

EBRD

# Project Complaint Mechanism

Annual Report 2012

Report of the Project Complaint  
Mechanism Officer



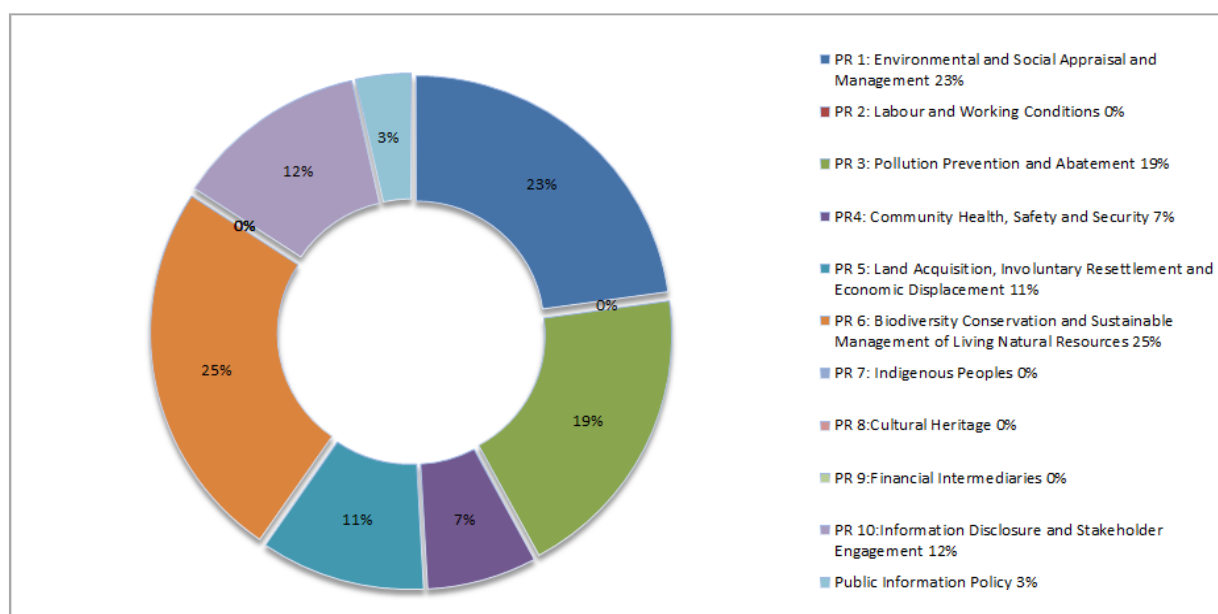
**European Bank**  
for Reconstruction and Development

|  |    |
|--|----|
| Executive summary                              | 2  |
| PCM Complaints at a glance                     | 5  |
| PCM Complaints – issues and process            |    |
| Tbilisi Railway Bypass, Georgia                | 6  |
| Boskov Most Hydro Power Plant, FYR Macedonia   | 7  |
| Ombla Hydro Power Plant, Croatia               | 9  |
| Paravani Hydro Power Plant, Georgia            | 11 |
| Rivne Kyiv High Voltage Line, Ukraine          | 13 |
| Sostanj Thermal Power Plant, Slovenia          | 14 |
| EPS Kolubara Environmental Improvement, Serbia | 16 |
| Ineligible complaints                          | 16 |
| Outreach                                       | 17 |
| Cooperation with other IFIs                    | 19 |
| 2013   | 20 |

This report covers activities of the EBRD Project Complaint Mechanism (PCM) in 2012. During the reporting period, the PCM worked on the complaints registered in 2012 and 2011, undertook a number of outreach activities, and engaged with other institutions' accountability mechanisms. Also in 2012 the PCM started preparations for the upcoming review of the PCM Rules of Procedure (RP) in 2013.

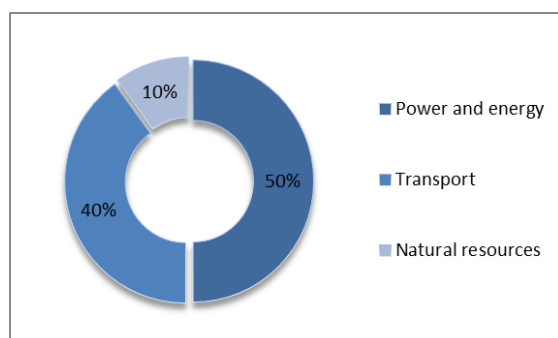
In 2012 the PCM registered three new project complaints and continued working on the different stages of the review process of the seven complaints registered in 2011. Main issues raised in all complaints related to the adequacy of the environmental and social impact assessment, information disclosure and

public consultations, particularly in relation to the assessment of biodiversity in challenging infrastructure projects. Other issues included land acquisition, resettlement, pollution and greenhouse gas emissions. As in previous years, none of the complaints raised issues relating to labour conditions, indigenous peoples or cultural heritage. This trend may point to a lack of awareness about the PCM among CSO segments such as trade unions, labour organisations and cultural heritage protection advocates. The following chart looks at the breakdown of complaints by issues raised in line with the EBRD's Environmental and Social Policy 2008\* (Performance Requirements 1-10) and the Public Information Policy.



