

EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

**PROJECT COMPLAINT MECHANISM
ELIGIBILITY ASSESSMENT REPORT**

**COMPLAINT: EPS RESTRUCTURING PROJECT, SERBIA
REQUEST: 2016/01**

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EXECUTIVE SUMMARY

The Project Complaint Mechanism (PCM) has received a Complaint in relation to the EBRD's financing of the EPS Restructuring Project in Serbia, alleging non-compliance with the Bank's 2014 Public Information Policy (PIP), in particular Section D, paragraph 3.2. Indirectly, the Complaint raises concerns connected with paragraph 15 of the Bank's Environmental and Social Policy, as well as the EBRD's commitment to the spirit, principles and ultimate goals on public disclosure and stakeholder engagement comprised in the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).

Bank Management has agreed that the Complaint is eligible for a Compliance Review. The Eligibility Assessors are satisfied that, indeed, the Complaint meets the eligibility criteria for a Compliance Review under the 2014 PCM Rules of Procedure (PCM RPs) (paragraphs 24-29). The Complaint will proceed to the Compliance Review stage.

I. BACKGROUND

1. On 16 February 2016 the PCM received a Complaint regarding the EPS Restructuring, Project in Serbia. The Complaint was submitted by CEE Bankwatch Network¹ requesting a Compliance Review. The Complaint² was registered by the PCM Officer on 23 February 2016 in accordance with paragraphs 11-13 of the PCM Rules of Procedure (PCM RPs), and was subsequently posted in the PCM Register, pursuant to paragraph 20 of the PCM RPs. On 23 March 2016 Ms Susan T. Wildau was appointed as Eligibility Assessor to conduct an Eligibility Assessment jointly with the PCM Officer, in accordance with paragraph 22 of the PCM RPs.
2. The financing of the EPS Restructuring project was approved by the EBRD Board of Directors on 26 October 2015. The project is a €200 million loan to Public Enterprise Elektroprivreda Srbije (EPS), guaranteed by the Republic of Serbia, and subject to the Bank's policy requirements for public sector projects. The loan proceeds will be used to restructure EPS's balance sheet, replacing short and medium term financial debt entered into on an emergency basis to alleviate a critical cash situation created by the unprecedented and catastrophic floods in Serbia in 2014.
3. In a broader context the following is noted by the Bank Management: "The refinancing will free up resources to allow the EPS to focus on the implementation of its long term capital expenditure program, which involves substantial modernisation of Serbia's power sector infrastructure. This Project will also allow EBRD to continue its engagement with EPS on environmental and social issues."³
4. Following the EBRD's due diligence carried out with the assistance of a TC-funded independent consultant, a new, updated company-wide Environmental and Social Action Plan (ESAP) was agreed, which provides a comprehensive response to environmental and social issues associated with EPS's operations. EPS strategy will be based on an outline prepared by the consultant, which includes a new Resettlement Framework. The ESAP also reinforces the commitment to implement the action plans from the company-wide environmental, health, and safety audits (EHS audits). These actions are stated as addressing a number of the recommendations of the PCM Compliance Review on the Kolubara Environmental Improvement Project. A post-signing TC provided a consultant to survey EPS for corporate governance gaps and to provide an action plan to remedy such gaps.

II. STEPS TAKEN IN THE ELIGIBILITY ASSESSMENT

5. The Eligibility Assessors have undertaken a general examination of the Complaint in accordance with the PCM RPs, as well as additional information provided by the Complainant and Bank Management. The Assessors also considered the response to the Complaint provided by Bank Management.⁴

¹ Hereinafter the Complainant.

² Complaint Number 2016/01 available at: <http://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-register.html> and attached as Annex 1.

³ Bank Management Response to PCM Officer, dated 22 March 2016, p 2.

⁴ The Client was invited to submit, but did not provide a written response to the Complaint. Given the nature of the Complaint, which focuses exclusively on the EBRD's actions, such a response was not anticipated or considered necessary.

6. The Eligibility Assessors deemed it sufficient and adequate to determine eligibility through primarily a document-based review.

