

TÜRK TRAKTÖR PROJECT

REQUEST NUMBER: 2015/03

COMPLIANCE REVIEW REPORT – January 2017

The Project Complaint Mechanism (PCM) is the independent accountability mechanism of the EBRD. PCM provides an opportunity for an independent review of complaints from one or more individual(s) or organisation(s) concerning an EBRD project, which allegedly has caused, or is likely to cause harm. PCM may address Complaints through two functions: Compliance Review, which seeks to determine whether or not the EBRD has complied with its Environmental and Social Policy and/or the project-specific provisions of the Public Information Policy; and Problem-solving, which has the objective of restoring a dialogue between the Complainant and the Client to resolve the issue(s) underlying a Complaint without attributing blame or fault. Affected parties can request one or both of these functions.

For more information about PCM, contact us or visit www.ebrd.com.

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How to submit a complaint to the PCM

Complaints about the environmental and social performance of the EBRD can be submitted by email, telephone or in writing at the above address, or via the online form at:

<http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/submit-a-complaint.html>

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NOTE: Unless otherwise defined, capitalised terms used in this Compliance Review Report refer to terms as defined in the PCM Rules of Procedure.

Glossary

AESR	Annual Environmental and Social Report
Birleşik Metal-İş	Birleşik Metal İşçileri Sendikası
BTOR	Back to Office Report
CAO	World Bank Group Compliance Advisor/Ombudsman
CBA	Collective Bargaining Agreement
Client	Türk Traktör ve Ziraat Makinaları A.S
Complainant	Birleşik Metal İşçileri Sendikası
EBRD	European Bank for Reconstruction and Development
ESAP	Environmental and Social Action Plan
ESD	Environment and Sustainability Department
2008 ESP	2008 Environmental and Social Policy
ESDD	Environmental and Social Due Diligence
EU	European Union
ITUC	International Trade Union Confederation
IFC	International Finance Corporation
ILO	International Labour Organisation
MESS	Türkiye Metal Sanayicileri Sendikası
NGO	Non-Governmental Organisation
PCM	Project Complaint Mechanism
PR	Performance Requirement
PSD	Project Summary Document
RP	Rule of Procedure
SEP	Stakeholder Engagement Plan
TOR	Terms of Reference
Türk Metal	Türk Metal Sendikası
Türk Traktör	Türk Traktör ve Ziraat Makinaları A.S

Executive Summary

On 2 September 2015 the EBRD's Project Complaint Mechanism (PCM) received a Complaint entitled *Workers Rights violations in Türk Traktör ve Ziraat Makinalari A.S.* The Complaint was submitted by Birleşik Metal İşçileri Sendikası (United Metalworkers Union), and raised matters connected with EBRD lending in respect of *Türk Traktör v Ziraat Makinalari A.S* ('Türk Traktör'). The Complaint sought a Problem-solving Initiative, and if that were not possible, it requested a Compliance Review (para. 9).

On 11 September 2015, the Complaint was registered in accordance with the 2014 PCM Rules of Procedure (PCM RP) 11-13, and was subsequently uploaded to the PCM website pursuant to PCM RP 20. Following an Eligibility Assessment, which concluded that the Complaint was eligible for Compliance Review but ineligible for a Problem-solving Initiative, a Compliance Review was commissioned in January 2016. PCM Expert Halina Ward was appointed by PCM to undertake the Compliance Review, which commenced on 4 January 2016.

The PCM Compliance Review process involved a review of public domain project information, EBRD internal documents, and documents provided by Türk Traktör and the Complainant. Face to face and conference call meetings and discussions were held with the Relevant Parties, including with EBRD Environment and Sustainability Department (ESD) staff, with the EBRD's Operation Lead for lending to Türk Traktör, with the Complainant and a Dutch-based non-governmental organisation acting as an advisor to the Complainant, and with managers at Türk Traktör.

The Compliance Review Expert also sought the input of a number of external experts and other interested parties. These included discussions with representatives of Koç Holding. Additionally, during a PCM visit to Turkey in February 2016, meetings were held with a group of long-standing workers and separately with elected trade union representatives at Türk Traktör's Ankara factory site; with a representative of Türk Traktör's employer's union MESS; with two former workers at the Türk Traktör Ankara factory; with three Turkish academics specialising in Turkish labour law and/or industrial relations, and with a lawyer representing former workers at the Türk Traktör Ankara factory in ongoing reinstatement and compensation proceedings.

During the course of the Compliance Review the Compliance Review Expert was also in contact with the International Labour Organisation (ILO) Freedom of Association Committee Secretariat, with the office of the World Bank Group's Compliance Advisor/Ombudsman (CAO), and with a UK-based labour expert with prior experience working in Turkey and with the CAO.

Türk Traktör was founded in 1954 to undertake the manufacturing and trade of farm tractors, harvesters and other agricultural machinery and equipment. Today, 25% of the company's shares are traded on the Borsa Istanbul stock exchange. Türk Traktör is operated as a joint venture between Koç Holding and CNH Österreich GmbH, each of which maintains a 37.5% shareholding.

On 14 May 2013, EBRD signed a EUR 75m senior unsecured loan agreement with Türk Traktör. The loan was provided to part-finance the construction of a new tractor plant in Erenler, Sakarya, together with research and product development and engine and transmission investment, at the existing Ankara factory (together 'the Project'). In October 2014, EBRD signed an additional loan facility of up to EUR 20m for further investment in Erenler.

The immediate trigger for the Complaint that is the subject of this Compliance Review was May 2015 industrial action which directly affected Türk Traktör's Ankara plant, leading to a production stoppage from 21 May 2015-1 June. Full production resumed on 2 June 2015. Twenty workers at Türk Traktör's Ankara plant were dismissed following the action.

The Complainant makes a number of allegations of Project failures related to the application and/or implementation of EBRD's 2008 Environmental and Social Policy (2008 ESP). For purposes of the present Compliance Review, the Complaint is rooted in the claim that *"EBRD has failed to ensure that Türk Traktör complied with PR2, and other relevant provisions of the Performance Requirements, in its appraisal, monitoring and supervision of"* the Project.

The allegations within the Complaint raise issues about EBRD's compliance with the 2008 ESP in relation to matters concerning:

1. Due diligence and monitoring carried out by EBRD in respect of the implementation of the Project at the Ankara factory.
2. Respect for freedom of association.
3. The consistency of the dismissal of twenty workers following the May 2015 industrial action with relevant national and international standards.
4. Wages, benefits and conditions of work (including in particular occupational health and safety issues, wages, and overtime).
5. Stakeholder engagement and grievance mechanisms.

The Compliance Review Expert finds:

1. That EBRD was non-compliant in its application of the 2008 ESP general requirements and the requirements of PR 1 in relation to both appraisal and due diligence, and routine monitoring, of the Project's compliance with labour and occupational health and safety aspects of PR 2.
2. That EBRD was non-compliant in its application of the ESP general requirements in relation to monitoring of the Project's compliance with labour and occupational health and safety aspects of PR 2 following the receipt of an initial complaint from the Complainant, and subsequently during the course of the PCM Eligibility Assessment and Compliance Review process.
3. That EBRD was non-compliant with the general commitments of the 2008 ESP and with PR 10 in relation to routine monitoring with respect to the establishment of an external grievance mechanism.
4. That EBRD was non-compliant with the general commitments of the 2008 ESP and with PR 2 and PR 10 in relation to monitoring following the submission of a Complaint to the Project Complaint Mechanism with respect to internal and external grievance mechanisms.

The Compliance Review Report contains a number of recommendations consistent with the findings of non-compliance identified in the Compliance Review.

1 Introduction: the Compliance Review Process

On 2 September 2015 the EBRD's Project Complaint Mechanism (PCM) received a Complaint entitled *Workers Rights violations in Türk Traktör ve Ziraat Makinalari A.S.* The Complaint was submitted by Birleşik Metal İşçileri Sendikası ('Birleşik Metal-İş', the United Metalworkers Union), and raised matters connected with EBRD lending in respect of a Project implemented by *Türk Traktör v Ziraat Makinalari A.S* ('Türk Traktör' or 'the Client'). The Complaint sought a Problem-solving Initiative, and if that were not possible, it requested a Compliance Review.

The Complaint relates to a part-EBRD-financed Project at Türk Traktör. EBRD's investment in Türk Traktör by way of a EUR 75m senior unsecured loan agreement between EBRD and Türk Traktör was approved by the EBRD Board of Directors on 12 March 2013. The loan was composed of up to EUR 30m for EBRD's own account (A loan) and up to EUR 45m syndicated to commercial banks (B loan). The loan, as described in the loan agreement, was provided to part-finance the construction of a new tractor plant in Erenler, Sakarya, together with research and product development, and engine and transmission investment, at the Ankara factory. On 29 May 2014, EBRD's Board of Directors approved an additional loan facility of up to EUR 20m for further investment in the Project's Erenler components.

The PCM Eligibility Assessment Report, dated November 2015, found that the Complaint satisfied the PCM criteria for a Compliance Review but that it did not satisfy the criteria for a Problem-solving Initiative. A Compliance Review was commissioned in January 2016. PCM Expert Halina Ward was appointed by PCM to undertake the Compliance Review. Initial discussions and analysis took place from 4 January-19 February 2016, with a visit to Turkey undertaken from 20-26 February 2016 and a subsequent follow-up meeting with EBRD's Environmental and Social Department on 7 March 2016.

The PCM Compliance Review process involved a review of public domain Project information, EBRD internal documents, and documents provided by Türk Traktör and the Complainant. Three face to face meetings and two additional calls were held with EBRD Environment and Sustainability Department (ESD) staff, and two discussions (one face to face and one via conference call) with the EBRD's Operation Lead for the Project. A total of five face to face and conference call discussions were additionally held with the Complainant and representatives of a Dutch-based non-governmental organisation acting as advisor to the Complainant. Face to face discussions with the Complainant took place in Turkey in February 2016; with one meeting in Ankara and one in Istanbul. One conference call was held with Koç Group and Türk Traktör, as well as individual and group meetings with Türk Traktör managers and with a senior representative of Koç Group at Türk Traktör's site in Ankara over three and a half days from 21-24 February 2016.

The Compliance Review Expert also sought the input of a number of external experts and interested parties. During a PCM visit to Turkey, additional meetings were held with a group of long-standing workers and separately with elected trade union representatives at Türk Traktör's Ankara factory site; with a representative of Türk Traktör's employers' union MESS; with two former workers at the Türk Traktör Ankara factory; with three Turkish academics specialising in Turkish labour law and/or industrial relations, and with a lawyer representing fourteen former workers at the Türk Traktör Ankara factory in their ongoing reinstatement proceedings.

During the course of the Compliance Review the Compliance Review Expert has also been in contact with the International Labour Organisation (ILO) Freedom of Association Committee

Secretariat, with the office of the World Bank Group's Compliance Advisor/Ombudsman (CAO), and with a UK-based labour expert with prior experience working in Turkey and with the CAO.

As noted, the Compliance Review process has included review of internal EBRD documentation and extensive discussions with EBRD and Türk Traktör. The Compliance Review Expert is bound by EBRD's Public Information Policy and is not permitted without consent to disclose documents intended for EBRD's internal purposes only, nor the content of confidential exchanges.

It became clear during discussions with Türk Traktör, the Complainant, and current and former workers at the Türk Traktör factory in Ankara, that the language used to describe workers' actions during the period from 21 May 2015 to the resumption of production on 2 June is itself contested. The question of whether those actions amounted to a 'strike' or an 'illegal strike', or whether they should rather be understood as an 'action' a 'collective action' or even an 'illegal action', is also subject to ongoing judicial consideration in connection with litigation by twenty dismissed workers whose actions seek remedies spanning reinstatement, and/or compensation and severance pay. This Compliance Review Report adopts the term 'industrial action' save where the context specifically indicates otherwise.

2 EBRD and Türk Traktör

Türk Traktör was founded in 1954. Today, it is listed on the Borsa Istanbul stock exchange. The company is operated as a joint venture between Koç Holding and CNH Österreich GmbH, each of which maintains a 37.5% share-holding.

For both practical day-to-day and accounting purposes Türk Traktör may be considered part of the Koç Group under Koç Holding A.S. Koç Group, in turn, is Turkey's largest industrial and services group.¹ Together, Koç Holding sales accounted for around 5% of Turkey's GDP in 2014.²

Türk Traktör is among the world's largest farming, tractor, and agricultural equipment manufacturers. The firm's products are exported to more than 130 countries.³ The company's two factories have a combined annual production capacity of 50000 tractors.⁴

On 12 March 2013, EBRD's Board of Directors approved a EUR 75m senior unsecured loan agreement with Türk Traktör, composed of up to EUR 30m from EBRD's own resources (A loan) and up to EUR 45m syndicated to commercial banks (B loan). The 2013 loan was to be applied (in summary) to (i) research and product development, and engine and transmission investment, at the Ankara factory (in particular for research and development to support the launch of Tier IV emission tractor engine production through the modernization of the existing manufacturing plant in Ankara), and (ii) to increase Türk Traktör's production capacity from 35,000 to 50,000 tractors through construction of a new assembly line at Erenler in Sakarya. Subsequently in May 2014, EBRD agreed an additional loan facility of up to EUR 20m for further investment in Erenler.

The 2013 Project was processed under the EBRD 2008 Environmental and Social Policy (2008 ESP), and assigned a Category B designation in accordance with 2008 ESP Part C, paragraph 21.

