

**EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

**PROJECT COMPLAINT MECHANISM  
COMPLIANCE REVIEW MONITORING REPORT III  
BOSKOV MOST HYDROPOWER PROJECT, REQUEST NUMBER: 2011/05**

**September 2015**

## Compliance Review Monitoring Report

This Compliance Review (CR) Monitoring Report is prepared pursuant to Rule 44 of the 2009 PCM Rules of Procedure (PCM RPs)<sup>1</sup> whereby, pursuant to a finding of non-compliance, the PCM Officer is mandated to monitor the implementation of the recommendations of the CR Report subject to the timetable and estimate of human and financial resources as set in the Management Action Plan (MAP).

PCM reviewed two closely related Complaints about the EBRD's Boskov Most Hydropower Project, completing the CR at the end of 2013. The CR Expert made a finding of non-compliance on one of the five grounds raised in the Complaints, namely in relation to Performance Requirement (PR) 6 of the EBRD's 2008 Environmental and Social Policy (ESP).

The CR Report included recommendations<sup>2</sup> to address the findings of non-compliance, in response to which the Bank's Management prepared a MAP in accordance with PCM RP 41. The MAP addressed whether the recommendations were appropriate, and put forward a timetable and estimate of the human and financial resources required to implement the recommendations. The Complainant had an opportunity to comment on the MAP, in accordance with PCM RP 42, and the Complainant's comments along with the CR Report and MAP were publicly released on 1 January 2014.

PCM monitors the implementation of recommendations of CR Reports and prepares Monitoring Reports at least biannually. This is the third Monitoring Report for the Boskov Most Project. This Report has been prepared pursuant to the update on the MAP received from the Bank's Management in August 2015, and reflects the status of implementation at the time. The next Monitoring Report will be published around January 2016.

### Summary

PCM has considered the following in preparation of this CR Monitoring Report:

- Revised Environmental and Social Procedures, approved in July 2015
- Updated internal *Staff Guidance Manual on implementing the 2014 Public Information Policy, dated November 2014*
- Updated internal *Guidance for Preparing the Environmental and Social Input to the Project Summary Document, dated January 2015*
- *Assurance Framework*, rolled out in 2Q 2015.

Monitoring of items related to the above documents will be closed.

The following will be considered by PCM when available:

- A guidance note specific to PR 6 of the ESP, which is expected to be piloted later in 2015

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<sup>1</sup> The Complaint was registered, reviewed and will continue to be processed in accordance with the 2009 PCM RPs.

<sup>2</sup> Pursuant to PCM RP 40 a CR Report includes recommendations to:

- a. address the findings of non-compliance at the level of EBRD systems or procedures to avoid a recurrence of such or similar occurrences; and/or
- b. address the findings of non-compliance in the scope of implementation of the Project taking into account prior commitments by the Bank or the Client in relation to the Project; and
- c. monitor and report on the implementation of any recommended changes.

- ESD’s Oversight Committee procedure which will provide guidance on circumstances when environmental and social appraisal can be deferred until after Board approval or as condition to disbursement of funds
- Internal guidance for preparing environmental and social information in Board documents.

PCM will continue monitoring in relation to Recommendations 4 and 5 below, including EBRD’s oversight of ELEM’s communication with the CSOs and the developments around the revalorisation of the Mavrovo National Park.