III. SUMMARY OF THE RELEVANT PARTIES' POSITIONS

Complainant

7. On 29 October 2015 the Complainant requested a copy (via email) of the Board document on the EPS Restructuring Project. That request was subsequently acknowledged by the Bank, noting “[p]lease be advised that you will receive the response in line with PIP [Public Information Policy] requirements”. Between November 2015 and February 2016 numerous exchanges took place between the Complainant and the Bank. The Complainant filed a Complaint with PCM on 16 February 2016. The document was disclosed on 29 February 2016.
8. Due to the failure to disclose the requested document, the Complainant asserts that the Bank is in breach of its 2014 Public Information Policy. In particular, the Complaint cites Section D, paragraph 3.2 of the Policy:

Board Reports for public sector projects will be made available to the public on request, once the project has been approved by the Board of Directors. Information considered confidential, as set out in Section E of the Policy, will be removed from the documents prior to release.⁵

9. The Complainant also asserts that, indirectly, the Bank has been non-compliant with paragraph 15 of the 2014 Environmental and Social Policy as well as with “the EBRD’s commitment to the spirit, principles and ultimate goals on public disclosure and stakeholder engagement comprised in the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.”
10. As stated in the Complaint, the following results are expected to be achieved through the PCM’s process:
 - a. *Generally improve the transparency and disclosure practices of the EBRD, namely to prevent future delays on requests for information.*
 - b. *Receive the Board Document on the EPS Restructuring project, in order to:*
 - c. *Engage more meaningfully in dialogue with the EBRD Management, the PCM and EBRD’s decision makers (with regards to the implementation of the current project and the PCM MAP on the 2013/03 on the EPS Emergency Power Sector Reconstruction Loan, EPS Power II and EPS Kolubara Environmental Improvement).*

⁵ EBRD 2014 Public Information Policy (PIP), section 3.2 available at - <http://www.ebrd.com/what-we-do/strategies-and-policies/public-information-policy.html>.

Bank Management

11. As stated in Bank Management's written response to the Complaint, EBRD receives relatively few requests for public sector Board reports and at present, the Bank does not currently have a defined process for dealing with these requests and is usually adopting a case by case approach prior to release of documents.
12. According to the written response, Bank staff received the request for disclosure of the Board report for the EPS Restructuring project on 29 October 2015, which was acknowledged through a formal response on 4 November, in line with Public Information Policy requirements.
13. Bank Management states that on 26 November, Bank staff informed the Complainant that an additional 20 working days were required due to the complexity of the Board document and the need to separate confidential information. On 8 January 2016, an email was received from the Complainant enquiring about the status of the request, to which Bank Management responded promptly and assured the Complainant that the Board report would be disclosed, but was not yet ready.
14. Bank Management's written response notes that the redacted Board report on the Project was provided to the Complainant on 29 February. The Bank acknowledged that this disclosure fell outside of the 40 working day requirement of the implementing provisions of the Public Information Policy (Annex, section 2. (vi)). Bank Management asserts that this was an unfortunate delay, resulting in the Complainant receiving the report some 84 working days after the initial request (25, 28 December 2015 and 1 January 2016 being counted as bank holidays).
15. In its response Bank Management states that the main reason for the delay was the separation of confidential information from that which could be disclosed, noting that under section 3.2 of the Public Information Policy, information considered confidential pursuant to section E of that Policy will be removed from Board reports prior to release.
16. In addition to the Board report provided to the Complainant, Bank Management states that all environmental and social information requested, including documentation related to Kolubara, was disclosed either by the Bank or the Client.
17. In its response, the Bank Management states that paragraph 15 of the Bank's Environmental and Social Policy has not been breached and is not the central issue in the Complaint.

IV. DETERMINATION OF ELIGIBILITY FOR A COMPLIANCE REVIEW

18. In its written response to the Complaint, Bank Management acknowledges that the eligibility criteria in the PCM RPs are satisfied, with a view to expediting the determination of eligibility of this Complaint. Bank Management also "...accepts that there is gap in consistency with regard to responding to requests for Board documentation and there is a need for a documented approach to include notification of the Secretary General's Office, involvement by counsel and the relevant banking team."

