



Project
Complaint
Mechanism

COMPLAINT: KRNOVO WIND FARM

REQUEST NUMBER: 2017/01

ELIGIBILITY ASSESSMENT REPORT – July 2017

The Project Complaint Mechanism (PCM) is the 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>

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
I. BACKGROUND	4
II. STEPS TAKEN IN THE ELIGIBILITY ASSESSMENT	4
III. SUMMARY OF THE RELEVANT PARTIES' VIEWS	5
IV. DETERMINATION OF ELIGIBILITY	8
V. CONCLUSION	10
VI. TERMS OF REFERENCE FOR A COMPLIANCE REVIEW	11
Annex 1: Complaint	14
Annex 2: Bank Management Response	16
Annex 3: Client Response	18

Unless otherwise indicated capitalised terms used in this report are those as set forth in the PCM Rules of Procedure.

EXECUTIVE SUMMARY

The Project Complaint Mechanism (PCM) received a Complaint in relation to the EBRD's financing of the Krnovo Wind Farm Project in Montenegro, alleging non-compliance with the Bank's 2014 Environmental and Social Policy (ESP), in particular Performance Requirement 5. The Complainant has requested that both functions be undertaken by the PCM: Problem-solving and Compliance Review.

The Eligibility Assessors have determined that a Problem-solving Initiative undertaken by PCM is unlikely to assist in resolving the concerns raised by the Complainant or achieve positive results. The issue of compensation is being addressed by the Client and Complainant in line with the legal system of Montenegro.

The Eligibility Assessors have determined that the Complaint is eligible for a Compliance Review, and the Bank had a responsibility in line with its Environmental and Social Policy to ensure adequate due diligence in relation to Performance Requirement 5 – "Land acquisition, Involuntary Resettlement and Economic Displacement".

The PCM Eligibility Assessors find that the Complaint does not satisfy the criteria for a Problem-solving Initiative and does satisfy the criteria for a Compliance Review, as set out under the PCM Rules of Procedure.

I. BACKGROUND

1. On 2 March 2017 the PCM received a Complaint regarding the Krnovo Wind Farm Project in Montenegro.¹ The Complaint was submitted by an individual who requested his identity be kept confidential (the Complainant). The Complaint requested both a Compliance Review and a Problem-solving Initiative. The Complaint was registered by the PCM Officer on 6 March 2017 in accordance with paragraphs 11-13 of the PCM Rules of Procedure (PCM RPs), and was subsequently posted in the PCM Register pursuant to paragraph 20 of the PCM RPs. On 7 March 2017 Ms Susan T. Wildau was appointed as an Eligibility Assessor to conduct the Eligibility Assessment jointly with the PCM Officer, in accordance with paragraph 22 of the PCM RPs.
2. The Project involves up to EUR 48.5m senior loan to Krnovo Green Energy (the Client), a special purpose vehicle established for the sole purpose of financing the construction and operation of the 72MW Krnovo wind power plant. The Project site is located approximately 28 km northeast of Niksic, Montenegro and is expected to be Montenegro's first utility-scale wind farm.²
3. The Project was approved by the EBRD Board of Directors on 6 May 2015, as a category B project under the 2014 Environmental and Social Policy.
4. In summary, the Complainant has asserted that:
 - The expropriated area of the Complainant's land includes only a small portion of the actual area occupied by the Project;
 - The compensation for expropriation does not correspond to the market price or appraiser's price;
 - Resolution to the Complainant's dispute with the Cadastre of a parcel of land within the Project area should have been resolved before continuation of the Project works;
 - The Project sponsor did not recognize the damage done to the Complainant's land as a whole and its future value by changing its structure and putting limits to construction of objects;
 - The Complainant was not consulted prior to his land being expropriated, and the land acquisition process was not undertaken following a negotiation process as outlined in the Environmental and Social Policy;
 - The Complainant was unable to access the Client's grievance mechanism.

II. STEPS TAKEN IN THE ELIGIBILITY ASSESSMENT

5. The Eligibility Assessors have undertaken a general examination of the Complaint, and additional information provided by the Complainant, EBRD Management and the Client, to determine if the eligibility criteria set out in the PCM RPs are satisfied.
6. A site visit was not considered necessary for the purposes of this Eligibility Assessment as the Assessors deemed it sufficient and adequate to determine eligibility through primarily a document-based review.
7. PCM has continuously engaged with the Complainant, Bank staff and the Client since first receiving a communication from the Complainant in August 2015.

