

EPS Emergency Power Sector Reconstruction Loan, EPS Power II and EPS Kolubara Environmental Improvement Projects

REQUEST NUMBER: 2013/03

Compliance Review Monitoring Report III – August 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 third Compliance Review Monitoring Report of the Project Complaint Mechanism (PCM) regarding two Complaints received from national NGO CEKOR as well as a local NGO in respect of a number of EBRD-funded Projects with the Serbian state electrical company, EPS. Following a review of the Bank's compliance with its 2008 Environmental and Social Policy, the PCM Compliance Review Expert determined four grounds of non-compliance. EBRD Management subsequently prepared a Management Action Plan in response to the recommendations outlined in the Compliance Review Report.¹

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

The PCM Officer takes note of the actions undertaken by Management to fulfil the commitments outlined in the Management Action Plan, and considers all Actions under this Complaint completed and is closing the 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 EPS Emergency Power Sector Reconstruction Loan, EPS Power II and EPS Kolubara Environmental Improvement Projects (EPS Projects), completing a Compliance Review process in October 2015. The Compliance Review Expert made a finding of non-compliance on several grounds raised in the Complaints, namely in relation to Performance Requirements 1, 3, 5 and 10 of the EBRD's 2008 Environmental and Social Policy. 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 third Compliance Review Monitoring Report in respect of the two Complaints received on a number of EBRD-funded Projects with the Serbian state electrical company, EPS.

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

Two substantively similar Complaints were received by PCM in 2012 and 2013 regarding the activities of Serbia's state-owned electricity company, Public Enterprise Elektroprivreda Srbije (EPS), at the Kolubara mining basin.⁴ The Complaints primarily concerned the Kolubara Environmental Improvement (KEI) Project, for which EBRD approved financing on 26 July 2011. The KEI Project consists of a substantial investment in EPS' lignite basin, comprising installation of a coal management system to analyse quality of the excavated coal; installation of a spreader system in the Tamnava West field to allow for separation and handling of the mined lignite; and consultancy support for procurement and implementation. The KEI Project was assigned Category A, and assessed and structured in accordance with the Bank's 2008 Environmental and Social Policy.

An Eligibility Assessment was conducted for each Complaint, and both were found eligible for a Compliance Review. In accordance with the PCM Rules of Procedure, the Complaints were joined for the purposes of Compliance Review. Mr Glen Armstrong undertook an ad hoc appointment to carry out the Compliance Review. The Compliance Review consisted of a review of documentation, meetings with the Complainants, Bank staff and Client, and a site visit to Lazaverac and Vreoci in October of 2013.

The Compliance Review Expert determined four grounds of non-compliance, namely:

- EBRD was non-compliant in its application of the Environmental and Social Policy general requirements and the requirements of Performance Requirement 1, in determining the scope of its environmental and social due diligence on the KEI Project.
- EBRD was non-compliant with the general commitments of the Environmental and Social Policy and Performance Requirements 1, 3, 5 and 10 with respect to its exclusion of Vreoci from its due diligence (and application of the Performance Requirements) on the KEI Project.
- EBRD was non-compliant with the general requirements of its Environmental and Social Policy and the specific requirements of Performance Requirement 3 with respect to the assessment of greenhouse gas emissions on the KEI Project.
- That whilst no new strategic assessment was necessary for Kolubara due to the existing strategic information available, EBRD should have been more strategic itself in how it applied that information to its due diligence on the KEI Project and the conditionality and requirements therefore placed upon its client, reinforcing non-compliance finding (1) above.

The Compliance Review Expert made recommendations relating to the interpretation of the Environmental and Social Policy consistent with the concerns identified in the Compliance Review. In particular, recommendations were made to clarify certain aspects of the Policy, as well as underlying guidance and procedures. Recommendations were also made on how EBRD might bridge the gap between the due diligence it undertook for the KEI Project, and the standard deemed appropriate by the Compliance Review Expert.

⁴ Refer to the [PCM Register](#) for more information.

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 Kolubara basin. 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 on 26 October 2015. The Relevant Parties were subsequently informed, and the Compliance Review Report, Management Action Plan and Complainants' comments were publicly released thereafter.