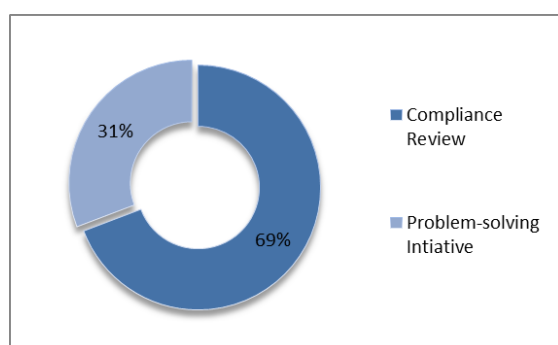
\*The complaint about the Rivne Kyiv High Voltage Line project concerns the EBRD's 2003 Environmental Policy, which applied when the Bank approved the Project. It related to the adequacy of the Environmental Impact Assessment and disclosure and meaningful public consultation. For the purpose of the chart and ease of display, these issues were included under the corresponding PR of the 2008 Environmental and Social Policy – PR 1 and PR10.

All of the PCM complaints received in 2011 and 2012 were in relation to Category ‘A’<sup>1</sup> projects, mostly in the Power and Energy sector, followed by the Transport and Natural Resources sectors.



*PCM complaints by EBRD sector*

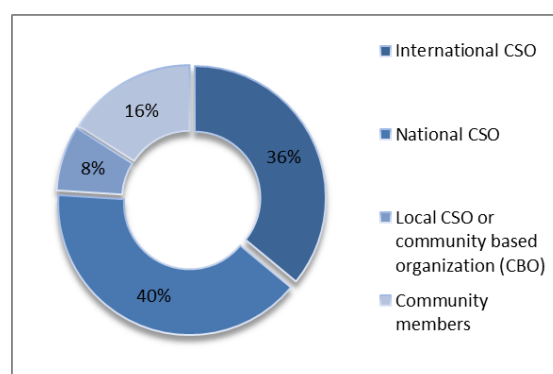
Nine complaints alleged the EBRD’s non-compliance with provisions of its Environmental and Social Policy and thus requested Compliance Reviews; four complaints requested Problem-solving Initiatives (mainly in addition to the Compliance Review) as a way to resolve issues with the project sponsor (the EBRD’s client).



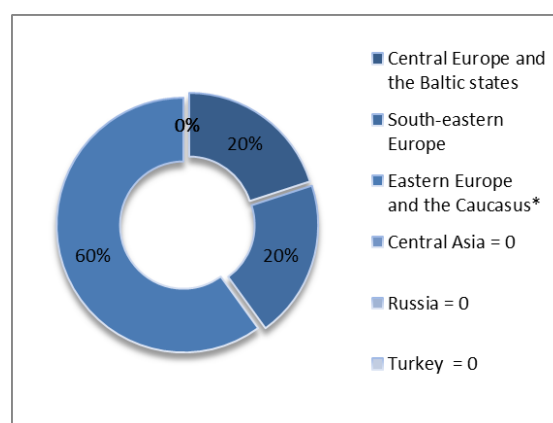
*PCM complaints by function requested*

<sup>1</sup> A project is classified as Category A when it could result in potentially significant and adverse future environmental and/or social impacts and issues which, at the time of categorisation, cannot readily be identified or assessed.

Complaints received during both years were filed mainly by representatives of national and international civil society organisations (CSOs) acting directly as complainants, and the regional distribution of these complaints shows that they tend to emanate from the countries with a comparatively stronger civil society (central and eastern Europe) or where local civil society has a well-established relationship with their international counterparts (for example, Georgia and Ukraine).



*PCM complaints by type of complainant*



*PCM complaints by region*

\*4 complaints in the Caucasus region related to one Project – Tbilisi Railways Bypass in Georgia

This demonstrates that while our communication with larger CSOs is well established and they have generally a solid understanding of the PCM mandate and its procedures, affected communities may still require further awareness-raising about the Mechanism's role and functions. In this context, raising awareness about the PCM among smaller NGOs and local communities will form part of the outreach efforts in 2013.

During the review of the complaints the PCM Officer, along with appointed independent experts, undertook a number of project site visits and engaged with the concerned clients of the Bank, CSOs and local communities in the project areas. In 2012 the PCM worked on the review of 10 complaints filed during 2011 and 2012: 1 Compliance Review was completed which did not make findings of non-compliance – thus closing the 3 complaints on the Tbilisi Railways Bypass project in Georgia; 5 Eligibility Assessments were carried out and found the complaints eligible for Compliance Reviews, which are currently in progress; one Eligibility Assessment was initiated and is currently also in progress. In the same time period, the PCM also received 14 letters or complaints that were ineligible for consideration by the PCM. Most of these related to procurement issues and were forwarded to respective bodies within the Bank.

In outreach, working jointly with the Bank's Civil Society Engagement Unit and the Environment and Sustainability Department, the PCM organised a number of informative workshops in Russia and Ukraine and conducted a session on the PCM with the participants of the Civil Society Programme at the EBRD's Annual Meeting in London. The PCM Officer also provided an update on the activities of the Mechanism to the Bank's Environmental and Social Advisory Council.

As part of cooperation with other accountability mechanisms, the PCM Officer participated in the annual meeting for the Network of Accountability Mechanisms of IFIs (IAM Network). A number of important issues and questions were discussed during the event, including the outcome of the IAM Network participation in the 2012 UN Conference on Sustainable Development in Rio de Janeiro (Rio+20), the mandates and effectiveness of accountability mechanisms and the development of the IAM Network.