¹ Complaint Number 2017/01, available at <http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html> and annexed to this report.

² Project Summary Document for Krnovo Wind Farm Project, available at <http://www.ebrd.com/work-with-us/projects/psd/krnovo-wind-farm.html>.

III. SUMMARY OF THE RELEVANT PARTIES' VIEWS

1. Complainant

8. The Complainant initially contacted PCM on 7 August 2015 via email, stating that he owns 21,100 m² of land in Krnovo, Montenegro, where the Krnovo Wind Farm was going to be constructed with financial support from EBRD.
9. The Complainant explained that the Ministry of Economy of Montenegro was in charge of the expropriation process and that they determined that only 426 m² of the Complainant's land would be expropriated.
10. The 426 m² of land recognized to be the property of the Complainant covers only the area where two transmission towers of Krnovo Wind Farm were built to connect the wind farm to the grid. However, according to the Complainant, due to the fact that the two towers are connected with 110 kV transmission lines suspended above his land, he believes the area under the lines is unusable. According to the Complainant, he cannot use the area of around 8 meters on both sides of the lines due to safety reasons. The Ministry of Economy of Montenegro did not offer to compensate the Complainant for the land area under the transmission lines.
11. Also, according to the Complainant, because of the construction of the two windmill towers and the installation of transmission lines, the remaining land plot would drop in value. Therefore, the Complainant stated that he wanted his entire land parcel of 21,100m² to be expropriated.
12. According to the Complainant, he was offered compensation of 0.50 €/m² for the 426 m² of land without any possibility to negotiate, which he declined. A court process started automatically after the Complainant declined the offered price. In the view of the Complainant the 0.50 €/m² is well below the market price and below the price estimation of 4.31 €/m² that was determined by an expert witness (official appraiser) selected by the court. An independent appraiser hired by the Complainant estimated his land price at 5.60 €/m².
13. The court process started in November 2013 on the issues listed above and stopped because of the inaccuracy of the land ownership documents within the Cadastre database for the remaining 4,619 m² of land, which the Complainant was contesting. The Complainant found the court process to be slow, which is why he decided to contact the PCM hoping for a faster resolution of his issues.
14. On 21 August 2015, PCM informed the Complainant that due to the fact that he had not been in touch with EBRD Management and/or the Client to try and address the issues outlined in his Complaint, the registration of his Complaint would be suspended to afford such an opportunity.³
15. Between August 2015 and February 2017 numerous exchanges took place between the Complainant, the Bank and the Client. PCM was copied on most of the Complainant's correspondence with the Bank and the Client. Also, PCM participated in joint meetings with parties involved, and was regularly updated on the progress relating to the issues raised by the Complainant.

³ Paragraph 15 of the PCM RPs states: "If...the PCM Officer decides not to register a Complaint due to failure of the Complaint to meet one or more of the Registration criteria of Paragraphs 11-13 and if, in the opinion of the PCM Officer, this failure can be remedied, the PCM Officer will so notify the Complainant or its Authorised Representative. The PCM Officer will then suspend the Registration decision and allow the Complainant a reasonable opportunity to correct the failure and resubmit the Complaint."

16. In January 2017 Krnovo Green Energy initiated proceedings against the Complainant in court to determine the compensation for the expropriated land. In court, the Complainant was offered 2 €/m² instead of 0.5 €/m². The Complainant declined the 2 €/m² offer, as he believed this was still below the price suggested by the official state appraiser and the price suggested by the independent appraiser hired by the Complainant. However, the Complainant's biggest concern remained the damage to his land plot and the limited focus on the expropriated area of 426m² where the Krnovo Wind Farm towers were built.
17. In February 2017, after 18 months of communication between the Complainant, the Client and Bank staff, the Complainant informed PCM that his issues still remained unresolved and that he wished his Complaint to be registered by PCM.
18. On 2 March 2017 the Complainant submitted a revised Complaint to PCM seeking both a Problem-solving Initiative and a Compliance Review, which included additional information. The Complainant also asked the PCM to keep his name confidential throughout the PCM Complaint-handling process.
19. On 6 March 2017 the PCM Officer determined that the requirement to make a good faith effort to address the issues had been satisfied by the Complainant and registered the Complaint.
20. In his Complaint, the Complainant described the alleged harm caused to him by the EBRD Project:

Project Sponsor did not try to acquire land rights through negotiation but through expropriation which is not in compliance with EBRD's Environmental and Social Policy. Project Sponsor did not contact me until I reached out to EBRD.

