

**DOCUMENT OF THE EUROPEAN BANK  
FOR RECONSTRUCTION AND DEVELOPMENT**

**PROJECT COMPLAINT MECHANISM (PCM)  
RULES OF PROCEDURE**

**REPORT ON THE INVITATION  
TO THE PUBLIC TO COMMENT**

**Project Complaint Mechanism Rules of Procedure Review 2013-2014**  
**Summary of comments received during the formal public consultation period**

The review of the PCM Rules of Procedure (PCM RPs) was launched in 2013, in parallel with the reviews of the EBRD's Environmental and Social Policy (ESP) and Public Information Policy (PIP). The formal 45 day public consultation on the new draft PCM RPs took place between 22 January and 6 March 2014 and involved 7 public consultation meetings in Almaty, Casablanca, Kiev, Moscow, Sofia, Tbilisi and London. Around 200 individuals and organisations attended the meetings, where the PCM took note of comments about the new draft PCM RPs and answered questions from the audience. PCM also received written submissions from 23 organisations and individuals. All comments have been reviewed and the draft PCM RPs amended, as appropriate. The final PCM RPs have been approved by the EBRD Board of Directors on 07 May 2014 and will come into force six months following this date.

The consultation meetings were organised and facilitated on behalf of the EBRD by the Regional Environmental Center (REC).

The following civil society organisations and individuals provided written submissions:

1. Accountability Counsel, USA
2. Amnesty International, UK
3. Arab NGO Network for Development (ANND), Lebanon, joined by other CSOs from Tunisia, Egypt, Jordan, Lebanon, Palestine, Bahrain, Sudan, Yemen and Iraq.
4. ARTICLE 19, UK
5. Both ENDS, The Netherlands
6. CEE Bankwatch Network, Czech Republic
7. Center for International Environmental Law, USA
8. Center for Human Rights and Environment (CEDHA), Argentina
9. Centre for Research on Multinational Corporations (SOMO), The Netherlands
10. Centre national de coopération au développement, CNCN-11.11.11, Belgium
11. Egyptian Center for Economic and Social Rights, Egypt
12. Forest Peoples Programme, UK
13. Gender Action, USA
14. Human Rights Watch, USA
15. National Association of Professional Environmentalists (NAPE), Uganda
16. Observatori del Deute en la Globalització, Spain
17. Pacific Environment, USA
18. Platform London, UK
19. The United Nations Economic Commission for Europe (UNECE) Secretariat of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment
20. Ulu Foundation, USA
21. Urgewald, Germany
22. Jack Mozingo
23. Suresh Nanwani

Public consultation meetings took place as follows:

1. 4 February 2014 Public Meeting Casablanca, Morocco
2. 7 February 2014 Public Meeting Kiev, Ukraine
3. 11 February 2014 Public Meeting Tbilisi, Georgia
4. 14 February 2014 Public Meeting Almaty, Kazakhstan
5. 18 February 2014 Public Meeting Moscow, Russia
6. 21 February 2014 Public Meeting Sofia, Bulgaria
7. 25 February 2014 Public Meeting London, EBRD London HQ, UK
8. 28 February 2014 Videoconference with Serbian CSOs, EBRD London HQ, UK

The comments and the Bank's responses to these comments are presented in the attached table.

No	TOPIC/ISSUE/ PCM RP <sup>1</sup>	COMMENT	EBRD RESPONSE
<b>PCM INDEPENDENCE AND MANDATE</b>			
1	<b>Project categorisation</b>	It would be useful for the EBRD to consider how to provide for opportunities to challenge project environmental categorisation under Performance Requirement 1 of the ESP 2008 (screening). This may be done through the PCM or the PR1, as deemed appropriate.	Provisions for categorisation of projects is part of the ESP and therefore is subject to the PCM.
2	<b>Scope of the PCM</b>  - <b>Adequacy of EBRD policies</b>	PCM should be able to make recommendations on adequacy or suitability of EBRD policies and procedures, as in some other International Financial Institutions (IFI) accountability mechanism.	The Bank has decided not to change the scope of policies subject to the PCM.  Adequacy and suitability of EBRD policies are dealt with through other procedures of the Bank. In accordance with the PIP EBRD policies, country strategies and sector strategies are subject to periodic reviews, where comments from the public and all interested stakeholders are sought in the context of public consultations. The Board reviews these comments and suggestions when approving the policies.
3	- <b>Public Information Policy (PIP)</b>	The division of responsibility for the PIP between the PCM and the Secretary General is confusing to potential complainants; access to information should be also subject to an accountability mechanism independent from Secretary General who is responsible for the implementation of PIP – it would be logical if the PCM were responsible for all of the PIP complaints.	The PIP sets out how the EBRD discloses information and consults with its stakeholders about the entire EBRD activities and governs access to different information about the Bank, including institutional information, information on policies and strategies, accountability and governance related information and project-related information. As the PCM was designed to review Complaints about Bank-financed Projects only, it cannot include in its scope provisions of the PIP that are outside of the project-related information.
4	- <b>Economic viability or</b>	Could one introduce issues of economic viability of projects into the mandate of the PCM, given that there is no alternative	The Bank has decided not to include issues related to economic viability of projects into the mandate of the PCM. Performance of

<sup>1</sup> PCM Rule of Procedure (RP) raised in a comment – the numbering of the RPs is per the revised PCM Rules of Procedure.

	<b>transition/development impact of projects</b>	channel to provide input to the Bank? Once a Project is financed, if it is economically unviable and affects public budgets or bills there is no effective recourse. Although general appeals can be made to the Board of Directors on these issues, there is no clear obligation for anyone to look into the issues and come up with any conclusion. Therefore, there is no mechanism by which the public hold the bank for such projects.	<p>the EBRD's completed projects and programmes relative to the Bank's objectives is evaluated by the EBRD Evaluation Department. It systematically analyses the results of both individual projects and wider themes defined in the Bank's policies. Overall Bank operations performance is assessed based on the following criteria:</p> <ul style="list-style-type: none"> <li>- Relevance (additionality, or how the EBRD added value to the project)</li> <li>- Effectiveness (fulfilment of operational objectives and financial performance of the project or company)</li> <li>- Efficiency (bank handling and bank investment performance)</li> <li>- Impact and sustainability (transition impact, environmental and social impact and change)</li> </ul> <p>EBRD evaluation work:  <a href="http://www.ebrd.com/pages/about/what/evaluation.shtml">www.ebrd.com/pages/about/what/evaluation.shtml</a></p>
5	- <b>Article 1</b>	The fact that the PCM cannot deal with cases raising issues related to Article 1, makes it extremely difficult to independently hold the Bank accountable for compliance with this part of its mandate and risks enabling Article 1 to be interpreted according to political expediency. Introduction of Article 1 within the mandate of the PCM is recommended in particular in the context of the EBRD's entry into the SEMED region.	<p>The issues of compliance of the EBRD recipient countries with Article 1 of the Agreement Establishing the Bank are subject to the EBRD Board of Director's review. The Board of Directors review at least annually the Bank's operations and lending strategy in each recipient country to ensure that the purpose and functions of the Bank, as set out in Articles 1 and 2 of the Agreement, are fully served. In accordance with the PIP, the Bank invites the public to provide input to the preparation of each Country Strategy.</p> <p>The procedures on implementation of the political aspects of the Bank's mandate are outlined in the <i>Political Aspects of the Mandate of the European Bank for Reconstruction and Development</i>: <a href="http://www.ebrd.com/downloads/about/aspects.pdf">www.ebrd.com/downloads/about/aspects.pdf</a></p>
6	<b>Functions of the PCM</b>	PCM should be able to recommend programmatic audits (i.e. thematic, sector-specific etc.) of the EBRD's financing activities. The PCM's experiences and its independence, make it well-positioned to detect potential systemic problems	It has been decided not to extend the functions of the PCM at this point to cover thematic and programmatic audits and recommendations.

