

**EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

**PROJECT COMPLAINT MECHANISM  
COMPLIANCE REVIEW MONITORING REPORT IV  
PARAVANI HPP PROJECT, REQUEST NUMBER: 2012/01**

**March 2016**

## Compliance Review Monitoring Report

### *Context*

This Compliance Review (CR) Monitoring Report is prepared pursuant to Rule 44 of the 2009 PCM Rules of Procedure (PCM RPs)<sup>1</sup> whereby, pursuant to a finding of non-compliance, the PCM Officer is mandated to monitor the implementation of the recommendations of the CR Report subject to the timetable and estimate of human and financial resources as set in the Management Action Plan (MAP). PCM monitors the implementation of recommendations of CR Reports, and prepares Monitoring Reports at least biannually or until the PCM Officer determines that the implementation issues are concluded. Monitoring Reports are submitted to the President and Board, and then published in the PCM Register on the EBRD website.

PCM reviewed a Complaint about the EBRD's Paravani HPP Project in Georgia, completing the CR at the end of 2013. The CR Expert made a finding of non-compliance on three of the six elements of the Complaint, namely Performance Requirements (PRs) 1, 6 and 10 of EBRD's 2008 Environmental and Social Policy (ESP).

The CR Report included recommendations<sup>2</sup> to address the findings of non-compliance, in response to which the Bank's Management prepared a MAP in accordance with PCM RP 41. The MAP addressed whether the recommendations were appropriate, and put forward a timetable and estimate of the human and financial resources required to implement the recommendations. The Complainant had an opportunity to comment on the MAP, in accordance with PCM RP 42, and the Complainant's comments along with the Report and MAP were publicly released on 1 January 2014.

This is the fourth Monitoring Report for the Paravani HPP Project.

### *Current monitoring period – July-December 2015*

For the January-July 2015 monitoring period, the PCM Officer reviewed Management's Progress Report (prepared in July 2015) and reviewed several documents provided by Management, namely: (1) revised Environmental and Social Procedures, approved in July 2015; (2) updated internal Staff Guidance Manual on implementing the 2014 Public Information Policy, dated November 2014; (3) updated internal Guidance for Preparing the Environmental and Social Input to the Project Summary Document, dated January 2015; (4) Terms of Reference for Environmental and Social Impact Assessment in Category A projects; and (5) updated internal Guidance Note – Stakeholder Engagement Plan, dated January 2015. Based on the information reviewed, the PCM Officer concluded that recommendations 1 (provision of guidance on the Initial Environmental and Social Examination) and 3 (provision of guidance on assessing the strategic context of a project) as well as 4 and 5 (availability of ESIA's in an internationally accessible language) would no longer require monitoring, as Bank Management had satisfied its commitments stated in the MAP.<sup>3</sup> For recommendations 2 and 6, the PCM Officer concluded PCM monitoring would continue.

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<sup>1</sup> The Complaint was registered, reviewed and will continue to be processed in accordance with the 2009 PCM RPs.

<sup>2</sup> Pursuant to PCM RP 40 a CR Report includes recommendations to:

- a. address the findings of non-compliance at the level of EBRD systems or procedures to avoid a recurrence of such or similar occurrences; and/or
- b. address the findings of non-compliance in the scope of implementation of the Project taking into account prior commitments by the Bank or the Client in relation to the Project; and
- c. monitor and report on the implementation of any recommended changes.

<sup>3</sup> Two earlier recommendations dealing with the exception for the imperative reasons of overriding public interest provided in the EU Habitats Directive were not adopted by Bank Management and have not been monitored by PCM.

For the current monitoring period, the PCM Officer has reviewed Management's Progress Report on the implementation of the MAP (attached as Annex 1); has reviewed relevant documents prepared by Management and identified as addressing the recommendation of the Compliance Review Expert; and has been familiarised with the internal management system (called the Assurance Framework) of the Bank's Environmental Sustainability Department (ESD).