Project Sponsor intended to expropriate only the area where the towers will be built but not the area under power wires and adjacent area that will be unusable completely for security reasons. Project Sponsor through expropriation priced the land at 0.50 EUR/m² which is at least 10 times less than the fair value.

Project Sponsor ignored the fact that around 25% of the area from my ownership paper is not adequately represented in Cadastre's map and did not wait for the issue to be resolved. Moreover, Project Sponsor did not recognize the damage done to my land as a whole and its future value by changing its structure and putting limits to construction of objects.

...[I]f Project Sponsor was compliant with EBRD social policy and negotiated before resorting to expropriation, lengthy court process could have been avoided.⁴

21. In subsequent discussions, the Complainant raised concerns regarding consultation as well as access to Krnovo Green Energy's grievance mechanism.
22. As stated in the Complaint, the Complainant desired outcome of the PCM process is "that the Project Sponsor will compensate [him] adequately for the harm caused by the Project."

2. Bank Management

23. Bank Management submitted its written response⁵ to PCM in relation to the Complaint on 1 April 2017.

⁴ Complaint.

⁵ The Bank Management response is annexed to this report.

24. According to the response, the Project has been structured to comply with the requirements of the 2014 Environmental and Social Policy applicable to an EBRD category B project and relevant EBRD Performance Requirements. An Environmental and Social Due Diligence (ESDD) was undertaken by an independent consultant. The ESDD confirmed the categorization of the Project. The gaps that had been identified were addressed and closed. All actions required to implement the Project in compliance with EBRD's ESP are reflected in the Project's Environmental and Social Action Plan (ESAP) that has been agreed with the Company prior to EBRD Board approval. The Bank has been closely monitoring the Project with help of independent consultants both during preparation and implementation phase.

25. In response to the Complaint, EBRD Management believes that:

- EBRD has structured the Project fully in line with its Environmental and Social Policy and its Performance Requirements. In particular, all provisions of PR 5 have been met. In accordance with PR 5, the loss of assets resulting from the construction of the transmission line has been compensated for through payment for the affected land, and not for the entire land plot, at replacement value.
- Significant efforts, which included several meetings in Montenegro, were made in 2015 and 2016 by the Project sponsor and EBRD to try and solve the issue amicably.
- An independent consultant confirmed that the process followed was fully compliant with PR 5 and EBRD's Policy, and the compensation offered to the affected people was in line with the requirements of PR 5.
- Based on the information provided by the Complainant, EBRD is not aware that the Complainant has taken any legal steps in the Republic of Montenegro to address the issue of compensation. This continues to contribute to the lack of an effective and timely resolution of the issue of compensation.
- The Project sponsor is willing to follow all judicial and formal administrative process to resolve the issue.
- EBRD's policy as well as good international practice does not require the compensation of an entire plot of land affected by a 110kV line construction, nor does it require the compensation for the land under the transmission line.

3. Client

26. In its written response⁶ to the Complaint, received by the PCM on 2 May 2017, Krnovo Green Energy references the three main topics mentioned by the Complainant: negotiation around land rights; the portion of land expropriated; and the issue with the Cadastre.

27. In relation to negotiation around land rights, the Client stated that the expropriation process started in 2010 and due to the fact that the Krnovo Wind Farm Project was considered to be a project of public interest in Montenegro; the expropriation process was under the responsibility of the state of Montenegro. In addition, the Client specifies that in practical terms, the expropriation process was undertaken by the Ministry of Economy of Montenegro, through the Real Estate Agency being regulated by the Montenegro Law on Expropriation.

28. The Client's response also details that the Client has not been allowed to conduct any public meetings in relation with the land acquisition, since this process was not under their

⁶ The Client's response is annexed to this report.

responsibility. In addition, the Client explained that a compensation price was allocated to each former owner of the land, and some land owners accepted the compensation amount and received it; other land owners appealed by opening court cases at a Higher Court level, same as the Complainant.