		that are contrary to the EBRD’s environmental and social commitments. A programmatic, rather than project-specific, approach is needed to better understand systemic problems and formulate robust recommendations for addressing them. This approach would be consistent with and build on RP 44(a), which envisages that the PCM will contribute to the prevention of adverse impacts at a systemic level.	<p>Systematic analyses of the results of both individual projects and wider themes defined in the Bank’s policies are carried out by the EBRD’s Evaluation Department. The core objective of the evaluation is to contribute to the Bank’s legitimacy, relevance and to superior institutional performance.</p> <p>Evaluation Reports on Bank’s projects can be found here: <a href="http://www.ebrd.com/pages/about/what/evaluation/reports.shtml">www.ebrd.com/pages/about/what/evaluation/reports.shtml</a></p>
7		The Bank’s experience with the PCM has not strengthened the ESP, it has just created more loopholes for EBRD (e.g. inclusion of more caveats in the revised text of the ESP: where appropriate, where required, as applicable etc.).	The role of the PCM is to review complaints about specific Projects financed by the Bank and to make determinations on compliance or help in problem solving. It is not used to review the adequacy of EBRD policies, themselves. The PCM Office was part of an Internal Working Group that contributed to the review process of the ESP and PIP. In addition, in accordance with the PIP, governance policies must undergo public comment periods during their revision process and publicise how comments have been taken into account in the revision. The ESP underwent a revision and addressed the comments received during the consultation period, such as reducing the number of qualifying statements, reinserting commitments to international conventions, and other constructive suggestions that were raised. The Bank issued a consultation report on the ESP, similar to that on the PCM, and included management response to comments, so as to show how these have been addressed in the final draft of the policy.
8	<b>Independence of the PCM</b>	To emphasise its independence from the Bank’s Management PCM needs to report directly to the Board of Directors – just as the EBRD’s Evaluation Department does – rather than being part of the Office of the Chief Compliance Officer that reports to the President.	The Office of the Chief Compliance Officer (OCCO) itself is operationally independent from the rest of the Bank and therefore we believe being placed within the OCCO does not affect independence of the PCM. The role of the CCO is limited to ensuring that the PCM Officer carries out the PCM functions and administrative responsibilities according to the PCM RPs, as provided by the PCM RP 48. PCM Officer is nominated by a committee (comprising 5 members, both internal and external to the Bank) and appointed by the President and may be removed only with the approval of the President.

9		Currently PCM is the final point that a Complainant can reach. If a Complainant is not satisfied with the result of PCM what could be done?	In terms of complaining about the actions of the Bank vis-à-vis its policies, the PCM is the last appeal for an individual who has been adversely affected.
<b>ACCESSIBILITY OF THE PCM AND SUBMISSION OF A COMPLAINT</b>			
10		PCM procedure is very complex and too lengthy, thus seen as ineffective. It is unclear what can be achieved through PCM, what its purpose is and what the benefit/end result would be. Affected population choose to look for better ways to address concerns, such as through local courts.	Complainants are not expected to understand in detail EBRD policies and the PCM RPs to be able to submit a Complaint. A sample complaint form is available online and as part of the PCM booklet, but complaints can be submitted in any form.
11		Complaint submission process and the RPs should be simplified – a one page complaint form should be available. Complainants cannot be expected to understand the full RPs.	Although there is no dedicated PCM person in each Resident Office, the PCM Officer may be contacted for guidance on how to write and submit a Complaint (PCM RP 3). Also, a Complaint may be submitted to any of the Resident Offices (PCM RP 9).
12		Can PCM appoint a dedicated person in each Resident Office who would train affected population/CSOs on the correct process of filing complaints?	EBRD encourages CSOs to voice concerns in relation to projects with the Bank and/or the PCM on behalf of the affected population, but the Bank does not engage CSOs to provide capacity building training to affected population.
13		CSOs should have a formalised role in the PCM process and there should be criteria on how these CSOs can be selected to take part in PCM reviews. EBRD should encourage the voice of CSOs in problematic projects and engage/hire national NGOs to build capacity of those affected communities that need help in submitting complaints.	We recognise the need for more outreach activities by the PCM and civil society stakeholders. EBRD does rely on larger CSOs in the countries of operations to convey information about the Bank's projects and how to bring grievances about them to the attention of the Bank's staff.
14		How do you ensure that affected population in remote areas have access to PCM?	
15		Does PCM have special publications/brochures explaining how to submit a complaint? PCM publications should be disseminated more proactively and widely.	Upon approval of the revised PCM RPs by the Board of Directors of the EBRD, all guidance materials about the PCM will be updated and translated into languages of the countries of operations on progressive basis. Outreach events will also be held to inform as many affected communities as possible about the PCM.
16		Please add links in the text of the RPs to the specific web pages mentioned, e.g. where it says a Complaint will be published on the PCM Register it would help to have a direct link to the Register.	This will be done in the PCM guidance materials.

17		<p>Information about the PCM should be included in public consultation meetings on projects with environmental categories A or B. Few complaints are currently submitted by affected people without the assistance of NGOs, which may be because affected people do not know that the mechanism exists. It is suggested to conduct in-person consultation meetings rather than documents, as many people in the EBRD's country of operations are far from being used to reading official documents, especially online ones. Consultations have sometimes been carried out before the EBRD gets involved in projects but are often repeated during the project appraisal process.</p> <p>Currently PCM is a reactive mechanism, but should be more proactive in communicating with affected communities and do inspection work on projects.</p> <p>Project sponsors should also be contractually obliged to inform anyone who accesses their own grievance mechanisms to inform them about the possibility of addressing a complaint to the PCM if the complaint is not handled satisfactorily by the EBRD Client's own mechanism.</p>	<p>The PCM recognises the need for more direct outreach to affected communities and is currently discussing possible strategies for it. It is, however, important that the PCM outreach does not undermine Clients' grievance mechanisms, successful operation of which is key to building Clients' capacities for dealing with issues of affected communities during the lifespan of a Bank's Project, as well as after its completion.</p>
18		<p>PCM has a relatively low level of Complaints. Could this be because the civil society is not sufficiently involved?</p>	<p>The PCM is one of the youngest accountability mechanisms and is still in the process of raising awareness about its activities. Equally, through thorough due diligence and consultations about the impacts of the projects, EBRD aims at identifying issues of concern at an early stage. Civil society organisations do voice concerns about projects with the Bank, but only a few result in PCM Complaints, while the majority get resolved in communication with the relevant operations teams. Also, the PCM encourages Complainants to communicate their concerns to the Bank through the "good faith effort" requirement and use the PCM only when the operations teams cannot provide satisfaction.</p>

REGISTRATION OF COMPLAINTS			
19	<b>RP 1</b>	Why is there a reference only to economic interest of the Complainant to be able to file a Complaint, what about cultural, social and any other interests? It is important to be clearer about who can complain.	RP 1 has been amended to include also social and cultural interests of potential complainants.
20	<b>RP 11(d)</b>	To be registered, only an allegation of harm or potential harm is required, not an allegation of policy violation, nor identification of the specific policy at issue. All projects cause some degree of harm, so theoretically all projects would be eligible for Compliance Review (CR), which is not a situation the RPs should encourage or allow.	Such theoretical possibility is irrelevant, because experience at the PCM and other accountability mechanisms does not suggest this is a problem in the real world. Also, PCM RP 28 (a) provides protection from complaints filed for frivolous purposes.
21	<b>RPs 12(a) and 13</b>	<p>Complaints should be allowed to be filed before the Project has been approved, even where the EBRD may be still in the process of due diligence and preparation of environmental and social documentation. Some projects are causing negative consequences already during the development stages.</p> <p>RPs 12(a) and 13 should be amended as follows: “[Where the PSI or CR is requested, the Complaint]... must relate to a Project where the Bank has provided – and not withdrawn – a clear indication that it is interested in financing the Project (such indication would usually be provided if the EBRD has begun due diligence or investigations in respect of the Project);... .”</p>	<p>The mandate of the PCM as the EBRD’s accountability mechanism is to review complaints against projects that fall under the responsibility of the Bank. The effectiveness of the PCM functions depends upon the Bank being able to ensure compliance with its policies and its ability to restore a dialogue between the complainant and the client in the context of a specific project.</p> <p>The PCM RPs provide different timing requirements for the two functions of the mechanism – the Problem-solving Initiative (PSI) and the Compliance Review (CR). In the case of the PSI a complaint can be filed after the final review of the project and before the project is approved for funding by the Board of Directors of the EBRD or by authorised authority. This gives an opportunity for the complainants to raise concerns regarding the project during the preparation stage.</p> <p>A complaint becomes eligible for a CR only after the Board approval of the project – i.e. when the Bank finalised its due diligence and is officially committed to the project. This is when the Bank becomes officially responsible for the project and its compliance, making a CR applicable and meaningful.</p>