¹ Source: <http://www.Koc.com.tr/en-us/investor-relations/corporate-overview-and-governance/company-profile>

² Source: <http://www.bloomberg.com/news/articles/2016-01-21/mustafa-Koc-head-of-turkey-s-largest-group-of-companies-dies>

³ Source: http://www.turktraktor.com.tr/kurumsal_genel.aspx?id=78

⁴ Source: http://www.turktraktor.com.tr/kurumsal_genel.aspx?id=78

Environmental and Social Due Diligence (ESDD) was commissioned from an international consulting firm and carried out by auditors based at its Turkey offices, beginning in December 2012 and concluding in March 2013. The contracted ESDD included a one-day visit to the Ankara facility, environmental and social audit of existing facilities in Ankara, and environmental and social analysis of the proposed Project at both locations. The consultants were expected to address Performance Requirements 1-8 and 10 of the 2008 ESP, including all relevant aspects of PR 2 on Labour and Working Conditions.

A separate Stakeholder Engagement Plan (SEP) was also prepared by the consultants for subsequent adoption by Türk Traktör. In its final form as a Türk Traktör document, dated March 2013, it incorporates a public grievance mechanism, including an outline of the grievance procedure, together with a basic flowchart and an example of a grievance form.

In February 2013, following review of the draft consultants' report, EBRD's ESD prepared an environmental and social summary for the Bank's Final Review process.⁵ This noted that no major issues associated with PR 2 were identified during environmental and social due diligence, save for a need to develop contractor management procedures (which are not relevant for purposes of the present Compliance Review).

The summary notes the conclusion of ESDD that it would be prudent periodically to review health and safety procedures currently in place and update them where considered necessary and/or beneficial. It reports that Türk Traktör has a formal and certified integrated management system in place at the Ankara plant, including (in respect of environmental management) ISO 14001, and (in respect of occupational health and safety) OHSAS 18001. It notes that environmental and social due diligence had identified that the company does not currently have an external grievance mechanism, and reports that the company had agreed to adopt such a system to meet the requirements of PR 10. Finally, the summary notes that the adoption of a grievance mechanism (together with agreement to disclose information regarding the company's expansion proposals) is considered sufficient to manage the risks and benefits associated with stakeholder engagement.

As summarised in the publicly available Project Summary Document (PSD), which was disclosed on 13 March 2013, the ESDD process concluded that adverse environmental and social risks associated with the Project were site specific, readily identifiable and could be addressed through mitigation measures.⁶ EBRD concluded, based on the ESDD, that Türk Traktör had international standard management systems in place at the existing facilities.

EBRD formally committed Türk Traktör by means of the Project loan agreement, to carry out the Project, and its business and operations, in accordance with Performance Requirements 1-8 and 10 of the 2008 ESP. Residual environmental and social risk issues identified during ESDD were addressed by means of an Environmental and Social Action Plan (ESAP) which was integrated within the loan agreement, with an obligation on Türk Traktör diligently to implement and adhere to the ESAP and monitor its implementation.

The ESAP includes two action items that are touched upon by the present Compliance Review; namely obligations to develop an external grievance mechanism and information disclosure

⁵ Confidential.

⁶ Source: <http://www.ebrd.com/work-with-us/projects/psd/turk-traktor.html>

policy; and to review occupational health and safety procedures and instructions and update them in accordance with modifications/changes planned in the existing Ankara facility.

Alongside its other environmental and social commitments, Türk Traktör has committed to provide EBRD with an annual environmental and social report (AESR), incorporating information on compliance with EBRD Performance Requirements 1-8 and 10, such as occupational health and safety and policies relating to labour and working conditions, compliance with applicable environmental and social regulations, and the ESAP requirement to develop an external formal grievance mechanism for the public. The Compliance Review Expert considered two such annual reports, for 2013 and 2014 respectively, in the course of the Compliance Review.

On 29 May 2014, EBRD's Board approved an additional loan facility to Türk Traktör of up to EUR 20m for the Bank's own account, following revision to the scope of the Sakarya Assembly Plant Investment.

3 The Complaint

The proximate trigger for the Complaint that is the subject of this Compliance Review was May 2015 industrial action which directly affected Türk Traktör's Ankara operation, leading to a stoppage in factory production there from 21 May 2015-1 June, with full production resuming on 2 June 2015. A total of twenty workers at Türk Traktör's Ankara plant were dismissed following the action.

The matters to be considered in the Compliance Review also concern trade union organisation and representation at the Ankara factory.

PCM and ESD received an email from Birleşik Metal-İş ('the Complainant'⁷) on 3rd June 2015, the day after resumption of production at Türk Traktör's Ankara factory following the industrial action of 21 May-1 June 2015 inclusive.

At this point, Türk Traktör had dismissed an initial group of five workers involved in the industrial action. A second group of 15 workers who were later dismissed had not at this point yet been dismissed. The Complainant described issues stemming from a 'wild-cat' strike at Türk Traktör's factory, during which workers had resigned from a union which the Complainant alleged they had been 'forced to join'. The email also set out a number of allegations about the company's management's attitude during the industrial action. It noted that a number of workers had already been dismissed and that a further group of workers had been placed on compulsory leave, and expressed the view that *"these workers probably will be dismissed too"*. The message stated *"it would be really good to have some sort of urgent mediation with the help of the Bank, in order to prevent further dismissals if there is any such mechanism"*.

An acknowledgement was sent by EBRD's ESD and EBRD began to make inquiries with Türk Traktör on issues raised in the complaint towards the end of June. It subsequently followed up on a number of responses provided by Türk Traktör, initially via email.

⁷ The capitalised word 'Complainant' is used throughout this Compliance Review Report, including in respect of the period prior to the submission of the formal Complaint to PCM.

On 3 July, EBRD wrote to the Complainant encouraging it to send its concerns directly to Türk Traktör in the first instance. EBRD added that *“Türk Traktör has a grievance mechanism in place for both workers and for external stakeholders and any issues of concern should be discussed with the company directly in the first instance.”*

The Complainant responded on 14 July, saying that *“workers representatives tried to communicate with Türk Traktör management several times, unfortunately without any success”*. On 24 July 2015, the Complainant contacted Türk Traktör through its external communications platform, as suggested by EBRD, to raise its concerns. In this communication, the Complainant set out its position in relation to relevant decisions of the ILO Freedom of Association Committee. The message expressed the view that Türk Traktör’s dismissal of workers was not compatible with EBRD standards and principles. It additionally highlighted decisions of the ILO Committee on Freedom of Association, and concluded that *“termination of workers for reason of [the] actions they participated in constitutes a violation of all these international standards.”* The Complainant maintains that it did not receive a response to this message from Türk Traktör.

In late July 2015 members of EBRD’s banking team in Turkey met with representatives of Türk Traktör’s senior management team and discussed the complaint in detail.

On 6 August 2015, EBRD wrote to the Complainant stating that it was seeking to establish the most appropriate channel for the Complainant’s enquiry, and in a response later that day the Complainant notified EBRD that it was preparing to submit a PCM Complaint. EBRD consulted with Türk Traktör who advised that the Complainant should contact Türk Traktör’s employer’s association, Türkiye Metal Sanayicileri Sendikası (MESS), and this was subsequently conveyed by EBRD to the Complainant.

On 19 August, the Complainant wrote to MESS, *“in order to find a solution to [the] problem”*, and setting out arguments that were a short time later to form the core of its formal PCM Complaint.

The Complainant subsequently submitted a formal Complaint to the PCM on 2 September 2015. The Complaint makes a number of allegations of Project failures related to the application and/or implementation of EBRD’s 2008 Environmental and Social Policy (2008 ESP) at Türk Traktör’s Ankara plant (para. 5).

The Complaint states that EBRD has failed to ensure that Türk Traktör complied with PR2 and other relevant provisions of the Performance Requirements in its appraisal, monitoring and supervision of the Project (para. 6I). It notes that PR 2 states, in part, that *“The client will not discourage workers from joining workers’ organisations of their choosing or from bargaining collectively. The client will not discriminate or retaliate against workers who act as representative, participate, or seek to participate, in such organisations or bargain collectively.”* The Complaint additionally cites specific references in PR 2 to ILO Conventions 87 (Freedom of Association) and 98 (Right to Collective Bargaining).⁸

The Complaint contains the following substantive allegations and assertions:

⁸ ILO Convention No. 87, *Freedom of Association and Protection of the Right to Organise Convention*, 1948, was ratified by Turkey on 12 July 1995; and Convention No. 98, *Right to Organise and Collective Bargaining Convention*, 1949, was ratified on 23 January 1952.

- a) Türk Traktör has consistently denied workers' right to organize, compelling them to join and stay in Türk Metal Union (para. 6a);
- b) workers at Türk Traktör are unable to bargain freely for their working conditions (para. 6d);
- c) Türk Metal has for many years been the "competent union" for purposes of concluding collective bargaining agreements in the workplace (para. 6d). Membership of Türk Metal is a pre-condition for employment at Türk Traktör (para. 6d);
- d) workers cannot elect their shop stewards or any other union representatives; "*workers who are in conflict with the... union are dismissed*" (para. 6d); and
- e) workers have 'previously' been threatened, pressured or subjected to violence by trade union officials, and the Complaint alleges that "*the company allows this to happen in order to protect the management-friendly union*" (para. 6d).

The Complaint makes three specific allegations regarding issues that it says workers are unable to address because they cannot freely bargain for their working conditions:

- a) violation of national law relating to overtime in the Ankara factory, with annual overtime 'compulsory' and far higher than the maximum 270 hours permitted under the Turkish Labour Code (para. 6b).
- b) Health problems caused by extensive overtime working, "mostly" musculoskeletal disorders. The Complaint mentions herniated discs specifically (para. 6b).
- c) Average wages, which the Complaint states range between 1300-1400TL per month. The Complaint asserts that workers are unable to meet their basic needs with these salaries, and that as a result, many of the workers have incurred debt (para. 6c).

The Complaint asserts that despite assurances that no workers would be dismissed as a consequence of their work stoppage 20 workers were dismissed without justification, (para. 6b) though they "*did not do anything which would justify their dismissal*" (para 6i). It asserts that workers taking part in the demonstrations and work stoppages collectively resigned from Türk Metal union,⁹ and that workers had four main demands (para. 6e):

1. Freedom to choose their own unions.
2. Ability to elect their own representatives and shop stewards.
3. A guarantee that no-one would be dismissed because of the demonstrations and demands.
4. Payment of a living wage that provides for decent living standards.

The Complaint states that 1200 Türk Traktör workers joined the industrial action on 21 May 2015. The action halted production, with full production resuming in Ankara on 2 June 2015. Five workers at the Türk Traktör Ankara factory who were involved in the industrial action were dismissed on 1 June. Fifteen workers out of an additional group of workers who had been sent on compulsory leave when the action came to an end were subsequently dismissed on 8 June (para. 6f).

The Complaint states that Türk Traktör management had repeatedly announced that no-one would be dismissed because of their participation in the industrial action, and it specifically refers to a memorandum signed by the General Manager and circulated on 28 May 2015 in

⁹ The Compliance Review Expert understands from subsequent discussions during a PCM visit to Turkey in February 2016 that a significant number of workers taking part in the action resigned, but not all.

which the company committed not to take action against workers who returned to work by May 29 2015 (para. 6h).

The Complaint states that the reason given by Türk Traktör for the dismissals as “participation in an illegal strike”, but adds that aside from the total of twenty workers dismissed on 1 and 8 June 2015, all of the remaining workers who participated in the action remained employed by Türk Traktör. These workers were recorded as having been placed on administrative leave for the duration of the strike and were paid for this period (para. 6j). The Complaint contends, in effect, that the industrial action did not amount to an illegal strike, and argues specifically that the *“ILO Committee on Freedom of Association considers wildcat strikes, sit-down strikes, etc. as part of [the] right to strike as long as they are peaceful”* (para. 6k).

The Complaint requests two specific solutions, in addition to a request for a Problem-solving Initiative which was rejected in the Eligibility Assessment Report:

- Reinstatement of the dismissed workers (para. 9), and
- Organisation of a secret ballot to allow workers freely to choose their representatives. (para.9)

EBRD’s initial response to the issues raised in the Complaint is described in its Management Response, which is summarised in the Eligibility Assessment Report. Türk Traktör has also responded to the Complaint. The company’s response includes background information about the company and the industrial action, which was, it asserts, an illegal strike. Türk Traktör disputes many of the Complainant’s allegations, stating that no illegal actions were taken in respect of the industrial action, and that no worker’s employment was terminated due to exercise of union rights. Türk Traktör furthermore disputes the Complainant’s claim that it did not respect workers’ union rights. Türk Traktör’s response is also summarised in the Eligibility Assessment Report.

Relevant passages from both responses are referred to throughout this Compliance Review Report.

According to the Eligibility Assessment Report in the present Complaint, on 27 October 2015 the Eligibility Assessors held a conference call with EBRD during which they were informed that EBRD was considering the appointment of an independent labour expert to further assess Türk Traktör’s compliance with national labour laws and regulations, and conformity with ILO convention requirements. At the time of writing, no expert or external analysis had been appointed, though the Compliance Review Expert understands that further discussions have taken place regarding this possibility.

In November 2015, a number of EBRD representatives met with Koç Group and Türk Traktör representatives in Ankara and discussion regarding the PCM Complaint took place.

EBRD has not yet arrived at a position on the substantive claims made by the Complainant and Türk Traktör’s handling of the situation.

4 Key issues for consideration during Compliance Review

The factual allegations contained within the Complaint raise issues concerning EBRD’s compliance with its obligations under the 2008 ESP as these relate to:

1. Due diligence and monitoring carried out by EBRD in respect of the implementation of the Project at the Ankara factory.
2. Allegations concerning freedom of association.
3. The dismissal of twenty workers following the May 2015 industrial action and review of relevant national and international standards.
4. ESP performance requirements concerning wages, benefits and conditions of work.
5. ESP performance requirements concerning stakeholder engagement and grievance mechanisms.

These issues are reflected in the Terms of Reference for the Compliance Review, which form part of the Eligibility Assessment Report.¹⁰

This Compliance Review must consider, in respect of the matters raised by the Complaint, whether EBRD met its obligations under the 2008 Environmental and Social Policy. As summarised in the Eligibility Assessment Report and Terms of Reference for this Compliance Review, the Complaint raises issues of possible non-compliance by EBRD with the general requirements contained in Part C of the 2008 ESP, as well as with its obligations in respect of Performance Requirements 1, 2 and 10.