29. The Client's response also indicates that, when land owners opened law cases at Higher Courts in Montenegro, Krnovo Green Energy hired a lawyer and requested from the Court the authorization to negotiate with former owners the land compensation price outside the Court process. This authorization was granted, and the Client's lawyer started negotiating individually with each former owner.
30. In addition, the Client explains that the Complainant decided to terminate his Court process, because of the portion of land to be expropriated and the Cadastre issue. In the absence of an open Court case, the Client could not engage in a negotiation process with the Complainant, this being communicated to the Complainant during meetings with the Client and the Bank.
31. Further, with regards to the portion of the expropriated land, the Client stated that it was decided to expropriate the land parcels required for the towers and not the land under the transmission lines. The Client also indicated that as a practice, easement right is not paid for in Montenegro, and it was decided to take the same approach in this particular case.
32. In conversations with PCM and in its written response, the Client mentioned that the Cadastre issue the Complainant refers to in his Complaint to the PCM cannot be solved by the Client. The Cadastre has not recognized the Complainant as the owner of land he claims and in the opinion of the Client, the Complainant should address this issue with the Cadastre directly. In addition, the Client stated they have offered to support the Complainant through the Cadastre process.
33. At no time has the Client indicated a willingness to participate in a dispute resolution process held under the auspices of the PCM.

IV. DETERMINATION OF ELIGIBILITY

34. The Eligibility Assessors have examined the Complaint to determine whether the relevant eligibility criteria are met under paragraphs 24-28 of the PCM RPs, and considered the responses of Bank Management and the Client to the Complaint in accordance with paragraph 29 of the PCM RPs. PCM has also sought additional information and documentation from Bank staff (in particular, the Banking and Environment & Sustainability Department) and the Client.
35. Pursuant to paragraph 24 of the PCM RPs, the Eligibility Assessors do not judge the merits of the allegations in the Complaint and do not make a judgement regarding the truthfulness or correctness of the Complaint in making their determination on eligibility.
36. The Eligibility Assessors have also determined that the criteria outlined in paragraph 25 of the PCM RPs have been met:
 - The Complainant has indicated in his Complaint that he expects both functions to be undertaken by the PCM to address the issues raised in the Complaint.
 - The Complainant has indicated the outcomes he seeks as a result of use of the PCM process:

*I hope that the Project Sponsor will compensate me adequately for the harm caused by the project.*⁷

- The Complainant has submitted copies of his correspondence with the Bank and the Client and other relevant documents related to his Complaint.
- The Complainant has indicated in his Complaint details of a Relevant EBRD Policy:

*Expropriation process related to the Krnovo Wind Farm project was not undertaken with a proper negotiation process as outlined in the EBRD 2014 Environmental and Social Policy, PR 5, clause 10, page 30.*⁸

37. Pursuant to paragraph 28 of the PCM RPs, the Eligibility Assessors have found that the Complaint was not filed fraudulently or for a frivolous purpose, and that its primary purpose is not to seek competitive advantage through the disclosure of information or through delaying the Project. One of the issues raised by the Complainant – the issue of the determination of his land holding – constitutes an obligation of a third party, the Cadastre, and is therefore not reviewable by PCM.

1. Determination of Eligibility for a Problem-solving Initiative

38. The Eligibility Assessors have determined that the eligibility criteria for a Problem-solving Initiative set out in paragraph 24(a) of the PCM RPs are satisfied:

- the Complainant is an individual having an interest in the Krnovo Wind Farm Project impacted area;⁹ and
- the Complaint raises issues covered by the EBRD's 2014 Environmental and Social Policy, namely land acquisition-related issues relating to PR 5 – "Land Acquisition, Involuntary Resettlement and Economic Displacement".

39. The Eligibility Assessors further note that paragraph 28(c) relating to consideration of the Complaint by other accountability mechanisms is not applicable.

40. PCM's problem-solving function has the objective of restoring a dialogue between the Complainant and the Client to resolve the issues underlying a Complaint without attributing blame or fault. In this case, the Complainant is seeking problem-solving pertaining to land acquisition-related matters.

41. The Eligibility Assessors have considered whether PCM involvement may assist in resolving the dispute, or is likely to have a positive result, taking into account previous or ongoing efforts to resolve the issues. The Eligibility Assessors have considered that the Complainant, EBRD and Client have had several meetings over the past 18 months to try and find an amicable solution to the concerns of the Complainant to no avail. Further, while the Client has stated their willingness to follow judicial and formal administrative processes to resolve the issues, they have not indicated their willingness to participate in a Problem-solving Initiative held under the auspices of the PCM.

⁷ Refer to the Complaint in annex to this report.

⁸ *Ibid.*

⁹ In accordance with paragraph 1 of the PCM RPs: "One or more individual(s) located in an Impacted Area, or who has or have an economic interest, including social and cultural interests, in an Impacted Area, may submit a Complaint seeking a Problem-solving Initiative."

42. Based on this assessment, the Eligibility Assessors have concluded that the Complaint is ineligible for a Problem-solving Initiative.