22	<b>RPs 12(b), 13 and 24(b)</b>	<p>Complainants requesting PSI cannot be filed later than one year after the final disbursement of funds, yet, adverse impacts may not become evident until much later, and conflicts between affected persons and the EBRD’s Client can occur throughout the life of the project. The EBRD is commended on the revision of RP 12(b) to cover equity investments and to allow PSIs for the period that the Bank is shareholder, however, this does not cover non-equity investments. This is not on par with the practice of other international financial institutions.</p> <p>RP 12(b) should be amended as follows: “Where the PSI is requested, the Complaint . . . must relate to a Project where the Bank maintains a financial interest in the Project in which case, the Complaint must be filed within twenty-four (24) months following the last disbursement date of EBRD funds, or during the duration of the Bank’s contractual relationship with the project, whichever is the later.”</p> <p>It is not clear whether this provision applies to CR Complaints or only problem-solving ones? It should apply to both.</p>	<p>The PSI is a mediation attempt by the Bank to resolve a dispute between the complainant and the Client and its effectiveness depends upon the Bank’s ability to influence the project and the client, which may decrease over time. The Bank also encourages its Client to develop and maintain its own effective recourse mechanisms so as to be able to take over the responsibility for dealing with grievances from the PCM throughout the life of the project.</p> <p>Provision in RP12(b) applies only to PSI, CR has different timing requirements.</p>
23	<b>RP 14</b>	<p>Does PCM publish on-line complaints that were not accepted for Registration? PCM should provide explanation why other complaints were not registered.</p>	<p>Only registered Complaints are published on the PCM register. Complaints that are not eligible for Registration under the PCM often raise issues that would not be normally disclosed by the Bank until after an investigation (allegations of corruption, procurement complaints, etc...). However, the total number of unregistered complaints is noted in the PCM annual report, along with reasons they were not registered.</p>
24		<p>The three-step process – registration, EA, PSI or CR – has at least one step too many. The process should be shortened by having the initial intake process incorporate the elements of registration and also include an assessment of whether the Complaint includes the components listed in RPs 24-28.</p>	<p>During the review process the Bank agreed to merge certain elements of the Registration and EA stages, but all three stages serve their respective specific purposes and should remain. Experience across all IFIs has also shown the three-step process to be optimal.</p>

**SUSPENSION OF REGISTRATION**

<p>25</p>	<p><b>“Good faith” efforts requirement RP 12(c) RP 17</b></p>	<p>There is a concern about the removal of the provision for waiver of the requirement to make prior good faith efforts to address the issues if such efforts would be harmful to the Complainant or futile. The matter is too important to be left as merely implied.</p> <p>RP 12(c) should be amended as follows: “...should describe the good faith efforts the Complainant has taken to address the issues in the Complaint, including with the Bank and/or the Client, and a description of the result of those efforts, or an explanation of why such efforts were not possible, as when, for example, the Complainant believes that doing so would cause harm or be futile.”</p> <p>RP 17 should also be amended as follows: “If the Complainant did not make good faith efforts to address the issues with the Bank and/or the Client and did not provide an explanation of why such efforts were not possible as per paragraph 12(c), the PCM Officer will, in consultation with the Complainant, and having ascertained that doing so would not be futile or potentially cause harm, forward the Complaint to the relevant department in the Bank to address the issues raised without registering the Complaint at that stage.”</p> <p>There should be further clarification for how and when a suspension will be lifted. At the moment – RP 17 exposes Complainants to unnecessary delays and potentially deprives them of the prerogative to decide when sufficient good faith efforts have been made. It is suggested that the following is added to RP17:“The suspension will be lifted at the Complainants’ request where they have made good faith efforts to address the issues, or reasonably believe that the issues will continue to not be fully addressed notwithstanding any action by Management or Client”.</p>	<p>The waiver of the requirement to make prior good faith efforts has been reinstated , and added to the end of PCM RP 12(c) (previously deleted from RP26(c) of the PCM RPs 2009). RP 12(c) now reads as follows: “...the Complaint... should describe the good faith efforts the Complainant has taken to address the issues in the Complaint, including with the Bank and/or the Client, and a description of the result of those efforts, or an explanation of why such efforts were not possible. The PCM Officer may waive the requirement that the Complainant make good faith efforts to resolve the issues in the Complaint with the Client if, in his/her view, such efforts would be harmful to the Complainant or futile”.</p> <p>RP 17 now also has additional wording and reads as follows: “If the Complainant did not make good faith efforts to address the issues with the Bank and/or the Client and did not provide an explanation of why such efforts were not possible as per RP 12(c), the PCM Officer will, in consultation with the Complainant, forward the Complaint to the relevant department in the Bank to address the issues raised without registering the Complaint at that stage. When good faith efforts have subsequently been made, suspension may be lifted if such efforts, in the view of the PCM Officer, have not yielded positive results”.</p>
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<b>COOPERATION WITH OTHER IFIs</b>			
26	<b>RP 23</b>	Instead of casting the obligation on the co-financing institution to establish a written cooperation agreement in instances where the Complaint is also subject to co-financing, it is suggested that the last sentence in RP 23 be revised as follows: “Where appropriate, <del>EBRD the co-financing institutions</del> will consider establishing a written cooperation agreement <del>with the co-financing institution(s)</del> addressing <del>such</del> issues <del>such</del> as confidentiality and sharing of information.”	RP 23 has been amended as follows: “Where appropriate, the PCM will consider establishing a written cooperation agreement with the accountability mechanism of co-financing institution(s) addressing issues such as confidentiality and sharing of information.”
<b>DETERMINING ELIGIBILITY OF COMPLAINTS</b>			
27	<b>RP 24 (a) (ii)</b>	No relationship to EBRD Policies should be required for PSI as this requirement is not relevant to the PSI’s stated objective of restoring dialogue between the parties. The 2009 PCM RPs did not have such a requirement, and no explanation was given for its inclusion now. Notably, other accountability mechanisms do not require Complaints to relate to their policies in order to be eligible for problem-solving or dispute resolution. RP 24(a)(ii) should be removed.	This provision requires that the <u>issues</u> raised in the Complaint are covered by one of the Relevant Policies as per the PCM definitions (i.e. broadly relate to environmental, social and project-related information)
28	<b>RP 24(a) (ii)</b>	How do you expect all complainants to know what the relevant issues and relevant policies are?	The provision is discretionary not mandatory and the Complainant does not have to know which Relevant Policy provision the issues relate to. But they can indicate it, if they know/want to.
29	<b>RP 24(b)</b>	The concept of “participation” in projects is vague, and could be interpreted to exclude proposed projects under consideration and those not yet approved. The phrase “participating in” could also exclude complaints for CRs brought after the completion of the project, which was not the case under the 2009 RPs. Compared with the cut-off dates of other international financial institutions’ accountability mechanisms, this revision is regressive, but no justification for it was given. It is suggested that RP 24(b) be amended as follows: “To be held eligible for a CR, the Complaint must relate to a Project where the Bank has provided – and not withdrawn – a clear indication that it is interested in financing	The mandate of the PCM as the EBRD’s accountability mechanism is to review Complaints that fall under the responsibility of the Bank and where the Bank has influence over the Project. The effectiveness of the CR depends upon the Bank being able to ensure compliance with its policies in the context of a specific Project. Therefore, a Complaint will be eligible for a CR only after the Board approval of the Project – i.e. where the Bank is committed to the Project – this is clearly reflected in RP13. The wording in RP 24(b) is focused on the tail-end of the project – i.e., until when a Project would be eligible for a CR once the Bank has entered into the contractual arrangements and disbursed the funds to the Client. RP 24(b) has been further

		the Project, or a Project that the Bank has financed.”	revised to allow for submission of a CR request 24-months after the Bank is no longer “participating” in the project (meaning has exposure to, not “after the last disbursement”), i.e. after it ceased to be engaged in the project. This terminology provides a wider window for requesting a CR than other IFIs – including the IFC.
30	<b>RP 25 (a) and (d): “...the Complaint <u>should</u> also include, if possible: (a) an indication of which PCM function the Complainant expects the PCM to use ... (d) if applicable, details of the Relevant Policy at issue in the Complaint”</b>	The use of “should” sounds like a requirement, but few people would know if they prefer PSI over CR or know which Policy has been breached. The requirement in RP 25(d) can be seen as a barrier to “public access to justice” as a person often could not understand what kind of norms are violated.	All provisions of PCM RP 25 are discretionary, not mandatory, thus, the provision also states, “if possible”.  The wording in the Russian version will be amended to make it clearer.
31	<b>RP 25(d): “...the Complaint <u>should</u> also include, if possible: if applicable, details of the Relevant EBRD Policy at issue in the Complaint.”</b>	It is recommended this requirement be strengthened. A complaint should identify both the specific policy at issue and how a specific Bank action or inaction failed to implement or otherwise violated this policy. This in turn should be linked back to the requirement (in RP 25(b)) that the desired outcome be indicated.	Both the ESP and the PIP are complex policies and Complainants cannot be expected to have the specific expertise. For wider accessibility of the PCM this requirement should remain discretionary. One of the purposes of the EA is to identify which policy requirements a Complaint relates to.
32	<b>RP 26(b) Parallel proceedings</b>	While relevant to determining how the PCM should proceed, parallel proceedings should not be determinative of whether or not a complaint is eligible. Impacts of parallel proceedings should be carefully considered in consultation with the Complainants, but should not be used as a determining factor in the EA.	Parallel proceedings should not be a determinative factor in the decision on eligibility and that is not the intention of the provision, but they are important to consider when establishing whether a PSI can succeed. See also response to comment 33.
33	<b>RP 26(c): “...the Eligibility Assessors will consider whether the Complainant has raised the issues in the Complaint ...before a</b>	What if the decision of the court was not satisfactory to the Complainant and he/she still wishes the PCM to review it? You should insert clarifications in the RPs in this regard.  This eligibility criterion is redundant and should be removed as its purpose is unclear. The removal of the good faith requirement as part of the eligibility criteria in RP 26(c),	A decision by a court or any other complaint/grievance reviewing body, favourable or not, does not disqualify the Complaint from being eligible, but they will be considered by the assessors to ensure that the proposed PSI does not duplicate, or interfere with, or is not impeded by, any other review processes.

