

14 March 2017

Board of Directors
European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom

Re: Complainants' Response to Management Action Plan in the Case of TÜRK TRAKTÖR

Dear Members of the Board of Directors:

We would like to express our appreciation to the PCM Expert responsible for the compliance review phase of the complaint. She has conducted a thorough and rigorous analysis of complainants' concerns, including a site visit to Turkey, and has, together with the PCM Officer, kept complainants informed throughout the process.¹ While there are elements of the analysis with which we do not agree, complainants largely support the findings and recommendations contained in the Compliance Review Report. While EBRD Management has made some commitments in the management action plan (MAP) to improve EBRD's handling of labor rights in future projects, it has not sufficiently adopted PCM's recommendations with regards to the current case. Complainants, therefore, request that the Board reject the MAP in part and return it to Management for revision.

If an accountability system is to be effective, filing a complaint in which non-compliance by EBRD is found must result in some measurable improvement for complainants. The Turk Traktor (TT) Compliance Review has documented EBRD's systemic failure to ensure respect for labor rights. In response, the MAP has made forward-looking commitments to improve its and its client's policies and procedures. Accountability does not just entail the prevention of future violations, but also rectifying the harms that have occurred. The MAP has failed to address the grievance that led complainants to file in the first place, the dismissal of workers who demanded that TT respect their right to freedom of association. While complainants welcome Management's commitment to undertake an independent review of the dismissals, the MAP should be revised to clarify the scope of the review, commence that review immediately, and commit to adopting corrective measures in response to the review's findings.

As documented in the Compliance Review, complainants contacted EBRD as the dismissals were taking place. They requested EBRD's assistance in seeking a solution with EBRD's client. They did not want to file a complaint but were left no choice after no assistance from EBRD was forthcoming. In the interim, more workers were dismissed.

The MAP does nothing for those workers. Two years after workers were dismissed from TT, the MAP further delays EBRD's response to those dismissals, awaiting the conclusion of judicial proceedings in Turkey. The legal proceedings may not conclude this month, as claimed in the MAP. The decisions may now be appealed to the Court of Cassation, which could take another four to six months. As repeated throughout the Compliance Review, compliance with national law is necessary but not sufficient to ensure compliance with EBRD's policies, which require compliance with international labor standards. Should the court find that the dismissals were illegal under Turkish law, EBRD's client would also be in non-compliance with EBRD's policies. However, an opposite ruling is not dispositive of whether the dismissals were in violation of EBRD's own policies. Either way, as the Compliance Review found, EBRD must not wait to take action until the Turkish courts have

¹ The same cannot be said for the eligibility assessment phase, which was conducted by another PCM Expert. Complainants were disappointed that the possibility of dispute resolution was foreclosed based on unverified information and without the benefit of a site visit.

decided the national legal issues.²

Complainants also request that Management clarify the scope and process of the review and commit to responding to its findings. The language in the MAP regarding the review's scope leaves room for interpretation. We understand the MAP to mean that the scope of the review will be the process of the dismissals that occurred in 2015 and not TT's process for dismissing workers generally. We would like Management to confirm this understanding. Consideration of compliance with national legal requirements could be excluded from the review and left for the decision of the Turkish courts. A draft of the independent review should be consulted with PCM, as per PCM Recommendation 14, and with complainants. Should the analysis find non-compliance with PR 2(7), EBRD should agree to corrective actions with its client, again in consultation with complainants.

Complainants also request that the MAP be revised so that they are consulted on the reports and measures referenced in the MAP. Complainants have experience with other employers in Turkey and can provide suggestions on how the issues raised in the complaint have been successfully addressed elsewhere. For example, EBRD should explicitly commit to consult complainants under Management Action 3 regarding good international practice on freedom of association. Similarly, complainants request to be consulted during EBRD's review of its client's process for dismissals and grievance mechanisms. Further opportunities to seek complainants' input are identified below. Not only can complainants provide valuable insight on current practice and areas for improvement, ensuring that the issues are addressed in a manner that takes into consideration the complainants' concerns will ensure that the same issues do not reoccur in the future.