PCM has also had a meeting with the ESD Specialist assigned to the Paravani HPP Project, who clarified that the objective of Management's response to recommendation 6 in the CR Report was to ensure increased access of environmental and social information related to Paravani HPP to the public. ESD has been working with GUE to ensure the disclosure of environmental and social data that was produced in the context of the Project. According to the Specialist, GUE has understood the need for such disclosure and has acted accordingly – birds mortality monitoring reports were disclosed, monthly environmental flow data are disclosed, and the first annual aquatic biodiversity monitoring report will be disclosed in the near future. Further, GUE has committed to providing regular updates on the Project's website on social matters, and to communicate the social actions they take.

The Complainant has also provided comments on the Paravani HPP Project. The Complainant expressed the following concerns:

EBRD is starting consideration funding for the projects when the developer has already "fulfilled" weak ESIA legislation of the country and when construction is already ongoing. As a result involvement of the EBRD is changing nothing as the construction is ongoing in accordance of the weak ESIA while consultation processes have flawed and the developer is not following additional studies....Despite the fact that EBRD made gap analysis and additional studies are underway according to staff, in parallel construction works are ongoing in compliance with the poor quality of the ESIA report missing significant part of the studies crucial for the project (Alternative analysis, geological risks assessments, detail Environmental and Social impacts, feasibility of the project for the country, compliance of the project with the demands of the EU Water Framework Directive etc.). As a result it created confusion for the stakeholders, in particular the local communities, and exacerbated the tensions between the affected population and the project sponsor.

The Complainant has also reiterated that adequate guidance on assessing the strategic context of a project is essential, and that guidance should also be provided on the scope of analysis required within ESIA documentation on the analysis of project alternatives as well.

In regards to recommendation 2, the Complainant has asked EBRD's Management to disclose the draft guidance note on PR 6 for comments before mid-2016, and to involve all interested parties in this process.

Linked to recommendation 6, the Complainant states that the flood risk assessment of the Khertvisi village and nearby lands used by the locals is not available to the public, raising questions about the potential risks. The Complainant welcomes that the developer will disclose data and inform Khertvisi villagers about the risk of floods that could be caused by a dam in Turkey. However, the Complainant notes that it is unclear why GUE is not disclosing information directly connected to Paravani HPP. The Complainant asks, what measures will be made to address impacts and who will provide compensation in case of disaster?

In light of information received to date, and in accordance with the scope of the PCM Officer's monitoring role, the PCM Officer has determined the following:

<p><b>Recommendation 2:</b> PCM recommends that EBRD issue legally derived advice (potentially integrated into the next version of the ESP) on how the relevant EU directives are interpreted for the purposes of undertaking biodiversity assessments under performance requirement 6 of the ESP....</p>	<p>PCM notes the piloting of a guidance note on PR 6. PCM will continue monitoring this item pending PCM review of the guidance note, when available.</p>
<p><b>Recommendation 6:</b> PCM recommends that in addition to effectively monitoring implementation of the Environmental and Social Action Plan EBRD should work with GUE to prepare and disclose a comprehensive annual report which updates the ESIA/ESAP on which consultation can take place and which can inform future HPP developments within Georgia....EBRD should also consider as part of its policy review, how important elements of the environmental and social appraisal which are undertaken after disclosure of the ESIA are made available publicly....</p>	<p>The PCM takes note of the information provided by ESD regarding the efforts of GUE to increase public disclosure of environmental and social information related to the Paravani HPP Project (information is available at <a href="http://www.paravanihpp.com/reports.html">http://www.paravanihpp.com/reports.html</a>.)</p> <p>PCM will continue monitoring this item till the next monitoring period, to allow for clarification issues raised by the Complainant during the monitoring cycle.</p>

The next Monitoring Report will be issued in August/September 2016.

## ANNEX 1: Management's Progress Reports

Management provides biannual updates to their progress in implementing the MAP. Management's updates on recommendations not yet closed by PCM are contained in the table, below.

