

The Project Complaint Mechanism

Annual Report for 2011

**Report of the Project Complaint
Mechanism Officer**



European Bank
for Reconstruction and Development

Project Complaint Mechanism

Annual Report 2011

This report is prepared in accordance with the Rules of Procedure 63 of the Project Complaint Mechanism. The report covers Project Complaint Mechanism activities during the period 1 January 2011 to 29 December 2011.

Report of the Project Complaint Mechanism Officer

Introduction

This year the Project Complaint Mechanism (PCM) has seen a surge in the number of complaints. During the reporting period, the PCM received and registered seven new complaints. The main source of complaints since the launching of the PCM in March 2010 has been local and international civil society organisations (CSOs), acting directly as Complainants, or on behalf of project-affected communities. This trend reflects the change in the Rules of Procedure of the PCM, which allows CSOs to file a complaint seeking compliance reviews on their own behalf, without representing a project-affected community.

In the same time period, the PCM also received ten letters or complaints that were ineligible for the consideration by the PCM. Most of the ineligible complaints related to procurement issues; others were on matters that are outside of the PCM's environmental and social mandate. All ineligible complaints were filed by individuals or by private companies. This demonstrates that while our communication with CSOs is well established and they have generally a solid understanding of the PCM mandate and its procedures, affected communities still struggle to identify the role of the PCM and to differentiate it from other agencies within the Bank.

Thus, raising awareness on the part of project-affected communities and individuals remains one of the main challenges of the PCM's outreach strategy. The regional distribution of the complaints received so far also shows that they tend to emanate from the countries with 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).

Not surprisingly, the majority of complaints relate to large infrastructure projects with high environmental and social impact. Two complaints affected the transport sector, (D1 Motorway in Slovak Republic and Tbilisi Railway Bypass in Georgia) and three complaints related to three different projects in the area of energy and power (Boskov Most HPP in FYR Macedonia, Ombla HPP in Croatia and Paravani HPP in Georgia). All these projects are categorised by the Bank's Environmental and Sustainability

Department as “A” category projects, acknowledging potentially significant adverse impacts on the environment and on hosting communities.

The record number of complaints received in 2011 demonstrates that during the two years of its operation the PCM has gained the trust of project-affected communities and civil society groups and is viewed as a credible recourse mechanism. The following provides a brief description of the complaints received and the status of the complaints up to end December, 2011. Information on the current status can be found on the Bank’s Website (<http://www.ebrd.com/pages/project/pcm.shtml>) which is continuously updated to reflect the current situation with respect to the processing of PCM complaints.

PCM Complaints

D1 Motorway, Slovak Republic

During the reporting period, the PCM concluded the Compliance Review on its first complaint received in the preceding reporting period, D1 Motorway Project in Slovak Republic.

In April 2010 the EBRD Board of Directors approved provision of a senior loan of up to EUR 250 million for the design, build, finance and operation of selected sections of the Slovak national D1 motorway network, comprising 75 km of dual carriageways within five stretches. The complex Project also involved the construction of 162 bridges (with a total length of 22.8 km) and 4 tunnels (with a total length of 7.3 km).

The EBRD was part of a financing consortium, which also included the European Investment Bank (EIB) and a range of other banks. The Project Sponsor / Client was a special purpose company Slovenské dial’nice.

On 7 June 2010 Slovakian civil society organisations Priatel’ia Zeme – CEPA and SOS BirdLife Slovensko filed a complaint with the PCM, alleging inadequate appraisal of environmental risks related to the Turany – Hubova section of the motorway and damage and further potential damage to the Natura 2000 sites and habitats of Community importance. According to the Complainant, the

underestimation of environmental risks has led to insufficient mitigation measures, which have in turn resulted in damage to the Rojkovske Raselinisko Mire Nature Reserve in the course of the preparatory construction works. The Complainant further alleged that the Project has breached the EU Habitats Directive and Performance Requirement 6 on Biodiversity Conservation and Sustainable Management of Living Natural Resources of the EBRD Environmental and Social Policy 2008. The Complainant sought a Compliance Review of the Project under the PCM. The Eligibility Assessment concluded that the Complaint was eligible for a Compliance Review and PCM Expert Dr Owen McIntyre was appointed to conduct the Compliance Review.