Lastly, this is not the only EBRD-financed project in Turkey where labor rights are a concern. Complainants raised similar issues about two other EBRD projects in their letter to President Chakrabarti in 2015. All EBRD-funded projects in Turkey where there are risks to labor rights should be required to adopt measures to ensure that ILO standards are met, as required by PR 2 (7). Taking this systemic approach is far more efficient than responding to multiple complaints raising the same concerns. Further, the Country Strategy for Turkey should be revised immediately to incorporate the findings of the analysis in Management Action 4, identifying the gaps between the ILO Conventions and national law.

Complainants' detailed comments on the MAP can be found in the following section, appended to the tables in the MAP for ease of reference.

² Compliance Review Report, p. 33 ("The Compliance Review Expert considers further that EBRD's continuing monitoring obligations do not permit EBRD to wait to take action, possibly for a lengthy period, until a final authoritative judgment on the national legal issues has been handed down by a Turkish court. Additionally, the obligations of PR 2 in respect of relevant ILO principles and standards exist independently of its provisions in respect of national law. ").

1. Management Action Plan

Actions to address the Recommendations in the Compliance Review Report

1.1 Project Level Recommendations

Overtime

PCM Recommendation 1

The Compliance Review Expert recommends that EBRD seek further information from Türk Traktör about its overtime policy and procedures as expeditiously as possible. Through this process, EBRD should seek to establish whether Türk Traktör's internal systems provide adequate assurance that a) no worker's annual overtime exceeds the maximum 270 hours permitted by law, b) within this overall upper limit workers are afforded the maximum space to accept or decline overtime working consistent with both law and efficient management of production, and c) any disciplinary sanctions applicable to the administration of the overtime system are aligned with these outcomes.

PCM Recommendation 2

To the extent that the process outlined in Recommendation 1 does not provide assurance in respect of the matters set out in that Recommendation, the Compliance Review Expert recommends that in accordance with 2008 ESP C 37 EBRD should seek to agree with Türk Traktör on a plan for implementing any necessary procedural or policy enhancements, and that EBRD monitor these measures through subsequent AESRs and any other progress reporting agreed for these purposes with Türk Traktör.

Management Action 1

EBRD has already requested further information from Türk Traktör and has been in dialogue with them in relation to the overtime policies and procedures to ensure compliance with Turkish legal requirements. The company reports that a new system will be established in March 2017 to control overtime policies and to ensure compliance with national law. EBRD will review these new systems against the requirements of the Bank when they are introduced..

Projected deadline: mid 2017 If the review indicates areas for improvement, EBRD will seek agreement with TT to implement those and will continue to monitor the practical implementation of the agreed measures.

Complainants' Response

EBRD should not only ensure TT's compliance with national law, but also applicable international laws and standards, as required by EBRD's policy (2008 ESP, PR 2). In this regard, especially the issues of compulsory overtime and workers' consent to overtime need to be addressed. It is unclear why EBRD would wait to assess compliance of TT's new system with EBRD's requirements, including international labour standards, until after the system has been introduced. We encourage the EBRD to ensure that TT's new system is compliant before it is adopted and provide the details of that new system to the complainants and workers.

In the proposed action, EBRD will "seek agreement with TT to implement those [measures for improvement] and will continue to monitor the practical implementation". Similar to Recommendation 2 of the Compliance Review (CR) Report, we would ask the management to be more specific about the procedures/tools through which it would seek to monitor any agreed measures

for improvement, including by verifying information provided by TT with complainants and trade unions.

Occupational health and safety

PCM Recommendation 3

EBRD should expeditiously seek missing OHS information from Türk Traktör for the 2013 reporting period to ensure that it maintains a proper record of its Client's OHS performance.