19. The Eligibility Assessors agree with the view of Bank Management on eligibility, noting that the Complaint raises direct allegations of violations of the 2014 Public Information Policy – in particular section D, paragraph 3.2.
20. The Eligibility Assessors further take note of the Complainant's reference to paragraph 15 of the Environmental and Social Policy as well as to the Bank's commitment to the spirit, principles and ultimate goals on public disclosure and stakeholder engagement comprised in the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. The Eligibility Assessors recognise that in raising Bank policy commitments relating to information disclosure and stakeholder engagement more broadly (i.e. beyond technical requirements of the Public Information Policy), the Complainant is expressing a desire to engage in a meaningful dialogue with the Bank on environmental and social concerns in relation to the EPS Restructuring Project, which the Complainant considers has not been possible to date. In this way, the Assessors consider that the Complainant is alleging that the Bank has fallen short of meeting appropriate standards on information disclosure and stakeholder engagement. The Assessors deem it appropriate for the concerns of the Complainant to be considered in the context of a Compliance Review, which would consider whether the Bank has satisfied the appropriate standards on information disclosure and stakeholder engagement it has committed to in its policy framework.
21. In accordance with paragraph 24 of the PCM RPs, the Assessors do not judge the merits of the allegations in the Complaint and do not make a judgement regarding the truthfulness or correctness of the Complaint in reaching conclusions on eligibility. The Eligibility Assessors have confirmed that the Complaint meets the relevant eligibility, as set out in paragraphs 24, 25, 27 and 28 of the PCM RPs.
22. To be clear, the Eligibility Assessors consider that the Complaint:
 - a) concerns a Project that has been approved for financing by the Bank;
 - b) has been filed within prescribed timeframes;
 - c) raises issues that relate to applicable Relevant EBRD Policies;
 - d) adequately describes the PCM function requested, namely a Compliance Review;
 - e) adequately describes what outcomes are sought;
 - f) provides references to relevant correspondence, notes, or other materials related to communications with the Bank and the Client;
 - g) raises issues that fall within the scope of the responsibility of the Bank, such issues constituting more than a technical violation of applicable Relevant EBRD Policies;
 - h) is not disqualified under any criteria set out in paragraph 28 of the PCM RPs.

V. CONCLUSION

23. On the basis of the information set out above, the present Complaint concerning the EPS Restructuring Project will proceed to the **Compliance Review**. The Terms of Reference for the Compliance Review follow in the next section of this Report.

COMPLAINT: EPS RESTRUCTURING PROJECT, SERBIA
Request: 2016/01

TERMS OF REFERENCE FOR A COMPLIANCE REVIEW

Application

1. These Terms of Reference apply to any inquiry, action or review process undertaken as part of the Compliance Review, with a view to determining, as per PCM RP 41 if (and if so, how and why) any EBRD action, or failure to act, in respect of the Project has resulted in non-compliance with a Relevant EBRD Policy, in the present case, the EBRD's 2014 Public Information Policy, section 3.2 (2014 PIP). If it is determined that there has been non-compliance, the Compliance Review will recommend remedial changes in accordance with PCM RP 44.
2. Activities carried out as part of the Compliance Review, and subject to these Terms of Reference, are subject to modifications which the Compliance Review Expert and the PCM Officer may, at any time, expressly agree upon, except any modification that may prejudice the interests of any Relevant Party or is inconsistent with accepted review practice.

Compliance Review Expert

3. In accordance with PCM RP 40 the PCM Officer appoints PCM Expert Andrea Saldarriaga as Compliance Review Expert.
4. The Compliance Review Expert shall conduct the Compliance Review in a neutral, independent and impartial manner and will be guided by principles of objectivity and fairness giving consideration to, *inter alia*, the rights and obligations of the Relevant Parties, the general circumstances surrounding the Complaint and due respect for EBRD staff.

Time Frame

5. The Compliance Review will commence as soon as possible following the posting of the Eligibility Assessment Report containing these Terms of Reference in the PCM Register on the EBRD website.
6. Every effort shall be made to ensure that the Compliance Review is conducted as expeditiously as circumstances permit, and it is intended that the Compliance Review shall be concluded within 60 Business Days of its commencement. At the request of the Compliance Review Expert, the PCM Officer may extend this time period for as long as

necessary to ensure full and proper conduct of the Compliance Review. Any such extension shall be promptly notified to all Relevant Parties.