<b>PCM Recommendation 2</b>  “PCM recommends that EBRD issue legally derived advice (potentially integrated into the next version of the ESP) on how the relevant EU directives are interpreted for the purposes of undertaking biodiversity assessments under performance requirement 6 of the ESP. Whilst EU legislation of course changes, most of the relevant directives have been in place for many years and the underlying principles have not changed. In any case the ESP has a finite life (say 5 years) and the advice within it could be applicable for that period and then revised according to any changes in EU requirements.”
<b>Management Response</b>  Management proposes to clarify the role of the Bank in relation to the EU Directives in the next version of the ESP and PR 6.
<b>Resources/Timetable</b>  No additional resources needed. ESP and PR 6 will be reviewed and revised as appropriate during the ongoing review of ESP.
<b>Management's Progress Report – July 2014</b>  The revised Environmental and Social Policy was approved by the EBRD Board of Directors on 7 May 2014. The text on EU requirements and the role of the Bank is found in article 7 and footnote 6 of the ESP. In addition, a guidance note for PR6 will be prepared with the help of independent biodiversity experts. The ToR has been prepared and they address this recommendation and will provide guidance on biodiversity assessment that is to be carried out in accordance with EU Habitat Directive and associated guidance when a project could have a significant impact on the conservation objectives or integrity of a protected area comparable to a Natura 2000 site. The guidance note is expected to be completed by the year end.
<b>Management's Progress Report – January 2015</b>  A guidance note for the PR6 is currently being finalised with an independent consultant. It will clarify how the relevant EU directives are interpreted for the purposes of undertaking biodiversity assessments under PR 6 and provide guidance on biodiversity assessment that is to be carried out in accordance with EU Habitat Directive and associated guidance when a project could have a significant impact on the conservation objectives or integrity of a protected area comparable to a Natura 2000 site. The GN will be rolled out in the first half of 2015 to Bank staff and our clients. This will be accompanied by internal training for ESD. The final GN will be disclosed on the EBRD website.
<b>Management's Progress Report – August 2015</b>  Two guidance notes on biodiversity were finalised in June 2015 by the <i>MFI Working Group on Biodiversity</i> in which EBRD participated, playing a leading role on the guidance on baseline information. The notes have specifically taken EU legislation into account. These guidance notes have been posted on the EBRD website: Good Practice Guidelines on the Collection of Biodiversity Baseline Data <a href="http://www.ebrd.com/cs/Satellite?c=Content&amp;cid=1395245538876&amp;pagename=EBRD%2FContent%2FDownloadDocument">http://www.ebrd.com/cs/Satellite?c=Content&amp;cid=1395245538876&amp;pagename=EBRD%2FContent%2FDownloadDocument</a> Good Practices for Biodiversity Inclusive Impact Assessment and Management Planning <a href="http://www.ebrd.com/cs/Satellite?c=Content&amp;cid=1395245539075&amp;pagename=EBRD%2FContent%2FDownloadDocument">http://www.ebrd.com/cs/Satellite?c=Content&amp;cid=1395245539075&amp;pagename=EBRD%2FContent%2FDownloadDocument</a>  A guidance note specific to EBRD's PR6 is in draft form and will be piloted later in 2015. The final guidance note will be disclosed on the EBRD website.

### **Management's Progress Report – January 2016**

The draft guidance note on PR 6 is currently being piloted. It clarifies how the relevant EU nature directives are interpreted for the purposes of undertaking biodiversity assessments under PR 6 and provides guidance on carrying out biodiversity assessments in accordance with EU Habitat Directive and associated guidance. In mid-2016, the document will be reviewed and finalised, taking the pilot stage into account. The final guidance note will be put on the EBRD website.