PCM Recommendation 5

The Complainant's occupational health and safety allegations should be the subject of expeditious and dedicated inquiry by EBRD of Türk Traktör. This process of enquiry should aim to provide EBRD with assurance in relation to OHS matters addressed in the ESAP and occupational health and safety provisions of PR 2 so far as they concern the Ankara facility. In the event that any improvements in OHS policies or practices are indicated, the Compliance Review Expert recommends that in accordance with 2008 ESP C 37 EBRD should seek to agree with Türk Traktör on a plan for implementing any necessary procedural or policy enhancements, monitoring these measures through subsequent AESRs and any other progress reporting agreed for these purposes with Türk Traktör.

Management Action 2

EBRD has requested a summary of occupational health and safety performance at the Ankara facility and agreed reporting requirements for future EBRD monitoring. This data has now been received and is subject to review against the recommendations of the PCM compliance report. The EBRD has also received all outstanding OHS reports.

EBRD has also discussed the allegations on muscular-skeletal injuries with the Client and is in the process to clarify how these issues will be monitored in the future. Opportunities for improvements may be discussed as necessary based on findings.

Projected deadline: mid 2017.

Complainants' Response

A review of information provided by the client is not sufficient. Since TT is part of the FIAT-CNH group, the company would normally be required have a system in place to monitor and analyse the ergonomic risks of work stations (namely ERGO-UAS). Complainants strongly urge EBRD to commission an independent expert to carry out an ERGO-UAS analysis to collect information on muscular-skeletal disease in the Turk Traktor workforce (including risks and prevalence). Results of the analysis based on this method as well as EBRD's own review should be shared with complainants and workers.

In addition to agreeing how injuries will be monitored in the future, EBRD should agree with its client on any measures necessary to remedy injuries that have already occurred.

Freedom of association

PCM Recommendation 8

EBRD should carry out an assessment of the Complainant's allegations in relation to freedom of association as quickly as possible. Each allegation should be considered as a potential Project risk area as indicated by the 2008 ESP and in accordance with EBRD's monitoring obligations. However, the Compliance Review Expert recommends that EBRD is additionally guided in its assessment and in agreement on follow-up with Türk Traktör by its obligation under 2008 ESP C 37 to "review with the client any performance improvement opportunities related to projects". The aims should be to work with Türk Traktör to identify innovations with potential to drive best practice, and thereby to generate learning that can inform further iterations of EBRD's own internal guidance and practice on freedom of association issues. The Compliance Review Expert recommends that EBRD consider working with Türk Traktör to agree appropriate ways for workers to be involved in this process.

PCM Recommendation 9

EBRD and Türk Traktör should work together to identify best practice innovations in respect of freedom of association at the following entry points: a) recruitment policies and procedures, and associated communications by Türk Traktör to new workers on choices related to any CBA in effect from time to time; b) disciplinary procedures and practices and whistleblower protections, and c) identification of best practice steps for employers in relation to trade union organising; an area where the Compliance Review Expert considers there may be significant scope for appropriately designed innovation to advance wider best practice across sectors and employers in multiple EBRD countries of operation.

PCM Recommendation 10

Drawing as needed on external expert input and ideas and proposals from Türk Traktör, EBRD should work to agree an action plan with Türk Traktör to pilot identified best practice innovations as soon as reasonably feasible

PCM Recommendation 11

Agreed additions or amendments to existing policies and processes at Türk Traktör should be documented as provided for under 2008 ESP C 37 and PR 1 (21), and monitored through subsequent AESRs and any other progress reporting agreed for these purposes with Türk Traktör.

Management Action 3

- a. EBRD will review the complainant's allegations regarding freedom of association with the Client. Discussions of any areas of improvement that may be appropriate, in accordance with good international practice, are ongoing. If the review shows the need for improvement, EBRD will agree with TT additional measures which are allowed by Turkish law and monitor their implementation.
- b. In developing good international practice approach to freedom of association, EBRD will seek information from expert consultants, workers' organisations and other key stakeholders, such as the ILO. This work is currently being commissioned and is anticipated to be completed in 2017.
- c. EBRD is currently updating guidance materials on freedom of association for EBRD ESD specialists to use in their due diligence and monitoring.