On 2 September 2010, the newly elected Government of the Slovak Republic announced that it would no longer be proceeding with the D1 Motorway, Phase 1 Project. However, the questions relating to EBRD compliance with its safeguard policies remained outstanding and so it was decided that the Compliance Review should proceed.

The principal compliance issue concerned the Complainant's argument that the EBRD had failed to ensure that the Client carried out an adequate 'appropriate assessment' of the implications of the Project for Natura 2000 sites likely to be affected, as required under EU law, and thus under the EBRD Environmental Policy. While, on the basis of a detailed examination of the facts, the Compliance Review Expert identified significant deficiencies with the principal study purporting to satisfy the requirement for an appropriate assessment, he determined that subsequent studies undertaken at the behest of EBRD, the preparation of an Environmental and Social Action Plan, and steps taken towards the preparation of a Biodiversity Management Plan, addressed these deficiencies sufficiently in order to ensure compliance with the EBRD Environmental Policy. This determination relied in large part on taking a broad and purposive approach to the interpretation and application of the EBRD Environmental Policy, which seeks to ensure the best possible environmental outcomes for the Project.

In relation to the Complainant's concerns that the inadequacy of the appropriate assessment had resulted in the underestimation of the ecological risks of the Project

and consequent stipulation of insufficient mitigation measures, the Compliance Review Expert determined that the same subsequent measures undertaken at the behest of EBRD had resulted in the identification and stipulation of appropriate and adequate mitigation measures.

As regards the Complainant's contention that, due to the alleged non-availability of the construction permit, the EBRD had failed to ensure that all national requirements on the disclosure of relevant environmental information were met, the Compliance Review Expert concluded that, in the circumstances, it was perfectly reasonable for the Bank to relay on assurances provided by the Client and/or the national competent authorities.

Therefore, the conclusion of Dr McIntyre was that there were no cases of non-compliance with the EBRD Environmental and Social Policy 2008 in respect of any of the three grounds set out in the Complaint. The Compliance Review Report was sent to the relevant parties – including the Board and the President – and publicly released on 18 May 2011.

Tbilisi Railway Bypass, Georgia

In March 2011 the PCM received four complaints on Tbilisi Railway Bypass project.

The Project in question consists of a senior loan of up to EUR 100 million to Georgian Railway LLC for the construction of a new section of railway line intended to bypass the central area of the city of Tbilisi. The Project's aim is to improve the efficiency and safety of rail operations within the city of Tbilisi enabling relocation and consolidation of the existing rail facilities located in the centre of the urban area and to permit the redevelopment of the lands made available by this relocation of the rail facilities and their reintegration as part of the city

Three of the complaints sent to the PCM were submitted by Mr. David Chipashvili, International Financial Institutions Monitoring Programmes Coordinator with Association Green Alternative, Georgia. Complaint 1, requesting a Compliance Review was submitted on behalf of the Green Alternative, while Complaint 2 and

Complaint 3, requesting both Compliance Review and Problem-solving Initiative were submitted on behalf of project-affected persons living on the route of the Project. Complaint 4 was submitted by Mrs Nino Saginashvili, a resident of the same Avchala district where the other complaints have originated.

Pursuant to PCM RP 10, all four complaints were registered and PCM standing Experts Ms Susan Wildau, Dr Owen McIntyre and Dr Walter Leal were appointed as Eligibility Assessors to conduct Eligibility Assessment of the Complaints, jointly with the PCM Officer. As a result of the Eligibility Assessment, the PCM recommended one joint Compliance Review to address the compliance related issues of the Complaints 1, 2 and 3 and one joint Problem-solving Initiative to address the issues raised in the Complaints 2, 3 and 4, which would allow for procedural efficiency and consistency of outcomes.