**Update by EBRD Management and implementation status**

<p><b>PCM Recommendation 1</b></p> <p><b>Development of detailed guidance on the minimum requirements for the preparation of biodiversity assessments for projects likely to have a significant effect on natural, critical or protected habitats, providing, <i>inter alia</i>:</b></p> <ol style="list-style-type: none"> <li>a. <b>Best practice regarding the setting out of conclusive and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the proposed Project on the integrity of the site concerned.</b></li> <li>b. <b>Best practice regarding the preparation and reporting of a biodiversity assessment separately from the general ESIA or in a manner clearly identified and distinguishable within the ESIA.</b></li> </ol>
<p><b>Management Response</b></p> <p>Management believes that there are many good sources of guidance currently available on biodiversity assessment which collectively cover and define best practices that the Bank can rely on. These include guidance on both the setting out of conclusive and definitive findings and conclusions as well as the preparation and reporting of a biodiversity assessment, for example in accordance with the EU Environmental Impact Assessment Directive and Habitats Directive.</p> <p>Management proposes that the Environment and Sustainability Department (ESD) will review such guidance during the on-going review of the ESP, including Performance Requirement 6, and identify appropriate guidance that will be made available and applied to relevant assessments.</p>
<p><b>Resources/Timetable</b></p> <p>No additional resources needed. Identification of appropriate guidance in 2014, following Board approval of the revised ESP.</p>
<p><b>Management’s Progress Report – July 2014</b></p> <p>The revised Environmental and Social Policy was approved by the EBRD Board of Directors on 7 May 2014. Other supporting documents, such as procedures and guidance notes are now being planned. A guidance note for PR6 will be prepared with the help of independent biodiversity experts. The ToR has been prepared and the guidance note is expected to be completed by the year end.</p>
<p><b>Management’s Progress Report – January 2015</b></p> <p>A guidance note for the PR6 is currently being finalised with an independent consultant. It will clarify how the relevant EU directives are interpreted for the purposes of undertaking biodiversity assessments under PR 6 and provide guidance on biodiversity assessment that is to be carried out in accordance with EU Habitat Directive and associated guidance when a project could have a significant impact on the conservation objectives or integrity of a protected area comparable to a Natura 2000 site. The GN will be rolled out in the first half of 2015 to Bank staff and our clients. This will be</p>

accompanied by internal training for ESD.

The final GN will be disclosed on the EBRD website.

### **Management's Progress Report – August 2015**

Two guidance notes on biodiversity were finalised in June 2015 by the *MFI Working Group on Biodiversity* in which EBRD participated, playing a leading role on the guidance on baseline information. These guidance notes have been posted on the EBRD website:

Good Practice Guidelines on the Collection of Biodiversity Baseline Data

<http://www.ebrd.com/cs/Satellite?c=Content&cid=1395245538876&pagename=EBRD%2FContent%2FDownloadDocument>

Good Practices for Biodiversity Inclusive Impact Assessment and Management Planning.

<http://www.ebrd.com/cs/Satellite?c=Content&cid=1395245539075&pagename=EBRD%2FContent%2FDownloadDocument>

A guidance note specific to EBRD's PR6 is in draft form and will be piloted later in 2015. The final guidance note will be disclosed on the EBRD website.

### **PCM comments on implementation – September 2015**

**PCM notes the publication of the guidance notes on biodiversity.**

**PCM will continue monitoring this item and will review the guidance note specific to EBRD's Performance Requirement 6 when available.**

### **PCM Recommendation 2**

**Practical guidance on the scope of the very limited flexibility as regards the exhaustiveness of such a biodiversity assessment likely to be acceptable for the approval of a Project under the so-called "D1 exception".**

### **Management Response**

Management proposes to refine internal operational procedures to clarify the circumstances under which Board approval to defer elements of environmental and social appraisal until after Board approval could be sought, providing that appropriate contingencies or other obligation placed on the borrower are included in the financing agreements, including the Environmental and Social Action Plan. Management also proposes that internal operational procedures will be amended to clarify the decision making process and documentation of such decisions, and enhance the information provided to the Board on such circumstances and contingencies relating to further environmental and social appraisal when their approval is sought.

### **Resources/Timetable**

No additional resources needed. Internal operational procedures will be refined in 2014, following Board approval of the revised ESP.

### **Management's Progress Report – July 2014**

The Environmental and Social Procedures are now being revised to reflect the new Environmental and Social Policy. This action item will be reflected in that document, which will be finalised in 3Q 2014.