Scope of Compliance Review

7. Based on the issues raised in the Complaint, the Compliance Review Expert will determine which provisions of applicable Relevant EBRD Policies apply, and examine core compliance issues (such issues being limited to matters raised in the Complaint), particularly:
 - Did EBRD satisfy its obligations in relation to information disclosure and stakeholder engagement as set forth in the applicable policy framework?
8. The Compliance Review will not address any issues under litigation or being considered by judicial processes, or reach conclusions that are prejudicial to or may affect the conduct of those processes.

Procedure: Conduct of the Review

9. The Compliance Review Expert may conduct the Compliance Review process in such a manner as she considers appropriate, taking into account the Rules of Procedure of the PCM, the concerns expressed in the Complaint, and the general circumstances of the Complaint.
10. Specifically, the Compliance Review Expert may:
 - a) Review the Complaint to frame the compliance issues to be included in the Compliance Review.
 - b) Review all documentation relevant to the Complaint;
 - c) Consult with EBRD staff involved in the Project, including personnel from the Bank's Environment and Sustainability Department, the Project Team Group, and the relevant EBRD Resident Office;
 - d) Solicit additional oral or written information from, or hold meetings with, the Complainant, any other Relevant Party and, further, any interested person or party as may be appropriate for the conduct of the Compliance Review;
 - e) Identify any appropriate remedial changes in accordance with PCM RP 41, subject to consideration of any restrictions or arrangements already committed to by the Bank or any other Relevant Party in existing Project-related agreements; and
 - f) Take any other action as may be required to complete the Compliance Review within the required timeframe and in consultation with the PCM Officer, as appropriate.

Procedure: General

11. The Compliance Review Expert shall enjoy, subject to the provision of reasonable notice, full and unrestricted access to relevant Bank staff and files, and Bank staff shall be required to cooperate fully with the Compliance Review Expert in carrying out the Compliance Review.
12. In conducting the Compliance Review, the Compliance Review Expert shall take care to minimize any disruption to the daily operations of all involved parties, including relevant Bank staff.
13. Generally, all Relevant Parties shall cooperate in good faith with the Compliance Review Expert to enable the Compliance Review to be carried out and concluded as expeditiously as possible and, in particular, endeavour to comply with requests from the Compliance Review Expert for obtaining access to sites, submission of written materials, provision of information and attendance at meetings. The Compliance Review Expert will advise the PCM Officer of situations where the actions or lack of action by any Relevant Party hinders or delays the conduct of the Compliance Review.
14. Access to, and use and disclosure of, any information gathered by the Compliance Review Expert during the Compliance Review process shall be subject to the Bank's Public Information Policy and any other applicable requirements to maintain sensitive commercial and/or other information confidential. The Compliance Review Expert may not release a document, or information based thereon, which has been provided on a confidential basis without the express written consent of the party who owns such document.

Compliance Review Report

15. In accordance with PCM RP 42, the Compliance Review Expert shall prepare a Report. The Report may include a summary of the facts and allegations in the Complaint, and the steps taken to conduct the Compliance Review. The Relevant Parties shall be provided an opportunity to comment on the draft Report, and the Compliance Review Expert shall consider the comments of the Relevant Parties when finalizing the Report. In addition, in cases of non-compliance, the Report shall include recommendations according to PCM RP 44.
16. The recommendations and findings of the Compliance Review Report shall be based only on the circumstances relevant to the present Complaint and shall be strictly impartial.
17. Prior to submitting the Compliance Review Report to the Relevant Parties and to the Board in accordance with PCM RP 43, or sending the draft Compliance Review Report to the Bank's Management and the Complainant in accordance with PCM RP 45, the PCM Officer will verify that there are no restrictions on the disclosure of information contained

within the Report, and will consult with the Relevant Parties regarding the accuracy of the factual information contained therein.

Exclusion of Liability

18. Without prejudice to the privileges and immunities enjoyed by PCM Experts, the Compliance Review Expert shall not be liable to any party for any act or omission in connection with any Compliance Review activities undertaken pursuant to these Terms of Reference.