The first Complaint requesting a Compliance Review alleged that the appraisal of the environmental and social risks inherent to the Project was inadequate in a number of respects, which has resulted in the inclusion of several inadequate mitigation measures in the Environmental and Social Impact Assessment and Environmental and Social Action Plan prepared for the Project, as well as in the Project's Environmental Permit issued by the Georgian authorities. The Complainant also alleges a number of further procedural inadequacies, including a failure adequately to consider feasible alternatives to the present Project and deficiencies regarding the conduct of meaningful consultation and public participation.

The complainants of the other three complaints comprise twelve families who reside in the gardening society of the former cognac winery within the territory of the Avchala settlement. The fundamental concern that they stated in their letter was that they will be subject to a number of intolerable risks related to the construction and later operations of the new railway section that will transport hazardous materials through their densely populated community, passing disturbingly close to their homes. The complaints expressed concerns on a number of issues, including safety, general deterioration of environmental conditions and the impact on human health, declining property values, water supply issues, unsightly visual impacts that will disturb the natural beauty and tranquil, country atmosphere of the area etc. In their complaints,

they also raised the issue of difficulties in communicating with the project sponsor and accessibility of project information to the community.

Although all complainants acknowledged the necessity of the project and its significance for improving the environmental situation in the city of Tbilisi, they had questions concerning the suitability of the location of the railway bypass route, its design, the location of the buffer zone and the decisions regarding who is compensated and resettled and who is not.

During the Eligibility Assessment the parties have indicated that a Problem-solving Initiative is 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 their support for the proposed Problem-solving Initiative.

After assessing the probability of resolving the Complaints through facilitated dialogue and negotiation, on 22 of September the President accepted the recommendation of the Eligibility Assessors to launch a Problem – solving Initiative. From 26 to 30 September the Problem-solving Initiative 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. The meeting was expected to take place in early November 2011. Unfortunately, on 4 November the Project was cancelled and consequently the Problem-solving Initiative was terminated on 7 November 2011. The Relevant Parties were informed about the termination of the Problem-solving Initiative.

We believe a productive dialogue between the Client and the Avchala families is still possible so, we encouraged the Client to meet with them and try to answer their questions, even without PCM's involvement. We forwarded all materials prepared for the information-session to the Client to help them to prepare for the meeting, should they decide to hold it. In our final letter to the Client we tried to highlight the long-term advantages for holding the meeting and for a meaningful engagement with the population living along the project route in general.

The Compliance Review process was not affected by the cancellation of the project. The recommendation for the *ad hoc* appointment of Dr. Bradlow as a Compliance Review Expert was approved by the President and the Board of Directors and Dr Bradlow commenced Compliance Review on 12 of December 2011. The Compliance Review is currently ongoing.

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 Macedonia. The Complaint is submitted by Ms Ana Colovic Lesoska from Macedonian environmental NGO Eko-svest.

On 8 November 2011 the EBRD Board of Directors approved a project for the provision of a sovereign guaranteed loan of up to EUR 65 million for the Boskov Most Hydro Power Project in the FYR Macedonia. The project sponsor is AD Elektrani na Makedonija (ELEM), a state-owned electric power utility in Macedonia responsible for mining and power generation. The Project entails construction of a 70MW power plant located near the town of Debar in western 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 (22ha surface area) near the village of Tresonce located in the Mavrovo National Park. The tributary intakes and dam will have provisions for maintaining an environmental flow and an overflow spillway for high flow events. Annual generation is forecast to be around 118 GWh. The Mala Reka forms the south western boundary of the Mavrovo National Park and most of the project (approximately 80%) will be located in the Mavrovo National Park.

The Complaint refers to the Mavrovo National Park where the Project will be mainly situated as an Emerald Site and future Natura 2000 site and raises concerns about the adequacy of the assessment of the environmental risks to mammals and birds and landscape as reported in the Environmental and Social Impact Assessment Report, as well as issues concerning cumulative impacts on the local climate, inadequate assessment of benefits versus costs and a lack of assessed alternatives to the proposed Project. The Complaint also raises concerns about an incomplete biodiversity assessment and the alleged destruction of natural and critical protected habitats and

cites the Balkan lynx as an example of a valuable species threatened by the Project. The Complaint also alleges that a Strategic Environmental Assessment is required under FYR Macedonian law for the FYR 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 none of these strategic environmental assessments have been carried out to date and that 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 on the Project was submitted to the PCM by Ms Ana Colovic Lesoska on 17 January 2012, alleging that the Ministry of Environment and Physical Planning has not yet approved the Environmental and Social Assessment Plan and thus the environmental impact assessment process is not yet completed and the national planning requirements in this respect have not been met and therefore 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 Environmental Social Policy 2008.