Part C of the 2008 ESP states that EBRD must, *inter alia* carry out social and environmental appraisal “appropriate to the nature and scale of the project, and commensurate with the level of environmental and social risks and impacts” (C 14); “require clients to structure projects so that they meet” the requirements of PR 2 and PR 10 (C 28); and carry out monitoring “commensurate with the project’s issues, impacts and compliance requirements, and with the ability of the client and/or local authorities to adequately monitor and manage these issues and impacts” (C 35). The Bank is required to monitor projects “on an ongoing basis” in order to verify proper and timely implementation of ESAPs and adherence to agreed social and environmental covenants as long as it maintains a financial interest in the project (C 36). If circumstances change since appraisal or previous monitoring activities that could result in adverse social or environmental impacts, the EBRD “will work” with the client to devise a plan for the client to address them.¹¹ (C 37)

Additionally, PR 1 (5) states, in part, that “...the client will consider in an integrated manner the potential environmental and social issues and impacts associated with the proposed project. The information gained will inform the EBRD’s own due diligence related to the client and project and will help to identify the applicable PRs and the appropriate measures to better manage risk and develop opportunities.”

PR 1 (21) states that “The results of... monitoring should be used to correct and improve operational performance. Similarly, monitoring activities can be adjusted according to performance experience and feedback. During project implementation, results of client self-

¹⁰ Complaint: Türk Traktör (DTM 44173), Request Number: 2015/03, Terms of Reference for a Compliance Review, November 2015.

¹¹ A separate provision (C 39) addresses changes in the nature and scope of projects following Bank approval and signing, as distinct from changed ‘circumstances’ that could result in adverse social or environmental impacts. This is one indication that changed ‘circumstances’ are those changes that could result in adverse social or environmental impacts and that may understood in the ordinary meaning of the word as changed ‘circumstances’. There is no need for such changes to amount to a change in the nature or scope of a project.

monitoring, governmental inspection reports, third party audits/reports or monitoring by lenders may indicate that changes are necessary to the ESAP. Based on the monitoring results, the client will identify and reflect any necessary corrective and preventive actions in an amended ESAP and/or offset programme, which will be submitted to the Bank for approval. The client will implement agreed corrective and preventive actions, and follow up on these actions to ensure their effectiveness.”

As circumscribed by the Complaint, and considering also the Management Response and Türk Traktör’s reply, the Compliance Review Expert has clustered matters raised for consideration in this Compliance Review into three component themes, as follows:

- Claims that working conditions at Türk Traktör’s Ankara factory did not meet EBRD PR 2 requirements relating to pay, overtime, and health and safety arrangements;
- Allegations concerning freedom of association that are not directly connected to the industrial action which began in May 2015;
- Allegations concerning freedom of association and breaches of worker rights connected to industrial action of May and early June 2015.

In addition, in order to allow for proper consideration of the Bank’s actions in relation to the Complaint itself, and in accordance with the Terms of Reference for this Compliance Review Report, the Compliance Review Expert has added a fourth component, namely

- Issues relating to PR 2 and to PR 10 so far as they relate to grievance mechanisms established in respect of the Project, and associated issues of stakeholder engagement.

Each component is addressed from the following perspectives:

1. The Complaint and, where relevant, EBRD and Client responses.
2. Relevant provisions of the 2008 ESP.
3. Analysis (including of additional information provided by the Relevant Parties and by experts consulted during the Compliance Review).
4. Findings and recommendations.

Analysis of each component is addressed in relation to three separate time-horizons, where relevant¹², as follows:

1. Appraisal and due diligence.
2. Pre-Complaint Project monitoring.
3. Project monitoring in the period since the Complainant’s first contact with EBRD and subsequent submission of a Complaint to PCM (referred to collectively as ‘post-Complaint’ monitoring).

Where a particular issue or piece of documentation has already been discussed or analysed in connection with one component, only key parts are re-presented for subsequent themes to minimize repetition.

If the Compliance Review Expert concludes that EBRD was not in compliance with a Relevant EBRD Policy, as is the case in the present Compliance Review, she must, pursuant to PCM RP 14,

¹² Analysis of issues arising out of dismissals following the May 2015 industrial action considers only ‘post complaint’ monitoring.

develop recommendations to address the findings of non-compliance at the level of EBRD systems or procedures in order to avoid a recurrence of such or similar occurrences, and/or address the findings of non-compliance in the scope or implementation of the Project. Accordingly, the Compliance Review Report incorporates numbered recommendations throughout. These are numbered consecutively in the main body of the Report.

Following analysis of the four components according to the outline structure above, a subsequent Section of the Compliance Review considers wider cross-cutting issues raised by the Complaint in relation to the core EBRD ESD functions considered; namely appraisal and due diligence, and monitoring. Recommendations in this Section correspond with instances of non-compliance taken as a whole.

The Compliance Review Report concludes with a complete compilation of the numbered findings and recommendations using numbering from the main body of the Report, and dividing recommendations into Project-level and wider recommendations respectively.

5 Working conditions

5.1 Introduction

The Complaint raises three distinct sets of issues regarding working conditions: wages; overtime working; and occupational health and safety respectively.

Issues regarding working conditions were not raised by the Complainant in its initial contact with EBRD, but featured in its initial communication with the employers' union MESS on 19 August 2015 and subsequently in its formal Complaint to PCM.

5.2 Wages

As noted above, the issue of low average wages is offered as an example in support of the broader claim relating to freedom of association issues at Türk Traktör. However, PR 2 contains a distinct provision concerning wages.

2008 ESP PR 2, paragraph 12, states that:

“Wages, benefits and conditions of work offered should, overall, be comparable to those offered by equivalent employers in the relevant region of that country/region and sector concerned. Where the client is a party to a collective bargaining agreement or is otherwise bound by it, such agreement will be respected”

Pre-project appraisal revealed that blue collar wage levels (i.e. those relevant for purposes of the Complaint) are determined by the collective bargaining agreement (CBA) currently in effect at Türk Traktör. The CBA was concluded in December 2014, and covers a three-year period from September 1, 2014 through to August 31, 2017. It is a group agreement negotiated, for purposes of Türk Traktör workplaces, between the competent union, Türk Metal, and MESS. MESS is the principal employer union in the metal sector, and Türk Traktör is a member. Therefore notwithstanding that the Complainant contests the legitimacy of the CBA on freedom of association grounds, the CBA could in principle reasonably be understood to reflect wages offered by 'equivalent employers' for purposes of appraisal and due diligence.

The Compliance Review Expert has reviewed EBRD's internal documentation of ESDD and has not found evidence of non-compliance in respect of PR 2 (12). Neither is there any evidence of non-compliance with EBRD's obligations in respect of wages during routine annual monitoring by means of review of the 2013 and 2014 AESRs.

This leaves the issue of whether, in the period since the Complainant raised issues concerning working conditions, EBRD took steps required of it by the 2008 ESP.

The Compliance Review Expert has not seen any evidence that EBRD followed up on the wage issue raised by the Complainant. She would have appreciated assurance, through internal records, that the relevance of PR 2 (12) had been considered during the Bank's post-Complaint monitoring of the Project. However, she is not able to conclude that EBRD was non-compliant in this regard.

Türk Traktör's response to EBRD's early inquiries following the Complainant's contact with it, together with its response to the Complaint to PCM, provided EBRD with information about wage increases under the CBA and the background to the industrial action. Subject to verification of these facts, for reasons set out below the Compliance Review Expert finds that it was reasonable for EBRD to conclude that no specific issue of non-compliance with PR 2 (12) arose for further consideration without making further inquiry of Türk Traktör on wages at its Ankara plant.

Wage concerns were first raised by the Complainant in an email to MESS shortly before the submission of the Complaint to the PCM. There was not any suggestion in the Complaint itself that wage provisions of the CBA currently in effect at the Türk Traktör Ankara plant have not been respected. Neither has there been any suggestion that wages are not comparable to those offered by equivalent employers across the regional or national automotive sector as a whole. It should be noted that ESP PR 2 (12) does not incorporate any obligation upon the Bank's Client's to pay any particular minimum wage. Rather, it is based on comparison between 'equivalent employers'.

According to Türk Traktör's response to the Complaint, workers involved in the industrial action of May and June 2015 at a number of automotive sector plants reportedly sought an increase in hourly pay equal to that of a CBA agreed shortly before the industrial action began in respect of workers at another facility in Turkey. The Compliance Review Expert has not seen the relevant pay settlement and does not have knowledge of its detailed content. However, during interviews in Turkey the Compliance Review Expert heard that for a little over three years, owing to a dispute over union recognition, workers at this facility had not benefitted from wage increases under any collective bargaining agreement. Subsequently, the CBA that emerged from negotiations in respect of the employer concerned included a commitment to increases to make up for the missed years in which no agreement was in place.¹³

The Compliance Review Expert concludes that in these circumstances the employer concerned was not an 'equivalent employer'. As mentioned above, the Compliance Review Expert has not seen written evidence that EBRD explicitly considered the relevance of ESP PR 2 (12) in the period since wage issues were first raised by the Complainant. However, she has concluded that EBRD could reasonably have concluded that no specific issue of non-compliance with PR 2 (12)

¹³ EBRD Management notes in its response to the Complaint that the CBA resulted in a wage increase covering three years to be given all at once.

arose for further consideration, based on consideration of information made available to it by the Client in the period since the Complaint was submitted to PCM.

5.3 Overtime

The Complaint alleges violation of national law relating to overtime in the Ankara factory, with annual overtime 'compulsory' and far higher than the maximum 270 hours permitted under the Turkish Labour Code.¹⁴ The Complaint alleges further that this causes serious health problems among workers.

EBRD projects are required, under PR 2 (7), to comply at a minimum with (inter alia) national labour laws. The Compliance Review must therefore consider whether EBRD was in compliance at all times with its appraisal, due diligence, and monitoring obligations in relation to PR 2 (7).

At the time of appraisal and due diligence, EBRD internal guidance addressing labour matters in Turkey highlighted long hours and unpaid overtime as risk areas. There is no evidence to suggest that these issues were not appropriately considered by EBRD at these stages. Information made available to EBRD through due diligence or through regular monitoring did not point to any particular issues in relation to overtime at Türk Traktör.

The Compliance Review Expert notes that Türk Traktör's reply to the Complaint states that compulsory working, including overtime working, is prohibited by law and is not applied in Türk Traktör workplaces.

EBRD has clearly considered this reply but does not address overtime in its Management Response to the Complaint. The Compliance Review Expert notes further that there is no record of any follow-up by EBRD specifically on the issue of overtime (including the allegation that overtime exceeds the maximum permitted in the Turkish Labour Code) in its communications with Türk Traktör following the Complainant's first reference to overtime issues in an email to MESS on 19 August 2015.

In addition to the formal positions of the Complainant and of Türk Traktör, when analysing this aspect of the Complaint the Compliance Review Expert has taken account of information provided verbally by the Complainant, by a legal representative of fourteen workers dismissed from Türk Traktör following the May 2015 industrial action, by a former worker, and by Türk Traktör managers. She has also reviewed relevant provisions of the CBA in effect at Türk Traktör and of the Türk Traktör employee handbook.

The Compliance Review Expert notes the seriousness of the Complainant's overtime allegations in relation to national legal requirements, which provide both an upper ceiling for overtime work, and state that the employee's consent shall be required for overtime work.¹⁵ She notes further the allegation in the Complaint that health problems have arisen as a result of excessive overtime. She considers that these alleged Project issues demanded specific and targeted follow-up and inquiry by EBRD with Türk Traktör. This has not happened.

¹⁴Complaint, para. 6b. Article 41 of the Labour Code of Turkey, number 4857, states both that the employee's consent shall be required for overtime work and that total overtime work shall not be more than two hundred and seventy hours in a year. Unofficial translated version at <https://www.ilo.org/dyn/natlex/docs/SERIAL/64083/63017/F1027431766/TUR64083.PDF>). The maximum limit of 270 hours annually is also found in Article 5 of the Regulations on Overtime and Extra Hours of 2004.

¹⁵ Ibid.

This requires a preliminary issue to be dealt with, the determination of which is relevant to other Sections of the Compliance Review Report addressing EBRD's post-Complaint monitoring. This concerns the conduct of EBRD monitoring in respect of projects once a PCM Complaint has been lodged and PCM processes are under way. The Compliance Review Expert concludes that there is no ground in the 2008 ESP for the filing of a PCM Complaint to impact upon monitoring. The Bank's actions in the period following the submission of the Complaint must be considered against the substantive obligations placed upon it by the 2008 ESP.

In particular, monitoring must be "*commensurate with the project's issues, impacts and compliance requirements*", in accordance with 2008 ESP C 35, whether or not Eligibility Assessment Compliance Review or Problem-solving are under way. In respect of ESAPs, EBRD is required to monitor projects "*on an ongoing basis*" in order to verify proper and timely implementation (and additionally adherence to agreed environmental and social covenants) as long as it maintains a financial interest in the project (C 36).

The conduct of PCM's functions, including Problem-solving and Compliance Review, cannot be an effective substitute for the Bank's day to day operational procedures for implementing the ESP (in this case the 2008 ESP). Compliance Review focuses on EBRD's actions in relation to its clients. It does not reach conclusions on whether clients have met their project-related obligations under the ESP. Problem-solving, in turn, focuses on problem-solving in relationships between clients and Complainants in respect of EBRD-funded projects, rather than on compliance with the obligations of the 2008 ESP.

Furthermore, whilst the PCM Rules of Procedure contain a series of timelines and deadlines associated with the conduct of its functions, there are no penalties for failure to adhere to those deadlines. PCM processes have on occasion taken many months or even years to reach a conclusion. EBRD should not be prevented from fulfilling its responsibilities under the ESP by delays in PCM processes.

