



Project
Complaint
Mechanism

COMPLAINT: Southeast Europe Equity Fund II

REQUEST NUMBER: 2017/05

Compliance Review Monitoring Report I – July 2019

The Project Complaint Mechanism (PCM) is the accountability mechanism of the EBRD. PCM provides an opportunity for the independent review of environmental, social, and Project disclosure-related Complaints from individuals or organisations concerning EBRD Projects. PCM may address Complaints through two functions: Compliance Review, which seeks to determine if the EBRD has complied with its Environmental and Social Policy (or the Project-specific provisions of the Public Information Policy) in respect of the Project; and Problem-solving, which seeks to support dialogue between the Complainant and the Client to resolve the issues underlying the Complaint, without attributing blame or fault. Affected Parties can request to pursue one or both of these functions.

For more information about PCM, contact us or visit [the PCM webpage](#).

Contact information

Questions can be addressed to:

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How to submit a complaint to the PCM

Complaints about the environmental and social performance of an EBRD Project 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>

1. Introduction

This is the first Compliance Review (CR)¹ Monitoring Report issued by PCM in relation to the Southeast Europe Equity Fund II Project (“the Project”), following PCM’s December 2018 to May 2019 monitoring period.

The purpose of this Monitoring Report is to update the EBRD Board of Directors, Relevant Parties and the public on the Bank’s implementation of the Board-approved [Management Action Plan](#), in accordance with Paragraph 47 of the [PCM Rules of Procedure](#) (RPs).

It presents:

- a) the background and context associated with this PCM case;
- b) the monitoring activities undertaken by PCM during the December 2018 – May 2019 reporting period; and
- c) the findings and conclusions resulting from PCM monitoring.

2. Background and Context

2.1 External Complaint

The PCM received a [Complaint](#) in August 2017 from a Project-affected person, which raised concerns related to unfair treatment and discrimination by the American Hospital in Kosovo, a subsidiary of the American Hospital in Albania (and a sub-project under the Southeast Europe Equity Fund II). The Project is managed by Bedminster Capital Management L.L.C.

The Complainant alleged inadequate warning or consultation regarding termination of his employment contract, as well as similar unfair treatment of other Kosovar employees, who also identified as being subject to systemic discrimination or termination of their employment based on their nationality. The Complainant requested that PCM undertake a CR to address the issues they identified.

2.2 PCM Eligibility Assessment

In February 2017, the PCM found the Complaint [eligible](#) for a CR and Mr. Victor Thorpe was appointed to undertake the CR as a PCM Expert under the PCM [RPs](#).

2.3 PCM Compliance Review Findings

Following a review of EBRD’s compliance with the 2003 Environmental Policy in respect of the Project, the PCM Expert issued a [Compliance Review Report](#), which identified one finding of non-compliance. The non-compliance identified related to the need for ongoing Project monitoring under EBRD’s Environmental Procedures for Private Equity Funds. The Report found that:

¹ Note: Unless otherwise defined, capitalised terms used in this Report refer to terms as identified in the [PCM Rules of Procedure](#).

1. EBRD failed to comply fully with its responsibilities to monitor the effectiveness of the Client's environmental performance, as required under the EBRD Policies and Environmental Procedures for Private Equity Funds, Annex 8, and Annual Environmental Report; and
2. The practical application of the 2003 Environmental Procedures for Private Equity Funds lacked the proactive promotion of environmentally and socially sustainable development foreseen in the Agreement Establishing the EBRD.

In response to the findings, the CR Expert strongly recommended that the Bank address the inconsistency in its application of Procedures and Performance Requirements (PRs) across Bank Projects, to ensure that all Projects are brought under a common framework of compliance. The CR Expert noted that the implementation of this recommendation would also require that Client investment agreements contain provisions that foresaw the need to update compliance requirements in line with environmental and social policy and procedural changes introduced by the Bank (e.g., in subsequent iterations of the environmental and social safeguard policies), in the pursuit of continuous improvement and Project performance.

2.4 Management Action Plan

Bank Management prepared a [Management Action Plan](#) (MAP) presenting their views on: a) the Compliance Review recommendations and b) appropriate measures to respond to the findings of non-compliance (available on the [PCM Register](#)). The MAP noted that the Bank has updated Procedures and Policies on a number of occasions since the time of signing SEEF II (through its 2008 and 2014 Environmental and Social Policy [ESP] reviews) and had established the Bank's Responsibility Index.

Management committed to undertake one action (consisting of two sub-actions) in response to the findings of non-compliance, namely:

1. Renew its FI monitoring strategy to take a more active approach to funds (per the requirements that are currently placed on funds under the Environmental Procedures for Active Funds, which replaced the previous Procedures under which SEEF II operates); and
2. Include elements of Continuous Risk Improvement in the Environmental and Social Management Plans that the Funds operate under, to recognise and encourage the development of a 'dynamic' approach to environmental risk management.