2. Determination of Eligibility for a Compliance Review

43. In considering if the Complaint meets the eligibility criteria for a Compliance Review, the Eligibility Assessors have concluded that the conditions set out in paragraph 24(b) of the PCM RPs have been met:

- the Complaint was filed within the prescribed timeframes; and
- the Complaint relates to the EBRD 2014 Environmental and Social Policy – in particular, PR 5.¹⁰

44. Further, the Eligibility Assessors have considered that the Complaint raises more than a minor technical violation of the Environmental and Social Policy, that being the acquisition of his land and compensation for such acquisition.

45. The Eligibility Assessors consider that the questions raised by the Complainant relating to land rights, consultation and compensation are issues that would have been addressed in the ESDD pursuant to section C, paragraph 33 of the 2014 Policy.¹¹ Bank responsibility is therefore triggered in so far as those issues would have been considered as part of the ESDD, satisfying paragraph 27(a) of the PCM Rules of Procedure.

46. Connected with the Bank responsibility for conducting adequate due diligence when the Bank became involved in the Project, the issue of monitoring Client commitments would also be relevant for the purposes of determining the Bank's compliance with the 2014 Policy.

47. Subsequent to the submission of the Complaint, the Complainant raised an issue under PR 5.21, requiring Clients to establish grievance mechanisms as early as possible. A process establishing a formal grievance mechanism was set out in the Stakeholder Engagement Plan for the Project in July 2013, which was established as part of the Bank's ESDD. In falling within the scope of Bank responsibility, the Eligibility Assessors consider that the eligibility criteria for this issue have been met.

48. Based on this assessment, the Eligibility Assessors have found the Complaint eligible for a Compliance Review, in accordance with the Terms of Reference set out below.

V. CONCLUSION

49. On the basis of the information set out above, the Eligibility Assessors have found that the Complaint does not satisfy the eligibility criteria for a Problem-solving Initiative and does satisfy the criteria for a Compliance Review.

¹⁰ Paragraph 24(b) of the PCM RPs stipulate that: "To be held eligible for a Compliance Review, the Complaint must be filed within 24 months after the date on which the Bank ceased to participate in the Project and must relate to a Relevant EBRD Policy."

¹¹ Paragraph 33 provides: "Where the EBRD is approached to finance a project that is under construction, or where the project has received its permits from the host country, including the approval of local environmental and social impact assessments, the Bank's appraisal will include a gap analysis of the project design and implementation against the PRs to identify whether any additional studies and or mitigation measures are required to meet the EBRD's requirements."

COMPLAINT: KRNOVO WIND FARM PROJECT
Request: 2017/01

TERMS OF REFERENCE FOR A COMPLIANCE REVIEW

Application

1. These Terms of Reference apply to any inquiry, action or review process undertaken as part of the Compliance Review, with a view to determining, as per PCM RP 41 if (and if so, how and why) any EBRD action, or failure to act, in respect of the Project has resulted in non-compliance with a Relevant EBRD Policy, in the present case, the EBRD's 2014 Environmental and Social Policy. If it is determined that there has been non-compliance, the Compliance Review will recommend remedial changes in accordance with PCM RP 44.
2. Activities carried out as part of the Compliance Review, and subject to these Terms of Reference, are subject to modifications which the Compliance Review Expert and the PCM Officer may, at any time, expressly agree upon, except any modification that may prejudice the interests of any Relevant Party or is inconsistent with accepted review practice.

Compliance Review Expert

3. In accordance with PCM RP 40 the PCM Officer appoints PCM Expert Andrea Saldarriaga as Compliance Review Expert.
4. The Compliance Review Expert shall conduct the Compliance Review in a neutral, independent and impartial manner and will be guided by principles of objectivity and fairness giving consideration to, *inter alia*, the rights and obligations of the Relevant Parties, the general circumstances surrounding the Complaint and due respect for EBRD staff.

Time Frame

5. The Compliance Review will commence as soon as possible following the posting of the Eligibility Assessment Report containing these Terms of Reference in the PCM Register on the EBRD website.
6. Every effort shall be made to ensure that the Compliance Review is conducted as expeditiously as circumstances permit, and it is intended that the Compliance Review shall be concluded within 60 Business Days of its commencement. At the request of the Compliance Review Expert, the PCM Officer may extend this time period for as long as necessary to ensure full and proper conduct of the Compliance Review. Any such extension shall be promptly notified to all Relevant Parties.