3. Current monitoring period

The PCM Officer reviewed an implementation update on the Management Action Plan regarding the EPS Projects for the December 2016 - June 2017 period, which was provided by EBRD Management in July 2017. The Actions 14, 15, 16 and 21 were the only actions under monitoring by the PCM during the current monitoring period. In the monitoring update, the Management considers that all the pending actions under this Complaint were completed. Bank Management have now updated and published the Green House Gas (GHG) Emissions guidance on www.ebrd.com. Also, the information on the scope and scale of project-specific GHG assessments are currently being disclosed in PSDs. In addition, the Bank highlights that it is supporting EPS in the areas of transparency and accountability by providing capacity-building initiatives.

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 regarding the EPS Projects.

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

4.1 Recommendations in the Compliance Review Report to address the findings of non-compliance at the level of EBRD systems or procedures

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.

4.1.1 Appraisal generally

The Compliance Review Expert made a number of recommendations relating to the appraisal process generally, particularly in the case where the Bank has been involved in multiple investments for a single client; and where a client occupies a dominant position within a sector or region and where its approach and practices have broader socio-economic or environmental impacts.

Actions 1 to 13 and 17 to 20 were reported as completed in previous monitoring reports, with the exception of Actions 14, 15, 16 and 21. In this third report, with the additional disclosure of guidance on Greenhouse Gas Emissions and the disclosure of the scope and scale of project-specific GHG assessments in PSDs, and in taking note of the Bank's ongoing efforts and initiatives to support EPS in the areas of transparency and accountability, PCM considers that Actions 14, 15, 16 and 21 are closed and do not require further monitoring by the PCM.

Action 1	Implementation update
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Under the revised (2014) Environmental and Social Policy, the Bank reviews the environmental and social performance of projects and commitments in legal documentation, for which remedial measures may be agreed with the client in the case of a failure to comply (paragraphs 43-44 of the Policy).

The revision of the Environmental and Social Policy has been in effect since 7 November 2014.

Management requests that this action item be closed.

PCM comments

This action item has been completed. PCM closed this action in July 2016.

Action 2	Implementation update
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For follow-on projects with existing clients, corrective measures for addressing areas of material non-compliance may be set as conditions precedent for disbursements or as covenants connected with a new project, for

Guidance on this point has been included in the Assurance Framework and its implementation is reviewed as part of the Bank's project approval processes. Management request this item be closed.

example by including remedial measures to address any outstanding Environmental and Social Action Plan (ESAP) actions in the new ESAP.

PCM comments This action item has been completed. PCM closed this action in February 2017.

Action 3 Implementation update

A summary of a client's compliance with commitments will be included in any submission to the relevant EBRD decision making body with proposed remedial action, where necessary.

The template for the environmental and social content of the project documentation submitted to the final stage of the internal management review and to the Board of Directors has been updated to include this. Management request this item be closed.

PCM comments This action item has been completed. PCM closed this action in February 2017.

Action 4 Implementation update

Environmental and social appraisal will identify whether a client occupies a dominant position, having broader socio-economic or environmental impacts that should be addressed through policy dialogue or in EBRD country strategies.

The Board of Directors' documentation contains a section on the Client, and ESD staff has been advised to review this section, as well as the project description, environmental and social sections of Board documentation. Guidance on this point has been included in the Assurance Framework and its implementation is reviewed as part of the Bank's project approval processes. Management request this item be closed.

PCM comments This action item has been completed. PCM closed this action in February 2017.

Action 5 Implementation update

The environmental and social sections of Board documents will include a summary of the broader socio-economic or environmental impacts resultant from a client's sectoral or regional approaches and propose appropriate technical cooperation and policy dialogue activities to address them. This will form part of the internal management system of the Environment and Sustainability Department (ESD).

The template for the environmental and social content of the project documentation submitted to the final stage of the internal management review and to the Board of Directors has been amended to include a summary of the broader socio-economic or environmental impacts resultant from a client's sectoral or regional approaches. The standard terms of reference for environmental and social appraisal included in the ESD assurance framework has also been amended to ensure that regional and sectoral approaches are appropriately considered in the environmental and social appraisal of all projects. Management request this item be closed.

PCM comments This action item has been completed. PCM closed this action in February 2017.

