



Project
Complaint
Mechanism

Boskov Most Hydropower Project

REQUEST NUMBER: 2011/05

Compliance Review Monitoring Report V – November 2016

The Project Complaint Mechanism (PCM) is the independent accountability mechanism of the EBRD. PCM provides an opportunity for an independent review of complaints from one or more individual(s) or organisation(s) concerning an EBRD project, which allegedly has caused, or is likely to cause harm. PCM may address Complaints through two functions: Compliance Review, which seeks to determine whether or not the EBRD has complied with its Environmental and Social Policy and/or the project-specific provisions of the Public Information Policy; and Problem-solving, which has the objective of restoring a dialogue between the Complainant and the Client to resolve the issue(s) underlying a Complaint without attributing blame or fault. Affected parties can request one or both of these functions.

For more information about PCM, contact us or visit www.ebrd.com.

Contact information

Inquiries should be addressed to:

The Project Complaint Mechanism (PCM)
European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
Telephone: +44 (0)20 7338 6000
Fax: +44 (0)20 7338 7633
Email: pcm@ebrd.com

<http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism.html>

How to submit a complaint to the PCM

Complaints about the environmental and social performance of the EBRD can be submitted by email, telephone or in writing at the above address, or via the online form at:

<http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/submit-a-complaint.html>

Contents

Executive summary 1

1. Introduction 2

2. Context 3

3. Current monitoring period..... 5

4. PCM observations..... 6

5. Conclusions and next steps 8

NOTE: Unless otherwise defined, capitalised terms used in this Compliance Review Monitoring Report refer to terms as defined in the PCM Rules of Procedure.

Executive summary

This is the fifth Compliance Review (CR) Monitoring Report of the Project Complaint Mechanism (PCM) regarding two closely related Complaints about the EBRD's Boskov Most Hydro Power Project, completing the CR at the end of 2013. Following a review of the Bank's compliance with its 2008 Environmental and Social Policy, the PCM Compliance Review Expert determined a finding of non-compliance on one of the five grounds raised in the Complaints. EBRD Management subsequently prepared a Management Action Plan in response to the recommendations outlined in the Compliance Review Report.¹

During this fifth monitoring period, the PCM Officer reviewed the update provided by EBRD Management on implementation of the Management Action Plan as well as related documentation provided by the Bank Management.

The PCM Officer takes note of the actions undertaken by Management to fulfil the commitments outlined in the Management Action Plan, and considers Actions 1, 2, 3 have been completed. The PCM Officer will continue to monitor implementation of Actions 4 and 5. The next monitoring report is expected to be issued in February-March 2017.

¹ The Complaints, Compliance Review Report and Management Action Plan are available on the [PCM Register](#).

1. Introduction

This Compliance Review Monitoring Report is prepared pursuant to the 2009 PCM Rules of Procedure² whereby, pursuant to a finding of non-compliance, the PCM Officer is mandated to monitor the implementation of the recommendations³ of a Compliance Review Report subject to the timetable and estimate of human and financial resources as set in the Management Action Plan. PCM monitors the implementation of recommendations of Compliance Review 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 two closely related Complaints about the EBRD's Boskov Most Hydro Power Project, completing the Compliance Review at the end of 2013. The CR Expert made a finding of non-compliance on one of the five grounds raised in the Complaints, namely in relation to Performance Requirement (PR) 6 of the EBRD's 2008 Environmental and Social Policy (ESP). The Compliance Review Report included recommendations to address the findings of non-compliance, in response to which EBRD Management prepared a Management Action Plan (available on the [PCM Register](#) on the EBRD website).

This is the fifth Compliance Review Monitoring Report regarding the EBRD's Boskov Most Hydro Power Project.

² The Complaint was registered, reviewed and will continue to be processed in accordance with the 2009 PCM Rules of Procedure.

³ Pursuant to the PCM Rules of Procedure a Compliance Review Report will include 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.

2. Context

The PCM received two closely related Complaints from a single Complainant concerning the Boskov Most HPP Project in FYR Macedonia on 7th November 2011 and 30th December 2011, respectively. The Complainant alleged that the Project has failed to comply with the EBRD's 2008 Environmental and Social Policy on a total of five grounds.

First of all, the original Complaint contended that the appraisal of the environmental risks in the Environmental and Social Impact Assessment (ESIA) was inadequate in that it failed to properly assess the impacts of the Project on mammals, birds and landscapes and that it did not provide a proper analysis of the cumulative impacts or a proper analysis of alternatives. Secondly, the original Complaint alleged that the biodiversity assessment conducted in accordance with PR 6.6 of the ESP was incomplete by virtue of missing data, which was central to such an assessment. Thirdly, the original Complaint claimed that the Project would result in destruction of natural, critical or protected habitats in a manner inconsistent with the requirements of PR 6 of the ESP. Fourthly, the original Complaint contended that Strategic Environmental Assessment (SEA) had not been carried out in respect of the relevant strategy on renewable energy or the new Management Plan for the Mavrovo National Park, which had to be adopted shortly. Finally, the additional Complaint alleged that the Environmental Impact Assessment (EIA) process for the Project was incomplete and, thus, that national legal requirements in that respect have not been met.