Scope of Compliance Review

7. Based on the issues raised in the Complaint, the Compliance Review Expert will determine which provisions of applicable Relevant EBRD Policies apply, and examine core compliance issues (such issues being limited to matters raised in the Complaint), particularly:
 - Did EBRD satisfy its obligations in relation to the environment and social due diligence relating to Performance Requirement 5, and did the Bank adequately monitor Client commitments as determined pursuant to the ESDD?

Procedure: Conduct of the Review

8. The Compliance Review Expert may conduct the Compliance Review process in such a manner as she considers appropriate, taking into account the PCM Rules of Procedure, the concerns expressed in the Complaint and the general circumstances of the Complaint.
9. Specifically, the Compliance Review Expert may:
 - a) Review the Complaint to frame the compliance issues to be included in the Compliance Review;
 - b) Review all documentation relevant to the Complaint;
 - c) Consult with EBRD staff involved in the Project, including personnel from the Bank's Environment and Sustainability Department, the Project Team, and the relevant EBRD Resident Office;
 - d) Solicit additional oral or written information from, or hold meetings with, the Complainant, any other Relevant Party and, further, any interested person or party as may be appropriate for the conduct of the Compliance Review;
 - e) Identify any appropriate remedial changes in accordance with PCM RP 41, subject to consideration of any restrictions or arrangements already committed to by the Bank or any other Relevant Party in existing Project-related agreements; and
 - f) Take any other action as may be required to complete the Compliance Review within the required time frame and in consultation with the PCM Officer, as appropriate.

Procedure: General

10. The Compliance Review Expert shall enjoy, subject to the provision of reasonable notice, full and unrestricted access to relevant Bank staff and files, and Bank staff shall be required to cooperate fully with the Compliance Review Expert in carrying out the Compliance Review.
11. In conducting the Compliance Review, the Compliance Review Expert shall take care to minimize any disruption to the daily operations of all involved parties, including relevant Bank staff.
12. Generally, all Relevant Parties shall cooperate in good faith with the Compliance Review Expert to enable the Compliance Review to be carried out and concluded as expeditiously as possible and, in particular, endeavour to comply with requests from the Compliance Review Expert for obtaining access to sites, submission of written materials, provision of information and attendance at meetings. The Compliance Review Expert will advise the PCM Officer of situations where the actions or lack of action by any Relevant Party hinders or delays the conduct of the Compliance Review.
13. Access to, and use and disclosure of, any information gathered by the Compliance Review Expert during the Compliance Review process shall be subject to the Bank's Public Information Policy and any other applicable requirements to maintain sensitive commercial and/or other information confidential. The Compliance Review Expert may not release a document, or information based thereon, which has been provided on a confidential basis without the express written consent of the party who owns such document.

Compliance Review Report

14. In accordance with PCM RP 42, the Compliance Review Expert shall prepare a Report. The Report may include a summary of the facts and allegations in the Complaint, and the steps taken to conduct the Compliance Review. The Relevant Parties shall be provided an opportunity to comment on the draft Report, and the Compliance Review Expert shall consider the comments of the Relevant Parties when finalizing the Report. In addition, in cases of non-compliance, the Report shall include recommendations according to PCM RP 44.
15. The recommendations and findings of the Compliance Review Report shall be based only on the circumstances relevant to the present Complaint and shall be strictly impartial.
16. Prior to submitting the Compliance Review Report to the Relevant Parties and to the Board in accordance with PCM RP 43, or sending the draft Compliance Review Report to the Bank's Management and the Complainant in accordance with PCM RP 45, the PCM Officer will verify that there are no restrictions on the disclosure of information contained within the Report, and will consult with the Relevant Parties regarding the accuracy of the factual information contained therein.

Exclusion of Liability

17. Without prejudice to the privileges and immunities enjoyed by PCM Experts, the Compliance Review Expert shall not be liable to any party for any act or omission in connection with any Compliance Review activities undertaken pursuant to these Terms of Reference.

ANNEX 1: COMPLAINT

Project Complaint to PCM

Date/Time: 02/03/2017 05:15

Country: MONTENEGRO

Is there a representative making this Complaint on behalf of the Complainant? No

If yes, please provide the Name and Contact information of the Representative: n/a

Are you requesting that this Complaint be kept confidential? Yes

If yes, please explain why you are requesting confidentiality: I do not want my name to be indexed by search engines (Google, etc.)