Action 6 Implementation update

EBRD has a robust country strategy process, and each project submitted to the Board of

A guidance note on environmental and social inputs to the country strategy process,

Directors must explain how it meets the strategic priorities in the relevant country strategy.

including policy or capacity building initiatives, has been developed and included in ESD's internal management system.

Management requests that this action item be closed.

PCM comments

This action item has been completed. PCM closed this action in July 2016.

4.1.2 Project scope considerations

The Compliance Review Expert made a number of recommendations relating to the absence of clarity around a project's "area of influence" and the determination of appraisal and application of Performance Requirements to the area of influence. The Expert also asserted that the determinations of the area of influence and scope of appraisal as agreed with the client should be publicly disclosed.

Actions 7 & 8

Implementation update

Potentially ambiguous terminology used in the 2008 Environmental and Social Policy has been clarified in the 2014 revision. In particular, the scope of applying Performance Requirements to facilities and activities that are associated with, but not part of the project – corresponding to the concept of "area of influence" in the 2008 Environmental and Social Policy – has been clarified. Should any uncertainty with the application of Performance Requirements remain, clarifications will be published on the Bank's website.

The revision of the Environmental and Social Policy has been in effect since 7 November 2014.

Management requests that action items 7 & 8 be closed.

PCM comments

This action items have been completed. PCM closed this action in July 2016.

Action 9

Implementation update

Guidance documents for external use designed to assist clients and consultants are disclosed on EBRD's website and subject to normal stakeholder engagement in accordance with the Bank's Public Information Policy.

The management group in the Environmental and Sustainability Department have developed a terms of reference for their function. It specifically states that for each guidance document reviewed/approved, a decision will be made on whether it will be internal, external for information, or external for consultation. Guidance documents for external use are disclosed on the EBRD website. Comments are welcomed at any time on the guidance notes on the EBRD website and are reviewed when received, and may be revised to take account of the comments as well as implementation lessons as appropriate. Many guidance notes are developed in working groups with specialised CSOs, institutes, and/or consultants (e.g., on biodiversity). Management request this item be closed.

PCM comments

This action item has been completed. PCM closed this action in February 2017.

Action 10	Implementation update
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Public Information Policy Operational Guidelines for preparing project summary documents (PSDs) will be updated to include instruction to describe clearly the project financed by EBRD.	The Public Information Policy implementation guidelines in the banking operational manual have been updated. Management requests that this action item be closed.
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PCM comments This action item has been completed. PCM closed this action in July 2016.

Action 11	Implementation update
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Internal guidance for preparing the environmental and social sections of PSDs includes a description of the scope of appraisal, and all PSD draft environmental and social sections will be reviewed as part of ESD's internal management system process.	The requirement for a description of the scope of environmental and social appraisal has been included in the template for the environmental and social content of the Project Summary Documents. Its implementation is reviewed as part of the Bank's project approval processes. Management request this item be closed.
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PCM comments This action item has been completed. PCM closed this action in February 2017.

4.1.3 Additional studies to support appraisal

The Compliance Review Expert made a number of recommendations relating to the potential role of sectoral, regional or strategic studies in the appraisal process.

Action 12	Implementation update
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EBRD will ensure that due diligence identifies and assesses relevant regional and strategic environmental and social assessments or studies that might affect a project, and that where these are identified and reviewed, they will be included in internal documents and disclosed in PSDs.	Standard terms of reference for environmental and social impact assessment have been prepared, which include a specific task to identify, review and take into consideration any relevant strategic level assessment documentation.
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PCM comments This action item has been completed. PCM closed this action in July 2016.

Action 13	Implementation update
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EBRD will identify the need for technical cooperation and policy dialogue to support strategic assessments in the country strategy process.	A guidance note on environmental and social inputs to the country strategy process, including the need for technical cooperation and policy dialogue to support strategic assessments has been developed and forms part of ESD's internal management system.
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PCM comments This action item has been completed. PCM closed this action in July 2016.

4.1.4 Greenhouse Gas (GHG) emissions analysis and guidance

The Compliance Review Expert asserted that EBRD GHG analysis and guidance should be improved.

Action 14**Implementation update**

EBRD guidance on GHG assessment will be updated and disclosed.

The updated guidance note on GHG assessment has been prepared and is disclosed on the www.ebrd.com Management request this item be closed.