Finally, the PCM started preparations for its first review which will take place in 2013 and will include benchmarking against other comparable accountability mechanisms, extensive engagement with internal and external stakeholders and broad public consultations.

# PCM complaints at a glance

| Year registered | Project name                                  | Country       | Sector            | Complainant(s)  | PCM function requested | Status in 2012   |
|-----------------|---|---------------|-------------------|---|------------------------|--|
| 2012            | <i>EPS Kolubara Environmental Improvement</i> | Serbia        | Natural Resources | Ecological Society "Vreoci"<br><br>The Council of the Local Community of Vreoci   | PSI and CR             | Eligibility Assessment is currently in progress.   |
|                 | <i>Sostanj Thermal Power Plant</i>            | Slovenia      | Power and Energy  | Focus Association for Sustainable Development<br><br>Environmental Legal Service<br><br>CEE Bankwatch Network               | CR                     | Eligibility Assessment was carried out and found the complaint eligible for a Compliance Review. <b>Compliance Review is currently in progress.</b>  |
|                 | <i>Rivne Kyiv High Voltage Line</i>           | Ukraine       | Power and Energy  | National Ecological Centre of Ukraine   | CR                     | Eligibility Assessment was carried out and found the complaint eligible for a Compliance Review. <b>Compliance Review is currently in progress.</b>  |
|                 | <i>Paravani Hydro Power Plant</i>             | Georgia       | Power and Energy  | Association Green Alternative   | CR                     | Eligibility Assessment was carried out and found the complaint eligible for a Compliance Review. <b>Compliance Review is currently in progress.</b>  |
| 2011            | <i>Ombla Hydro Power Plant</i>                | Croatia       | Power and Energy  | Zelena akcija/Friends of the Earth Croatia  | CR                     | Eligibility Assessment was carried out and found the complaint eligible for a Compliance Review. <b>Compliance Review is currently in progress.</b>  |
|                 | <i>Boskov Most Hydro Power Plant</i>          | FYR Macedonia | Power and Energy  | Centre for environmental research and information "Eko-vest"  | CR                     | Eligibility Assessment was carried out and found the complaint eligible for a Compliance Review. <b>Compliance Review is currently in progress.</b>  |
|                 | <i>Tbilisi Railway Bypass</i>                 | Georgia       | Transport         | Ms Nino Saginashvili (member of project-affected community)   | PSI                    | Following the Eligibility Assessment, the PCM recommended one joint Compliance Review to address the compliance related issues and one joint Problem-solving Initiative to address the issues in the respective complaints.  |
|                 | <i>Tbilisi Railway Bypass</i>                 | Georgia       | Transport         | Association Green Alternative as authorised representative of Mr Aleksandre Asatiani (member of project-affected community) | CR and PSI             | <b>Problem-solving Initiative was terminated in 2011 following the cancellation* of the project.</b><br><br>Compliance Review was not affected by the cancellation of the project and was carried out. <b>No findings of non-compliance were made following the Compliance Review process in respect of any of the matters raised in the three complaints.</b> |
|                 | <i>Tbilisi Railway Bypass</i>                 | Georgia       | Transport         | Association Green Alternative as authorised representative of a group of affected inhabitants of Avchala district           | CR and PSI             |  |
|                 | <i>Tbilisi Railway Bypass</i>                 | Georgia       | Transport         | Association Green Alternative   | CR                     |  |

PSI = Problem-solving Initiative, CR = Compliance Review

\*The project was cancelled on 4 November 2011. Please refer to the relevant press release: [www.ebrd.com/english/pages/news/press/2011/111107d.shtml](http://www.ebrd.com/english/pages/news/press/2011/111107d.shtml)

\*\*Full reports on all of the complaints are available on the PCM register via the following link: [www.ebrd.com/pages/project/pcm/register.shtml](http://www.ebrd.com/pages/project/pcm/register.shtml)

## Tbilisi Railway Bypass

### Georgia

In March 2011, the PCM received four complaints concerning the Tbilisi Railway Bypass project in Georgia.<sup>2</sup> The project involves construction of a 28 km double track electrified railway bypass that will enable Georgia's main east-west railway line to go around rather than through the city of Tbilisi. It was approved by the EBRD's Board of Directors on 9 March 2010.

Following registration of the complaints by the PCM Officer, Eligibility Assessments were conducted with respect to Complaint 1 requesting a Compliance Review and Complaints 2 and 3, requesting both Compliance Review and Problem-solving Initiatives. Complaint 4 requested only a Problem-solving Initiative. As a result of the Eligibility Assessment, the PCM recommended one joint Compliance Review to address the compliance related issues of Complaints 1, 2 and 3 and one joint Problem-solving Initiative to address the issues raised in the Complaints 2, 3 and 4, which will allow for procedural efficiency and consistency of outcomes. Full texts of the Eligibility Assessment Reports, which include responses to the complaints by the EBRD

Management, are available on the EBRD web site.<sup>3</sup>

During the Eligibility Assessment the parties indicated that a Problem-solving Initiative was the most compelling alternative for resolving the issues in the complaint, compared to other procedures, and recognised that the compliance audit will proceed along a separate track. The management of the EBRD also indicated support for the proposed Problem-solving Initiative. Following the approval of the Problem-solving Initiative, PCM Expert Susan Wildau and the PCM Officer travelled to Tbilisi for a number of bilateral meetings with the complainants and the client in preparation of the problem-solving meetings between the parties. Subsequently, on 4 November 2011 the project was cancelled and the Problem-solving Initiative was terminated on 7 November. The client was encouraged to make an effort to establish a productive dialogue with the Avchala families even without PCM's involvement.