Projected deadline: end 2017

Complainants' Response

While complainants appreciate that EBRD has already begun addressing these issues, it should be doing so in consultation with them in order to seek their advice on developing an approach to freedom of association in the Turkish context. In order to prevent violations of the right to freedom of association in this and other EBRD-funded projects in Turkey, preventive measures will be needed. Examples of such measures could include: organizing public meetings with the entire workforce of the company, informing them of their rights to organize; building mechanisms for safe whistleblowing, and; educating workers about these whistleblowing mechanisms. The work commissioned should include consultations with complainants, experts, and workers' organizations.

Given the serious nature of the allegations (in relation to freedom of association), and the fact that these allegations have been raised with TT and EBRD for over 1.5 years, the proposed project deadline for review of these allegations and identification of additional measures (end 2017) is unacceptable. Violations of ILO Convention 87 (Freedom of Association) warrant immediate and expeditious follow up from both EBRD and TT, with the review completed and possible additional measures implemented by mid 2017.

Dismissals

PCM Recommendation 13

As part of its next steps in respect of the dismissal of workers from Türk Traktör following the 2015 industrial action, EBRD should procure an analysis of ILO principles and standards referred to in PR 2 (7) and of national legal issues and risks associated with the dismissal of twenty workers following the May 2015 industrial action at Türk Traktör.

PCM Recommendation 14

EBRD should rapidly seek confirmation from Türk Traktör on the reason or range of reasons for dismissal of the twenty workers dismissed following the May 2015 industrial action. Once this has been obtained, EBRD should expeditiously seek the expert view of an independent expert (or as necessary experts) in Turkish and international labour law on risks of non-compliance with PR 2 (7) in respect of national or relevant international (ILO) norms in the circumstances of the Türk Traktör industrial action. The Compliance Review Expert recommends that EBRD consider including provision within its Management Action Plan for a draft of the independent expert's/experts' report/s to be shared with PCM so that PCM may provide feedback, within the scope of its monitoring responsibilities under PCM RP 47, before the report/reports is/are finalised.

PCM Recommendation 15

If significant risks of Client non-compliance with PR 2 (7) emerge from independent analysis, EBRD should seek to agree appropriate corrective and preventive measures to address these risks with Türk Traktör as provided for by 2008 ESP C 37 and PR 1 (21). EBRD should seek to ensure that where indicated by any identified risks of non-compliance, any agreed measures encompass both workers dismissed following the industrial action which began on 21 May 2015 as well as Türk Traktör's internal human resources policies and procedures. EBRD should monitor any such measures through subsequent AESRs and any other progress reporting agreed for these purposes with Türk Traktör.

PCM Recommendation 16

In order fully to meet its monitoring obligations in respect of PR 2 (2), (10) and (11), EBRD should seek up to date information on Türk Traktör's human resources policies, procedures and standards applicable to decision-making processes leading to worker dismissals. The aims should be to work with Türk Traktör a) to confirm that and/or whether these are aligned with fair treatment, non-discrimination and equal opportunity of workers as well as respect for national labour laws and the fundamental principles and key regulatory standards embodied in the ILO Conventions central to freedom of association and collective bargaining, and b) where necessary and as appropriate seek to agree with Türk Traktör improvements to such policies, procedures and standards as provided by 2008 ESP C 37 and PR 1 (21). EBRD should monitor these measures through subsequent AESRs and any other progress reporting agreed for these purposes with Türk Traktör.

Management Response to Recommendations 13, 14, 15

EBRD is not in a position to request individual worker records and personnel details, which are confidential. We understand that 19 of the 20 workers dismissed in 2015 have pursued legal cases pending regarding the dismissals. The Bank cannot interfere with Turkish judicial process or take steps – directly or indirectly - that could prejudice the outcome. The judicial process will determine the outcomes for the 20 workers. It is anticipated that the Supreme Court rulings will be concluded in March 2017 after which time EBRD will review the outcome and the process.