In the present Complaint it is clear that EBRD took a number of steps to follow up on a number of the matters raised by the Complainant in the period following submission of the PCM Complaint, including through correspondence, exchanges and meetings with Türk Traktör. Additionally, the Management Response states that "*EBRD has initiated an evaluation of the situation, the claims made and the Company's handling of the situation...*", and ends "*Following the internal assessment, EBRD shall consider the verification of the issues and status by an independent specialised consultant in labour, with a duty of care to the Bank.*"

EBRD has not followed up with Türk Traktör specifically on the overtime issues raised in the Complaint. The Compliance Review Expert does not consider that in the present Complaint consideration of Türk Traktör's response to the Complaint is sufficient to discharge EBRD's monitoring obligations in respect of the Complainant's serious allegations in relation to overtime.

The question then arises whether the expressed intention to conclude an evaluation in the future, and potentially to consider verification of the issues and their status by means of an independent specialised consultant, are at this point sufficient to discharge those obligations.

2008 ESP C 35 and C 36 do not contain timeframes for the conclusion of fact-finding or evaluative monitoring activities when new issues arise or allegations are made. However, the Compliance Review Expert does not consider that it would be consistent with the language of these provisions to conclude that the pace at which follow-up takes place in such circumstances

lies solely in EBRD's discretion. In particular, the timeframe over which follow-up takes place is relevant in determining whether monitoring has taken place 'on an ongoing basis' under C 36, and/or whether it is 'commensurate with the project's issues, impacts and compliance requirements' in the case of C 35. In the present Complaint, given the time elapsed since overtime issues were first raised, and the seriousness of the allegations, the Compliance Review Expert considers that these obligations have not been met.

Non-compliance finding 1: The Compliance Review Expert finds that EBRD's lack of follow up with Türk Traktör on overtime aspects of the Complaint was inconsistent with its obligation under 2008 ESP C 35 to carry out monitoring "commensurate with the project's issues, impacts and compliance requirements".

Recommendation 1 (overtime): 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.

Recommendation 2 (overtime): 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.

It is clear that EBRD's substantive monitoring responsibilities under the 2008 ESP are not affected by PCM proceedings. This is the basis on which the Compliance Review Expert has addressed her review of EBRD's monitoring activities in the post-Complaint period. However, safeguarding PCM's ability to engage with clients, EBRD's responsibility to monitor projects, and complainants' access to PCM free from interference, calls for sensitivity. Equally, duplication of efforts, for example during fact-finding by ESD and/or PCM, should be minimised to the extent consistent with full realisation of the distinct functions of PCM and ESD experts. Based on the present Compliance Review, the Compliance Review Expert does not consider that current EBRD practice and internal guidance developed by PCM for use by EBRD staff¹⁶ are adequate to address these interconnected concerns fully.

The Compliance Review Expert concludes that it is appropriate to recommend that guidance be developed on implementation of EBRD's monitoring responsibilities under the ESP in the period following submission of a PCM Complaint. This is the subject of Recommendation 28, in Section 9.3 of this Compliance Review Report.

5.4 Occupational health and safety

5.4.1 Positions of the parties and relevant provisions of the 2008 ESP

¹⁶ Project Complaint Mechanism: EBRD Management Response and General Guidance (2014), confidential.

The Complaint asserts that health problems have been caused by extensive overtime working at Türk Traktör's Ankara plant, "mostly" musculoskeletal disorders. It adds that "*much of the workforce have herniated discs or similar conditions*" (para. 6b). Türk Traktör's response to the Complaint states that regulatory provisions relating to occupational health and safety are respected and that health issues are continuously monitored, with hazards and accidents monitored and reported to the Koç Group on a regular basis. The Management Response refers to health and safety issues addressed within the ESAP but does not otherwise comment specifically on the occupational health and safety issues raised by the Complainant.

Aside from these sources of information, the Compliance Review Expert's consideration of occupational health and safety issues has been informed by discussions with members of the occupational health and safety team at Türk Traktör's Ankara plant and separately with two former Türk Traktör workers during PCM's visit to Turkey in February 2016.

Key provisions of the 2008 ESP are found in paragraphs (2), (7) and (13)-(15) of PR 2.

It should be noted that as provided in PR 2 (7) and (14), projects must meet national occupational health and safety requirements (2 (7)), but projects also 'will comply' with relevant EU OHS requirements. The question for Compliance Review is whether EBRD met its obligations in relation to PR 2. These can be derived from the obligations contained in Part C of the 2008 ESP, both as they relate directly to PR 2, and as they relate to the appraisal and performance monitoring and review responsibilities placed upon clients by PR 1.

5.4.2 *Due diligence and appraisal*

The Compliance Review Expert notes that consultants commissioned to carry out ESDD associated with the Bank's environmental and social appraisal were required to consider all relevant EBRD Performance Requirements, including those relating to occupational health and safety.

EBRD's contracted due diligence procedure did not require or invite the consultants to carry out an explicit gap analysis nor to run separate due diligence inquiries in relation to national legislation (for purposes of PR 2 (7)) and "*relevant EU occupational health and safety requirements*" referred to PR 2 (14).

The commissioned ESDD report concluded that the Ankara facility was in compliance with local laws and regulations. It also indicated that OHS procedures and instructions presented an area for improvement, and recommended that Türk Traktör review OHS procedures and instructions and update documentation in accordance with modifications/changes planned in the Ankara facility. The consultants' report indicated that Türk Traktör has an OHSAS 18001 certified occupational health and safety management system. The Compliance Review Expert understands that this would have incorporated a requirement for compliance with national law.¹⁷

A statement that Türk Traktör is compliant with national or local laws and regulations concerning health and safety does not provide assurance, in and of itself, that the proposed Project meets relevant EU OHS requirements as required by PR 2 (14). If there were no other evidence that this had been considered by the consultants during commissioned ESDD, this potential omission would have warranted specific follow up with the consultants by EBRD experts.

¹⁷ ESD team member telephone discussion 29 March 2016, confidential.

The Compliance Review Expert has considered whether the circumstances of the Türk Traktör ESDD warranted such an explicit instruction. For these purposes she has reviewed EBRD internal OHS guidance and reports, as well as preliminary ESDD information concerning OHS provided by Türk Traktör to EBRD.

The Compliance Review Expert has reviewed a consultancy report and associated summary documents concluded for EBRD in April 2012, which (inter alia) compare Turkish, EU and international occupational health and safety requirements. A summary graphic does not indicate pronounced transposition gaps for a project involving an employer of the size, or sector, of Türk Traktör.

Based on this internal documentation, the Compliance Review Expert has concluded that there was no specific need for EBRD explicitly to distinguish between EU and national requirements at appraisal and due diligence stages nor in its instructions to consultants contracted to carry out due diligence. One indication to the contrary was contained within the then-current EBRD Turkey country strategy adopted in April 2012.¹⁸ This noted, at section 3.4, that “*The Framework Directive on health and safety at work has not been transposed into Turkish law...*” However, given that more detailed analysis available to ESD at the time of ESDD did not point to a need to consider the principles and standards of the Framework Directive independently of national legal requirements the Compliance Review Expert does not consider that this reference alone would justify specific instructions to the commissioned ESDD consultants to carry out separate analyses of EU and Turkish OHS law respectively.

Key OHS questions at appraisal and due diligence stages in relation to a prospective EBRD client do not in any event concern the status of implementation or enforcement of national legislation by relevant authorities. Rather, EBRD must consider whether the project itself will comply with relevant EU OHS requirements (PR 2 paragraph (14)) and with national laws (PR 2 (7)).

The Compliance Review Expert finds that there was no non-compliance by EBRD at appraisal and due diligence stages in relation to the requirements of the 2008 ESP so far as they relate to occupational health and safety issues.

5.4.3 Pre-Complaint monitoring

The Compliance Review Expert has reviewed information concerning occupational health and safety contained within Türk Traktör’s AESRs for 2013 and 2014 respectively.

EBRD has informed the Compliance Review Expert that it reviewed the two AESRs, but considered that there were no issues reported by the Client that warranted further follow up. The Compliance Review Expert disagrees. Abnormally low numbers in relation to certain health and safety matters included in the 2013 AESR were a *prima facie* indication that the Report had not been correctly completed and that EBRD should seek further information and/or clarification from its Client.

Non-compliance finding 2: EBRD did not adequately monitor occupational health and safety issues in the period between the first loan agreement and receipt of initial communications from the Complainant in June 2016. This was inconsistent with its obligation under 2008 ESP C 35.

¹⁸ At page 21. Available online via <http://www.ebrd.com/documents/strategy-and-policy-coordination/turkey-strategy-2012.pdf>

Recommendation 3 (occupational health and safety): 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.

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.

EBRD has informed the Compliance Review Expert that at the times that each of the two AESRs were submitted, it would have considered OHS figures in isolation, rather than viewed reports year on year in order to assess trends over time. The Compliance Review Expert understands that this approach has been revised with the creation of a system that facilitates year on year comparison against key indicators. This offers greater assurance that significant differences, year on year, would in future be more readily visible to reviewers within EBRD. For this reason no further recommendation is necessary.

5.4.4 Post-Complaint monitoring

The Complainant first referred to occupational health and safety issues in an email to MESS on 19 August 2015, and subsequently in its formal Complaint to PCM.

The Compliance Review Expert notes that EBRD's fact-finding and follow-up has not specifically addressed the occupational health and safety issues raised. In effect, EBRD's overall approach has been to address allegations regarding occupational health and safety as incidental to central issues concerning freedom of association and the dismissal of twenty workers.

The Compliance Review Expert notes that this is the way in which the Complainant itself has raised these issues. However, the serious nature of the allegations and the clear attention given to occupational health and safety matters in the ESAP, coupled with deficiencies in routine reporting on these matters by way of AESR, lead the Compliance Review Expert to the determination that EBRD should have raised queries about occupational health and safety matters with Türk Traktör in follow-up to the Complaint. This is particularly important given the clear allegation that negative occupational health and safety issues have arisen because workers are not able to address them themselves.

EBRD has an obligation to carry out monitoring "*commensurate with the project's issues, impacts and compliance requirements, and with the ability of the client and/or local authorities to adequately monitor and manage these issues and impacts*" (C 35). It must monitor projects "*on an ongoing basis*" in order to verify proper and timely implementation of ESAPs as long as it maintains a financial interest in the project (C 36). Given that the Bank has not followed up on the Complainant's occupational health and safety allegations, and taking account of the time now elapsed since those allegations were made, these obligations have not been satisfied.

Non-compliance finding 3: The Compliance Review Expert finds EBRD non-compliant with 2008 ESP C 35 and C 36 in respect of its omission to follow up on occupational health and safety allegations raised by the Complainant in the period since those allegations were made.

Recommendation 5 (occupational health and safety): 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.

5.5 Systems-level recommendation on working conditions and freedom of association

The Compliance Review Expert has considered each of the three distinct sets of issues regarding working conditions issues separately for purposes of Compliance Review. In each case she observes that EBRD did not do so. In two cases this has led to a finding of non-compliance.

The Compliance Review Expert notes that the Complainant linked its allegations about working conditions to its central complaint regarding freedom of association. However, the Compliance Review Expert does not consider that the 2008 ESP reflects an intention to subordinate performance requirements concerning matters such as occupational health and safety or wages to freedom of association. EBRD's obligation is to *"require clients to structure projects so that they meet"* the requirements of PR 2 (2008 ESP C 28) in their entirety. The matters complained of concerning working conditions were serious, including allegations of serious negative impacts upon workers. EBRD's obligation under 2008 ESP C 35 is to carry out monitoring *"commensurate with the project's issues, impacts and compliance requirements"*.

Recommendation 6 below accordingly addresses non-compliance findings 1, 2 and 3 above.

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.

6 Freedom of Association

6.1 Positions of the parties and relevant provisions of the 2008 ESP

The Complaint raises a series of questions regarding the ability of workers at Türk Traktör to associate freely with the union of their choosing. Freedom of association is protected both by Turkish national law and by ILO Conventions, including Convention 87 (on freedom of association) and Convention 98 (on the right to collective bargaining). Each of these sources of obligations is referred to in PR 2 (7), relevant parts of which state:

"7. Projects are required to comply, at a minimum, with:

- national labour, social security and occupational health and safety laws, and*
- the principles and standards embodied in the ILO conventions related to... d) the freedom of association and collective bargaining."*

The Complaint alleges that:

- Membership in the Türk Metal trade union is a pre-condition for employment (para. 6 d), and workers who are in conflict with Türk Metal are dismissed (para. 6 d)
- Workers cannot elect their shop-stewards or any other union representatives (para. 6 d), and
- Previously there have been cases where workers have been threatened, pressured or subjected to violence by trade union officials. The company allows this to happen in order to protect the management-friendly union. (para. 6 d)
- Workers at Türk Traktör are unable to bargain freely for their working conditions (para. 6d)

In addition to alleging non-compliance with PR 2 and other provisions of the Performance Requirements, the Complainant proposes a specific solution, stating that: *“A mechanism must be established in the workplace which ensures that workers can freely choose their representatives. Based on ILO Committee on Freedom of Association decisions in previous cases, we believe that best way to do this is to organize a secret ballot in the workplace based on ‘closed voting, open counting’.”*

The allegations and the Complainant’s proposed solution are considered below in relation to the three time-horizons of this Compliance Review.

Türk Traktör responds that:

- Türk Metal has authority to conclude collective bargaining in its workplaces and trade union rights of its employees are secured and respected, with a three year collective bargaining agreement in place at all Türk Traktör sites, valid from 1 September 2014
- Membership of Türk Metal is not a precondition for employment, and as a constitutional right all employees benefit from the liberty to choose their own membership of labour unions
- The allegation that the company allows unlawful actions, including threatening of fellow employees to protect management-friendly union is “outrageous”

Additionally, Türk Traktör asserts that employees still employed by it include workers who had resigned from Türk Metal during the action as well as some who claimed at the time to represent the protestors.