### **PCM Recommendation 6**

**“PCM recommends that in addition to effectively monitoring implementation of the Environmental and Social Action Plan EBRD should work with GUE to prepare and disclose a comprehensive annual report which updates the ESIA/ESAP on which consultation can take place and which can inform future HPP developments within Georgia. At a generic level, EBRD should also consider as part of its policy review, how important elements of the environmental and social appraisal which are undertaken after disclosure of the ESIA are made available publicly as they form an important element of third party review of EBRD projects.”**

### **Management Response**

ESP/PR10 requires GUE to keep the ESIA in the public domain throughout the life of the project, and amend it, from time to time, with additional relevant information. GUE is also required to disclose relevant project performance and information to public periodically as well as maintain a constructive relationship with stakeholders on an ongoing basis through meaningful engagement during project implementation. GUE has identified the information to be released to public and the frequency of such disclosure in the Stakeholder Engagement Plan for the project.

Management proposes that the Bank will discuss with GUE to agree the specific information to be disclosed to address the issues raised by the CSOs and affected communities.

Management notes that the ongoing reviews of ESP and Public Information Policy include reviewing disclosure requirements by clients and by the Bank.

### **Resources/Timetable**

No additional resources needed. Current client obligation in the financing agreements, which is being monitored by Bank staff. The Bank staff will review the client's disclosure plans and agree with the client specific information to be disclosed. Disclosure requirements will be reviewed and amended as part of the ongoing review of ESP.

### **Management's Progress Report – July 2014**

The Stakeholder Engagement Plan (SEP) that was initially prepared for the Project mainly covered the construction phase. Construction is expected to end this year, with the first commissioning tests being carried during the summer period. GUE has been required to prepare an updated version of the SEP, covering the operation period. The draft version of the revised SEP will be reviewed by ESD. Particular attention will be paid to the appropriate disclosure of specific information of interest for the CSOs and the affected communities.

The revision of the ESP and PIP has led to a commitment of the Bank to release more information on environmental and social issues. After 7 November, the Project Summary Documents of new Category A projects will be updated annually on the EBRD website.

### **Management's Progress Report – January 2015**

The actions described in the Management Response are being implemented. A new Stakeholder Engagement Plan (SEP) covering the operation period is being finalised (as of January 2015, it is a working draft).

In 2014, a number of engagement activities were carried out by GUE, spontaneously or after workshops were held with EBRD on Good International Practices in the hydropower sector. This includes for example (i) Paravani HPP website was revamped and now includes numerous information on the social activities carried out by GUE with and for the local population, (ii) the birds and aquatic biodiversity monitoring plans were disclosed on Paravani HPP website and the subsequent monitoring reports will be disclosed in 2015, (iii) in July 2014, a presentation was made to representatives of Khertvisi on the results of a flood risk assessment that demonstrates the absence of significant additional flood risk generated by the HPP operation (the assessment was carried out after a local NGO had claimed that the HPP would generate flood risks), and (iv) GUE has installed numerous signs at critical locations to warn people about local dangerous areas (for example at the intake).

#### **Management's Progress Report – August 2015**

ESD is working with GEU in preparing the SEP for the Operational Phase of the project and will provide comments on any commitments therein for sharing of information relevant to the local communities, including information about flood risks.

Actions (i) and (ii) are continuing. The Bank is reviewing the 2015 monitoring reports on birds and aquatic biodiversity and the flood assessment report.

#### **Management's Progress Report – January 2016**

A monitoring site visit was undertaken in October 2015. The Client has upgraded its website and is now disclosing environmental flow data on it, in addition to the environmental monitoring reports that were already disclosed. Birds mortality reports are now being disclosed. The aquatic biodiversity report is yet to be disclosed.

Regarding floods the client has started preparing a policy and a protocol to manage floods, based on the information received from the new upstream dam in Turkey on Kura River: this document is yet to be tested on real flood cases as a number of procedural aspects need to be confirmed. In practice Paravani will receive information as soon as releases from Turkey exceed 200 m<sup>3</sup>/s (this value is estimated to represent 50% of the flood value above which flood problems occur in Khertvisi), and they will systematically inform the villagers when such floods occur.