Both Complaints were registered and posted on the PCM website. PCM Expert Graham Cleverly was appointed to act as Eligibility Assessment Expert for the Complaint. The Complaint is currently in the process of Eligibility Assessment.

Ombla Hydro Power Plant, Croatia

On 17 November 2011 the PCM received a complaint regarding the Ombla Hydro Power Project in Croatia. The Complaint was submitted by Mr Enes Ćerimagić, on behalf of Zelena Akcija/Friends of the Earth Croatia.

The Project consists of a 68MW hydroelectric power plant near Dubrovnik, involving, among other things, a construction of an underground grout curtain dam 130 meters high x 1300 meters across causing a significant rise in the water table, excavation of an underground cavern to locate the powerhouse, the blocking of existing water conduits and the construction of new tunnels for water conveyance, the construction

of new drinking water infrastructure, as well as associated access roads, storage areas and electricity transmission lines. The Project was approved by the EBRD Board of Directors on 22 November, 2011. The Bank is to provide financing of up to EUR 123.2 million, out of an estimated total project cost of EUR 152.4 million.

The Complaint is requesting a Compliance Review and comprises a number of distinct elements, each alleging breach of the EBRD's 2008 Environmental and Social Policy. In particular the Complainant claims that in approving the Project the Bank has relied upon an Environmental Impact Assessment dating from 1999, which it contends is outdated, and by implication inadequate, and is no longer legally valid under the applicable Croatian law. The Complainant 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 Complainant 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 Complainant further claims that two natural features likely to be impacted by the Project, the Vilina Cave system and the Ombla Spring, are part of a 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 Complainant 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 Bank's approval of a 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 has been registered and posted on the PCM website on 24 November. PCM Expert Owen McIntyre was appointed to act as Eligibility Assessment Expert for the Complaint. The Complaint is currently in the process of Eligibility Assessment.

Paravani Hydro Power Plant, Georgia

On 22 December 2011 the PCM received a complaint regarding the Paravani Hydro Power Plant Project in Georgia. The Complaint was submitted by Mr. David Chipashvili, International Financial Institutions Monitoring Programmes Coordinator with Association Green Alternative, Georgia.

The Project consists of the construction and operation of a new run-of-the-river hydro power plant on the Paravani River with 85 MW capacity and 408 GWh/year production based. It will be the first large scale greenfield renewable project financed by the Bank in Georgia and the first private power generation project in Georgia. The Project will be connected to the Georgian electricity systems via a 220kV line to the Akhaltsikhe substation, financed by the Bank under the Black Sea Transmission project and located approximately 33 km away, where it will then connect to the converter station and 400kV Akhalstkhe-Borcka 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 will be the first greenfield power facility connected to the converter station and making use of the new export transmission line to Turkey.

The Complaint is requesting a Compliance Review to verify whether or not the Project's Environmental Social Impact Assessment is adequate in measuring some of the key impacts of the Project. In particular the Complaint alleges that the Project will have a drastic negative impact on the biodiversity of the river Paravani and questions the methodology used in measuring that impact. The Complainant is also concerned about the 220 KV transmission lines infrastructure associated with the Project and its impact on the 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 a serious increase in bird mortality as a result of the Project. The Complaint also contends that there will be a major social impact due to the risk of flooding of the village Khertvisi located downstream of the powerhouse of the Project. The Complaint also raises a number of issues related to access to documentation and Public Information Policy implementation and an alleged failure adequately to consider feasible alternatives to the present Project.