The Management Response to the Complaint provides information about the environmental and social context for the Project and key findings of project appraisal, approval and monitoring. It does not comment on specific allegations concerning freedom of association. Indeed, the Management Response notes that EBRD is not yet able to comment on the specific claims made in the Complaint. It continues *“EBRD has initiated an evaluation of the situation, the claims made and the Company’s handling of the situation...”*, and ends *“[f]ollowing the internal assessment, EBRD shall consider the verification of the issues and status by an independent specialised consultant in labour, with a duty of care to the Bank.”*

Relevant provisions of the 2008 ESP Performance Requirements for purposes of setting norms for client performance can be found in PR 2 (2) and PR (7).

PR 2 (2) states that at a minimum, the client’s human resources policies, procedures and standards shall be designed to:

“establish and maintain a sound worker-management relationship;

promote the fair treatment, non-discrimination and equal opportunity of workers;

promote compliance with any collective agreements to which the client is a party, national labour and employment laws, and the fundamental principles and key regulatory standards embodied in the ILO conventions that are central to this relationship...”

6.2 Due diligence and appraisal

The Compliance Review Expert has reviewed EBRD’s internal documents concerning project appraisal and due diligence in light of the Complainant’s allegations. Based on this review, she has identified one project level risk raised at the project appraisal stage in relation to freedom of association which was not adequately followed up during due diligence.

A communication in the early stages of project appraisal included a statement that 100% of the company’s blue collar workers were members of a trade union. This statement could potentially have reflected a state of affairs at the Ankara factory that was not consistent with respect for freedom of association as required by the incorporation within PR 2 of ILO Conventions 87 and 98, or irrespective of those Conventions by protections provided under Turkish law to freedom of association. Even so, EBRD’s ESD did not specifically draw the statement to the attention of the consultants contracted to carry out ESDD. Rather, the communication containing the statement was simply included with other information provided to the consultants prior to the start of the commissioned ESDD process.

This omission is also at odds with EBRD’s assertion that commissioned independent due diligence had concluded that Türk Traktör *“had policies and procedures in place that meet..., relevant ILO conventions¹⁹ and EBRD’s PR2.”* The Compliance Review Expert considers that this assertion was not adequately supported or demonstrated by due diligence so far as it relates to relevant ILO Conventions.

The consultants’ ESDD report addressed PR 2, but it contained no specific references to compliance with ILO standards. It did, however, confirm that Türk Traktör complies with applicable local laws and regulations and also that an audit carried out by the Ministry of Labour and Social Security had found it in compliance with applicable regulations.

At the time of due diligence, internal guidance and tools available to EBRD social specialists clearly highlighted a number of relevant risk areas relating to freedom of association in Turkey.²⁰ The Compliance Review Expert considers that these should have alerted ESD to the need to ensure that efforts were made to secure particularly careful consideration of labour-related risk areas during appraisal and due diligence.

The 2008 ESP C 14 states that it is the client’s responsibility to ensure that the required due diligence studies are carried out in accordance with PRs 1-10. However, EBRD is responsible under 2008 ESP C 14 for reviewing the information provided and considering the social impacts associated with the proposed project in a manner appropriate to the nature of the project, and

¹⁹ The Compliance Review Expert notes that she has been unable to locate a positive statement that Türk Traktör’s labour policies and procedures, at the time of the assessment, were aligned with ‘relevant ILO conventions’ in the due diligence material available to her.

²⁰ Country Labour Briefing: Turkey, 2009, confidential; Labour toolkit: Worker Engagement document, 2010, confidential.

commensurate with the social risks. In the present Complaint, failure to ensure that possible freedom of association issues associated with 100% trade union membership were adequately addressed during due diligence meant that EBRD missed an opportunity to identify the most appropriate measures better to manage project risk. PR 1 (8) states that “[t]he nature of due diligence studies undertaken will be commensurate with the risks and issues involved”, and further that it “will be an adequate, accurate, and objective” evaluation and presentation of the issues.

Non-compliance finding 4: The Compliance Review Expert concludes that EBRD did not ensure that the information provided to and by the contracted due diligence study was ‘adequate’ as required by PR 1 (8) in light of the specific freedom of association risk revealed by early project appraisal.

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.

6.3 Pre-Complaint monitoring

There is no reason to conclude that EBRD’s routine monitoring of the Project was non-compliant with the 2008 ESP in respect of aspects of the Complaint addressed in this Component. The Compliance Review Expert has concluded that no relevant issues were raised by the AESRs for 2013 and 2014.

6.4 Post-Complaint monitoring

EBRD’s communications and discussions with Türk Traktör in the period since the Complaint did not follow up explicitly on allegations that membership of Türk Metal was a precondition for employment and that workers falling out with Türk Metal were dismissed; that Türk Traktör allows threat, violence or pressure of workers by trade union representatives; that workers cannot elect their shop stewards or other representatives; and that workers could not freely bargain for their working conditions. However, EBRD reminded Türk Traktör that projects must meet both national labour laws and the fundamental principles and standards embodied in the ILO conventions.²¹

The Compliance Review Expert considers that each of these allegations merited more specific follow-up with Türk Traktör than they received over the period since the Complaint to PCM. Additionally, the allegation that workers were forced to join Türk Metal was present in the Complainant’s initial contacts with the Bank but was not the subject of specific follow-up, based on documents that the Compliance Review Expert has reviewed.

Non-compliance finding 5: More than one year after the Complainant’s initial contact with it, EBRD has not fully evaluated the substance of the series of allegations regarding freedom of association at Türk Traktör. This does not fall within the acceptable boundaries of discretion offered by EBRD’s monitoring obligations. EBRD is non-compliant with its responsibility to ensure that monitoring is commensurate with the project’s issues, impacts and compliance

²¹ Confidential email from EBRD to Türk Traktör.

requirements (2008 ESP C 35), and to monitor projects on an ongoing basis in order to verify adherence to agreed social and environmental covenants (2008 ESP C 36).

Appropriate and specific recommendations in respect of this non-compliance must go further than EBRD's existing statements of intention in its Management Response. To this end, the Compliance Review Expert has reviewed information provided by experts, managers, workers and former workers in the course of the Compliance Review. She has additionally reviewed EBRD's internal Project documentation, considered key relevant provisions of Turkish and international labour law, and a range of publicly available sources, including from the ILO and international trade unions (specifically the International Trade Union Confederation (ITUC)) regarding freedom of association issues in Turkey.

The Compliance Review Expert has additionally considered separately what recommendations may be appropriate in respect of each of the four substantive freedom of association allegations made by the Complainant. In each case, she has considered the full range of information gathered during the course of the Compliance Review. The Compliance Review Expert notes that Türk Traktör's human resources policies and practices, from recruitment to contract termination, provide the company with positive opportunities to address freedom of association issues.

In relation to the allegation that Türk Traktör allows threats, pressure or violence against workers by trade union officials, the Compliance Review Expert notes that the allegation is strongly denied by Türk Traktör.

The allegations that workers who conflict with Türk Metal are routinely dismissed for that reason or that membership of Türk Metal is compulsory at Türk Traktör are also equally highly contested.

The Compliance Review Expert does not consider it necessary to develop a specific recommendation for EBRD in relation to the allegation that workers cannot elect their shop stewards. Elections to choose six Türk Metal union representatives from among the Ankara workforce took place in October 2015 following a number of changes in the union's policies and procedures. The Compliance Review Expert has concluded further that it would not be appropriate to seek, by means of recommendation to EBRD, to pursue the solution sought by the Complainant at Türk Traktör's Ankara facility, namely *"a secret ballot in the workplace based on 'closed voting, open counting' principles."* Not only would such an intervention by EBRD represent an unwarranted intrusion in the worker-manager relationship, but if carried out during the period of an existing CBA it could put potentially put EBRD's client in breach of its obligations to its employer union and jeopardise the client's responsibility under PR 2 to promote compliance with collective agreements to which it is a party.

However, the Compliance Review Expert takes note of the broader allegation, itself contested, that workers at Türk Traktör are not able to address issues such as low wages, excessive overtime, or occupational health and safety problems because they are not able to bargain freely for their working conditions.

The Compliance Review Expert notes that a group CBA is currently in effect at Türk Traktör's Ankara site; that this is valid until August 2017; that the competent union at Türk Traktör's sites is Türk Metal; that elections for Türk Metal union representatives at Türk Traktör's Ankara factory were held in 2015; and that there are currently very high levels of membership of Türk Metal among blue collar workers at the Ankara factory.

Taking account of all the factors referred to earlier in this sub-Section 6.4, the Compliance Review Expert considers that EBRD's next steps should address PR 2-related freedom of association issues raised in the Complaint, and also work with Türk Traktör to identify performance innovations that could generate good practice learnings across multiple sectors and EBRD countries of operation.

Recommendation 8 (freedom of association): 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.

Recommendation 9 (freedom of association): 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.

Recommendation 10 (freedom of association): 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.

Recommendation 11 (freedom of association): 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.

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.

7 Dismissals of workers

7.1 Positions of the parties and relevant provisions of the 2008 ESP

The Complaint raises distinct issues concerning the dismissal of twenty workers in connection with industrial action at Türk Traktör, and suggests that the dismissals represented a breach by Türk Traktör of its obligations under PR 2.

The Complaint asserts that despite assurances that no workers would be dismissed as a consequence of their work stoppage twenty workers were dismissed without justification, (para. 6b) though they “*did not do anything which would justify their dismissal*” (para 6i). The Complaint states that Türk Traktör management had repeatedly announced that no-one would be dismissed because of their participation in the industrial action. It specifically refers to a memorandum signed by Türk Traktör’s General Manager and circulated on 28 May 2015 in which it says the company agreed to some worker demands and committed not to take action against workers who returned to work by May 29 2015 (para. 6h).

The Complaint cites the reason given by Türk Traktör for the dismissals as “participation in an illegal strike”, but also notes that aside from the twenty workers dismissed on 1 and 8 June 2015 respectively, all of the remaining workers who participated in the action remained employed by Türk Traktör. These workers were recorded as having been placed on administrative leave for the duration of the strike and were paid for this period (para. 6j).

The Complaint further suggests that the: “*ILO Committee on Freedom of Association considers wildcat strikes, sit-down strikes, etc. as part of [the] right to strike as long as they are peaceful*”²² (para. 6k).

The Management Response to the Complaint reports that EBRD has encouraged Türk Traktör on a number of occasions to engage with the Complainant to address the concerns, and that EBRD is at that time reviewing the position of Türk Traktör regarding the legality of the strike and the basis for the dismissals. The independent ESDD had confirmed that the Client had adequate policies and procedures in place to handle those issues in accordance with PR 2. The Management Response adds that EBRD remains in discussion with Türk Traktör and that “*confirmation on whether these policies and procedures were in place during the recent industrial action is pending*”.

The Management Response states additionally that at the time of writing (which was in 2015), EBRD has not been able to verify MESS’s account of events, and has “*therefore launched an assessment of the situation*”, and that to make a further assessment of the claims and positions of Türk Traktör, EBRD will “*initially use its internal resources to carry out an assessment of the situation and may then consider the appointment of a labour specialist to provide an independent opinion*”.

Türk Traktör’s response notes that as of July 2015, approximately 1.4 million workers were employed in the Turkish metal industry. Approximately 100,000 are covered by the MESS Group CBA. Türk Traktör’s response states that the CBA had been concluded in December 2014 with Türk Metal and Çelik-İş unions for a term of three years, valid from 1 September 2014 through to 31 August 2017. Birleşik-İş Metal-İş had rejected the agreement, then called a strike which was postponed, with the process then referred to the High Board of Arbitration. According to Türk Traktör’s response, the High Board of Arbitration resolved that the MESS Group CBA would be applicable for the members of Birleşik-İş Metal with the same terms as those of the agreements concluded by Türk Metal and Çelik-İş.

At Türk Traktör’s Ankara factory, industrial action led to a stoppage in production from 21 May 2015 until 1 June 2015 inclusive. Türk Traktör’s management has estimated that around 600

²² Referenced in the Complaint, page 3, footnote 1: “2006 [*ILO Digest of Decisions*] para. 545; 1996 Digest paras. 496 and 497; and 360th Report, Case No. 1865, para. 337”.

workers were behind the factory gate during the industrial action, with around 100 workers supporting the action outside the gates. By 29 May, the Compliance Review Expert was informed by members of Türk Traktör's management team that there were some 300 workers still occupying the factory site and garden (around 25% of the total workforce). In the late afternoon of 1 June, according to a former worker, the remaining workers involved in the action ended the action and left the factory site. Full production resumed at the Ankara plant on 2 June.

Türk Traktör managers initially identified five workers for dismissal following the industrial action. On the evening of 1 June, this first group of five workers received an SMS dismissing them. The Compliance Review Expert has been provided with a sample of this dismissal SMS. A further 18 employees who returned for work on 2 June were told on arrival that they could go home. They were informed via SMS that they would be considered to be on paid vacation until their employer had concluded an assessment of their situation.²³ On 8 June, following an internal evaluation of evidence by Türk Traktör managers, 15 of these 18 workers were dismissed by means of a further SMS.

In its response, Türk Traktör does not respond directly to the Complainant's allegations in relation to ILO Conventions. It asserts, principally, that under Labor Law No. 6356 on *Trade Union and Collective Labour Agreements Act* Articles 58 and 70, disruption of production in the absence of a formal negotiation process is defined as an unlawful strike and allows the employers to take certain legal measures, including termination of employment contracts of those participating in the strike.

Türk Traktör further states that *"certain individual actions of a limited number of former employees and their leading involvement in workplace disruptions and continued calls to cease production and occupy the workplace even though the employers opted for an optimum compromise required their dismissal, as a last resort"* and that *"During [the period of the illegal strike] means granted to us by the labour laws and other applicable legislation were exercised towards some of our former employees who claimed to be the representatives of the protestors without relying on a legitimate election process, actively advocated disruptions of production, applied peer pressure to their fellow employees and sought employer-forced action to force the union with authority to conclude collective agreement out of our workplace. During this process, utmost care was shown and no illegal actions were taken"*.