The Compliance Review process was not affected by the cancellation of the project. The recommendation for the *ad hoc* appointment of Daniel Bradlow as a Compliance Review Expert was approved by the EBRD's President and Board of Directors. The Compliance Review

---

<sup>2</sup> The description of the project and the issues raised in the complaint were already published in the PCM Annual Report 2011, but for convenience are recalled here.

---

<sup>3</sup> [www.ebrd.com/pages/project/pcm/register.shtml](http://www.ebrd.com/pages/project/pcm/register.shtml)

included a thorough examination of all relevant documents, a visit to the project site in Georgia, a number of interviews with the relevant Bank staff, consultants, the client and the complainant.

On completion of the Compliance Review<sup>4</sup> the PCM Expert concluded that although achieving full compliance has proven to be very difficult in such a complex project, it was clear that the staff of the EBRD worked diligently and professionally to comply with the applicable Bank policy. While the PCM Expert made no findings of non-compliance in respect of any of the matters raised in the three complaints, he did make two recommendations for the EBRD to take into account when dealing with future similar projects. Firstly, he recommended that the Bank should carefully evaluate the existing division of responsibilities between those Bank staff who are involved with the client during the project appraisal stage and those who provide oversight and quality assurance with regard to policy compliance. This separation of responsibilities has been adopted by the Environment and Sustainability Department and will ensure an objective assessment of the project and client's capacity to meet its obligations under the Bank's policies. Secondly, it was

recommended that the Bank staff need to make more of an effort to ensure that the client understands the function of consultation with project-affected local communities and the importance of fully respecting all procedural aspects of the Bank's consultation requirements. The Compliance Review Report was posted on the EBRD web site on 23 July 2012 and the complaint was closed.

### **Boskov Most Hydro Power Plant FYR Macedonia**

On 7 November 2011 the PCM received a complaint regarding the Boskov Most Hydro Power Plant project in FYR Macedonia, approved by the EBRD's Board of Directors on 8 November 2011.<sup>5</sup> The complaint was submitted by Ms Ana Colovic Lesoska from Macedonian environmental NGO Eko-svest and was registered on 14 November 2011.

The project provides a sovereign guaranteed loan of up to €65 million for the construction of a 70MW power plant located near the town of Debar in western FYR Macedonia. The project is intended to utilise the full hydro potential of the tributaries that combine to make up the river Mala Reka and will include a 34 metre high dam and storage reservoir

---

<sup>4</sup> Full Compliance Review Report can be found via the following link:  
[www.ebrd.com/pages/project/pcm/register.shtml](http://www.ebrd.com/pages/project/pcm/register.shtml)

---

<sup>5</sup> The description of the project and the issues raised in the complaint were already published in the PCM Annual Report 2011, but for convenience are recalled here.

(22ha surface area) near the village of Tresonce located in the Mavrovo National Park. The project is aimed at enhancing the security and quality of supply in the Macedonian electricity sector by addressing the existing capacity gap and providing flexible responsive power at peak times. The project will also demonstrate the opportunities that exist to build significant renewable energy capacity in the Western Balkans. The project sponsor is AD Elektrani na Makedonija (ELEM), a state-owned electric power utility in FYR Macedonia responsible for mining and power generation.

The complaint refers to the Mavrovo National Park, where the project will be mainly situated, as an Emerald Site and possibly a future Natura 2000 Site, and raises concerns about the adequacy of the assessment of the environmental risks to mammals, birds and landscape, as reported in the Environmental and Social Impact Assessment Report. It also raises issues concerning cumulative impacts on the local climate, adequacy of the assessment of benefits versus costs and the assessment of alternatives to the proposed project. The complaint further alleges an incomplete biodiversity assessment, potential impact on the natural and protected habitats and cites the Balkan lynx as an example of a species affected by the project. The

complaint also alleges that a Strategic Environmental Assessment is required under the FYR Macedonian law for the Macedonian Government's renewable energy strategy, as well as for the Mavrovo National Park Management Plan which is expected shortly, once Mavrovo achieves its anticipated official National Park status. The complainant alleges that since none of these strategic environmental assessments have been carried out to date, the client, ELEM, is therefore unable to follow the mitigation hierarchy set out in the Bank's 2008 Environmental and Social Policy.

An additional complaint was submitted to the PCM by Ms Ana Colovic Lesoska on 30 December 2011 (registered on 10 January 2012). It alleges that the Macedonian Ministry of Environment and Physical Planning has not yet approved the Environmental and Social Assessment study for the project and thus the environmental impact assessment process is not yet completed. It therefore concludes that the national planning requirements in this respect have not been met. According to the complaint, the EBRD should have waited for the national process to be finalised and only then considered approving the project for funding.

The complaint is requesting a Compliance Review, alleging that the EBRD failed to comply with the requirements of its 2008 Environmental and Social Policy. The

Eligibility Assessment carried out for both complaints found them eligible for a Compliance Review. Full text of the Eligibility Assessment Report, which includes a response to the complaint by the EBRD Management, is available on the EBRD web site.<sup>6</sup>

PCM Expert Owen McIntyre was appointed to act as a Compliance Review Expert. The Compliance Review will examine whether the ESIA presented an adequate appraisal of the project's environmental risks and whether the appraisal properly addressed the impact on mammals, birds and landscapes or provided a proper analysis of alternatives to the project and appropriate mitigating measures. More specifically it will look into whether the biodiversity assessment, as undertaken, was complete, correctly identifying and characterising the potential impacts on biodiversity, including whether the Bank used a reasonable approach to determine impact on the species of the Balkan lynx. Further it will look into whether the renewable energy alternatives to the project have been properly assessed in the absence of a Strategic Environmental Assessment of the FYR Macedonia's strategy for use of renewable energy resources. The Compliance Review is currently in progress.