	<p><b>court, arbitration tribunal or other dispute resolution mechanism...”</b></p>	<p>which is covered in the registration requirements in RP 12(c), is welcome. However, the intended purpose of the remainder of RP 26(c) is unclear. If its purpose is to ascertain the good faith efforts of the Complainant to address the issues in the complaint, the draft RPs already deal with good faith efforts at the registration stage. If its purpose is to avoid potential problems posed by parallel proceedings, RP 26(b) of the Draft RPs also addresses this issue, and in that case it is recommended to consolidate RPs 26(b) and 26(c) into a single provision, with the concerns outlined above with regard to RP 26(b)) to be taken into account.</p>	<p>RP 26 has been amended as follows: “Where the Complaint raises issues appropriate for a Problem-solving Initiative, the Eligibility Assessors will also consider whether a Problem-solving Initiative may assist in resolving the dispute, or is likely to have a positive result, in particular;</p> <ol style="list-style-type: none"> <li>a. whether the Complainant has raised the issues in the Complaint with the Client’s dispute resolution or grievance mechanism, or with the complaint or accountability mechanism of a co-financing institution, or before a court, arbitration tribunal or other dispute resolution mechanism and, if so, the Eligibility Assessors will also consider the status of those efforts; and</li> <li>b. whether the Problem-solving Initiative may duplicate, or interfere with, or may be impeded by, any other process brought by the same Complainant (or where the Complainant is a group of individuals, by some of the group) regarding the same Project and/or issues. ”</li> </ol> <p>The Russian version will be amended to make it clearer.</p>
34	<p><b>RP 28(a)(b)</b></p>	<p>How do you determine if a complaint was filed fraudulently or seeks to harm a competitor? How do you ensure that genuine complaints are not denied access to PCM under this provision?</p>	<p>PCM Experts have the means to investigate and make this determination.</p>
35	<p><b>RP 28(c)</b></p>	<p>Prior consideration of a Complaint by an accountability mechanism of a co-financing institution should not be determinative of eligibility, as this may bar the Complainants from seeking a further opportunity to problem-solve and resolve conflicts. Notably, this differs from other international accountability mechanisms. RP 28(c) should be amended to require the PCM to seek further clarification from Complainants for the reasons for bringing a new request for a PSI, and take such information into consideration only as a factor in determining eligibility, as opposed to a determinative ground for ineligibility.</p>	<p>The PCM recognises that there might be new evidence or circumstances that would allow for new review of a Complaint, which is evident from the wording of the RP: “in the cases [where]...the PCM Officer is <u>satisfied that the Complaint was adequately considered</u> by such accountability mechanism, <u>unless there is new evidence or circumstances not known at the time of the previous Complaint...</u>”.</p>

36	<b>RP 28(d)</b>	<p>RP 28(d), which finds complaints alleging issues related to the obligations of third parties or to country obligations ineligible, should be removed. The current phrasing is confusing because it presents a false choice between issues that are either under EBRD/Client control or under the control of a third party: it is possible that issues are under joint control, which does not obviate EBRD and Client responsibility. Further, it may be premature to determine whether issues “are under the control of the Client or the Bank” at the eligibility stage and certain circumstances may require in-depth consideration through investigation.</p> <p>Alternatively, the provision should be amended to clearly state that a complaint will be held ineligible on this ground only where it does not relate to any alleged act or omission on the part of the EBRD or the Client.</p>	<p>The mandate of the PCM as the EBRD’s accountability mechanism is to review Complaints that fall under the responsibility of the Bank and where the Bank has influence and an impact. Therefore, the mandate and scope of the PCM cannot extend to third party obligations. This is also consistent with the mandates of accountability mechanisms of other IFIs and with the rest of the PCM RPs. It is important to establish this during the EA, as this is one of the main purposes of that stage of the review.</p>
37	<p><b>Complainants should be allowed to comment on eligibility determinations</b></p> <p><b>RPs 29, 30 and 31</b></p>	<p>Given that an ineligibility determination terminates Complainants’ access to the PCM at an early stage, caution is required during this stage to ensure that meritorious grievances are not denied consideration. The Draft RPs set out a wide range of eligibility criteria that could be contentious and consideration of Complainants’ perspectives on potentially complex eligibility determinations enables a more thorough decision-making process.</p> <p>There should be an opportunity for Complainants to comment on the draft EA Report and to allow Complainants to provide formal comment on the EA Report when their Complaint is found ineligible. These comments should be made public on the PCM website.</p>	<p>EA is conducted in consultation with all Relevant Parties, including the Complainant, but the determination of Eligibility Assessors to hold a Complaint eligible or not eligible is final and not subject to challenge by any of the parties involved in the Complaint.</p>
38	<b>RP 29</b>	<p>The EA is not a substantive assessment of facts and allegations. Rather, the only substantive requirement is to further define the Bank action or inaction at issue (which as recommended above, should have been introduced by the Complaint). Since the Eligibility Assessor does not evaluate the facts – neither the actuality of harm nor the validity of the alleged violation (although the recent PCMs had elements of</p>	<p>All references to “days” in the text are described as “Business Days,” and included in the list of definitions. The rest of the comment about the scope of the eligibility phase misunderstands it as “pro forma”. In fact, it is important to undertake a careful screening at this stage in order to (1) be able to establish whether a PSI and/or a CR is more appropriate; and (2) determine whether the investment of scarce resources of a full CR is justified. Such</p>

		both in the EA)—only rarely, if ever, would the assessor need to visit the site or review documents, or even to meet with the various parties (RP 29). Regardless, 40 days seems excessive for such a pro forma exercise. Given the nature of the responsibilities, one work-week should suffice for an EA. (Also, all references to days should clarify whether working days or calendar days are intended.)	basic decision should never be taken lightly. The type of assessment, including visits, review of documents, interviews with parties etc. will remain at the discretion of Eligibility Assessors.
39		Why does the Eligibility Assessor present the positions of the parties? This could just as well be the responsibility of the compliance assessor, and having it be part of the compliance assessment would likely reduce the duration of the overall PCM process.	EA is an important stage in the Complaint review process which, apart for determination of eligibility also decides on the appropriate action, timing, proposed Terms of Reference for the function, establishes which provisions of which policy are affected by the allegations in the Complaint etc. Positions of parties are important part of that assessment and play an important role in determining all mentioned above.
40	<b>RP 30</b>	It is not specified whether the Complainant, Bank Management, and/or the Client will be allowed to review and comment on a draft EA report described in RP 30. Whether yes or no, is there provision for the PCM Officer to reject the draft report in some cases? If there will be review(s), will that need to occur within the mandated 40 days?	See response to comment 37. Regarding the PCM Officer being able to reject the determination of the EA report, as per PCM RP 22 (RP 17 of the PCM RPs 2009) the PCM Officer is one of the Eligibility Assessors and as the co-author of the report has input into the report from the outset.
41	<b>RP 32</b>	The timeframe for a CR should not be left entirely to an Eligibility Assessor, as indicated in RP 32. Rather, PCM RPs should give a maximum timeframe, which perhaps could in extraordinary circumstances be exceeded if approved by the PCM Officer.	Given the fact that the degree of complexity in CRs can vary greatly, it would be impossible to establish a single maximum timeframe. But Eligibility Assessors are requested to justify the timeframe through reference to the scope in the Terms of Reference, and any misalignment between the two can be corrected.
42	<b>RP 32:“Where possible, the Eligibility Assessor will consult with the Relevant Parties in drafting the Terms of Reference [for CR]”.</b>	Instead of “where possible” the Rules should “require” the Assessor to consult.	The assessors are required to consult, but the provision recognises that this might not always be possible. And the assessor would need to specify in the report why such consultation was not possible.