The PCM Officer designated Mr Graham Cleverly, to assist in the Eligibility Assessment of the Complaints. The Eligibility Assessors have determined that the two closely linked Complaints, as submitted by the same Complainant in November and December 2011, have satisfied the eligibility criteria for a Compliance Review. On 14th May 2012, PCM Expert Dr Owen McIntyre was appointed as the Compliance Review Expert. The Compliance Review consisted of a thorough review of all relevant Project documentation and of relevant internal and external Bank correspondence. Documentation specifically related to the Complaint examined included both Complaints received from the Complainant and the respective Responses received from the Relevant Parties. The Compliance Review Expert did not find it necessary to hold meetings with the relevant Bank staff during the course of this Compliance Review as the Eligibility Assessors had conducted in-depth meetings concerning the present Complaints in February 2012 in order to clarify outstanding issues. Also, the Compliance Review Expert did not find it necessary to conduct a site visit as the Eligibility Assessment Expert had undertaken productive fact-finding meetings in Skopje with both the Client and the Complainant in February 2012.

The Compliance Review Expert has made a finding of non-compliance in respect of one of the grounds set out in the Complaints. The Compliance Review has determined that the assessment of the Project's potential impacts on biodiversity and living natural resources was not sufficiently comprehensive and conclusive to satisfy the requirements of Performance Requirement 6 of the 2008 ESP.

The Compliance Review Expert made recommendations to address the findings of non-compliance at the level of EBRD systems or procedures, more specifically developing of detailed guidance on the minimum requirements for the preparation of biodiversity assessments for projects likely to have a significant effect on natural, critical or protected habitats. Recommendations have also been made to address the findings of non-compliance in the scope or implementation of the Project.

EBRD Management was requested to prepare a Management Action Plan, including a timetable and estimate of the human and financial resources required to implement the recommendations considered appropriate. The Management Action Plan included actions to address the recommendations at the level of EBRD systems and procedures as well as actions to address the recommendations connected with activities at the project level. The Complainants submitted comments on the Management Action Plan. The final Compliance Review Report and Complainants' comments were submitted for information to the EBRD's Board of Directors, along with the Management Action Plan, which was submitted for acceptance. The Board accepted the Management Action Plan and the Compliance Review Report, Management Action Plan and Complainants' comments were publicly released on 1 January 2014.

3. Current monitoring period

The PCM Officer reviewed an implementation update on the Management Action Plan regarding the Boskov Most Hydropower Project for the February 2016-July 2016 which was provided by EBRD Management to the PCM in September 2016. The PCM acknowledges the decision of the Bank to accept recommendations made by the Bern Convention Standing Committee relating to the Mavrovo National Park and to not take any further activities on the Project until the Government of FYR Macedonia has implemented the Bern Convention recommendations. PCM monitoring also takes into account the absence of further implementation of the Project.⁴ Under the current monitoring period, the Management highlights that the Guidance Note on EBRD Performance Requirement 6, relating to Biodiversity Conservation and Sustainable Management of Living Natural Resources has been publicly disclosed by EBRD. The PCM office has also reviewed the ESD internal guidance note on deferred appraisal while preparing the Environmental and Social Section in the Final Review Memorandum, the Board Document and the Project Summary Document.

Documents reviewed by the PCM provided by Management referenced in the implementation update, namely:

- PR6 Guidance note <http://www.ebrd.com/environment/pdf-guidance-note-ebrd-performance-requirement-6.pdf>
- Internal guidance note on deferred appraisal.

PCM has also had a meeting with the ESD Specialist assigned to the Boskov Most HPP Project

The PCM Officer also invited Complainants to provide their comments regarding Management's implementation of the Management Action Plan. No comments were received from the Complainants during this monitoring cycle. But, Complainants have expressed their interest in learning how the PCM will further address the monitoring of the Boskov Most Hydropower Project after after November 7th 2016, when the project will fulfill five years since the loan agreement signature, although no disbursement being made so far.

⁴ This information was disclosed on the EBRD website on 9 December 2015, available at <http://www.ebrd.com/cs/Satellite?c=Content&cid=1395248118146&pagename=EBRD%2FContent%2FContentLayout&rendermode=preview%3Fsrch-pg%3Fsrch-pg%3Dadv>.

4. PCM observations

In light of information received to date, and in accordance with the scope of the PCM Officer's monitoring role, the PCM Officer has made a number of observations regarding implementation of the Management Action Plan (MAP) regarding the Boskov Most Hydropower Project.

In the discussion below the Compliance Review recommendations are provided, along with the related action item(s) drawn from the MAP. The PCM's comments are also provided.