Please provide the name or a description of the EBRD Project at issue. Krnovo Wind Farm

Please describe the harm that has been caused or might be caused by the Project. Project Sponsor did not try to acquire land rights through negotiation but through expropriation which is not in compliance with EBRD's Environmental and Social Policy. Project Sponsor did not contact me until I reached out to EBRD. Project Sponsor intended to expropriate only the area where the towers will be built but not the area under power wires and adjacent area that will be unusable completely for security reasons. Project Sponsor through expropriation priced the land at 0,50 EUR/m² which is at least 10 times less than the fair value. Project Sponsor ignored the fact that around 25% of the area from my ownership paper is not adequately represented in Cadastre's map and did not wait for the issue to be resolved. Moreover, Project Sponsor did not recognize the damage done to my land as a whole and its future value by changing its structure and putting limits to construction of objects.

Have you contacted the EBRD to try to resolve the harm caused or expected to be caused by the Project? Yes

If yes, please list when the contact was made, how and with whom. First contact was made in Aug 2015 in e-mail communication with PCM. In supporting documentation sent to pcm@ebrd.com as part of this complaint submission attached is the complete history of e-mail communication between EBRD and me. Messages #1-2 represent my first contact with PCM in Aug 2015 Messages #3-11 represent my further communication with EBRD between Sep 2015 and July 2016 Messages #12-18 represent my latest communication with PCM from Dec 2016 to present

Please also describe any response you may have received. PCM forwarded my message to EBRD project team and EBRD project team provided me with contact details of the Project Sponsor and set up a meeting to hear my concerns. From the communication it is clear that EBRD does not have the power to resolve specific issues (i.e. cadastre issues) that are the responsibility of Montenegrin institutions, however since our first communication in Aug 2015 none of the issues raised are resolved today.

Have you contacted the Project Sponsor to try to resolve the harm caused or expected to be caused by the Project? Yes

If yes, please list when the contact was made, how and with whom. After receiving from EBRD project team contact details of Project Sponsor's direct representatives in Montenegro, I contacted them by e-mail however they communicated with me only by phone or in person. We

met several times. In supporting documentation sent to pcm@ebrd.com as part of this complaint submission attached is also e-mail communication.

Please also describe any response you may have received. Summarized response: The issue can be resolved only by Montenegrin institutions and courts. Please note that if Project Sponsor was compliant with EBRD social policy and negotiated before resorting to expropriation, lengthy court process could have been avoided.

If you have not contacted the EBRD and/or Project Sponsor to try to resolve the harm or expected harm, please explain why. n/a

If you believe the EBRD may have failed to comply with its own policies, please describe which EBRD policies. Expropriation process related to the Krnovo Wind Farm project was not undertaken with a proper negotiation process as outlined in the EBRD 2014 Environmental and Social Policy, PR 5, clause 10, page 38.

Please describe any other complaints you may have made to try to address the issue(s) at question (for example, court cases or complaints to other bodies). 1) The expropriated area includes only a small portion of the actual area occupied by the project. 2) The compensation for expropriation does not correspond to the market price or appraiser's price. 3) Part of the area has ownership issues in Cadastre that should have been resolved before continuing with the project works.

Are you seeking a Compliance Review where the PCM would determine whether the EBRD has failed to comply with its Relevant Policies? Yes

Are you seeking a Problem-solving Initiative where the PCM would help you to resolve a dispute or problem with the Project? Yes

What results do you hope to achieve by submitting this Complaint to the PCM? I hope that the Project Sponsor will compensate me adequately for the harm caused by the project.

ANNEX 2: BANK MANAGEMENT RESPONSE

1. INTRODUCTION

The project involves up to EUR 48.5m senior secured loan to Krnovo Green Energy d.o.o. (the Borrower or the Company), a special purpose vehicle established for the sole purpose of financing the construction and operation of the 72MW Krnovo wind power plant (the Project).

The Project was approved by the EBRD Board of Directors on 22 April 2015 and is subject to the 2014 Environmental and Social Policy.

The Complaint claims that the expropriation process related to the Krnovo Wind Farm project was not undertaken with a proper negotiation process as outlined in the EBRD 2014 Environmental and Social Policy, PR 5, clause 10, page 38.

The Complainant claims the following: (i) The expropriated area includes only a small portion of the actual area occupied by the Project; (ii) The compensation for expropriation does not correspond to the market price or appraiser's price; (iii) Part of the Project area has ownership issues in the relevant Cadastre that should have been resolved before continuing with the Project works.