### **Management's Progress Report – January 2015**

The following text has been included in the 2014 ESP: "EBRD's Board of Directors has the discretion to agree, as a condition to EBRD financing, that certain elements of environmental and social

appraisal take place following Board approval and after the signing of the financing agreements. The Board will consider the overall impacts, risks and benefits of the proposed approach.”

The revised and updated Environmental and Social Procedures are pending management review and will be finalised in 2Q 2015.

Internal operational procedures about circumstances for deferred appraisal, along with how to document these decisions etc. will be drafted in the first half of 2015.

#### **Management’s Progress Report – August 2015**

An ESD Oversight Committee procedure is being developed to clarify the deferred appraisal circumstances and this is anticipated in 3Q 2015.

More detailed internal processes are contained in the *Assurance Framework*, an internal management system which includes information on decision-making processes in projects and documentation of decisions. It was rolled out in 2Q 2015.

The revised and updated Environmental and Social Procedures that accompany the revised Environmental and Social Policy (2014) were approved on 10 July 2015. The Procedures have been posted on the EBRD website.

#### **PCM comments on implementation – September 2015**

**PCM Officer notes the publication of the revised Environmental and Social Procedures.**

**Additionally, ESD staff will provide an overview of the *Assurance Framework* system to PCM.**

**PCM Expert’s comments: It is universally accepted that ecological systems are especially vulnerable to adverse impacts, and that biodiversity damage is especially difficult to remediate. It is inconsistent with established practice in environmental governance to conflate the deferral of a biodiversity assessment with the deferral of other elements of environmental and social appraisal. Thus, legal frameworks for biodiversity protection commonly stipulate, in accordance with the precautionary approach/principle, that a biodiversity assessment must conclusively establish that such damage will not occur before approval of the project in question – see, for example Art. 6(3) EU Habitats Directive. Such concerns (and corresponding governance requirements) elevate the determinative role of a biodiversity assessment above that of other elements of environmental and social appraisal, such as ESIA, which merely serve to inform the decision-maker of the possible impacts. The refinement of the Bank’s internal operational procedures proposed above should clearly distinguish between the scope for deferral of a biodiversity assessment and deferral of other elements of environmental and social appraisal – notwithstanding the inclusion of the text in the 2014 ESP set out below.**

**PCM will continue monitoring this item pending the development of the ESD’s Oversight Committee procedure which will speak to the specifics of the deferred appraisal circumstances.**

#### **PCM Recommendation 3**

**Where the so-called “D1 exception” is employed, fully transparent procedures for decision-making on disbursement of funds subject to subsequent satisfaction of contractual conditions relating to further biodiversity assessment.**

#### **Management Response**

The Bank has robust procedures that govern decisions on disbursement of funds, including decisions taken upon completion of required additional environmental and social appraisal, and involve a

number of Bank departments in making such decisions. In such cases where further environmental and social appraisal is required as a condition of disbursement, ESD must deem the relevant disbursement conditions having been satisfied before disbursement can take place.

Management proposes:

- to amend internal operational procedures to clarify the decision making process and documentation of such decisions;
- to amend internal operational procedures to enhance the information provided to the Board to ensure the Board is fully informed on conditions relating to further environmental and social appraisal as a condition of disbursement when their approval is sought; and
- that for projects with disbursement/implementation requirements contingent upon further environmental and social appraisal, the Bank's Project Summary Documents (PSDs) disclosed on [www.ebrd.com](http://www.ebrd.com) will explicitly identify these requirements. PSDs will be updated as needed to disclose information on subsequent environmental and social appraisals and associated contingent disbursement decisions. Internal ESD guidance notes on the preparation of the environmental and social sections of PSDs will be updated to reflect this commitment.

#### **Resources/Timetable**

No additional resources needed. Internal operational procedures and ESD's internal guidance for preparing PSD Environmental Impact Sections will be amended in 2014, following Board approval of the revised ESP.

#### **Management's Progress Report – July 2014**

Following the policy approval, a number of procedures and guidance documents are now being revised.