---

<sup>6</sup>[www.ebrd.com/downloads/integrity/Boskov\\_Most\\_financial.pdf](http://www.ebrd.com/downloads/integrity/Boskov_Most_financial.pdf)

## **Ombla Hydro Power Plant**

### **Croatia**

On 17 November 2011 the PCM received a complaint regarding the Ombla Hydro Power project in Croatia, approved by the EBRD's Board of Directors on 22 November 2011.<sup>7</sup> The complaint was submitted by Mr Enes Cerimagic, on behalf of Zelena Akcija/Friends of the Earth Croatia and registered on 24 November 2011.

The project provides financing of up to €123.2 million for the construction of a 68MW hydroelectric power plant near the city of Dubrovnik, involving, among other things, construction of a grout curtain from 280 metre below sea level to 135 metre above sea level, as well as construction of a conveyance and filtration plant with an objective to triple the supply of drinking water to Dubrovnik and the surrounding area. The project will also help facilitate necessary growth of new and clean energy capacity in Croatia and strengthen public infrastructure and the tourism sector.

---

<sup>7</sup> The description of the project and the issues raised in the complaint were already published in the PCM Annual Report 2011, but for convenience are recalled here.

The complaint claims that in approving the project the EBRD relied upon an Environmental Impact Assessment dating from 1999, which it contends is outdated and by implication inadequate and no longer legally valid under the applicable Croatian law. The complaint also alleges that the Bank failed to ensure that the client held meaningful public consultation as required under the Aarhus Convention, Croatian law and the EBRD's 2008 Environmental and Social Policy. Essentially, the complainant contends that, due to the time lapse since the conduct of the Environmental Impact Assessment meaningful public consultation could not be undertaken prior to the taking of certain decisions and could not have been based on disclosure of relevant and adequate information. In addition, the complaint alleges that the project has been authorised by the Croatian national authorities and, more recently, approved by the Bank, without having undergone a biodiversity assessment adequate to ensure protection of the overall coherence of the Natura 2000 network. The complaint further claims that two natural features likely to be impacted by the project, the Vilina Cave system and the Ombla Spring, are part of the site proposed for designation as a Natura 2000 site and they constitute 'critical habitats' for the purposes of the EBRD's 2008 Environmental and Social Policy and thus may not be converted or



degraded unless certain strict conditions specified in the Policy have been satisfied in accordance with a precautionary approach. Finally, the complaint argues that the failure of the Croatian authorities to subject either the 2008 Croatian National Energy Strategy or the relevant spatial planning policies to a Strategic Environmental Assessment procedure constitutes a breach of Croatian law. It follows, according to the complainant, that the EBRD's approval of the project arising from that strategy and permitted under those policies constitutes a breach of its obligations under the 2008 Environmental and Social Policy. The complaint is requesting a Compliance Review comprising a number of distinct elements, each alleging breach of the EBRD's 2008 Environmental and Social Policy. An Eligibility Assessment was completed in 2012 which found the complaint eligible for a Compliance Review. Full text of the Eligibility Assessment Report, which includes a response to the complaint by the

EBRD Management, is available on the EBRD web site.<sup>8</sup>

PCM Expert Graham Cleverly was appointed to act as Compliance Review Expert. Within the process of the Compliance Review the Expert will examine whether the EBRD has taken reasonable steps to ascertain that the Environmental Impact Assessment, as undertaken, was sufficient; whether the EBRD failed to ensure that the client held meaningful public consultation as required; and whether the biodiversity studies were complete and provided adequate impact assessment. The Compliance Review is in progress.

### **Paravani Hydro Power Plant Georgia**

On 22 December 2011 the PCM received a complaint regarding the Paravani Hydro Power Plant project in Georgia, approved by the EBRD's Board of Directors on 14 June 2011. The complaint was submitted by Mr David Chipashvili, International Financial Institutions Monitoring Programmes Coordinator with Association Green Alternative, Georgia. The complaint was registered and posted on the EBRD web site on 4 January 2012.<sup>9</sup>



The project provides financing of up to US\$52 million in an A-loan and US\$5 million equity for the construction and operation of a new run-of-the-river hydro power plant on the Paravani River with 85MW capacity and 408GWh/year production base. It will be the first large scale greenfield renewable project financed by the EBRD in Georgia and the first private power generation project in the country. The power plant will be connected to the Georgian electricity systems via a 220kV transmission line to the Akhaltsikhe substation, financed by the Bank under the Black Sea Energy Transmission System project and located approximately 33 km away, where it will then connect to the converter station and a 400kV Akhalstkhe-Borcka transmission line for export to Turkey and/or to the Georgian electricity network, which is in turn interconnected with the whole Caucasus electricity network. The project

---

<sup>8</sup>[www.ebrd.com/downloads/integrity/Ombler\\_ear\\_6.07.2012.pdf](http://www.ebrd.com/downloads/integrity/Ombler_ear_6.07.2012.pdf)

<sup>9</sup> The description of the project and the issues raised in the complaint were already published in the PCM

---

Annual Report 2011, but for convenience are recalled here.

will be the first greenfield power facility of its size connected to the converter station and making use of the new export transmission line to Turkey.