ANNEXES

Annex 1: Complaint

Annex 2: Bank Management Response

Annex 1: Complaint

From: [PCM - Project Complaint Mechanism](#)
To: [PCM - Project Complaint Mechanism](#)
Subject: New Project Complaint
Date: 16 February 2016 14:18:58

Project Complaint to PCM

Date/Time

16/02/2016 14:18

Name/Organisation

Fidanka McGrath, CEE Bankwatch Network

Address

31 Shar planina str., Blagoevgrad 2700

Country

BULGARIA

Phone number

+359 877 303097

Email

fidankab@bankwatch.org

Is there a representative making this Complaint on behalf of the Complainant?

No

If yes, please provide the Name and Contact information of the Representative

n/a

Are you requesting that this Complaint be kept confidential?

No

If yes, please explain why you are requesting confidentiality

n/a

Please provide the name or a description of the EBRD Project at issue.

EPS Restructuring, 2015

<http://www.ebrd.com/work-with-us/projects/psd/eps-restructuring.html>

Please describe the harm that has been caused or might be caused by the Project.

The harm that has been caused by previous EBRD investments in EPS has been the subject of several previous PCM complaints. The compliance review for the last complaint (2013/03 Project name: EPS Emergency Power Sector Reconstruction Loan, EPS Power II and EPS Kolubara Environmental Improvement) concluded non-compliance of the EBRD with its own policies. It still remains to be seen if the current EPS Restructuring project can help remedy harm done by EPS operations. For CSOs, such as Bankwatch and its member group CEKOR, access to information is crucial for meaningful engagement with the Bank and its client.

Have you contacted the EBRD to try to resolve the harm caused or expected to be caused by the Project?

Yes

If yes, please list when the contact was made, how and with whom

1) e-mail request From: Fidanka McGrath Sent: 29 October 2015 12:59 To: EBRD Civil Society Subject: request for disclosure of the Board document on EPS restructuring 2) e-mail on 30 Nov. 2015, to cso@ebrd.com and cc: [REDACTED] 3) e-mail on 8 Jan.2016, to [REDACTED], cc: cso@ebrd.com

Please also describe any response you may have received

1) confirmation of receipt of request from CSO Unit on 4 Nov. 2015 2) e-mail from CSO Unit on 26Nov.2015 that additional 20 days are required. 3) e-mail from 8Jan.2016 with apologies and promise to send it 'next week'.

Have you contacted the Project Sponsor to try to resolve the harm caused or expected to be caused by the Project?

No

If yes, please list when the contact was made, how and with whom

n/a

Please also describe any response you may have received.

n/a

If you have not contacted the EBRD and/or Project Sponsor to try to resolve the harm or expected harm, please explain why.

The Board document on the EPS Restructuring loan is an EBRD document, so the request was directed to the EBRD. Bankwatch member group CEKOR is in regular contact with the Project Sponsor to discuss harm and expected harm caused by the project.

If you believe the EBRD may have failed to comply with its own policies, please describe which EBRD policies.

Directly the EBRD has failed to comply with its Public Information Policy, in particular Section D, paragraph 3.2. Indirectly the complaint concerns paragraph 15 of the Environmental and Social Policy, as well as the EBRD's commitment to the spirit, principles and ultimate goals on public disclosure and stakeholder engagement comprised in the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

Please describe any other complaints you may have made to try to address the issue(s) at question (for example, court cases or complaints to other bodies).

n/a

Are you seeking a Compliance Review where the PCM would determine whether the EBRD has failed to comply with its Relevant Policies?

Yes

Are you seeking a Problem-solving Initiative where the PCM would help you to resolve a dispute or problem with the Project?

No

What results do you hope to achieve by submitting this Complaint to the PCM?

I hope to 1) generally improve the transparency and disclosure practices of the EBRD, namely to prevent future delays on requests for information, 2) receive the Board Document on the EPS Restructuring project, in order to 3) engage more meaningfully in dialogue with the EBRD Management, the PCM and EBRD's decision makers (with regards to the implementation of the current project and the PCM MAP on the 2013/03 on the EPS Emergency Power Sector Reconstruction Loan, EPS Power II and EPS Kolubara Environmental Improvement).