Management Action 4

- a. EBRD has reviewed the Client's process for dismissals and clarified legal requirements in Turkish law, under the CBA, and the EBRD requirements on this issue. EBRD is currently in discussion with the Client to seek their agreement to implement additional measures, if not already done so. Projected Deadline: mid 2017
- b. The Bank is commissioning an analysis on the differences between Turkish Law and the provisions of the aspects of ILO core conventions. EBRD will discuss the issue with other IFIs and clarify the role of IFIs in situations where there may be gaps between ILO Conventions and national law. In general, where gaps are identified between core ILO Conventions and national law, these will be reflected in the normal EBRD/Country Strategy process and discussion held on the Bank's potential policy dialogue with the country. Projected deadline: end 2017 for the analysis.

Following the conclusion of the judicial hearings relating to the dismissals, EBRD will commission an independent review of the process against the provisions of the ILO conventions and EBRD's requirements. This will be completed in Q4 2017.

Complainants' Response

Complainants welcome EBRD's commitment to undertake an independent review of the dismissals that occurred in 2015. However, the review should not wait until the legal proceedings have concluded. As mentioned above, the decisions of the lower court may be appealed to the Court of Cassation, which could take another four to six months. PR 2 (7) requires that EBRD-funded projects are in compliance with the ILO core conventions, including with the right to freedom of association. The existence of a legal case pending before a Turkish court does not absolve the EBRD from its obligation to ensure its client is in compliance with EBRD's requirements under PR 2 (7) and to require the correction of any instances of noncompliance, in accordance with 2008 ESP 37 and PR 1 (21). In other words, a legal case regarding the possible unlawful action of an EBRD client should not preclude the functioning of EBRD's own internal accountability procedures. On the contrary, a legal case should alert EBRD to a potential violation of its policies and trigger a comprehensive inquiry.

In the present case, wildcat strikes were given as the reason for the dismissals by the client. The ILO Committee on Freedom of Association has affirmed the legality of wildcat strikes as follows: "Regarding various types of strike action denied to workers (wild-cat strikes, tools-down, go-slow, working to rule and sit-down strikes), the Committee considers that these restrictions may be justified only if the strike ceases to be peaceful (See the 2006 Digest para 545; 1996 Digest, paras. 496 and 497; and 306th Report, Case No. 1865, para. 337.)." It has further stated: "The right to strike should not be limited solely to industrial disputes that are likely to be resolved through the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their members' interests" (See the, 2006 Digest Para. 531; 1996 Digest, para. 484; 300th Report, Case No. 1777, para. 71; and 320th Report, Case No. 1865, para. 526.)."

Complainants also urge EBRD to consult with complainants and PCM on the draft report and commit to responding to its findings. Should the review confirm complainants' conclusions that the dismissals were in violation of international law, and hence, EBRD policy, EBRD should ensure its client takes appropriate corrective action with regards to the 20 workers who were dismissed following the May 2015 collective action.

We support EBRD's plan to commission an analysis of differences between Turkish law and the ILO Conventions, and the initiative to discuss this issue with other IFIs. The Country Strategy should be reviewed immediately following the conclusion of the analysis in order to reflect its findings and not wait until the next scheduled review. The failure to address labor rights issues in the 2015 strategy was a gross oversight. Systematic labor rights violations in Turkey, including the right to freedom of association, have been documented in reports by the ILO and the European Commission. Complainants' letter to the EBRD president in August 2015, during the consultation period for the Country Strategy, raised this issue not only in relation to TT but two other EBRD clients as well. Thus, EBRD knew or should have known that labor issues were a critical issue to address in the Country Strategy. While the Country Strategy is under review, all EBRD-funded projects in Turkey where there are risks to labor rights should be required to adopt measures to ensure that ILO standards are met, as required by PR 2 (7). Taking this systemic approach is far more efficient than responding to multiple complaints raising concerns about labor rights.

Grievance Mechanisms

PCM Recommendation 18

EBRD should seek adequate information from Türk Traktör on implementation of its ESAP commitment to establish an external grievance mechanism for the 2013 and 2014 AESR reporting periods to ensure that it maintains a proper record.