The complaint alleges that the project will have a negative impact on the biodiversity of the Paravani River and questions the methodology used in measuring that impact. The complainant is also concerned about the 220kV transmission lines infrastructure associated with the project and its impact on birds. According to the complainant, the project is located directly on the African – Eurasian migratory waterbird flyway for 255 bird species crossing the territory of Georgia from their nesting sites to the wintering areas and back. These birds are sensitive to accidents on linear obstacles like wires and to electrocution. Therefore, according to the complainant, there will be an increase in bird mortality as a result of the project. The complaint contends that there will also be social impacts due to the risk of flooding of the village Khertvisi located downstream of the powerhouse of the project. It also raises a number of issues related to access to documentation and the EBRD's Public Information Policy implementation, as well as an alleged failure to adequately consider feasible alternatives to the present project.

The complaint is requesting a Compliance Review to verify whether or not the

project's Environmental and Social Impact Assessment is adequate within the relevant provisions of the EBRD's 2008 Environmental and Social Policy, in measuring some of the key impacts of the project. An Eligibility Assessment was completed in 2012 and found the complaint eligible for a Compliance Review. Full text of the Eligibility Assessment Report, which includes a response to the complaint by the EBRD Management, is available on the EBRD web site.<sup>10</sup>

The recommendation for the *ad hoc* appointment of Glen Armstrong as a Compliance Review Expert was approved by the EBRD's President and Board of Directors in accordance with the PCM RP 50. The Compliance Review process will examine whether the EBRD violated its 2008 Environmental and Social Policy by presenting this project to the Board of Directors for approval when there were gaps in knowledge about potential project risks and mitigation measures identified in the assessment package, even if the client and the Bank intended to address those information gaps subsequent to the assessment process and Board approval of the project; whether the social impacts of the project, in particular the potential for flooding and the restrictions on local individuals' access to pasture lands were

---

<sup>10</sup>[www.ebrd.com/downloads/integrity/ear\\_paravani.pdf](http://www.ebrd.com/downloads/integrity/ear_paravani.pdf)

properly identified and addressed; whether the issue of bird mortality was adequately addressed in the Environmental and Social Impact Assessment; and, finally, whether other renewable energy alternatives to the proposed project should have been considered and described in the assessment in order to comply with the Environmental and Social Policy. The Compliance Review will also look into whether the project enjoyed meaningful public consultation and engagement. The Compliance Review is currently in progress.

### **Rivne Kyiv High Voltage Line Ukraine**

On 10 January 2012 the PCM received a complaint regarding the Rivne Kyiv High Voltage Line project in Ukraine, approved by the EBRD's Board of Directors on 6 November 2007. Co-financing for the project was approved by the European Investment Bank on 20 October 2008. The complaint was submitted by Mr Yury Urbansky, Executive Director of the National Ecological Centre of Ukraine. The complaint was registered and posted on the EBRD web site on 17 January 2012.

The project consists of a senior sovereign loan of €150 million by the EBRD for construction of a new 750kV power transmission line aimed at reinforcing the electrical connections between Ukraine's eastern and southern borders. The project

is intended to help Ukraine harmonise its electricity network with the European electricity transmission system in the medium term and to optimise the use of existing electricity generating capacity, thus resulting in reduced reliance on inefficient coal and gas-fired power plants with positive consequences in terms of decreased CO<sub>2</sub> emissions and increased network reliability.

The complaint alleges failure in information disclosure and meaningful consultation as, according to the complaint, the project was approved by the Bank despite the fact that two of the four components (a new 1000 kVA substation transformer and two 60 km long 330kV transmission lines which would be funded by a co-financier) were not included in the Environmental and Social Impact Assessment. As a result, according to the complaint, no disclosure or public consultation was conducted for these two components of the overall project. Additionally, the complaint alleges that the 2007 Environmental and Social Impact Assessment contains a number of deficiencies which further emphasise the gap in the quality assessment of the project documentation. It also expresses concern over alleged cost overruns associated with the project, which it claims will result in losses to Ukrainian tax-payers and in increased electricity tariffs.

The complaint requests a Compliance Review in regards to the adequacy of the Environmental Impact Assessment and meaningful public consultations within the provisions of the EBRD's 2003 Environmental Policy, which was the policy applicable at the time of project approval.

PCM Expert Walter Leal was appointed as Eligibility Assessment Expert and completed the Eligibility Assessment in 2012. The complaint was found eligible for a Compliance Review but only in part. As the alleged deficiencies in the 2007 Environmental and Social Assessment were not specified further by the complainant, they could not be further assessed for eligibility. The same applied to the issues raised relating to the financial burden on the Ukrainian tax-payers, as they did not relate to an alleged violation of a Relevant EBRD Policy. Full text of the Eligibility Assessment Report, which includes a response to the complaint by the EBRD Management, is available on the EBRD web site.<sup>11</sup>

The recommendation for the *ad hoc* appointment of Geert Van Calster as a Compliance Review Expert was approved by the EBRD's President and Board of Directors in accordance with the PCM RP 50.