The Complaint has been registered and posted on the PCM webpage on 4 January, 2012. PCM Expert Susan Wildau is appointed as Eligibility Assessment Expert. The Complaint is currently in the process of Eligibility Assessment.

Outreach

On 20-21 May 2011 the PCM Officer took part in the Civil Society Forum within the EBRD Annual Meeting in Astana. As part of the Civil Society Forum programme, she made a presentation on the role and functions of the PCM, held a discussion on the PCM rules and procedures and answered the questions about previous IRM and PCM cases and their outcomes.

During the meeting she also had an opportunity to meet representatives of civil society group from around the region and hear their views, in some cases concerns, about EBRD strategies and policies in specific countries, or particular sectors (mainly Mining, Energy and Energy Efficiency and Transport and Municipal Infrastructure), or on specific projects. This provided the PCM Officer with an important insight into main sectors and main issues that raise concern of civil society groups and that might potentially become subject to a PCM review.

Due to a high number of complaints that the PCM received this year, some outreach activities that were initially proposed for 2011 were postponed till the next year. In particular, the initiative of holding, jointly with the Bank's Civil Society Engagement Unit and its Environment and Social Department, a meeting for civil society groups in Saint Petersburg has been postponed till next year.

Cooperation with other accountability mechanisms

In July 2011 the PCM Officer participated in the annual meeting of the Network of Accountability Mechanism of IFIs (IAM Network). Every year accountability and compliance practitioners from different International Development Banks and International Financial Institutions meet to update each other on their work, to exchange ideas and views. This year's meeting was hosted by the Independent Consultation and Investigation Mechanism (ICIM) of Inter-American Development Bank in Washington. The meeting brought together representatives of accountability mechanism of all major IFIs, as well as some national development agencies and civil society representatives.

During the meeting several important issues were raised and discussed, including IAM outreach activities (means, costs, coverage, "internal outreach", use of social media as an outreach tool etc.), internal governance and independence, mandates of IAMs, advisory role as the third function of IAMs (in addition to problem-solving and compliance review), strengthening of the cooperation between IAMs, especially around co-funded projects.

One specific subject generated active discourse during the meeting: a group of representatives of IAMs came up with an initiative for the IAMs to jointly participate in the 2012 UN Conference on Sustainable Development in Rio de Janeiro (Rio+20) to promote awareness of the IAMs, to review twenty years of experience of IAMs of International Financial Institutions since the establishment of the World Bank Inspection Panel after the Earth Summit of 1992 and to evaluate main challenges for the IAMs, and to define recommendations and strategy for the development of the IAMs for the next 20 years. The initiators proposed a number of objectives, including "enhancing accountability to all affected people by all institutions engaged in sustainable development, "encouraging accountability at other organisations" and "outreach to citizens groups and civil society".

Although the PCM will not take part in the Rio+20 Summit, we will actively participate in setting the agenda for that engagement and in developing a number of publications that will be prepared and distributed during the Summit on behalf of all IAMs.

Within the framework of this year's meeting the PCM was also invited to take part in the Symposium on the Challenges of International Accountability: Lessons from Independent Accountability Mechanisms, which was hosted by the Washington College of Law and the World Bank Inspection Panel. The topics of the discussion included: effectiveness and credibility of IAMs, relationship between sovereignty and accountability, accountability and its application to the private sector. The event was not only informative, but also provided a good opportunity for networking.

Manifestly Ineligible

This year the PCM received 10 letters or complaints that were not eligible for consideration under the PCM. Most of the complaints were on the matters related to procurement and were forwarded to the Procurement Department. Others letters raised issues that were beyond PCM's mandate and therefore were forwarded to relevant departments within the Bank.

Budget

PCM RP 65 requires that the PCM Officer, in consultation with the CCO, prepares the annual budget indicating the level of resources required for the forecasted activities of the PCM for the coming year. In discussion with the management on the 2012 budget, it was proposed to maintain the level of PCM expenditure at the same level as for 2011, which also allows the appointment of *ad hoc* experts, as was the case in 2011. 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: 30 January 2012

Anoush Begoyan

Project Complaint Mechanism Officer