EFFECT OF COMPLAINTS ON BANK PROJECTS			
43		Does the Project stop while the PCM investigation is on-going?	PCM RP 35 provides: “The fact that a Complaint has been registered and/or found eligible for either a CR and/or a PSI <u>will not, of itself, have the effect of suspending the Bank’s interest in the Project.</u> However, if at any time during the processing of a Complaint, the PCM Officer believes that serious, irreparable harm will be caused by the Bank’s continued processing of the Project or disbursements in respect of the Project, the PCM Officer may make an interim recommendation to suspend further Bank processing of the Project, or, if possible, disbursements in respect of the Project. The decision on the recommendation will be made by the body vested with the power to make such a decision and only if the Bank has the right to suspend or cancel its interest in the Project. The PCM Officer’s recommendation and the decision thereon will be noted on the PCM Register”. The criteria for suspension of the Project as set out in that provision are “serious, irreparable harm”. Setting more specific criteria would risk leaving some potential serious harm out.
44		PCM RPs do not provide any article on criteria for suspension of Projects, it is recommended that it has to be clearly reflected in the document.	
45	<b>RP 35</b>	A decision to suspend Bank processing should not be made by the PCM Officer without appropriate input from a party who has reviewed the substance of the complaint in detail. This occurs only during the EA. It is recommended that any such decision be informed by the eligibility/compliance assessment and/or consultation with Environment and Sustainability Department specialists. Further, it is recommended that in every case the initial management response to the Complaint and the EA report itself be required to include a recommendation as to whether disbursement or other Bank processing should be suspended in order to prevent irreversible harm (the requirement for “serious” harm is superfluous, since only serious harm should be alleged in order to trigger eligibility.) Indeed, a more conservative approach is recommended: the management response should be required to provide justification as to why the Bank processing or disbursement of the Project should not be	These suggestions would create an unnecessary expectation that suspension is a customary recourse when, as a matter of experience, it rarely occurs, either at the EBRD or other IFIs. Instead, RP 35 puts responsibility on the “body vested with the power to make such a decision,” which allows the Relevant Parties cited in the comment to take part in the consideration of suspension. Irrespective of the substance of the Complaint and the stage of the review process (Registration, EA, CR or PSI), if there is a risk of serious and irreparable harm, the PCM Officer is able to make a recommendation to suspend further Bank processing of the Project.

		suspended pending further assessment. (Also, why should the PCM Officer’s recommendation be an “interim recommendation” rather simply a recommendation for temporary suspension pending the CR?) To whom does the PCM Officer make the recommendation, and what should be the criteria for decision? It is recommended the communication of the EA report to the Board or other body (under RP 33) be accompanied by a recommendation of whether or not (and when) Bank processing should be suspended, and justification of that recommendation.	
<b>APPROVAL AND CONDUCT OF A PROBLEM-SOLVING INITIATIVE (PSI)</b>			
46	<b>RPs 37 and 38</b>  <b>Complainants should be allowed to comment on PSI completion reports</b>	RPs 37 and 38 should be revised to allow Complainants the opportunity to comment on draft PSI Completion Reports, as well as provide an official response to the final Completion Report that will be made public on the PCM’s website.	According to the PCM RP 37: “ The PSI will be considered completed when the Relevant Parties reach an agreement or when, in the opinion of the PSI Expert, no further progress towards resolution of the dispute is possible.” As one of the parties, the Complainant will have to comment and agree to the statements made in the PSI report. Or, if an agreement cannot be reached, the PSI will clearly state that. Requesting comments from parties in that situation would be redundant.
47		PCM should have a decision-making power rather than just facilitation.	Making a decision during a PSI would be contrary to normal mediation process, as established and recognised within accountability mechanisms and throughout dispute resolution community. The purpose of the process is to bring together the parties, to empower and to provide safe environment and all necessary assistance for them to formulate their concerns and grievances and to arrive at an agreement that will suit them best. Parties to the process are in better position to judge and to decide which solutions would address their concerns. PCM is there to facilitate that process.
<b>CONDUCT OF A COMPLIANCE REVIEW (CR)</b>			
48	<b>RP 40</b>	The compliance assessor should be appointed within one week of disclosure of the Eligibility Assessment (EA) Report.	Since the CR Experts do not work full-time for the Bank, identifying and obtaining the commitment of a relevant Expert can take more or less time, depending on their schedules.

49	<b>RP 41 and 43</b>	The wording "...a Relevant Policy" at the end of the paragraph should be changed to "...the Relevant Policy." The same change should be made in RP 43, since the compliance assessment should be focused on the specific Policy provisions that are the subject of the Complaint and that are deemed to be eligible for CR. The CR should not be so broad as to assess compliance of EBRD action or inaction with any, or any other, Policy provisions than those specified in the Complaint or EA. And the EBRD action or inaction should be confined to those identified in the EA Report, not the broader range of actions or potential actions.	RPs 41 and 43 have been amended accordingly.
50	<b>RP 42</b>  <b>Complainants should be allowed to comment on CR Reports</b>	<p>The phrase in RP 42 stating that the Relevant Parties "will have the opportunity to comment" means that comments will be allowed on the CR Expert's "initial report and preliminary recommendations." The actual wording of the provision, however, only indicates that the parties will have the opportunity to provide feedback in some manner. In addition to giving comments during a CR investigation, the RPs should clearly provide parties the opportunity to comment on the draft CR Report.</p> <p>RP 42 should be amended as follows: "In conducting the CR, the CR Expert will examine key documents and consult with the Relevant Parties, who will be allowed to comment. The CR Expert may also carry out a site visit, and employ such other methods as the Expert may deem appropriate. The CR Expert will prepare a draft CR Report, allow the Relevant Parties to comment, and take their comments into account in finalizing the Report."</p>	RP 42 has been amended as follows: "In conducting the Compliance Review, the Compliance Review Expert will examine key documents and consult with the Relevant Parties, who will have an opportunity to comment. The Compliance Review Expert may also carry out a site visit, and employ such other methods as the Expert may deem appropriate. The Compliance Review Expert will prepare a draft Compliance Review Report, allow the Relevant Parties opportunity to comment, and consider these comments when finalising the Report".
51	<b>RP 42: "...Taking account of the comments received from the Relevant Parties, the CR Expert will prepare a CR Report."</b>	Suggest the wording state that the CR should consider all the information available, not refer only to the comments.	The intention of this provision is to put emphasis on the comments, not to exclude any other relevant information, which will of course be considered by CR Expert during the conduct of the a CR, as is evident from RP 46.

52	<b>RP 43</b>	Will Management be allowed to review and comment on a draft CR Report? Will the PCM Officer allow Management, Client, and/or Complainant to review and comment on a (revised) draft Report? Even if a hard deadline cannot be given, there should at least be a recommended timeline for providing the Report to Relevant Parties.	Since RP 43 refers to those situations where the Bank is found to be in compliance, the PCM will not share the CR Report for comment by Relevant Parties.
53	<b>RP 43 and 45</b>	Are the Relevant Parties to be allowed to review and comment on the CR Report provided “for information” in RP 43 (and not provided at all in RP 45), after which it may (or may not) be revised?	
54	<b>RP 43 and 45</b>	What if the CR Report finds some actions/inactions in compliance and some in violation? Which RP applies? Also, even a finding of compliance may result in recommendations either at the Policy or project level (removal of ambiguity, for example). Thus the same process of distribution, review, etc., should be followed regardless of finding.	If any instances of non-compliance are identified by the Assessor, the process set out in RPs 44-46 will be applicable.
55	<b>RP 44 (c)</b>	The Experts should not monitor implementation, which could extend for months or years; this should be a function of the PCM Officer, possibly with the option for consultant support if needed. Follow-up work such as monitoring should be independent of the CR.	In order to save time and scarce resources, the most efficient approach is for the same CR Expert to undertake both the review and any monitoring, if available. While implementation of the Management Action Plan (MAP) might extend for months or years, it is not envisaged that the monitoring should be consistently ongoing throughout all that time. The monitoring Expert will dedicate specific amount of time to review the progress and to report on it.
56	<b>RP 45 Complainants should be allowed to comment on MAP</b>	The MAP is vital to the remedy Complainants seek when bringing a Complaint for a CR, as it describes the concrete actions that will be taken to resolve the harm they have suffered or are at risk of suffering. It is concerning that the opportunity given to Complainants to comment on the MAP in the 2009 RPs has now been removed in the Draft RPs. This change gives Bank Management the power to determine what remedial actions will be effective and sufficient, subject only to the Board or President’s views. The provision should be amended to require Management to consult with Complainants in the creation of the MAP prior to its	The right of the Complainant to comment on the MAP has been reinstated and the revised RP 45 (d) reads as follows: “Upon receipt of the Management Action Plan and the management response to findings, if any, the PCM Officer will send the Compliance Review Report and the Management Action Plan to the Complainant for comments within twenty (20) Business Days. Taking account of the Management Action Plan and Complainant’s comments, the Compliance Review Expert may adjust his or her recommendations (but not findings) and will issue the final Compliance Review Report to the PCM Officer no later than fifteen (15) Business Days following receipt of the