PCM comments

PCM takes note of the updated and disclosed EBRD guidance on Greenhouse Gas Emissions and is closing this action during this monitoring period.

Action 15**Implementation update**

The revised guidance, including relevant project screening criteria and guidance on defining the scope of the GHG assessment will be applied to all EBRD investments by Q2 2016.

The revised guidance has been completed and is being applied to all relevant investments. Management request this item be closed.

PCM comments

PCM takes note that the updated EBRD guidance on Greenhouse Gas Emissions being applied to EBRD investments and is closing this action during this monitoring period.

Action 16**Implementation update**

Information on the scope and scale of project-specific GHG assessments will be disclosed in PSDs.

A requirement to include details of the GHG impact of projects, where this is greater than 25Kt CO_{2e} per year, has been included in the template for the environmental and social content of PSDs. Management request this item be closed.

PCM comments

PCM takes note of the Management's efforts to disclose information on scope and scale of project-specific GHG assessments in PSDs and is closing this action during this monitoring period.

4.2 Recommendations in the Compliance Review Report to address the findings of non-compliance in the scope or implementation of the project

The Compliance Review Expert made a number of recommendations regarding EBRD's engagement with EPS, in particular as relating to environmental and social considerations at the Kolubara basin.

4.2.1 The Compliance Review Expert recommended that EBRD should commission a review with EPS of future environmental, social and energy investment strategy for the Kolubara basin, taking into account EBRD's energy strategy and Serbia country strategy, as well as cumulative impacts based on future strategic development of the basin.

Action 17**Implementation update**

Management will update the PSD for the KEI Project to include links to various strategic information.

The PSD for the [KEI Project](#) has been updated.

PCM comments

This action item has been completed. PCM closed this action in July 2016.

4.2.2 The Compliance Review Expert recommended that the EPS environmental and social governance capacity and management systems implementation should be upgraded.

Action 18	Implementation update
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EBRD will publish a non-technical summary (NTS) of the work undertaken in 2015 in due course, along with a summary of the associated ESAP; monitoring of commitments under existing loans with EPS is ongoing.

The NTS was posted on both the EPS and EBRD websites ([EBRD website](#); [EPS website](#)). The version on the EPS website includes some updates on progress and schedule. Monitoring is ongoing, and the latest monitoring visit was in March 2016.

Management requests that this action item be closed.

PCM comments

This action item has been completed. PCM closed this action in July 2016.

Action 19	Implementation update
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The 2012 action plans will be updated by EPS for subsidiaries by Q4 2015, and EPS will be requested to publish the summary report for these audits by Q1 2016.

The 2012 action plans have been updated and posted by EPS on the EPS website.

Management requests that this action item be closed.

PCM comments

This action item has been completed. PCM closed this action in July 2016.

4.2.3 The Compliance Review Expert recommended that EBRD review the environmental and social conditions affecting the mining communities within the basin, with outputs from this work publicly disclosed and consulted, and an appropriate action plan developed.

Action 20	Implementation update
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EBRD will update the PSD for the KEI Project to include a summary of the social consultant's report on Vreoci (by end Q4 2015).

The PSD for the [KEI Project](#) has been updated to include this information.

PCM comments

This action item has been completed. PCM closed this action in July 2016.

Action 21	Implementation update
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Management has committed to publicly disclose additional information and will continue to work with EPS in the areas of transparency and accountability. More clarity will be provided in PSDs on what EBRD is financing.

EBRD consultants are working with the client on improving stakeholder engagement. The consultants have completed the diagnostic of EPS current transparency and accountability mechanisms and are making recommendations for improvements. A training programme for EPS staff will start in September 2017. Management request this item be closed.

PCM comments

Consistent with the commitment set out in the MAP, PCM takes note of Management's efforts to support the Client in enhancing transparency and accountability, including stakeholder engagement. This action item is considered closed during this monitoring period.

5. Conclusions and next steps

The Actions from 1 to 13 and from 17 to 20 have been completed under previous monitoring reports. In this third monitoring report, Bank Management has reported on efforts undertaken by the Bank and the Client in relation to the completion of the remaining Actions 14, 15, 16 and 21 and considers them closed. Accordingly, this Complaint does not require any further monitoring by the PCM and is considered closed.