2. MANAGEMENT RESPONSE

The Project has been structured to comply with the requirements of the 2014 Environmental and Social Policy applicable to an EBRD category B project and relevant EBRD Performance Requirements ("PRs"). An Environmental and Social Due Diligence (ESDD) was undertaken by an independent consultant. The ESDD confirmed the Project categorization. The gaps that had been identified were addressed and closed. All actions required to implement the Project in compliance with EBRD's ESP are reflected in the Project's Environmental and Social Action Plan (ESAP) that has been agreed with the Company prior to EBRD Board approval. The Bank has been closely monitoring the Project with help of independent consultant both during preparation and implementation phase.

In response to the Complaint registered by the PCM on 6th March 2017 in relation to the compensation for the land affected by the construction of a transmission line from the Krnovo Wind Farm in Montenegro, the EBRD's Management believes that:

- EBRD has structured the project fully in line with its Environmental and Social Policy (ESP) and its Performance Requirements (PRs). In particular, all provisions of the PR 5 have been met. In accordance with the PR5, the loss of assets resulting from the construction of the transmission line has been compensated for through payment for the affected land, and not for the entire land plot, at a replacement value.
- Significant efforts, which included several meetings in Montenegro, were made in 2015 and 2016 by the Project Sponsor and EBRD to try and solve the issue amicably.
- An independent consultant confirmed that the process followed was fully compliant with PR5 and EBRD's ESP and the compensation offered to the affected people was in line with the requirements of PR5.
- Based on the information provided by the Complainant EBRD is not aware that the Complainant has taken any legal steps in the Republic of Montenegro to address the

issue of compensation. This continues to contribute to the lack of an effective and timely resolution of the issue of compensation.

- The Project Sponsor is willing to follow all judicial and formal administrative process to resolve the issue.
- EBRD's policy as well as good international practice does not require the compensation of an entire plot of land affected by a 110kV line construction, nor does it require the compensation for the land under the transmission line.

ANNEX 3: CLIENT RESPONSE

As discussed on Tuesday, please find below our response to the project Complaint. It is structured with the 3 main topics mentioned by the complainant:

- The negotiation around the land rights
- The amount of land expropriated (tower footing vs area under the wires)
- The cadastre issues

Negotiation around the land rights

Expropriation process started in 2010. As the project is considered as a project of public interest, the expropriation was the responsibility of the state of Montenegro. Expropriation process was conducted by State of MNE (Ministry of economy) through the Real estate agency. We were not allowed to conduct any public meetings in regards to land since this was not our scope of work.

Expropriation procedure is regulated through law on expropriation (see the law attached). A compensation price was allocated to each former owner (based on experts determination). Some land owners accepted the compensation amount and received it. Some other appealed on the Court decision, triggering the opening of a court case at the Higher Court level. This was the case of the Complainant.

When those Higher Court cases were opened, Krnovo Green Energy (KGE) hired a lawyer to request to the Court the authorization to negotiate with the former owner the compensation price outside the Court (to avoid lengthy court processes). This authorization was granted, and the lawyer started negotiating individually with each former owner.

However, the Complainant decided to stop his Court process (because of the 2 following items raised by the Complainant in the PCM: amount of land expropriated and cadastre issue). His court case not being opened, our lawyer was not able to negotiate with him. The negotiation through the Court was of course not possible either, as the court case was closed by the Complainant. This was explained to him during several meetings with our CLO, and even with the broader project team and the Bank's E&S advisor. It was also written down and sent to him by email as can witness the copy email in attachment.

Amount of land expropriated

The land expropriated on the Complainant parcel comprised the tower footing of the overhead line, as it is common practice in Montenegro. Hence, we have indeed offered to compensate on the area where the towers will be built. However, the line being transferred at operation start to CGES, we need to comply with their compensation guidelines in order to be fair throughout the whole country. As they don't pay easement right to anyone in Montenegro (i. e. compensation for line passing over the parcel), we couldn't create a precedent by compensating those same easements on Krnovo site. The Complainant was aware of this, as can witness again our several meetings with him, as well as the email attached.

Cadastre Issues

The Cadastre issue is a bit different. Here, the problem is that the Cadastre didn't recognize the Complainant as owner of a part of the land he claims owning. This is not for us to decide but for the Cadastre (which can be a lengthy process in Montenegro). This is, as we understand, one of the reasons why he has stopped his court process. We have offered him several times to help him with the Cadastre process (as can witness again our meetings and the wrap-up email attached), however it is not a process that KGE can undertake alone (we can only try to fast-track it with the contacts we have at the Cadastre).