EBRD SECURITY NOTICE

This email has been virus scanned

Annex 2: Bank Management Response

Project	47318 Serbia: Public Enterprise Elektroprivreda Srbije (EPS) Restructuring
Project Team & Relevant Parties	Banking [REDACTED] [REDACTED] Office of the General Counsel [REDACTED] [REDACTED] Civil Society and Engagement [REDACTED] [REDACTED] Office of the Secretary General [REDACTED] [REDACTED] Resident Office [REDACTED]
Bank Management Response from:	Office of the Secretary General [REDACTED] [REDACTED] Banking: [REDACTED]
Date of issue to PCM Officer	23 March 2016

1. Introduction

EBRD's Project Complaint Mechanism (PCM) received a complaint from Bankwatch regarding EPS Restructuring project in Serbia (<http://www.ebrd.com/work-with-us/projects/psd/eps-restructuring.html>). The financing of the project was approved by the EBRD Board of Directors on 26 October 2015 and is subject to the EBRD Public Information Policy 2014 (PIP).

A complaint (2016/01) was registered with the Project Complaint Mechanism on 23 February 2016.

This document is the "Bank Management Response" to the Complaint as established in Section 19 of the PCM Rules of Procedure.

The "Bank Management Response" includes a description of the project financed by EBRD and information on the PIP requirements, the normal process of handling requests for Board reports, and then the specific issues raised by the Complainant with regard to the EPS request. In conclusion, Bank Management requests that this case be expedited, in accordance with Article 24 of the PCM RPs.

2. the project

EBRD has an established relationship with the client, having participated in five previous projects from 2001. This project is the first balance sheet restructuring.

The project is a €200 million loan to Public Enterprise Elektroprivreda Srbije (EPS), guaranteed by the Republic of Serbia, and subject to the Bank's policy requirements for public sector projects.

The loan proceeds will be used to restructure EPS's balance sheet, replacing short and medium term financial debt entered into on an emergency basis to alleviate a critical cash situation created by the unprecedented and catastrophic floods in Serbia in 2014. EBRD's operation provides long term debt with terms better matched to the underlying assets and EPS's operations. The refinancing will free up resources to allow the EPS to focus on the implementation of its long term capital expenditure program, which involves substantial modernisation of Serbia's power sector infrastructure.

This Project will also allow EBRD to continue its engagement with EPS on environmental and social issues.

In this new Project, following the EBRD's due diligence carried out with the assistance of TC-funded independent consultant, a new, updated Company-wide ESAP was agreed that provides a comprehensive response to environmental and social issues associated with EPS's operations. EPS is committed to enhancing its environmental and social management systems for the restructured Company in line with good international practice and will be revising its corporate environmental and social strategy accordingly. The strategy will be based on an outline prepared by the consultants, which includes a new Resettlement Framework. The ESAP also reinforces the commitment to implement the action plans from the company-wide EHS audits. These further actions address a number of the recommendations of the PCM Compliance Review on the Kolubara Environmental Improvement Project. A post-signing TC provided a consultant to survey EPS for corporate governance gaps and to provide an action plan to remedy them.

3. Requirements in the 2014 PIP

Section 3.2 of the 2014 PIP states that Board reports on public sector projects are available on request to the public once information considered confidential under the definition in the PIP are removed.

3.2 Public Sector Projects

Board Reports for public sector projects will be made available to the public on request, once the project has been approved by the Board of Directors. Information considered confidential, as set out in Section E of the Policy, will be removed from the documents prior to release.

4. Handling requests for Board reports

The Bank receives relatively few requests for public sector Board reports (an average of 50 public sector projects are approved per year, and six requests for Board reports have been received in total in the past five years, including the one in this Complaint). At present, the Bank does not currently have a defined process for dealing with these requests. The Bank has adopted a case by case approach in discussions with the banking team and their counsel prior to release of documents.

5. Management Response to The Complaint on the Request to Disclose the EPS Board Report

a. Complaint Concern: To improve delays in compliance with the PIP s.3.2

Directly the EBRD has failed to comply with its Public Information Policy, in particular Section D, paragraph 3.2.