PCM Recommendation 20

EBRD should analyse existing grievance procedures for workers at Türk Traktör to ensure that they provide effective grievance channels for workers who do not wish to call on the support of representatives of any trade union recognised as competent for collective bargaining purposes. If they do not, EBRD should in accordance with ESP C 37 seek agreement from Türk Traktör to amend internal grievance procedures accordingly at the earliest reasonable opportunity and to document any such measures in accordance with PR 1 (21), and EBRD should monitor such measures through subsequent AESRs and any other progress reporting agreed for these purposes with Türk Traktör.

PCM Recommendation 21

In accordance with ESP C 37, EBRD should work with Türk Traktör to agree a formally documented publicly available external grievance or complaint mechanism that extends to trade unions that are not recognised or competent for the purposes of collective bargaining. This should be subject to appropriate safeguards to ensure due respect for CBAs in effect from time to time. Such agreement could be sought by way of a new mechanism or amendment to an existing mechanism. EBRD should seek agreement that such a mechanism be made operational as soon as possible, including by means of readily publicly accessible and clear information about the mechanism and its associated procedures. EBRD should further seek a commitment to document measures agreed with Türk Traktör in accordance with PR 1 (21), and EBRD should monitor these measures through subsequent AESRs and any other progress reporting agreed for these purposes with Türk Traktör.

Management Action 5

EBRD has reviewed the Client's internal and external grievance mechanisms and how records related to the receipt and response to grievances are collected. Based on this, EBRD is currently agreeing reporting requirements with Türk Traktör for the AESR to the Bank. In particular, the Bank will review how workers, their representative organisations and the public are made aware of the grievance mechanisms and the process for raising concerns or comments. Projected Deadline: mid 2017

Complainants' Response

Complainants and other workers should be consulted about the functioning of the grievance mechanisms and their input solicited for improvements. To date, complainants are not aware of any improvements TT has made to the grievance mechanisms.

1.2 Wider Recommendations on improvements to internal systems and procedures

Annual Environmental and Social Reports

PCM Recommendation 4: Occupational Health and Safety

The Compliance Review Expert recommends that any omissions or discrepancies in data provided by clients through routine AESRs should be followed up through supplementary inquiry of clients by EBRD experts.

PCM Recommendation 19: Grievance Mechanisms

Any omissions or discrepancies in data provided by clients through routine AESRs should be followed up through supplementary inquiry of clients by EBRD experts.

Management Action 6

EBRD will assess the current AESR review process and, where necessary, develop internal capacity on timely response to review of AESRs and specific review of OHS statistics and functioning grievance mechanisms. Additional training may also be provided to Bank staff on adequacy of client reporting. Projected Deadline: end 2017

EBRD Procedures

PCM Recommendation 6: working conditions and freedom of association

EBRD's existing internal labour toolkit should be supplemented to make it clear that project risks associated with working conditions should be assessed and addressed independently of freedom of association risks.

PCM Recommendation 7: freedom of association

EBRD should supplement relevant internal tools and guidance on labour issues to incorporate guidance that evidence of very high levels of trade union membership may reflect circumstances that are not consistent with full respect for freedom of association and should therefore receive dedicated consideration during due diligence and/or monitoring and appraisal.

PCM Recommendation 12: freedom of association

EBRD should incorporate learning from its engagement with Türk Traktör into updated internal guidance on freedom of association for EBRD experts to apply in appraisal due diligence and monitoring in future projects, in particular in contexts where there is an existing competent/recognised trade union.

PCM Recommendation 17: dismissals

EBRD should develop internal guidance to assist ESD experts to make choices about appropriate courses of action, and advice to clients, in circumstances where there are potential tensions between national legal requirements and international or regional norms and principles referred to in PR 2, including those of relevant ILO Conventions referred to in PR 2 (7). Such guidance should cover monitoring as well as appraisal and due diligence.

PCM Recommendation 23: integration of internal guidance notes

EBRD should ensure that follow-up inquiries are made where clear links exist, in fact or allegation, between a) facts or omissions revealed by regular project-level reporting and monitoring, or b) allegations raised in specific complaints that have been communicated to EBRD for action by it, and c) the risks highlighted by up to date internal briefing documents.