		<p>submission to the Board or President.</p> <p>The following wording is proposed:  “The PCM Officer will send the CR Report to the Bank Management to allow it to prepare a MAP, which will address whether the recommendations contained in the CR Report are appropriate. Bank Management will consult with the Complainant and take the Complainant’s comments into account in formulating the MAP. The MAP will respond to each recommendation made in the CR Report, and provide justification wherever recommendations in the CR Report have not been adopted in full. It should include a timetable and estimate of the human and financial resources required to implement those recommendations considered appropriate.”</p> <p>There is an express provision allowing Management to request more time in "special circumstances" but this is absent in the case of the claimant. It would be fair to give both sides the same opportunity.</p>	<p>Complainant’s comments”. RP 46 also was amended to reflect the change.</p> <p>Per PCM RP 65 all deadlines may be extended by the PCM Officer for as long as is strictly necessary to ensure full and proper processing of Complaints.</p> <p>Complainants can request time extension along with all other parties.</p>
57	<p><b>RP 45</b></p> <p><b>Complainants should be allowed to issue an official response on the CR Report</b></p>	<p>The Draft RPs also give Bank Management the opportunity to issue a formal management response to findings after the CR Report is issued. However, under RP 45(d), the Complainants are only allowed to comment on the recommendations in the CR Report, and not its findings. Although this involves cases where the Report has found non-compliance, Complainants may want to raise issues not adequately addressed in the findings, and ultimately relevant to the recommendations. The exclusion of, or failure to formalise, opportunities for Complainants to comment on findings and decisions affecting them carries the costly risks of incorrect findings and failure to adequately address any negative impacts raised in the Complaint. Because there is no appeal process, providing checks on accuracy throughout a PCM process is important. An opportunity for the Complainant to comment in turn promotes participation in ensuring that the views are heard</p>	<p>It is not intended that any of the parties can comment publicly on the findings of the PCM Experts. As independent reviewers, their findings should be final and not subject to a challenge from any of the parties involved in the Complaint. Management’s comments are intended for the Board of Directors only and will be an internal document of the Bank.</p>

		during the process and also accords with current best practice in other mechanisms. Both Management and Complainants should be afforded the same opportunity to make a formal comment on the CR Report and recommendations. RP 45(d) should therefore be amended to allow Complainants to issue a response on not only the CR Report’s recommendations, but also findings. In addition, or alternatively, the Draft RPs should allow Complainants to be heard in person by the Board.	
58	<b>RP 45</b>	The MAP should have a mandatory deadline, perhaps 20-30 working days (or at least 10-15 days for preparation plus time for all levels of Management review and approval/revision.)	PCM RP 45 provides for a deadline of 30 Business Days for preparation of MAP. This deadline is set in consultation with the Management and based on previous experience.
59	<b>RP 45</b>	RP 45 provides that EBRD Management needs only to respond to and implement those recommendations in the CR Report that it considers “appropriate”, and is not required to provide any reasoning for its deviations from the CR findings and resulting recommendations. In the interests of transparency, and to make it possible for Complainants to adequately respond to the MAP, Bank Management should be required to respond to each recommendation made, and provide justification where recommendations in the CR Report have not been adopted. The MAP should also include responses to findings with which Management disagrees under this RP. It is noted that “no action” may be the proposed management action in such cases, but this must be fully justified.	RP 45(a) intends for the MAP to address all recommendations included in the CR, including those that will not be implemented.
60	<b>RP 45(d)</b>	30 working days is too long for Complainant to review – 15 or 20 would provide more than adequate time, especially if more time can be granted upon an acceptably justified request.	Where a community files a Complaint, and consensus is expected in providing a response to the draft Report, the PCM needs to provide enough time for the community to come together around a common view.
61		The CR Report should specifically address whether the Bank should suspend or adjust timing of Bank processing or disbursement in order to avoid irreversible harm that would occur due to violation of Policy, and the MAP should in turn address the same issue, with all recommendations and	Issues of financial management of a project are generally best left to Bank Management to determine the best course, which would be covered, as suggested, in the MAP proposed to the Board.

		<p>justifications provided in a separate memorandum to the President/Board. (The issues of suspension due to irreversible harm caused by violation of Policy is so serious that it justifies separate reporting, even if concurrent with the full reports. Indeed, any violation that causes harm and that does not lead to suspension should be subject to full justification by the PCM Officer).</p>	
62		<p>It is not clear what types of expertise may be needed for a CR. For example, if an ESAP requires a biodiversity study, would it be within the CR scope to bring in a biologist to evaluate the adequacy of sampling techniques or species identifications or statistical methods or ESAP requirements? If so, such a situation should be the very last thing the PCM should foster, and could be extremely time-consuming.</p>	<p>Under RP 59, the PCM Officer can obtain additional expertise as needed to ensure any reports submitted to the Board are of unquestionable technical excellence.</p>
63	<p><b>RP 47 and RP 39</b></p> <p><b>Monitoring of the MAP and the PSI implementation</b></p>	<p>It is suggested for clarity that RP 47 be revised as follows: “The PCM Officer will issue CR Monitoring Reports at least biannually or until the PCM Officer determines that <del>monitoring is no longer needed-the implementation issues are concluded.</del>” (The same comment applies to RP 39 which provides that “The PCM Officer will issue PSI Monitoring Reports at least biannually or until the PCM Officer determines that <del>monitoring is no longer needed-the implementation issues are concluded.</del>”) This will provide the PCM Officer with a clearer mandate in handling monitoring.</p>	<p>RPs 39 and 47 have been amended as suggested: “The PCM Officer will issue [Problem-solving Initiative / Compliance Review] Monitoring Reports at least biannually or until the PCM Officer determines that monitoring is no longer needed.”</p>
64	<p><b>Monitoring and follow-up</b></p>	<p>NGOs have experience with complaints against initiatives financed by IFIs that are degrading the environment, but are very disappointed with the follow-up.</p>	<p>In 2013 the PCM concluded three CRs with findings of non-compliance – the first findings of non-compliance since the mechanism became operational in 2010. Therefore, the monitoring of the implementation of the respective MAPs will only commence later in 2014. The monitoring will ensure that all agreed steps towards bringing the respective Projects into ‘compliance’ are addressed as effectively as possible and in consultation with the affected communities, where appropriate.</p>
65		<p>In cases where non-compliance was determined, what are the results of the respective MAPs implementation?</p>	

66		<p>What can be expected from the EBRD as a result of a successful registration of a complaint? If projects lead to disruption other than economical, how do you propose to repair the damage (moral, environmental, etc.)?</p>	<p>PCM has two functions: CR and Problem-solving. The function of the first is to check compliance of the EBRD with its own Relevant Policies and, where non-compliance is found, to recommend steps towards correcting these in the particular Project. The PSI is aimed at establishing dialogue between the Complainant and the EBRD Client with the objective of addressing the concerns raised. PCM can only consider environmental and social issues and those related to information disclosure in projects.</p>
<b>COMMUNICATION WITH COMPLAINANTS DURING THE REVIEW PROCESS</b>			
67		<p>Clarify the ground rules for contacts between EBRD Management/staff and the Complainant while a PCM review is underway, both on the subject of the Complaint and/or on other issues/projects.</p> <p>It is clear that if additional information relevant to the Complaint comes to light, it should be submitted to the PCM. However it is not clear whether the requirement is for the information to be sent only to the PCM and not to the staff, or whether the PCM should just be copied in all communication. It is also not clear how to approach information which is related to the project under investigation but is not related to the Complaint. This should be clarified.</p>	<p>This will be clarified in the PCM guidance material for the Complainants, the Clients and the EBRD staff.</p>
<b>CONFIDENTIALITY</b>			
68	<b>RP 4</b>	<p>How do you ensure confidentiality of the Complainant and how do you protect/ensure that Complainants/whistleblowers (or organisations they represent) do not fall under pressure (e.g. by the state authorities) following the submission of their Complaint? Some NGOs are reluctant to make complaints (e.g. in Central Asia) for fear of being black listed by the state authorities.</p>	<p>In cases where confidentiality is requested, the PCM will not disclose the name, address or any other identifying information about the Complainant to anyone outside of the PCM office. If processing of the Complaint is not possible without disclosing that information, the Complainant will be informed and the extent of necessary disclosure and the implications will be discussed with them. No information will be shared with anyone outside of the PCM Office without the agreement of the Complainant.</p>