The Complainant seeks to:

*1) generally improve the transparency and disclosure practices of the EBRD, namely to prevent future delays on requests for information,
2) receive the Board Document on the EPS Restructuring project, in order to 3) engage more meaningfully in dialogue with the EBRD Management, the PCM and EBRD's decision makers (with regards to the implementation of the current project and the PCM MAP on the 2013/03 on the EPS Emergency Power Sector Reconstruction Loan, EPS Power II and EPS Kolubara Environmental Improvement).*

Management Response

Bank staff received the request for disclosure of the Board Report for the EPS Restructuring project under section 3.2 of the 2014 PIP on 29 October 2015, which was acknowledged through a formal response on 4 November 2015, in line with PIP requirements to acknowledge requests for information within 5 working days. On 26 November, Bank staff informed the Complainant that an additional 20 working days were required due to the complexity of the Board document and the need to separate confidential information. On 8 January 2016, an email was received from the Complainant enquiring about the status of the request, to which Bank Management responded promptly and assured the Complainant that the Board Report would be disclosed, but was not yet ready to release.

During this period, Bank staff organised and facilitated meetings between the Complainant and the EBRD Board of Directors and Senior Management regarding the EPS Restructuring project on 26 January 2016. Bank staff also maintained continuous informal communication with the Complainant throughout this period. During the communications with the Complainant, there was no intention not to disclose the information requested.

The Bank provided the redacted Board Report on the project to the Complainant on 29 February 2016. The Bank's response fell outside of the 40 working day requirement of the implementing provisions of the PIP (Annex, section 2. (vi)). This was an unfortunate delay, resulting in the Complainant receiving the Board Report some 84 working days after the initial request (25, 28 December 2015 and 1 January 2016 counted as bank holidays).

The main reason for the delays was the separation of confidential information from that which could be disclosed. Under Section 3.2 of the PIP, information considered confidential pursuant to Section E of the PIP, will be removed from Board Reports prior to release. In order to assess potential confidentiality issues among others, EBRD had to consult with Banking, Counsel, and the project proponents on commercial, proprietary and other information in the possession of EBRD which was not created by EBRD and could have been identified by its originator as being sensitive and confidential. This process of clarification included several iterations and took longer than initially expected.

Throughout the process, the Complainant and the Bank continued to be in regular communication and maintain an open and constructive dialogue about any issues concerning EBRD projects.

In addition to the Board Report document provided to the Complainant, all environmental and social information requested, including documentation related to Kolubara, was disclosed either by the Bank or the Client. The Kolubara PCM Compliance Review Report for the previous project and associated documents are also available on EBRD's website.

b. Complaint Concern: indirect concerns

Indirectly the complaint concerns paragraph 15 of the Environmental and Social Policy, as well as the EBRD's commitment to the spirit, principles and ultimate goals on public disclosure and stakeholder engagement comprised in the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

Management Response

Bank Management believe that Paragraph 15 of the Environmental and Social Policy has not been breached and is not the central issue in the Complaint, which relates to a commitment in the Public Information Policy to respond to requests in a timely manner. Due to the volume and the complexity of the information requested, albeit with a delay, information was made available as soon as possible in the spirit of the principles of the UNECE Aarhus Convention. The commitment to the Aarhus Convention with regard to the disclosure of institutional information is within section B of the Public Information Policy, not the Environmental and Social Policy.

6. Management Request to Expedite PCM Review

As provided in Section 24 of the PCM Rules of Procedure, Bank Management would like to state that, from its perspective, criteria are satisfied to expedite the determination of eligibility. Bank Management acknowledge that Serbia: EPS Restructuring i) is an EBRD financed project that was approved by EBRD Board of Directors, and ii) that the issues raised by the Complainant fall under a Relevant EBRD policy, namely the PIP, section 3 .2.

We also accept that there is gap in consistency with regard to responding to requests for Board documentation and there is a need for a documented approach to include notification of the Secretary General's Office, involvement by counsel and the relevant banking team.

To avoid delays in processing future requests to disclose public sector project Board Reports, the Secretary General's Office will begin work on a guidance note for staff who may receive an information request for a Board document. This guidance note will clarify the appropriate timing requirements for responding to a request from the public in line with the PIP obligations, and will be included in the existing PIP Implementation Guidelines. Any recommendations that result from the PCM case would be welcomed so that they can be reflected in the guidance.