PCM Recommendation 22: grievance mechanisms

EBRD should review its internal labour toolkit and as needed other internal guidance and procedures with a view to ensuring that they address explicitly the need for appraisal, due diligence and monitoring processes adequately to consider minority or un-recognised trade unions or other worker representatives in implementation of PRs 1, 2 and 10. This may in particular require specific guidance in relation to stakeholder identification and consultation; and worker engagement in circumstances where it may be difficult for workers to raise issues or grievances through recognised or competent trade union representatives.

PCM Recommendation 24: integration of internal guidance notes

EBRD should develop internal processes and systems for securing maximum alignment between up to date internal guidance documents and EBRD expert practices at appraisal and due diligence and monitoring and due diligence stages. The outcome of this process should ensure that a) dissonance between internal guidance and the implementation of appraisal, due diligence and monitoring functions is minimised, and b) the exercise of individual professional discretion is actively, rather than passively, informed by risk areas highlighted in up to date internal guidance and tools. This should particularly be the case when activities connected with due diligence and monitoring are contracted to external consultants and experts.

Management Action 7

EBRD, with the assistance of external consultants, is currently in the process of updating the Labour Assurance Framework and building staff capacity to apply the tools provided therein. This process includes preparation of a new guidance note on Freedom of Association, as well as a Labour Due Diligence and Monitoring toolkit. There will be capacity building in ESD for new labour tools.

The PCM recommendations and EBRD action plan will be provided to the consultants drafting the guidance note and toolkit revision to ensure that the recommendations are fully adopted in the current programme of works. The toolkit review and associated training will include measures that seek to support EBRD professionals in better identifying risks related to freedom of association.

EBRD will further seek to better ensure adequate labour expertise is employed for external due diligence in identified high risk sectors or geographies. This point will be included in guidance and training of Bank social specialists.

Projected Deadline: end 2017

Complainants' Response

We welcome the EBRD's commitment to developing a guidance note on Freedom of Association. We would encourage EBRD to require their clients to make a public and explicit commitment to their workers that they will respect freedom of association and that they are free to join the union of their choice without fear of retaliation. A short general guidance document about implementation of freedom of association should also be distributed to workers of EBRD clients and displayed inside their factories.

Complainants would like to reiterate the importance of EBRD ensuring that its staff managing projects in Turkey (or any other country where EBRD invests) are adequately trained and informed of the labor rights situation locally, including the risks, prevalence, and nature of violations. Staff should also be expected to act swiftly to follow up on allegations raised regarding violation of labor rights, in order to ensure prompt action by the EBRD and its clients, and to prevent a lengthy and burdensome PCM process where possible and appropriate.

Distinctions between national and international commitments

PCM Recommendation 25

EBRD should adopt clear internal guidance for its experts setting out its expectations on how potential distinctions between national and applicable EU or international standards and principles referred to under the 2008 ESP PR 2 should be assessed in relation to client performance and project risks. The emphasis could usefully be on practical steps to identify actions that secure project compliance with standards and principles at each normative level to the greatest extent possible.

PCM Recommendation 26

The country-level approach to provision of internal analysis and guidance on labour and occupational health and safety issues should be extended to a larger number of countries as soon as practicable.

PCM Recommendation 27

EBRD experts should ensure that consultants contracted to carry out ESDD in countries where there are risks that national and relevant EU and/or ILO norms referred to in PR 2 are not fully aligned have demonstrable expertise in relation to both national and supranational norms. Whilst practice is being established, contracted experts should be explicitly requested to consider both sets of norms.

Management Response to Recommendation 26

EBRD has a full set of Labour Country profiles for all Countries of Operations which are updated on a regular basis. The process is ongoing. Whenever any material changes are introduced the country briefs are updated. For example, four country briefs are being updated in 2017. OHS risks in country are generally not country specific but relate to project performance and will continue to be reviewed and appraised in this way.