The 2014 ESP includes article 41, which clarifies that the Board is able to agree some elements of appraisal post- Board, and this will be reflected in guidance:

“41. EBRD's Board of Directors has the discretion to agree, as a condition to EBRD financing, that certain elements of environmental and social appraisal take place following Board approval and after the signing of the financing agreements. The Board will consider the overall impacts, risks and benefits of the proposed approach. Where a project has been approved subject to such conditions, the Project Summary Document will include a description of the approach.”

In addition, a guidance note for staff on the environmental and social section of the Project Summary Document (PSD) is being revised and will include this point. We will also work with the Secretary General's Office on the guidance for implementation of the Public Information Policy, which has the requirements for PSDs.

#### **Management's Progress Report – January 2015**

- Internal procedures will be revised in the first half of 2015 to clarify the decision making process of disbursement of funds subject to satisfaction of contractual conditions relating to further biodiversity assessment and documenting such decisions.
- ESD's internal guidance note for preparing environmental and social information for the Board document will be updated in the first half of 2015 to include information on conditions relating to further environmental and social appraisal as a condition of disbursement.
- ESD's internal guidance note for preparing the environmental and social contents of the PSD has been updated to include information on subsequent environmental and social appraisals and associated contingent disbursement decisions.
- The guidance for the implementation of the 2014 PIP has been prepared.

#### **Management's Progress Report – August 2015**

- ESD's internal guidance note for preparing environmental and social information for the Board document will be prepared in 3Q 2015.
- An ESD Oversight Committee procedure is being developed to clarify the decision-making process of disbursement of funds subject to satisfaction of contractual condition relating to further biodiversity assessment, and this is anticipated in 3Q 2015.
- The revised and updated Environmental and Social Procedures were approved on 10 July 2015 and have been posted on the EBRD website.

#### **PCM comments on implementation – September 2015**

##### **PCM notes the publication of the revised Environmental and Social Procedures.**

**PCM reviewed the guidance on updating PSDs in the internal *Staff Guidance Manual on implementing the 2014 Public Information Policy* and *EBRD Guidance for Preparing the Environmental and Social Input to the Project Summary Document* which point out that “any deferred appraisal (following Board or signing) must be disclosed in the PSD along with the rationale”. These items will not require further monitoring.**

**PCM will continue monitoring this item pending the development of internal guidance for preparing environmental and social information in Board documents and the ESD's Oversight Committee procedure which will speak to the specifics of the deferred appraisal circumstances.**

#### **PCM Recommendation 4**

**Though the Compliance Review Expert has concluded that the Bank was not in full compliance with the ESP as regards the assessment of the biodiversity impacts of the present Project, it is only necessary in the present case to recommend that the mitigation measures identified in the ESAP, and any further measures arising under the due process of national law, are rigorously implemented. The reasonably comprehensive desk-based studies undertaken and the complete suite of mitigation measures stipulated ought to be sufficient to ensure the effective application of the requisite standards of protection of biodiversity resources in the present case.**

#### **Management Response**

Management considers that the preparation of a satisfactory biodiversity study was appropriately established in this project as a condition precedent for disbursements under the EBRD loan. The results of the Environmental and Social Action Plan (ESAP)-required additional bio-monitoring programme have been disclosed and discussed with relevant CSOs. The four seasons' bio-monitoring was required to verify earlier conclusions contained in the Environmental and Social Impact Assessment (ESIA) regarding the project's limited and temporary impacts on biodiversity, and to strengthen mitigation measures, if needed. To satisfy the Bank's conditions precedent for disbursement and ensure effective protection of biodiversity resources, all necessary refinements to the project design and mitigation measures taking into consideration sound scientific advice from the CSOs will be introduced to address the findings and conclusions of the additional bio-monitoring programme.

#### **Resources/Timetable**

No additional action or resources needed. Current commitment in project documentation.

Resources include normal monitoring resources for Bank staff to review outputs of bio-monitoring and measures to address its findings, undertake site visits and monitor project reporting.