In response to the PCM Expert's recommendation that the EBRD should require Clients to adhere to the Bank's updated environmental and social policies and practices as they evolve over time, Management identified that "whilst the Report's recommendation to implement changes to the terms and conditions of funding arrangements to allow for a 'dynamic' approach to monitoring recognises the issue of evolving compliance standards, **"it is not a practical or commercial option."**

3. Monitoring Period – December 2018 to May 2019

4. Monitoring Activities

Pursuant to paragraph 47 of the RPs, the PCM will monitor the implementation of the MAP commitments, preparing CR Monitoring Reports at least biannually until it determines that monitoring is no longer needed.

In the preparation of this first Monitoring Report, PCM sought to consult with all Relevant Parties regarding the activities undertaken (or changes observed) during the December 2018 – May 2019 monitoring period, in relation to the commitments made by Management through their MAP. During PCM's first monitoring period, the Mechanism requested that Bank Management submit a formal written update on progress of the MAP's implementation. PCM reviewed Management's submission in June 2019, as well as two additional documents referenced by EBRD Management in the MAP implementation update (i.e., the 2019 ESP anticipated to come into force in January 2020; and the EBRD Responsible Investment Index for Private Equity Companies) – subsequent to which, further communications with Management were undertaken to clarify their activities.

As per PCM standard process, the PCM also invited the Complainant to provide comments regarding Bank Management's implementation of the MAP, but received no comments from the Complainant during the seven-day open comment period.

4.1 Monitoring Findings

Bank Management's progresses on the committed Actions, accompanied by the PCM's comments are presented in Table 1.

Table 1: MAP Implementation Progress

Compliance Review Recommendation	Management Action Plan Commitment approved by EBRD Board of Directors	EBRD Management implementation update	Status of Management Action Plan Commitment	PCM Feedback
<p>It is strongly recommended that the Bank address the inconsistency in its own Procedures and Performance Requirements in order to ensure that all projects are brought within a commonly understood and administered framework of compliance.</p>	<p>Action 1 – FI Monitoring Strategy: Renew its FI monitoring strategy to take a more active approach to funds (per the requirements that are currently placed on funds under the Environmental Procedures for Active Funds, which replaced the previous Procedures under which SEEF II operates).</p>	<p>Management will update the annual FI Project reporting templates described in the EBRD Responsible Investment Index as necessary in line with the new 2019 ESP before the end of 2019.</p>	<p>Action 1. Action not yet fulfilled; continued monitoring required until complete.</p>	<p>The PCM takes note of Bank Management’s commitment to update the annual FI Project reporting templates described in the EBRD Responsible Investment Index under the 2019 ESP. PCM looks forward to engaging with Bank Management during the next monitoring period.</p>
<p>Client investment agreements should contain language that foresees the need to evolve compliance requirements in line with changes introduced with new iterations of environmental and social safeguard policies / practices, in the pursuit of “continuous improvement of performance management”.</p>	<p>Action 2 – Inclusion of Continuous Risk Improvement in Environmental and Social Management Plans: Include elements of Continuous Risk Improvement in the Environmental and Social Management Plans that the Funds operate under, to recognise and encourage the development of a ‘dynamic’ approach to environmental risk management.</p>	<p>The inclusion of elements of Continuous Risk Improvement in Environmental and Social Management Plans under which EBRD fund clients operate are captured in the new 2019 ESP under PR 9, and will be applied to all new Projects approved after the 2019 ESP effective date (January 2020). PR 1 of the ESP now also includes Continuous Risk Improvement as a principle.</p>	<p>Action 2 (Part A) complete.</p>	<p>PCM reviewed the newly-approved 2019 ESP and identified Continuous Risk Improvement amendments to PR 1 and PR 9, namely:</p> <ul style="list-style-type: none"> • Assessment and Management of Environmental and Social Risks and Impacts (PR 1, para 26-28) • Financial Intermediaries (PR 9, para 9-17) <p>These requirements will apply to all new Bank Projects approved after the 2019 ESP effective date, but not be required for implementation on the SEEF II Project (approved in 2005). The PCM also reviewed the EBRD’s Responsible Investment Index for Private Equity Companies, which includes a more dynamic approach to reporting requirements</p>

				for EBRD Clients/beneficiaries of Equity Funds.
		A Guidance Note will be drafted in 2020 for the implementation of ESP PR9, applicable to all new FIs Projects approved after January 2020 including funds, where the principle of Continuous Risk Improvement will be a mandatory element of an Environmental and Social Management System established for a Bank Project.	Action 2 (Part B) Not yet initiated; continued case monitoring required until Action fulfilled.	PCM looks forward to reviewing the 2020 Guidance Note on PR 9 (as well as any associated documentation) confirming the practices set out facilitate the implementation of Continuous Risk Improvement for funds that represent EBRD Financial Intermediary projects.

4.2 Monitoring Conclusion

The PCM notes Bank Management's efforts to date to commence the implementation of the commitments outlined in the MAP, and will continue engagement with Bank Management during the next monitoring period (June-November).

In light of the information received, and as presented in Table 1, PCM shall continue monitoring sub-Action 1 and Action 2 pending the development of ESP Guidance Note on PR 9 (and any associated documentation), to ensure that the practices set out therein facilitate Continuous Risk Improvement for Bank funds. The PCM will continue issuing Compliance Review Monitoring Reports at least bi-annually until the Office determines that monitoring is no longer needed. The next CR Monitoring Report will be issued in December 2019.