The Compliance Review Expert made a series of recommendations concerning the 2008 Environmental and Social Policy and related procedures. EBRD Management committed to undertaking a number of actions in the MAP to address the recommendations considered appropriate.

MAP Action 2 was completed by the management and in January 2016 PCM determined that no further monitoring was needed and closed it. In this fifth MAP update report, Management request that Action 1 and Action 3 are additionally closed; PCM has accepted that no further monitoring will be need for these two additional actions.

PCM Recommendation 1		Implementation update
<p>Development of detailed guidance on the minimum requirements for the preparation of biodiversity assessments for projects likely to have a significant effect on natural, critical or protected habitats <i>inter alia</i>:</p> <ul style="list-style-type: none"> - Best practice regarding the setting out of conclusive and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed Project on the integrity of the site concerned. - Best practice regarding the preparation and reporting of a biodiversity assessment separately from the general ESIA or in a manner clearly identified and distinguishable within the ESIA. 		<p>The Bank has completed the pilot stage of the guidance note on PR6 and the final version has been posted on the Bank's website. http://www.ebrd.com/environment/pdf-guidance-note-ebrd-performance-requirement-6.pdf Management requested that this item be closed.</p>
PCM comments	PCM reviewed the guidance note on PR 6 and acknowledges the completion of its piloting stage. No further monitoring of this item will be necessary and PCM is closing this action.	

PCM Recommendation 2		Implementation update
<p>Practical guidance on the scope of the very limited flexibility as regards the exhaustiveness of such a biodiversity assessment likely to be acceptable for the approval of a Project under the so-called "D1 exception".</p>		<p>A memo has been approved by the ESD management to clarify the deferred appraisal approach and circumstances and documentation of such decisions, which has been included in the Assurance Framework. Guidance for preparing environmental and social sections of the Board documents and PSDs has been approved by the ESD management, which provides guidance on enhanced information to be included on circumstances and contingencies relating to further environmental and social appraisal.</p>
PCM comments	PCM determined in March 2016 that no further monitoring of this item will be necessary and the action was closed.	

PCM Recommendation 3		Implementation update
<p>Where the so-called “D1 exception” is employed, fully transparent procedures for decision-making on disbursement of funds subject to subsequent satisfaction of contractual conditions relating to further biodiversity assessment.</p>		<ul style="list-style-type: none"> - The procedure to clarify the decision-making process of disbursement of funds subject to satisfaction of contractual condition relating to further biodiversity assessment for the Environmental and Sustainability Department has been updated to clarify that any requests for disbursement for a project that has been granted a deferred appraisal needs to be reviewed and approved by the ESD Assurance Committee, which is comprised of senior level management. - A guidance note for ESD on environmental and social information to be included in the Board documents and PSDs has been approved and included in the Assurance Framework. Management requested this issue be closed.
PCM comments	<p>PCM has reviewed the ESD guidance note on environmental and social information to be provided to the Board of Directors. No further monitoring of this item will be necessary and PCM is closing this action.</p>	

PCM Recommendation 4		Implementation update
<p>Though the Compliance Review Expert has concluded that the Bank was not in full compliance with the ESP as regards the assessment of the biodiversity impacts of the present Project, it is only necessary in the present case to recommend that the mitigation measures identified in the ESAP, and any further measures arising under the due process of national law, are rigorously implemented. The reasonably comprehensive desk-based studies undertaken and the complete suite of mitigation measures stipulated ought to be sufficient to ensure the effective application of the requisite standards of protection of biodiversity resources in the present case.</p>		<p>No disbursement has been made to date, and EBRD is not taking any further activities on Boskov Most HPP project until the Government of FYR Macedonia has implemented the Bern Convention recommendations.</p>
PCM comments	<p>PCM notes the current circumstances on no disbursement being made by EBRD and the Bank’s decision on not taking any further activities on Boskov Most HPP project until the Government of FYR Macedonia has implemented the Bern Convention recommendations. PCM will continue monitoring this item as circumstances relating to Project implementation evolve.</p>	

PCM Recommendation 5		Implementation update
<p>In ensuring implementation of the mitigation measures stipulated in the ESAP, the Bank should have regard to the outcome of the ongoing revalorization of the Mavrovo National Park by the Ministry of Environment and Physical Planning and any new or additional management goals established thereby.</p>		<p>There has been no progress on this issue since the previous monitoring report in January 2016. EBRD is not taking any further activities on Boskov Most HPP project until the Government of FYR Macedonia has implemented the Bern Convention recommendations</p>
PCM comments	<p>PCM takes note that no progress has made on this action and will continue to monitor this item as circumstances relating to Project implementation evolve.</p>	

5. Conclusions and next steps

The PCM Officer has determined that Actions 1-3 have been completed, and although the actions 4 and 5 did not have actions associated with them, these will be subject to further monitoring.