Türk Traktör asserts that no employment agreement of any worker was terminated due to "exercise of union rights" at any point during the protests, and that this was evidenced by the fact that some of the resigned workers joined other trade unions, most of the others having rejoined Türk Metal, and some reportedly trying to establish a new trade union in the metal sector. All those other employees continued to be employed by Türk Traktör regardless of their union memberships. Türk Traktör adds that its management had clearly stated on many occasions that employees were at liberty to select the union of their choosing and that that matter was clearly between the employees and their respective union.

To understand the issues raised, it is helpful additionally to refer to correspondence which predated the formal PCM Complaint. In a message dated 24 July 2015, the Complainant contacted Türk Traktör. The message highlights decisions of the ILO Committee on Freedom of Association, and concludes that *"termination of workers for reason of [the] actions they participated in*

²³ Source: text and translation provided by Türk Traktör.

constitutes a violation of all these international standards.” References to the ILO’s Digest of Decisions and Principles and to ILO Reports in that message cite decisions that concern the legality of wildcat strikes (where the Complainant’s message asserts that the ILO Committee on Freedom of Association considers that denial of strike action to workers may be justified only if the strike ceases to be peaceful); and restrictions on the right to strike (where the Complainant’s message asserts that the right to strike should not be limited solely to disputes likely to be resolved through the signing of a collective agreement).

An email from MESS to the Complainant on 14 September 2015 sets out the position that a decision to go on a strike can only be taken by the workers’ union if a dispute arises during the negotiations for the collective agreement. This was not the case at Türk Traktör, where a CBA was already in effect. Consequently the message expresses the view that the demonstrations which took place in the Türk Traktör workplace were illegal, and that therefore employment contracts of workers who have prompted or participated in the actions have been terminated.

At least nineteen of the twenty workers dismissed following the industrial action have brought legal actions in Turkish courts for reinstatement and associated compensation and/or severance pay. These actions have not yet come to a final conclusion, though the Compliance Review Expert understands that a labour court has dismissed the action of one group of five former workers.²⁴

The allegations and responses of the parties in relation to the dismissals of twenty workers, raise issues concerning EBRD’s actions in relation to 2008 ESP PR 2.

Key provisions of the 2008 ESP are found in paragraphs (2), (7) and (10)-(11) of PR 2. These concern, respectively, (2 (2)) the promotion of non-discrimination and of compliance with collective agreements, labour laws and certain ILO conventions; (2 (7)) compliance with national labour laws and principles and standards embodied in ILO conventions related to freedom of association and collective bargaining; (2 (10)) compliance with EU requirements on non-discrimination related to employment; and (2 (11)) not discouraging nor retaliating against workers who participate or seek to participate in workers’ organisations of their choosing or to bargain collectively. Each provision of PR 2 is potentially relevant in shaping EBRD’s inquiries of its Client following the first contact by the Complainant on 3 June 2015.

7.2 Compliance analysis

When the Complainant first made contact with EBRD on 3 June, a first group of five workers had been dismissed. The second group of fifteen workers who were subsequently dismissed were at that time among a group of eighteen who had the previous day been placed on paid annual leave pending the outcome of Türk Traktör’s investigations into their conducts during the industrial actions. Given the potentially serious implications of matters raised by the Complainant for compliance with PR 2 and for the livelihoods of workers, expeditious follow-up was indicated.

The Compliance Review Expert notes that EBRD followed up with Türk Traktör on matters raised by the Complainant concerning the industrial action three weeks after the Complainant’s initial contact with it on 3 June. She does not need to consider whether this alone amounted to non-compliance with EBRD’s monitoring obligations under the 2008 ESP, and has not done so.

²⁴ Judgment No 2016/120, Ankara 38th Labour Court. Judgment provided by Türk Traktör and translated via PCM.

However, had EBRD followed up more swiftly with Türk Traktör, it could through early enquiry have provided itself with greater comfort that its Client's response to the industrial action was in full compliance with the 2008 ESP.

The Compliance Review Expert has carefully reviewed the steps subsequently taken by EBRD to follow up on matters raised by the Complainant in respect of dismissals. She notes that EBRD requested confirmation from Türk Traktör that there had been no labour code nor contractual breaches in connection with contract terminations, and Türk Traktör has maintained throughout that it has acted in full legal compliance.

Türk Traktör has offered a number of reasons for the dismissal of workers following the industrial action. Whilst EBRD has reminded Türk Traktör that EBRD projects are required to meet both national labour laws and the fundamental principles and standards embodied in the ILO conventions, it has not yet taken concrete steps to assess these two concerns in relation to the dismissal of workers following the industrial action at Türk Traktör.

As at September 2016 EBRD had not concluded an internal assessment or evaluation of the situation, of claims made, or of Türk Traktör's handling of the situation in respect of the dismissals. Whilst EBRD has considered commissioning an external expert, it has not yet done so.

It is clear from materials reviewed by the Compliance Review Expert that questions concerning the implementation and application of ILO principles and standards relevant both to freedom of association and the right to strike are the subject of evolving jurisprudence at national level. A number of matters concerning Turkey's implementation of its freedom of association obligations have also been considered by the ILO's Freedom of Association Committee, including in the course of the past few years.²⁵

EBRD should have made further inquiries to establish whether Türk Traktör was in substantive compliance with the requirement in PR 2 (7) to comply with the principles and standards embodied in the ILO conventions related to freedom of association and collective bargaining. Türk Traktör's assertion of compliance with national law cannot in its particular operating and regulatory context be assumed to provide a clear assertion of compliance with those principles and standards.

The Compliance Review Expert has reached the conclusion that in the specific circumstances of the present Complaint, the current outcome of the monitoring steps taken by EBRD in respect of the dismissals in the period following the Complainant's first communication with it in June 2015 is not, given the time elapsed, sufficient to fulfil EBRD's monitoring responsibilities under 2008 ESP C 35 and 2008 ESP C 36 in respect of matters raised by the Complainant.

EBRD's obligation to work with the client to devise a plan under 2008 ESP C 37 is triggered by the existence of 'changed circumstances' that could result in adverse social or environmental impacts. Where this obligation has been triggered, non-compliance with 2008 ESP C 35 and/or 2008 ESP C 36 may of itself, depending on all the circumstances, lead to non-compliance with ESP C 37. The Compliance Review Expert considers that this is such a case. The dismissals and subsequent Complaint relating to the industrial action represented a change in circumstances for purposes of 2008 C 37.

²⁵ See http://www.ilo.org/dyn/normlex/en/f?p=1000:20060:284692259497939:::P20060_REPORT_TYPE:A

Furthermore, more than one year from the time of the Complainant's first contact with EBRD on matters raised by the work stoppage at Türk Traktör the Compliance Review Expert expected to find greater evidence of engagement to confirm and, if necessary ensure, that Türk Traktör's actions are substantively aligned not only with the formal requirements of relevant national legislation; but also relevant protections of the right to strike that are afforded by ILO Conventions referred to in PR 2. 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.

Non-compliance finding 6: EBRD's delay in concluding an evaluation of the substance of the Complainant's allegations in respect of industrial action at Türk Traktör and, as needed, agreeing an action plan with its Client, reflect a non-compliance with EBRD's monitoring responsibilities under 2008 ESP C 35 and 2008 ESP C 36. They also reflect non-compliance with EBRD's obligation under 2008 ESP C 37 to work with the client to devise a plan if circumstances have changed since previous monitoring activities that could result in adverse social or environmental impacts. The dismissals and subsequent Complaint relating to the industrial action represented such a change in circumstances.

Non-compliance finding 7: EBRD has not adequately considered or determined the factual relevance of the standards and norms of ILO Conventions referred to in PR 2 (7) to the matters raised in the Complaint. EBRD is in this respect non-compliant with its monitoring obligations under 2008 ESP C 36 and C 37.

In order to consider the substantive issues raised further, whilst arriving at appropriate and specific recommendations in respect of these non-compliances, the Compliance Review Expert has considered information provided by experts, managers, workers and former workers in the course of the Compliance Review, as well as guidance on labour issues available internally to EBRD. She has additionally considered key relevant provisions of Turkish and international labour law and a range of publicly available sources, including from the ILO and its Freedom of Association Committee as well as international trade unions (specifically the International Trade Union Confederation, ITUC) regarding freedom of association issues in Turkey as well as media reports on the industrial action of 2015.

The analysis that follows focuses on the Complainant's allegations that the dismissal of twenty workers following the industrial action breached certain principles and standards of ILO Conventions, and/or that it was not otherwise justified. This needs to be understood against Türk Traktör's response that the industrial action constituted an illegal strike, and that the company has not acted illegally.

7.3 National legal issues

The Terms of Reference provided for this Compliance Review by the Eligibility Assessors state clearly that *"the Compliance Review will not address any issues under litigation or being considered by judicial processes, or reach conclusions that are prejudicial to or may affect the conduct of those processes"*.²⁶ The Compliance Review Expert has no reason to consider that the Eligibility Assessors had intended to instruct her to ignore these aspects of the Complaint. She

²⁶ Terms of Reference, paragraph 9.

has therefore aimed to conduct sufficient analysis to arrive at conclusions, and where appropriate recommendations, on EBRD's compliance with the 2008 ESP in respect of the dismissals of workers. However, because matters raised by the industrial action are currently under consideration within the Turkish legal system, she has refrained from detailed description or analysis of the applicable Turkish legal framework.

For the limited purposes of better assessing the arguments put forward by the Relevant Parties (namely the Complainant, EBRD Management, and Türk Traktör) in the context of the relevant provisions of the 2008 ESP and EBRD's monitoring obligations, the Compliance Review Expert has reviewed English translations of key provisions of Turkish law. These include Article 90 of the Turkish Constitution, which provides that in case of a conflict between international agreements concerning fundamental rights and freedoms and Turkish laws, the provisions of international agreements shall prevail; Article 54 of the Constitution, which concerns the right to strike; and provisions of Law no 6356 on Trade Unions and Collective Labour Agreements including Article 58, which defines lawful and unlawful strikes respectively; Articles 60 and 61, which set out the process by which a decision to call a lawful strike may be taken; and Article 70, which sets out the consequences of an unlawful strike; as well as Article 5 of Law 4857, the Labour Law, which incorporates a principle of equal treatment.

Relevant provisions of the Constitution and of the Labour Law and the Law on Trade Unions and Collective Labour Agreements, so far as they relate to the issues concerning worker dismissals that are included in the Complaint, have also been cited in reinstatement actions brought by workers dismissed following the May 2015 automotive strikes. The Compliance Review Expert has reviewed English translations of Turkish labour court judgments associated with three such actions.

For purposes of Compliance Review, it is not appropriate nor necessary to engage in a detailed legal evaluation, nor to weigh the authority of different sources. This is a matter for EBRD itself in the further course of its monitoring of and engagement with the Project.

It is nonetheless clear, irrespective of the particular facts presented by the June 2015 industrial action at Türk Traktör, that dismissals of workers following industrial action can potentially be the subject of successful challenges within the Turkish legal system on a number of grounds. If worker dismissals were illegal under Turkish law, they would also be associated with non-compliance with the requirement upon clients in PR 2 (7) to comply with national labour laws. With matters relating specifically to the dismissal of workers from Türk Traktör following the June 2015 industrial action currently under consideration within Turkey's court system, the Compliance Review Expert considers that it would be inappropriate, and is not in any event necessary, to engage in further description or analysis of national legal issues for purposes of the present Compliance Review.

7.4 ILO principles and standards

Pursuant to 2008 ESP PR 2 (7) EBRD projects are required to comply not only with national labour laws, but also with the principles and standards embodied in the ILO Conventions related to the freedom of association and collective bargaining that are referred to in that provision. Issues raised by the May 2015 industrial action in this regard speak to two concerns: the compatibility of the Türk Traktör industrial action with the standards and principles contained within ILO Convention 87; and the compatibility of dismissals of twenty workers subsequently with the principles and standards of that Convention.

The right to strike is an intrinsic corollary to the right to organize protected by ILO Convention No. 87.²⁷ Türk Traktör's assertion is that the May 2015 industrial action amounted to an illegal strike. However, for purposes of PR 2 (7) and implementation of EBRD's responsibilities in respect of this Performance Requirement, it is necessary also to consider the industrial action in the light of the standards and principles of ILO Convention 87.

The Complainant characterised the Türk Traktör industrial action as a wild-cat strike in its initial contact with EBRD on 3 June, and additionally refers to decisions of the ILO Freedom of Association Committee concerning wild-cat strikes in its subsequent Complaint.

ILO jurisprudence considers that restrictions on various types of strike action including wild-cat strikes may be justified *"only if the strike ceases to be peaceful"*.²⁸ It appears to be common ground at least that the industrial action at Türk Traktör did not involve physical violence towards people. The ILO's Freedom of Association Committee has also clarified whilst affirming this overall conclusion that *"taking part in picketing and firmly but peacefully inciting other workers to keep away from their workplace cannot be considered unlawful. The case is different, however, when picketing is accompanied by violence or coercion of non-strikers in an attempt to interfere with their freedom to work."*²⁹

The Compliance Review Expert is not in a position either given her mandate or in light of facts gathered during the Compliance Review to reach a conclusion on whether the Türk Traktör industrial action could be treated squarely as a wild-cat strike for purposes of ILO Convention 87.