69	<b>RP 26(c)</b>	What is the point of PCM offering confidentiality, if the eligibility of a Complaint depends on whether the Complainant already raised the issues before a court, the Client or the EBRD?	See response to comments 32 and 33.
<b>PCM EXPERTS</b>			
70	<b>RPs 49 and 50</b>	Eligibility assessors and compliance assessors should be drawn from separate rosters. Otherwise, with such a limited pool, there could be an appearance of conflict when the same assessors meet on separate Complaints. Regardless, there must be a separation in time between the appointment of the same two Experts as compliance and/or eligibility reviewers on two separate Projects (that is, when Expert A prepared an EA and Expert B conducts the CR, Expert A should not conduct a CR of another Project where Expert B prepared the EA without significant separation in time).	Given the current limited size of the Expert roster, it would be difficult to appoint Experts as suggested. If the number is increased at a future date, since up to 10 are allowed in RP 50, this approach could be considered
71	<b>RP 53</b>	Bank procurement rules regarding selection of consultants should apply to the selection of PCM Experts, unless explicit justification is made to and accepted by the President (or Board). There is nothing so extraordinary about the PCM process that should allow such a standard derogation from procurement rules.	Since the PCM Experts are appointed by the Board, they are by definition exempt from the Bank's procurement rules. Under RP 59, all other consultants and experts are appointed under the standard Bank rules.
72	<b>RP 54</b>	Prior to appointment in a specific case, all PCM Experts should be required to affirm in writing that they have no conflict of interest or appearance of conflict of interest with relation to the Client and the case at hand. Also, any work for or related to the Client or Complainant in the case at hand should constitute a conflict or potential conflict and thus disqualify the expert from that Project/Complaint. Similarly, there should be a prohibition on future work for or about the Client or Complainant. (Note, the staff handbook places such unenforceable limitations on EBRD staff after they leave the Bank, so there should be no reason not to include them here.)	As provided for in this RP 54, the Experts are subject to all the standard conflict of interest rules of the Bank. Disclosure is already required.
73	<b>RP 55</b>	This provision unduly restricts the ability of PCM Experts to inform the wider public, including non-complainants who	To avoid confusion during on-going PCM reviews, the suggested addition to this provision was not introduced. While the PCM

		may be affected by the Project in question, about the PCM's ongoing processes. Its last sentence should be amended to read: "...Nothing in this paragraph will prevent a PCM Expert from undertaking any type of public consultation, or publicly clarifying the process, when he or she considers it necessary as part of an EA, PSI, or CR."	Experts are able to clarify certain aspects of a case to the Complainant and all Relevant Parties, communication about the case and the review process to the media or the wider public should be handled by the PCM Officer who will have a better overview of the on-going reviews and all related processes.
74		Why doesn't PCM have permanent Experts? Introducing such would ensure their availability and reduce the delays.	The PCM has a roster of Experts, who are appointed for a renewable term. Term of appointment of PCM Experts is covered in PCM RP 51 and PCM RP 53.
75		How do you select an appropriate Expert? Do you match their expertise to the issues raised in the Complaints?	Yes, Experts are assigned specific tasks, such as EA, PSI or CR based on their expertise and on the specific requirements of the case.
76		How does the PCM ensure that the Experts understand the realities of Projects on the ground and the gravity of the raised concerns about the impacts of the Projects, have cultural and tradition awareness about the regions where Complaints come from? Knowledge of the local language is also very important in this regard.	This is achieved through training, site visits and extensive communication with the Complainants. All PCM Experts have experience of working on development projects in different regions of the world and have truly international experience, are used to working in multicultural or culturally sensitive environment. Where applicable, additional training will be provided for the PCM Experts, to ensure that they are prepared for a specific assignment. The PCM can also obtain additional expertise of consultants on specific issues as required, to ensure the successful performance of PCM duties and responsibilities, per PCM RP 59.
77		It is proposed to establish a multi-sector/expertise committee (EBRD, CSOs and clients) on preliminary consideration of complaints in addition to involvement of the Experts.	See response to comment 76.
<b>THE PCM OFFICER AND OFFICE</b>			
78	<b>RP 58</b>	Why could the PCM Officer not be allowed to serve two or more consecutive five-year terms? As written, it is five years and out, with no reason given.	PCM PR 58 already describes the term of the PCM Officer as "renewable."
79		Limitations on PCM Officer should also include (a) withdrawal from cases where the PCM Officer may have conflict by virtue of past work for or related to the Client or Complainant, and (b) prohibition (forever if possible) on	Limitations to avoid conflict of interest are placed on the PCM Officer through the EBRD Code of Conduct which applies to all Bank's staff members.

		future work for the Client or Complainant.	
<b>OUTREACH AND TRAINING</b>			
80	<b>Awareness raising on PCM in SEMED</b>	Whereas the EBRD is a new IFI operating in the region, more information on PCM RPs should be available to ensure that it is effectively used by relevant stakeholders, mainly local communities. This should also include availability of this information, in Arabic for relevant stakeholders' usage of the mechanism in the Arab region. With a positive development, the revised draft PCM RPs notes this need, yet the outreach should include a systematic and wide dissemination and awareness raising to local communities that are directly affected by EBRD-financed projects, on how to use PCM.	The revised PCM RP 61 requires the PCM guidance materials to be produced in the languages of the countries of operations on progressive basis. This will be done as soon as possible after the revised RPs are adopted. Awareness raising and outreach events will also be held in the SEMED region to inform local communities about the PCM.
81	<b>Public involvement and awareness</b>	<p>There is poor public involvement and public participation in many of the EBRD countries, as well as lack of awareness about accountability mechanisms such as the PCM. So more awareness-raising and training on how to submit a Complaint is needed.</p> <p>EBRD should also work with the local decision-makers (e.g. local municipalities) educating them about the importance and the necessity of public involvement in projects.</p> <p>Also, PCM must be allocated adequate resources to be able to provide guidance on how to write and submit a Complaint, including with site visits if necessary.</p>	The PCM will consider obtaining additional resources and will develop strategies to strengthen outreach.
<b>TIMELINESS (INCLUDING TIME EXTENSIONS)</b>			
82		The PCM has demonstrated commendable thoroughness in its work, and has played a critical role in ensuring accountability of the EBRD. The PCM's effectiveness depends on its ability to address Complaints in a timely manner, and delays in PCM reviews are a continuing concern. We note that changes to the registration and eligibility criteria in the Draft RPs were made to address concerns over timing. However, filtering out	As provided by RP 68, the Bank reviews adequacy of resources sufficient to allow the PCM to carry out all of the activities permitted by the PCM RPs.

		meritorious complaints with overly narrow registration and eligibility criteria undermines the purpose and effectiveness of the PCM. Instead, more resources should be given to the PCM to allow it to fulfil its mandate.	
83		One of the issues that has already been partly addressed by the new draft is the time it has taken to complete and publish CR Reports. However, from previous experience, there is also a concern about how long it takes to publish the completed CR Report on-line. There is an effectively unlimited possibility for time extension and there is no time limit in place on the publication of the Report. Understandably the Board's timetable for noting the Reports cannot easily be defined by bank policies, however it is unfair on the Complainants to have to wait more than six months (from past experience). A time limit needs to be set within which the Management will submit a final response and/or Action Plan and the Board will note the Report or the Report will be automatically published.	All these timing requirements are present in the PCM RPs and most of them were revised to ensure that they are realistic. It is expected that in future extensions to those deadlines will be required only in exceptional cases.
84		There should be an idealized timeline from Complaint to posting of the CR Report (and if necessary the MAP) showing all the various steps. Exceeding the guidelines should require explicit authorization by the PCM Officer. In no case should the entire process take more than six months.	Such an authorisation is provided for in the PCM RP 65. The revised PCM RPs are intended to reduce the time to complete the process.
85		Timeliness is an important issue – some concerns Complainants raise are time sensitive where a delayed reaction/resolution from the PCM makes it too late to make a difference to the problems.	See response to comment 84.
86		What are the consequences of failure to meet established deadlines without justification and prior approval? Suggest there be a paragraph that the PCM Office will report to the offending Department's VP within 10 days of a missed deadline, and to the President within 20 days? The paragraph should require PCM Officer to notify the offending Department within five days of a missed deadline, after which the Department may ask for more time and be granted the time if PCM deems the justification acceptable.	This is not seen as an ongoing problem that requires additional provision in the PCM RPs.

