



Project
Complaint
Mechanism

Boskov Most Hydropower Project

REQUEST NUMBER: 2011/05

Compliance Review Monitoring Report VI – March 2017

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>

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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 sixth 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 sixth monitoring period, the PCM Officer reviewed the update provided by EBRD Management on the Boskov Most Hydro Power Project status.

The PCM Officer takes note of the actions undertaken by Management during previous monitoring periods to fulfil the commitments outlined in the Management Action Plan in relation with Actions 1, 2 and 3. PCM Officer takes also note of the expiration of the EBRD loan in November 2016 due to the fact that conditions for disbursement were not met. PCM considers that no longer monitoring is necessary for the Actions 4 and 5 and is closing the Boskov Most Hydro Power Complaint.

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 sixth 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 July 2016-December 2016 which was provided by EBRD Management to the PCM in March 2017. The PCM acknowledges that the EBRD loan to the project was available for five years and expired in November 2016 as conditions for disbursement were not met. No disbursements were made by EBRD and the loan has now been cancelled⁴.

⁴ This information was disclosed on the EBRD website on 17 Jan 2017, available at <http://www.ebrd.com/boskov-most-cancellation>.

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 Actions 1, 2 and 3 were completed by the management during previous monitoring periods, PCM determined that no further monitoring was needed and closed them. In this sixth MAP update report, Management request that Action 4 and Action 5 are additionally closed. PCM Officer takes also note of the expiration of the EBRD loan in November 2016 due to the fact that conditions for disbursement were not met. PCM Officer considers that no longer monitoring is necessary for the Actions 4 and 5 and is closing the Boskov Most Hydro Power Complaint.

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>EBRD loan to the Macedonian electricity generation utility ELEM for the construction of Boskov Most hydro power plant in Mavrovo National Park was available for five years and expired in November 2016 as conditions for disbursement were not met. No disbursements were made and the loan has now been cancelled.</p>
PCM comments	Due to cancellation of the loan, PCM will no longer monitor this Action.

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>EBRD loan to the Macedonian electricity generation utility ELEM for the construction of Boskov Most hydro power plant in Mavrovo National Park was available for five years and expired in November 2016 as conditions for disbursement were not met. No disbursements were made and the loan has now been cancelled.</p>
PCM comments	Due to cancellation of the loan, PCM will no longer monitor this Action.

5. Conclusions and next steps

The PCM Officer has determined that Actions 1-3 have been completed by the Management. Also due to the cancellation of the Boskov Most Hydropower Project, PCM will no longer monitor the Actions 4 and 5 and is closing the Boskov Most Hydro Power Complaint.