However on this or other grounds if the Türk Traktör industrial action amounted to the exercise of the right to strike which is protected by Convention 87, it would become necessary to consider ILO reports and decisions of the ILO's supervisory machinery in respect of dismissals of workers who have been involved in protected strike action. The ILO's 2006 Digest includes five relevant statements:

- *"No one should be penalized for carrying out or attempting to carry out a legitimate strike."*³⁰
- *"The dismissal of workers because of a strike constitutes serious discrimination in employment on grounds of legitimate trade union activities and is contrary to Convention No. 98."*³¹
- *"When trade unionists or union leaders are dismissed for having exercised the right to strike, [it can only be concluded that] they have been punished for their trade union activities and have been discriminated against."*³²

²⁷ 2006 Digest, para 523, and 311th Report, Case No. 1954, para. 405.

²⁸ 2006 Digest, para 545, 1996 Digest, paras. 496 and 497; and 306th Report, Case No. 1865, para. 337.

²⁹ Case No. 923, para. 58.

³⁰ 2006 Digest, para. 660. See also the 1996 Digest, para. 590; and, for example, 302nd Report, Case No. 1849, para. 211; 307th Report, Case No. 1890, para. 372; 310th Report, Case No. 1932, para. 515; 311th Report, Case No. 1934, para. 127; 316th Report, Case No. 1934, para. 211; 318th Report, Case No. 1978, para. 218; 321st Report, Case No. 2056, para. 137; 324th Report, Case No. 2072, para. 587; 326th Report, Case No. 2091, para. 154; 331st Report, Case No. 1937/2027, para. 105; and 333rd Report, Case No. 2164, para. 608.

³¹ See the 2006 Digest, para 661, the 1996 Digest, para. 591; 306th Report, Case No. 1904, para. 596; 326th Report, Case No. 2116, para. 356; 333rd Report, Case No. 2164, para. 608; 334th Report, Case No. 2267, para. 658, and Case No. 2211, para. 678; and 338th Report, Case No. 2046, para. 104.

- Respect for the principles of freedom of association requires that workers should not be dismissed on account of their having participated in a strike or other industrial action. It is irrelevant for these purposes whether the dismissal occurs during or after the strike.³³
- The use of extremely serious measures such as dismissal of workers for having participated in a strike and refusal to re-employ them, implies a serious risk of abuse and constitutes a violation of freedom of association.³⁴

According to these statements, if the Türk Traktör industrial action were a legitimate exercise by workers of their right to strike under ILO Convention 87, workers should not be dismissed on account of their participation in the strike. This appears to be the case, *prima facie*, whether or not individual workers may be considered ‘union leaders’ or ‘trade unionists’. The ILO’s Freedom of Association Committee has additionally made it clear that where a worker is dismissed on grounds of trade union membership or activities, that worker must in principle be reinstated.³⁵ This is also the remedy requested by the Complainant. However, the relevance of this latter aspect of the Freedom of Association Committee’s jurisprudence is clearly challenged by Türk Traktör’s assertion that the dismissed workers were not dismissed on grounds of trade union membership or activities.

7.5 Conclusions and Recommendations

The legal status of the Türk Traktör industrial action, as well as the legal issues surrounding selective dismissals following industrial action under Turkish law, are clearly contested. This is evidenced by the arguments of the parties in ongoing legal proceedings.

The Complainant has cast its Complaint in terms of the substantive norms of ILO Conventions referred to in PR 2, and the jurisprudence of the ILO’s supervisory machinery on freedom of association. Simultaneously, EBRD must ensure that its projects meet the requirements of national labour law. There is a difference however between asking a client to refrain from doing what is *permitted* by national law in order to meet the spirit of ILO principles and standards, and asking it to do something that is *illegal* as a matter of national law, which EBRD must avoid. The latter issue does not arise in the present Complaint.

If Turkish law *permits* an employer to take action against workers in particular circumstances, but to do so would create a conflict with ILO principles and standards referred to in PR 2 (7), EBRD’s obligation is to ensure that its client acts in compliance with those ILO principles and standards, so that it fulfils its obligation to “*require clients to structure projects so that they meet*” the requirements of PR 2 (2008 ESP C 28) in their entirety. To this end, it is indispensable that in the circumstances presented by the present Complaint EBRD seek input in the form of expert analysis of the relevant national and international norms.

³² See the 2006 *Digest* para. 662, and the 1996 *Digest*, para. 592; 306th Report, Case No. 1904, para. 596; 318th Report, Case No. 1978, para. 218; 326th Report, Case No. 2116, para. 356; and 334th Report, Case No. 2267, para. 658.

³³ See the 2006 *Digest* para. 663, and the 1996 *Digest*, para. 593; 305th Report, Case No. 1870, para. 144; 308th Report, Case No. 1934, para. 132; and 327th Report, Case No. 2141, para. 324.

³⁴ See the 2006 *Digest*, para. 666 and also the 1996 *Digest*, para. 597; 311th Report, Case No. 1954, para. 406; 329th Report, Case No. 2195, para. 738; and 333rd Report, Case No. 2281, para. 633.

³⁵ 2006 *Digest*, paras. 837-839.

Furthermore, the foregoing analysis shows that risks of Client non-compliance with the requirements of PR 2 (7) in respect of *national* law would be mitigated if dismissals were objectively shown to be justified *irrespective* of the existence of the industrial action.

Even a judicial determination of compliance with relevant national law would not in and of itself be conclusively determinative of compliance with ILO principles and standards referred to in PR 2 (7).

The Compliance Review Expert's mandate does not permit her to draw any conclusion on the dismissal of workers from Türk Traktör. She may however draw on information gathered during the Compliance Review to make recommendations for the Bank in respect of its non-compliance with PR 2 (7).

Recommendation 13 (dismissals): 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.

Recommendation 14 (dismissals): 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.

The Complainant has made it clear that it seeks to secure the reinstatement of the dismissed workers as they were dismissed "*without any proper reason*" (para. 9). Reinstatement is not a remedy that properly lies within PCM's gift as an outcome of Compliance Review.

Recommendation 15 (dismissals): 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.

Recommendation 16 (dismissals): 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.

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.

For the future, as EBRD's systems and procedures evolve in light of Recommendation 17, the steps envisaged by the Project-specific recommendations above may become redundant or of limited value in other EBRD projects. The internal guidance recommended for development in Recommendation 17 is not however currently in place. In its absence, the Compliance Review Expert considers that Recommendations 14 15 and 16 offer an approach that can both address EBRD's non-compliances in respect of worker dismissals and provide learning to inform future improvements in internal systems and procedures.

8 Grievance mechanisms

8.1 Positions of the Parties and relevant provisions of the 2008 ESP

The Complaint alleges that Türk Traktör's workers "*cannot freely bargain for their working conditions*", in addition to a number of related allegations relating to freedom of association. Maintenance by an employer of a functioning grievance mechanism for use by workers is among the principal means by which workers may express concerns about working conditions.

At Türk Traktör, grievances about the way in which working conditions were handled by Türk Metal were among the key proximate triggers of the industrial action of May 2015. Thereafter a number of issues were raised directly with Türk Traktör by workers involved in the action through representatives selected by them for the purpose. At least nineteen of the twenty workers who were dismissed following the action subsequently brought legal actions for reinstatement.

The workplace industrial relations issues raised by the present Complaint indicate that it is appropriate to consider EBRD's actions in relation to provisions of the 2008 ESP concerning stakeholder engagement and grievance mechanisms, in accordance with the Terms of Reference for the Compliance Review.

There are two aspects to this inquiry: issues concerning stakeholder engagement and the establishment and implementation of a grievance mechanism prior to the Complaint; and issues concerning the application of these requirements to the Complainant in the period following receipt of the Complainant's communication of 3 June 2015.

As to the latter, the Management Response to the Complaint states that: "*communication regarding the dismissal of Türk Traktör employees was first received by EBRD on 3rd June 2015 after which the complainant was referred to Türk Traktör, with a request for the workers to address their concerns directly through the Company's Grievance Mechanism. The complainants informed the Bank that they did not receive a reply to their concerns and, as such, EBRD directed the complainant to the employers union (MESS), at the request of Türk Traktör. EBRD*

has encouraged Türk Traktör to engage with the complainant on a number of occasions to address the concerns.”

The Management Response to the Complaint states that: *“Workers are considered stakeholders in EBRD’s requirements, and have certain rights to information and the ability to raise grievances in a meaningful way. A Stakeholder Engagement Plan, which included a comprehensive Grievance Mechanism in line with PR10, was developed by the ESDD consultant and provided to Türk Traktör, who formally committed to implement the SEP.”*

PR 10, paragraphs 24-26, makes provision for the establishment by EBRD clients of grievance mechanisms. The relevant provisions of these three paragraphs are as follows:

“24. The client will need to be aware of and respond to stakeholders’ concerns related to the project in a timely manner. For this purpose, the client will establish a grievance mechanism, process, or procedure to receive and facilitate resolution of stakeholders’ concerns and grievances about the client’s environmental and social performance. The grievance mechanism should be scaled to the risks and potential adverse impacts of the project.

25. The grievance mechanism, process, or procedure should address concerns promptly and effectively, using an understandable and transparent process that is culturally appropriate and readily accessible to all segments of the affected communities, at no cost and without retribution. The mechanism, process [or] procedure must not impede access to judicial or administrative remedies....

26. Grievance mechanisms for workers will be separate from public grievance mechanisms and must be in accordance with PR2”

PR 10 (9) provides that “employees are always considered stakeholders”.

PR 2 contains requirements on grievance mechanisms for workers. It states, at paragraph 18, that:

“The client will provide a grievance mechanism for workers (and their organisations, where they exist) to raise reasonable workplace concerns... The mechanism should involve an appropriate level of management and address concerns promptly, using an understandable and transparent process that provides feedback to those concerned, without any retribution. The mechanism should not.. substitute for grievance mechanisms provided through collective agreements”.

8.2 Appraisal and due diligence

The ESDD report commissioned by EBRD noted that there was an internal grievance mechanism for workers that included written procedures and forms, and that if workers had complaints, they could fill out the forms, which were then evaluated by the Ethical Committee (Section 5.4, Grievance Procedures). However, it stated that there was no existing external formal grievance mechanism. The ESDD report noted that Türk Traktör should prepare a Stakeholder Engagement Plan according to PR 10, and reported that a plan had been prepared and was to be submitted to Türk Traktör for approval and then implementation. It further recommended development of an external formal grievance mechanism for the public for the existing and proposed facility, to

include written procedures describing the process on how to handle a complaint, designated personnel for this purpose and related forms.

The Stakeholder Engagement Plan was prepared for Türk Traktör by the consultants for subsequent adoption by Türk Traktör. This includes reference to an existing grievance mechanism used by workers at the Ankara facility, as well as making provision for a public grievance mechanism, with an example of a grievance form, a description of the grievance procedure, and an associated flowchart. The public grievance procedure states that grievances will be submitted to the industrial relations department and then handled within the relevant units, acknowledged within seven days, and a response provided within 30 days. Furthermore, the Environmental and Social Action Plan prepared for the Project, to which Türk Traktör has committed, includes a requirement to develop an external formal grievance mechanism for the public for the existing and proposed facility which includes written procedures describing the process on how to handle a complaint, designated personnel for this purpose and related forms.

There is no reason to conclude that EBRD's appraisal and due diligence was non-compliant with the 2008 ESP in respect of the requirements of PR 2 and PR 10 concerning the establishment of internal and external grievance mechanisms.

8.3 Pre-Complaint monitoring

The Compliance Review Expert has considered the two AESRs provided by Türk Traktör. Both report in similar terms on progress against the requirement in the ESAP to develop an external formal grievance mechanism. Each reports that this was within the scope of ISO 14001. The Compliance Review Expert notes that ISO 14001 is an environmental management systems standard. It is not designed to address the full range of environmental and social performance issues addressed by grievance mechanisms established or maintained to meet the requirement of PR 10.

EBRD did not follow up by means of any query on this aspect of Türk Traktör's reporting following its review of either the 2013 or the 2014 AESR. Confirmation that an external formal grievance mechanism exists, but that is in effect qualified by a reference to ISO 14001, does not provide assurance that that grievance mechanism meets the requirements of the ESAP. Consequently, EBRD was not in a position to verify proper and timely implementation of the ESAP requirement to establish an external grievance mechanism based on the information provided to it in the two AESRs.

Non-compliance finding 8: EBRD's routine monitoring of Türk Traktör's implementation of ESAP commitments to establish an external grievance mechanism has been non-compliant with EBRD's obligation to monitor projects on an ongoing basis "in order to verify proper and timely implementation of ESAPs."(2008 ESP C 36).

Recommendation 18 (grievance mechanisms): 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.

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.

8.4 Post-Complaint monitoring

The Complainant's first contact with EBRD on matters raised by the Complaint was on 3 June 2015. At this point, five workers had been dismissed by Türk Traktör in connection with the industrial action.³⁶ It was to be another five days before the remaining fifteen workers were dismissed. It was however clear from the Complainant's initial message to EBRD that further dismissals might be imminent. The context further indicated that there was a *prima facie* issue for further consideration by EBRD in relation to the Client's commitments in respect of PR 2.

EBRD followed up with Türk Traktör some three weeks after receipt of the initial contact from the Complainant, by which time fifteen more workers had been dismissed. In follow-up exchanges, EBRD asked Türk Traktör to confirm that a grievance mechanism was in place, and asked whether it had been used by workers prior to the strike. The Compliance Review Expert has reviewed correspondence and EBRD's internal records of discussions with Türk Traktör. These do not provide clear affirmations in this regard.

The issues raised by the present Complaint relate in their entirety to workplace concerns in the broad sense. However, PR 2 (18) states that grievance mechanisms for workers and their organisations should not "*provide a substitute for grievance mechanisms provided through collective agreements.*" One interpretive possibility is that PR 2 (18) has been drafted to address circumstances in which workers benefitting from a CBA are denied the benefits of a grievance mechanism for which their union representatives had negotiated; for example because their employer has developed an alternative mechanism that it prefers. This is not the situation in relation to the Türk Traktör industrial action. The role accorded to Türk Metal representatives by the CBA's grievance mechanism renders it unsuitable for application in a situation where workers' protest lies in some measure against that union.