LANGUAGE OF THE RULES OF PROCEDURE			
87		PCM RPs should be made available in Arabic, along with all other PCM publications.	The PCM will endeavour to have the PCM RPs translated in all languages of the countries of operations as soon as practically possible.
PCM DEFINITIONS AND TRANSLATION CLARIFICATIONS			
88	<b>Harm</b>	<p>The Definitions do not define “harm”, which is a key element of a Complaint and which first appears in the first sentence of the Introduction and Purpose section. This is a major oversight that should be addressed in the final. Several questions need to be addressed in the definition, at least as it applies to CRs:</p> <p>a. Nature of harm. Does the “harm” have to be literal harm to environmental resources or people (physical , economic, psychological, etc.), or can it be theoretical? If an Environmental and Social Action Plan (ESIA), for example, requires a Client to take action to avoid or control a potential impact, for example, can a Complaint successfully allege harm or likely harm even if the ESAP is being fully implemented and thus there is no actual harm, even if there could have been a violation of ESP? What if EBRD monitoring has identified actual harm due to Client failure to implement an ESAP and is in the process of working with the Client to overcome the failure – could a Complaint go forward before EBRD had completed this monitoring/correction process? (If so, how could the Bank prevent the PCM process from distracting scarce resources and personnel from the monitoring/remedial process?)</p> <p>b. Harm versus likely harm. If an ESAP is intended to avoid or reduce impacts to acceptable levels and a stakeholder disagrees with the likely success of the ESAP requirement or with the likely severity of the impact, will that provide grounds for “likely harm”? Will the PCM include bringing scientific,</p>	<p>The reason for not including a definition of “harm” is that the responsibility to demonstrate “harm” in a particular Project falls on the Complainant. Rather than creating a definition with preferred elements of harm, which is a term that translates easily into all languages, the approach taken here is to rely on the ESP, with allowance that harm may inadvertently happen and thus allowing a Complainant to identify such harm.</p> <p>a. On the nature of harm, it is firmly established in the practice of the PCM that specific material harm need not be established in the case of an alleged failure by the Bank to meet one of its core due diligence obligations arising under the 2008 ESP, ‘as such failure would inherently impact on the integrity of the relevant decision-making process, and thus on the quality and legitimacy of the decision taken. Harm can be presumed in the case of any such instance of non-compliance.’<sup>2</sup> As provided in RP 15, the PCM Officer has the option of suspending a Complaint if it is determined that Management is in the process of correcting a harmful situation that has been identified.</p> <p>b. Under either approach of the PCM, the idea of “duelling experts” is an improbable scenario. In a PSI, the facts on the table are those brought by the Relevant Parties, so it is incumbent on them to come to their own agreement about the evidence. In a CR, the role of independent Experts is to marshal the evidence, including that provided by the Bank and the Client. The Expert presents that in the CR Report in a fact-finding process; evidence that is contested is not a fact.</p>

<sup>2</sup> See, for example, PCM, *EA Report: Ombla Hydropower Project (HPP)*, Request No. 2011/06, at 14, para. 28.

		<p>engineering, or social expertise to evaluate technical decisions made by EBRD specialists? If so, that would raise the spectre of “dueling experts”, which would undermine the integrity of the due diligence process.</p> <p>c. Degree of harm. The ESP (and good/best international practice) does not require that all impacts be avoided, but rather they be reduced or controlled to an acceptable level, or somehow offset or compensated. It is strongly recommended the Bank’s definition of harm include “significant”, “unacceptable”, or some other modifier to eliminate de minimis or spurious claims. While not precise, such terms are commonly – and unavoidably -- used in the field of impact assessment and project appraisal. All greenfield and many brownfield projects cause at least some level of harm, even if it is nuisance noise or temporary dust generation; as written, the draft PCM RPs would allow such Complaints of harm to be registered and eligible for CR. Such Complaints could drain scarce resources and lead to minimal or no actual reduction in harm, and the PCM RPs need to be more carefully crafted to avoid such situations.</p> <p>d. Client versus EBRD actions. If a Client fails to implement one or more ESAP requirements or fails to use good international practices to control construction impacts, for example, does that mean EBRD failed to implement the ESP? Is the absence of an ESAP requirement for every potential impact to be considered evidence of a violation of policy?</p>	<p>c. PCM RP 28 provides sufficient protection from “frivolous” requests.</p> <p>d. The issue of the division of responsibility between the Client and the Bank is addressed in the ESP, and the PCM follows the ESP interpretation.</p>
89	<b>Translation clarifications</b>	Definition of ‘Impacted area’ as translated in Russian is not clear, i.e. what is ‘район’?	Russian version of the PCM RPs will be revised and the terms will be amended to make sure they clearly express the intended meaning.
90		Please define ‘Problem’ for the purpose of the PSI.	
91		For the purpose of ‘Проверки соблюдения установленных норм’ (Compliance Review), what is meant by “нормы” (norms).	
92		Translation for ‘Working day’ – suggest “Рабочий день” instead of “Операционный день”.	

93		The disclaimer on the translation of the policies [comment related to all policies under review] – the EBRD should be able to guarantee the accuracy of the translation and carry the responsibility for any mistakes in the translation.	The PCM RPs is approved by the Board of Directors in the English language, so that only the English text is authentic. In the event of any issues concerning the construction or interpretation of the Rules, reference shall be made only to the Rules as written in English and not to any translations into any other language. Therefore, translations into any other language, including working languages, carry a standard disclaimer. The Bank does, however, make every endeavour to ensure the accuracy of its translations.
<b>OTHER ISSUES AND QUESTIONS RAISED</b>			
94	<b>Nature and geography of PCM Complaints</b>	Please give examples of issues raise in the 14 Complaints registered by the PCM so far and more detail about those resulted in non-compliance. Has PCM ever received any complaints from Central Asia and if so what were the results?	Detailed information regarding PCM caseload is available from the PCM website: <a href="http://www.ebrd.com/pages/project/pcm/register.shtml">www.ebrd.com/pages/project/pcm/register.shtml</a> There were no complaints filed with the PCM from Central Asia.
95		Why do you think you do not have any complaints from Central Asia and the SEMED region? Maybe this is because you do not communicate to the public about the PCM? Or perhaps you should adapt your communication approach to the cultural nuances? Overall, PCM case load is quite low, why do you think this is?	See response to comments 10-15 and 80-81.
96		Why do you think you do not have any complaints on labour issues? Perhaps people are not aware of the PCM?	
97		Why do you think you do not have any complaints related to indigenous peoples? Your definition of “indigenous peoples” may be too narrow, thus excluding some groups.	
98	<b>Complaints about corruption, integrity, procurement</b>	Corruption and integrity issues are covered by the Office of the Chief Compliance Officer; however there is no clear procedure for how the CCO will interact with the Complainant, whether	The EBRD is mandated to investigate allegations of fraud, corruption, collusion, or coercion in relation to activities and projects financed by the Bank under the Bank’s Enforcement

		<p>s/he will report on the opening of an investigation or its closure, what are the outcomes etc. This makes it difficult to understand how seriously the office takes public complaints, whether public submissions have been found to be valid, and whether it is useful to continue communicating about the topics with the bank. A clearer framework on how such complaints will be dealt with by the Office of the Chief Compliance Officer and how this Office's independence from the bank's Management will be assured would be welcome.</p> <p>The annual Anti-corruption Report by the Chief Compliance Officer gives only aggregated information on anonymised projects and does not enable Complainants to track the progress of their complaints.</p> <p>For the other issues, it should be made more explicit in RP 14 whether the PCM can deal with them or not, and if not, who can and how.</p>	<p>Policies and Procedures  <a href="http://www.ebrd.com/pages/research/publications/policies/enforcementpolicy.shtml">www.ebrd.com/pages/research/publications/policies/enforcementpolicy.shtml</a>, which outlines the procedures for processing these allegations. The Chief Compliance Officer can be contacted via email <a href="mailto:compliance@ebrd.com">compliance@ebrd.com</a>.</p>
99		<p>It is proposed to establish a separate EBRD Department on complaints whose Head would have the status of a Bank vice-president. This Department has to consider not only CSOs and communities complaints, but also Bank's staff and corporate clients complaints. There have to be a group of independent experts under this Department who will check all submitted complaints.</p>	<p>The EBRD Office of the Chief Compliance Officer fulfils this function – the Office of the Chief Compliance Officer promotes good governance at the Bank and applies the highest standards of integrity to all activities of the Bank in accordance with international best practice. In particular, it deals with conflicts of interest, corruption, confidentiality and money laundering. The Office also conducts investigations into alleged misconduct of Bank officials, employees or consultants.</p> <p>The Office is responsible for developing rules, procedures and processes governing the ethical behaviour of Bank officials, employees or consultants. No less important, the Office will establish standards of integrity that the Bank expects of its clients, project sponsors and other partners.</p> <p>The CCO reports directly to the EBRD President.</p>