---

<sup>11</sup>[www.ebrd.com/downloads/integrity/ear\\_rivne\\_kyiv.pdf](http://www.ebrd.com/downloads/integrity/ear_rivne_kyiv.pdf)

The PCM Expert will examine whether the EBRD failed to ensure that an adequate EIA was carried out and if the EBRD failed to ensure meaningful disclosure and public consultation in respect of the project in accordance with the requirements of the 2003 Environmental Policy. The Compliance Review is currently in progress.

### **Sostanj Thermal Power Plant Slovenia**

On 17 January 2012, three civil society organisations – Focus Association for Sustainable Development, Environmental Legal Service and CEE Bankwatch Network – submitted a complaint to the PCM requesting a Compliance Review in relation to the Sostanj Thermal Power Plant project, approved by the EBRD's Board of Directors on 20 July 2010. The complaint was registered and posted on the EBRD web site on 24 January 2012.

As part of the project, the EBRD is extending a senior secured corporate loan of €100 million and is syndicating a loan of €100 million to fund a portion of the modernisation programme for the Termoelektrarna Sostanj (TES) – a state-owned coal-fired power plant in northeast Slovenia, currently generating one-third of Slovenia's electricity. The EBRD financing will focus on the replacement of five existing low efficiency units with a new state-of-the-art supercritical 600 MW

Unit 6, with full environmental protection systems constructed within the boundaries of the existing power plant. TES's proposed modernisation programme will substantially decrease the environmental impact from its operations. More specifically, the new Unit 6 will improve efficiency by increasing the production of electric energy per tonne of coal. It will also reduce specific CO<sub>2</sub> emissions (tonnes of CO<sub>2</sub> released per kWh produced).

The complainants claim the Bank's assessment and approval of the project did not conform to the European Union (EU) environmental standards and, consequently, with the Bank's 2008 Environmental and Social Policy which requires compliance of EBRD-funded projects with relevant EU environmental standards. They argue that the EBRD's assessment of TES as "Carbon Capture and Storage (CCS) ready" fell short of the assessment required by Article 33 of the EU's 2009 CCS Directive, thereby violating the Bank's Environmental and Social Policy. The complainants also argue that the EBRD acted contrary to its Environmental and Social Policy, by assessing and approving the project without sufficient grounds to believe its emissions levels will be consistent with the 2050 climate goals set by the EU, which would require Slovenia to reduce its

carbon emissions by 85-90 per cent by 2050 – a target complainants argue is rendered impossible given projected emissions from the TES plant.

PCM Expert Susan Wildau was appointed as Eligibility Assessment Expert and completed the Eligibility Assessment in early 2013<sup>12</sup>. The complaint was found eligible for a Compliance Review. Full text of the Eligibility Assessment Report, which includes a response to the complaint by the EBRD Management, is available on the EBRD web site.<sup>13</sup>

PCM Expert Owen McIntyre was appointed to act as a Compliance Review Expert for the complaint. The Compliance Review process will examine whether Article 33 of the CCS Directive is considered an "EU requirement" under the relevant provisions of the Bank's 2008 Environmental and Social Policy, what it requires in terms of a CCS-readiness assessment and if the EBRD has taken reasonable steps to assure itself that the CCS-readiness assessment carried out in relation to the project has met these criteria. It will also assess whether the European Council Presidency Conclusion declaring 2050 climate targets constitute a "EU requirement" under the relevant

<sup>12</sup> The Eligibility Assessment is included in this edition of the PCM Report due to the close proximity of the release date to the end of 2012.

<sup>13</sup> [www.ebrd.com/downloads/integrity/ear\\_sostanj\\_final.pdf](http://www.ebrd.com/downloads/integrity/ear_sostanj_final.pdf)

provisions of the Environmental and Social Policy, what these require in terms of EBRD's project assessment in this case and if the EBRD has taken reasonable steps to assure itself that its assessment was consistent with these climate targets and any emissions-reduction requirements. The Compliance Review is in progress.

### **EPS Kolubara Environmental Improvement Serbia**

On 24 August 2012 the PCM received a complaint on the EPS Kolubara Environmental Improvement project in Serbia, approved by the EBRD's Board of Directors on 26 July 2011. The complaint was made by two organisations: Ecological Society "Vreoci" and The Council of the Local Community of Vreoci. It was registered by the PCM Officer on 31 August 2012.

The project provides up to €80 million in a sovereign guaranteed loan to Elektroprivreda Srbije (EPS) to finance the purchase of equipment and a coal management system. The project will improve the efficiency of EPS' mining operations at two specific fields of the Kolubara basin (some 7km from the Vreoci village) and significantly improve the quality and uniformity of the lignite it delivers to its power stations. KfW Bank will provide a parallel loan of €60 million.

The estimated value of the project is €165.2 million.

The complaint alleges that the EBRD failed to comply with the provisions of its 2008 Environmental and Social Policy, namely PRs related to environmental and social appraisal process and management, pollution prevention, resource conservation, energy efficiency and greenhouse gas emissions. It also raises concerns in relation to land acquisition and resettlement associated with the project.

The complaint requested both functions of the PCM – a Compliance Review and a Problem-solving Initiative. PCM Expert Susan Wildau was appointed to assist in the Eligibility Assessment, which is currently ongoing.

### **Ineligible complaints**

In 2012 the PCM received 14 ineligible complaints that were reviewed and either forwarded to other bodies within the Bank for further review or closed. Most of these related to procurement issues.