Management Action 8

The Labour Due Diligence and Monitoring Toolkit mentioned in Management Action 7 will provide guidance on differences between country level obligations and international commitments. As part of the toolkit implementation EBRD ESD specialists will receive refresher training on Performance Requirement 2 and its application during due diligence and monitoring, and using the guidance provided in the Assurance Framework. Projected Deadline: end 2017

Generic terms of reference for external consultants on projects identified as high risk from a labour perspective will [be developed/updated] to include the ILO Core Conventions to the extent that they are covered by EBRD standards applicable to the project. Projected Deadline: end 2017

Complainants' Response

Management should share its plan (if any) to update the Labour Country profile for Turkey, based on the outcomes of Management Action 4 of this MAP ("analysis on the differences between Turkish Law and the provisions of the aspects of ILO core conventions").

Monitoring During PCM Proceedings

PCM Recommendation 28: implementation of monitoring obligations during PCM proceedings

EBRD should develop guidance on the implementation of its monitoring functions in respect of projects that are associated with active PCM Eligibility Assessment, Problem-solving or Compliance Review processes. ESD and PCM should collaborate in the development of this guidance with a view to addressing issues arising out of possible duplication of fact-finding, and communication with clients and complainants in the period when active PCM Eligibility Assessment, Problem-solving or Compliance Review processes are under way. The Compliance Review Expert recommends that EBRD should additionally through a public consultation process seek and take account of feedback on any proposed guidance for engaging with PCM complainants. The resulting guidance should be made publicly available for the benefit of actual and prospective clients and potential complainants.

Management Action 9

There is no change in the Bank's responsibility with regard to communicating with Clients or in monitoring a project because of a pending PCM case.

In the past, the PCM Office instructed Management not to communicate with Complainants during a PCM case without the PCM Office authorisation, so as to avoid any conflict of interest or perceived influence about the complaint. Management defer to the PCM Office with regard to this issue and if requested, will assist the PCM Office to develop formalised guidance on this issue. This should appear to be a PCM Guidance Note, not a Management one, and the PCM Office could decide to undertake a public consultation or disclose it, as they prefer. Management suggest that it is important that the guidance be seen as owned by the PCM, so that Complainants understand that they are telling Management what communication is possible. Management will work with the PCM Office in accordance with deadlines they establish.

Complainants' Response

Management's handling of grievances—before, during and after a complaint is filed—is equally if not more important than the PCM's own procedures in ensuring an effective accountability system at the EBRD. This and other cases have demonstrated that there is a need to clarify the actions that Management should take with regards to grievances. In this case, Management failed to respond to complainants' concerns in a timely fashion and missed an opportunity to resolve a conflict in real time. After the complaint was filed, complainants welcomed Management's offer to meet with them in Turkey, but that offer was promptly rescinded without explanation. While Management Action 9 asserts that there is no change in the Bank's responsibility to monitoring due to a pending PCM case, the Compliance Review suggests and complainants' experience confirms that the responsibility to monitor should be heightened following the filing of a complaint. A complaint should trigger EBRD to review the allegations seriously and seek additional information from its clients to determine whether additional actions are needed to address the concerns. Thus complainants urge EBRD to develop guidance not only with regard to EBRD's monitoring activities, but in relation to its handling of grievances more broadly. This type of guidance is directed to EBRD staff, not the PCM, and should be developed and owned by EBRD with input from the PCM and the public. It would also be useful for existing guidance, referenced in footnote 14 of the Compliance Review, to be made public.

As this is the first labor-related case at the EBRD, the response from the EBRD to the findings in the Compliance Review will set an important precedent for future projects. We urge the Board to direct Management to revise its MAP to ensure that the harms suffered by complainants are addressed. Please do not hesitate to contact us if we can provide any additional information.

Sincerely,

Eyüp Özer, International Secretary, Birleşik Metal İş
Kris Genovese, Center for Research on Multinational Corporations (SOMO)
Lydia de Leeuw, Center for Research on Multinational Corporations (SOMO)