The difficulty that this gives rise to is readily overcome if it is understood that the clear intention of PR 2 (18) is to ensure that grievance mechanisms are available to all workers. If in turn that intention is to be fully implemented in settings where not all workers are entitled to the benefits of a collective agreement that is in place in their workplace, the Compliance Review Expert concludes that PR 2 (18) must be read as a requirement that in principle where a collective agreement is in place and fully applicable to the grievance in question, its grievance mechanism should be applied. However, where the collective agreement is not applicable to the grievance in question, either because the worker or his or her trade union organisation is not entitled to benefit from the collective agreement, the client will provide an alternative grievance mechanism.

The CBA currently in effect at Türk Traktör contains internal grievance procedures. These procedures are designed for application, in the case of individual applications and complaints, by union members. They might also be suitable for use by workers receiving benefits under the CBA by virtue of solidarity fees.³⁷ For all but the most straightforward complaints however (i.e. those that could be resolved by means of a first-stage complaint procedure in which a Complainant simply brings a matter to his or her first superior) they would be ill-suited for use by workers who had chosen to resign from Türk Metal. They might also be ill-suited, on occasion, to use by those

³⁶ The complainant's email refers to seven.

³⁷ The benefits of the CBA are available to union members and also to workers who make 'solidarity payments' to the competent union without becoming union members. In practice both union dues and solidarity payments are administered by the employer by means of deductions from pay via the so-called 'check-out' system.

workers who had chosen not to become union members but who benefitted from the CBA by virtue of solidarity payments.

The Complainant brought concerns to EBRD requesting its assistance, but had no standing at the Türk Traktör Ankara plant to represent workers in the complaints procedure provided for under the current CBA. This is because the definition of a Trade Union Representative in that procedure is linked to Türk Metal as the competent Union under the CBA. Neither were the industrial relations and workplace issues raised by Birleşik Metal-İş on 3 June and in subsequent correspondence considered, during Türk Traktör's follow-up, through the application of any alternative internal grievance mechanism designed for use by workers and their chosen representatives.

The Management Response to the Complaint asserts that Türk Traktör "*confirmed that a Grievance Mechanism was in place to address internal and external concerns.*" The Compliance Review Expert has not found sufficient documentary or interview-based support, however, for EBRD to reach this conclusion in respect of both internal and external concerns.

The Compliance Review Expert has been unable following inquiries, and after considering written records of communications between EBRD and Türk Traktör in the period since the Complainant's first contact with it, to confirm whether the issues raised by Birleşik Metal-İş were considered by means of any *external* mechanism resembling that provided for in the SEP adopted by Türk Traktör and its associated commitment in the ESAP.

The Compliance Review Expert concludes that EBRD's actions following the initial contact by the Complainant on 3 June were not successful in securing the application of either any formal internal or any formal external grievance mechanism to Birleşik Metal-İş and the issues raised by it.

The question however is whether EBRD took sufficient steps to meet its obligations under the 2008 ESP.

The Complainant sought to raise a grievance. The public grievance mechanism that had been adopted was that provided for in the SEP, which included an example of a grievance form and an outline grievance procedure. EBRD conveyed information to the Complainant suggesting that it make use of general contact information provided on the Türk Traktör website, and thereafter that it contact MESS.

The subject of communication between the Complainant and Türk Traktör was clearly raised in exchanges between EBRD and Türk Traktör. However, the Compliance Review Expert has concluded that EBRD did not take adequate steps to remind Türk Traktör of its specific obligations under the ESAP in respect of the establishment of an external grievance mechanism and of the content of the SEP in this regard.

The foregoing analysis has pointed to respects in which the circumstances presented by the present Complaint test the boundaries of relevant provisions of PR 2 and 10. The analysis indicates that tailored guidance, both at project level and more widely, could help to secure performance improvements. 2008 ESP, C 37 states that "*if circumstances have changed since appraisal or previous monitoring activities that could result in adverse social or environmental impacts, the EBRD will work with the client to devise a plan for the client to address them.*" The industrial action at Türk Traktör taken in combination with the present Complaint needs to be understood as presenting changed circumstances. These are not changes in the nature or scope

of the project (which are addressed separately in C 39) but they represent a ‘*change in circumstances*’ that could result in adverse social impacts and justify a fresh look at certain aspects of the ESAP initially concluded for the Project, namely its requirements in respect of internal and external grievance mechanisms.

Non-compliance finding 9: In the period following the Complainant’s first communication with it, EBRD has not fulfilled its monitoring obligations pursuant to 2008 ESP C 35, C 36 and C 37 in respect of grievance mechanisms required by PR 10 (24-26) and PR 2 (18).

Recommendation 20 (grievance mechanisms): 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.

Recommendation 21 (grievance mechanisms): 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.

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.

9 Additional findings and recommendations: appraisal, due diligence, monitoring systems and procedures

In order to ensure that the full range of systems issues raised by the earlier findings of non-compliance are addressed, this Section sets out a series of additional recommendations in respect of EBRD’s functions under the 2008 ESP. Accordingly, this Section sets out recommendations for improvements to overall appraisal, due diligence and monitoring systems in light of the specific compliance issues that have arisen in the Compliance Review process.

9.1 Integration of internal guidance notes and tools into due diligence and monitoring

The Compliance Review Expert has had access to a number of EBRD internal guidance notes, tools and commissioned reports that address labour and occupational health and safety issues either generally, or with specific reference to Turkey. On occasion, the Compliance Review Expert has drawn on these documents in the course of her analysis when reaching a conclusion that EBRD has been non-compliant in respect of its monitoring obligations. This includes in respect of follow-up as part of appraisal and due diligence on matters concerning freedom of association, as well as follow-up with Türk Traktör on the full range of issues raised by the Complainant in order to fulfil EBRD's monitoring obligations.

Conversely, in respect of one relevant aspect of the Complaint (occupational health and safety) internal guidance concerning occupational health and safety has provided the Compliance Review Expert with a basis for concluding that EBRD was not in breach of its appraisal and due diligence obligations under the 2008 ESP.

Non project-specific documents on environmental and social issues that are prepared for use by EBRD's internal specialists can, so long as they are up to date, play a valuable role in delivering better client performance, compliance, and positive social and environmental outcomes in accordance with the ESP in effect from time to time. That potential is weakened when such documents and sources of information are not fully integrated within appraisal, due diligence and monitoring functions.

Based on the present Compliance Review alone, it appears that information contained within these documents is currently inadequately integrated within EBRD's appraisal, due diligence, and monitoring processes.

EBRD's overall processes need to exhibit the following characteristics:

- 1) A clear system or shared understanding for ensuring that information within internal tools or guidance documents prepared for use by EBRD social and environmental specialists informs detailed terms of reference or guidance provided to commissioned consultants and experts, including through specification of watch-points to supplement consultants' ordinary exercise of professional care.
- 2) A clear internal means for linking relevant sectoral or thematic internal guidance to matters revealed by routine project monitoring, or to practices applied by EBRD when following up with clients.
- 3) A clear mechanism for ensuring read-across between the substantive content of such guidance and communication with clients concerning complaints or issues raised by third parties concerning the environmental and social performance of projects.

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.

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.

9.2 Distinctions between relevant international or EU and national legal commitments

Two of the specific issues raised in the Complaint, concerning occupational safety and the dismissal of workers following the May 2015 industrial action respectively, have called for the Compliance Review Expert to consider 2008 ESP Performance Requirements that incorporate not only respect for national law, but also compliance with regional or international standards and principles; namely those of EU occupational health and safety requirements referred to in PR 2 (14), and of ILO Conventions listed in PR 2 (7).

These provisions of the 2008 ESP Performance Requirements demand appraisal due diligence and monitoring systems and procedures that are able clearly to identify and as needed distinguish between the normative content of, and client performance in relation to, these different sets of norms.

The Compliance Review Expert notes the usefulness of existing internal country-level analysis and guidance on labour and occupational health and safety issues in this regard.

Recommendation 25 (distinctions between national and international commitments): 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.

Recommendation 26 (distinctions between national and international commitments): 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.

Recommendation 27 (distinctions between national and international commitments): 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.

9.3 Implementation of EBRD's monitoring obligations during PCM proceedings

As set out in Section 5.3 above, the Compliance Review Expert concludes that EBRD's substantive obligations under the 2008 ESP are not altered by the filing of a Complaint with PCM. However, the relationship between EBRD monitoring and PCM procedures during periods of time when both are under way calls for processes that are demonstrably sensitive both to the interests of clients and complainants and the independence and integrity of 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.

10 Conclusions, Findings and Recommendations

10.1 Summary of Conclusions

The Compliance Review Expert has concluded that:

- EBRD did not take steps to ensure that freedom of association risks revealed by initial project appraisal were properly considered during due diligence.
- EBRD did not follow up on issues raised by the Client's Annual Environmental and Social Reports in respect of occupational health and safety and the implementation of an external grievance mechanism.
- EBRD did not, in a number of respects, adequately follow up on issues raised by the Complainant in its initial correspondence with EBRD and subsequently by means of a formal Complaint to PCM

The findings and recommendations of this Compliance Review Report are compiled for ease of reference below. To assist development of a Management Action Plan, recommendations are subdivided between those designed to address the present Project, and those with wider relevance to EBRD's systems and procedures.

10.2 Findings

The Compliance Review Expert has concluded that EBRD's actions in respect of the Türk Traktör Project are non-compliant with the 2008 ESP in the following respects.

10.2.1 Working Conditions

Non-compliance finding 1: The Compliance Review Expert finds that EBRD's lack of follow up with Türk Traktör on overtime aspects of the Complaint was inconsistent with its obligation under 2008 ESP C 35 to carry out monitoring "*commensurate with the project's issues, impacts and compliance requirements*".

Non-compliance finding 2: EBRD did not adequately monitor occupational health and safety issues in the period between the first loan agreement and receipt of initial communications from the Complainant in June 2016. This was inconsistent with its obligation under 2008 ESP C 35.

Non-compliance finding 3: The Compliance Review Expert finds EBRD non-compliant with 2008 ESP C 35 and C 36 in respect of its omission to follow up on occupational health and safety allegations raised by the Complainant in the period since those allegations were made.

10.2.2 Freedom of Association

Non-compliance finding 4: The Compliance Review Expert concludes that EBRD did not ensure that the information provided to and by the contracted due diligence study was 'adequate' as required by PR 1 (8) in light of the specific freedom of association risk revealed by early project appraisal.

Non-compliance finding 5: More than one year after the Complainant's initial contact with it, EBRD has not fully evaluated the substance of the series of allegations regarding freedom of association at Türk Traktör. This does not fall within any acceptable boundaries of discretion that may be offered by EBRD's monitoring obligations. EBRD is non-compliant with its responsibility to ensure that monitoring is commensurate with the project's issues, impacts and compliance requirements (2008 ESP C 35), and to monitor projects on an ongoing basis in order to verify adherence to agreed social and environmental covenants (2008 ESP C 36).

10.2.3 Dismissal of workers

Non-compliance finding 6: EBRD's delay in concluding an evaluation of the substance of the Complainant's allegations in respect of industrial action at Türk Traktör and, as needed, agreeing an action plan with its Client, reflect a non-compliance with EBRD's monitoring responsibilities under 2008 ESP C 35 and 2008 ESP C 36. They also reflect non-compliance with EBRD's obligation under 2008 ESP C 37 to work with the client to devise a plan if circumstances have changed since previous monitoring activities that could result in adverse social or environmental impacts. The dismissals and subsequent Complaint relating to the industrial action represented such a change in circumstances.

Non-compliance finding 7: EBRD has not adequately considered or determined the factual relevance of the standards and norms of ILO Conventions referred to in PR 2 (7) to the matters raised in the Complaint. EBRD is in this respect non-compliant with its monitoring obligations under 2008 ESP C 36 and C 37.

10.2.4 Grievance mechanisms

Non-compliance finding 8: EBRD's routine monitoring of Türk Traktör's implementation of ESAP commitments to establish an external grievance mechanism has been non-compliant with EBRD's obligation to monitor projects on an ongoing basis "*in order to verify proper and timely implementation of ESAPs.*" (2008 ESP C 36)

Non-compliance finding 9: In the period following the Complainant's first communication with it, EBRD has not fulfilled its monitoring obligations pursuant to 2008 ESP C 35, C 36 and C 37 in respect of grievance mechanisms required by PR 10 (24-26) and PR 2 (18).

10.3 Recommendations

10.3.1 Project-level Recommendations

10.3.1.1 Working Conditions

Recommendation 1 (overtime): 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.

Recommendation 2 (overtime): 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.

Recommendation 3 (occupational health and safety): 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.

Recommendation 5 (occupational health and safety): The he 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.

10.3.1.2 Freedom of Association

Recommendation 8 (freedom of association): 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.

Recommendation 9 (freedom of association): 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.

Recommendation 10 (freedom of association): 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.

Recommendation 11 (freedom of association): 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.

10.3.1.3 Dismissal of workers

Recommendation 13 (dismissals): 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.

Recommendation 14 (dismissals): 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.

Recommendation 15 (dismissals): 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.

Recommendation 16 (dismissals): 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.

10.3.1.4 Grievance mechanisms

Recommendation 18 (grievance mechanisms): 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.

Recommendation 20 (grievance mechanisms): 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.

Recommendation 21 (grievance mechanisms): 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.

10.3.2 Wider recommendations on improvements to internal systems and procedures

10.3.2.1 Working Conditions

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.

10.3.2.2 Freedom of Association

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.

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.

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.

10.3.2.3 *Dismissal of workers*

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.

10.3.2.4 *Grievance mechanisms*

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.

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.

10.3.2.5 *Appraisal, due diligence, and monitoring*

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.

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.

Recommendation 25 (distinctions between national and international commitments): 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.

Recommendation 26 (distinctions between national and international commitments): 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.

Recommendation 27 (distinctions between national and international commitments): 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.

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.