In accordance with the PCM RP 53 the PCM is required to conduct outreach activities to effectively inform the public, non-governmental organisations and civil society groups in the EBRD's countries of operations about the Mechanism. Outreach efforts also include cooperation with other institutions' accountability mechanisms as appropriate, presentations and information sessions. Due to a high number of complaints that the PCM received in 2011 and 2012, some outreach activities that were initially proposed for 2011 were postponed. In 2012 the PCM engaged an Outreach Consultant to help enhance and expand its outreach activities.

## **Stakeholder outreach programme**

In August 2012 the PCM undertook an outreach programme aimed at local and international civil society organisations that are active in the EBRD's region and EBRD clients with whom the Bank works in selected industry sectors. The main objective of the outreach was to raise awareness and enhance the stakeholders' understanding of the Bank's communication and engagement processes, including the opportunities provided to civil society and project-affected communities, to raise project-related issues with the Bank. The PCM worked jointly with the Bank's Operations teams, the Civil Society Engagement Unit and the



Environment and Sustainability Department to deliver a comprehensive overview of the Bank's requirements in stakeholder engagement in line with its Public Information Policy and the Environmental and Social Policy, emphasising the PCM's role as a mechanism of last resort where other available avenues did not effectively address the issue. The PCM conducted separate outreach workshops with CSOs and clients in St Petersburg and Kiev in October and November 2012 respectively.

During the workshops, representatives of CSOs were interested to learn about the EBRD's investment priorities in the countries, environmental and social standards and categorisation of projects, as well as how CSOs may be able to help the EBRD ensure that its projects observe relevant Bank and national standards. Some CSOs also raised questions about particular projects that the Bank finances. At the meetings with clients, participants

were interested to hear about the EBRD's best practices in engaging with civil society stakeholders, mitigating negative publicity from advocacy groups and handling grievances on projects. The PCM Officer explained how the EBRD works with clients whose projects become the subject of complaints and how the process may impact a project implementation. In total, 50 representatives of CSOs and clients attended the workshops.

### **Civil Society Programme**

On 18 May 2012 the PCM Officer took part in the Civil Society Programme within the EBRD's Annual Meeting in London. The PCM Officer met with CSOs in a dedicated session aimed at providing the participants with an update on the complaints that had been submitted for the PCM review and to answer their questions. CSOs were interested to learn about the progress in the review process of these complaints, foreseen timeframes and impacts of the review on the projects' implementation. During the session, the PCM Officer also gave a brief presentation about the PCM to CSOs that were less familiar with the Mechanism and answered questions about its general functions and procedures.

### **Ongoing dialogue and awareness-raising**

The PCM Officer has the responsibility to raise awareness about the work and processes of the PCM among civil society groups working in the EBRD's countries of operations. CSOs more familiar with the Bank's work are encouraged to distribute information about the PCM to smaller organisations and local communities, particularly those outside main cities and in remote areas, by sharing the PCM printed publications in English and Russian. Within the outreach efforts, PCM also seeks to establish dialogue with new relevant PCM constituencies, such as trade unions, labour rights organisations and cultural heritage protection organisations to assist them in understanding the different avenues open to them to raise their concerns, with the PCM available only as a last resort.

If you wish to be added to the PCM distribution list, please send us an email request to [pcm@ebrd.com](mailto:pcm@ebrd.com).



### **Meeting with representatives of other accountability mechanisms**

In September 2012 the PCM Officer participated in the annual meeting for the Network of Accountability Mechanisms of IFIs (IAM Network) organised and hosted by the Complaint Mechanism of the EIB. As always, the meeting brought together academics and compliance practitioners from different development banks and, increasingly, from other national and international development institutions. The meeting was followed by a Right to Know Day event hosted by the European Ombudsman in the European Parliament for the IAM network and the CSOs from across the region.

A number of important issues and questions were raised and discussed during these meetings, including the outcome of the IAM Network participation in the 2012 UN Conference on Sustainable Development in Rio de Janeiro (Rio+20), mandates and effectiveness of accountability mechanisms, the increasing number of such mechanisms within international organisations, the need for establishment of a secretariat for the IAM Network and the challenges of a direct outreach to the project-affected communities.

### PCM review

The Board of Directors of the EBRD approved the Rules of Procedure (RP) of the PCM in 2009. The PCM RP provide that the PCM will be reviewed by the Board every three years or as needed. Considering that the PCM became operational in March 2010, the review of the Mechanism is due in 2013.

The review of the Mechanism will be conducted with the intention of assessing its efficiency, functionality and effectiveness, and to introduce revisions as necessary. The review process will include benchmarking of the PCM against other comparable accountability mechanisms, extensive engagement with internal and external stakeholders and wider public consultations, the results of which will provide input for revising the PCM RP. Consultations with civil society will also form part of the process and will be carried out across the EBRD's region of operations, starting with a dedicated session during the Civil Society Programme at the EBRD's Annual Meeting in Istanbul, Turkey in May 2013.

### Budget

PCM RP 65 requires that the PCM Officer, in consultation with the Chief Compliance Officer, prepares the annual budget indicating the level of resources required for the forecasted activities of the PCM for the coming year. In discussion with management on the 2013 budget, it was proposed to maintain the level of PCM expenditure at the same level as for 2012, which also allows the appointment of *ad hoc* experts, as was the case in 2012.

As in previous years, expenses over and above the amount budgeted for the PCM are expected to be met out of the Bank's management reserve fund.

Dated: 14 March 2013

Anoush Begoyan  
Project Complaint Mechanism Officer