**Management’s Progress Report – July 2014**

The condition precedent (CP) has not yet been satisfied. The project implementation has been delayed due to a number of factors including delays encountered in the tendering and procurement process. EBRD and ELEM will continue liaising with IUCN network and other biodiversity experts to take into consideration sound scientific advice from the CSOs to finalise the biodiversity assessment and mitigation and monitoring plans.

**Management’s Progress Report – January 2015**

The project implementation has been delayed due to a number of factors including delays encountered in the tendering and procurement process and no disbursement of EBRD loan has taken place to date.

To date, ELEM has undertaken an additional Biodiversity Survey of the project area. The additional Biodiversity Survey report is being amended and finalised by ELEM and its external experts to address the comments received from CSOs and IUCN expert network organisations and satisfy the Bank’s requirements. A number of further hydrology and biodiversity studies as well as further consultation meetings with the CSOs and other interested parties regarding these studies are required to be completed before the disbursement of the loan and/or start of construction.

**Management’s Progress Report – August 2015**

No disbursement of the loan has been made to date. There has been progress with some of the additional studies. Further revision of studies and consultation meetings with the CSOs and other interested parties regarding these studies are planned.

In addition to the EBRD requirements on the project and biodiversity, it is important to note that FYR Macedonia ratified the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention) in 1999; this project, together with other planned hydropower projects in the Mavrovo National Park will be subject to its requirements.

[http://www.coe.int/t/dg4/cultureheritage/nature/bern/default\\_en.asp](http://www.coe.int/t/dg4/cultureheritage/nature/bern/default_en.asp)

The EBRD continues to monitor the project and will review the results of the appraisal by the independent expert panel, which are expected in late 2015, before continuing further preparations of the project.

**PCM comments on implementation – September 2015**

**PCM notes the delays in the project implementation. PCM will continue monitoring the implementation of this item and will seek comments from the Complainants regarding the revised Biodiversity Study and ELEM’s consultation with the CSOs.**

**PCM Recommendation 5**

**In ensuring implementation of the mitigation measures stipulated in the ESAP, the Bank should have regard to the outcome of the ongoing revalorization of the Mavrovo National Park by the Ministry of Environment and Physical Planning and any new or additional management goals established thereby.**

**Management Response**

Management continues to monitor the Park’s planning process closely. The revalorisation process has been completed, with no change to the previous “sustainable use” zoning of the area to be affected by the HPP; “sustainable use” is considered to include hydropower development. A draft Management Plan has also been completed and disclosed by authorities; on-going monitoring shows that the HPP project does not conflict in any way with draft plans, nor would construction and operation of the



HPP.

EBRD will continue to monitor the Mavrovo National Park revalorisation, zoning and management planning, and take the necessary actions to amend the project ESAP, mitigation measures and the project monitoring programme, as needed.

**Resources/Timetable**

No additional action or resources needed. Included in normal monitoring of this type of a project.

**Management's Progress Report – July 2014**

EBRD met with the Mavrovo NP management in May 2014 to clarify the current status of the revalorisation process and reviewed the finalised studies and proposals that are currently being considered by FYR Macedonian parliament. The outcomes of the revalorisation studies have also been taken into consideration in the annual pre-construction Biodiversity Survey, which has proposed additional mitigation measures.

**Management's Progress Report – January 2015**

EBRD met with the Mavrovo NP management and the Ministry of Environment and Physical Planning in September 2014 to clarify the status of the revalorisation process. ELEM and EBRD will remain in close communication with the National Park authorities to take into consideration any relevant new or additional management goals for the Mavrovo NP in the project.

**Management's Progress Report – August 2015**

EBRD met with the Mavrovo NP management in May 2015 and with the Ministry of Environment and Physical Planning in June 2015 to clarify the status of the approval of a new management plan for the national park. The process remains unfinished and the new park management plan has not yet been approved.

**PCM comments on implementation – September 2015**

**PCM will continue to monitor the Bank's environmental monitoring of the project.**