



Comments on the EBRD Project Complaint Mechanism draft Rules of Procedure

Submitted by CEE Bankwatch Network

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Introduction

The European Bank for Reconstruction and Development (EBRD) has been conducting the first review of its accountability mechanism, established as an Independent Recourse Mechanism (IRM) in 2004 and now proposed under the new name of Project Complaint Mechanism (PCM). As part of the first round of the consultation process, the bank submitted the existing IRM for public comments. CEE Bankwatch Network updated its analysis of the IRM from 2007 and submitted the document as comments in June 2008.¹

As part of the second stage of the consultation process, the bank released the draft Rules of Procedure on the PCM. The EBRD has also conducted a regional consultation meeting on the draft Procedures in January 2009 in London, at which a representative of Bankwatch participated alongside Bankwatch's partner, the former Secretary of the World Bank's Inspection Panel, Mr. Eduardo Abbott.

Bankwatch would like to use the opportunity to caution that the EBRD's concept of a policy consultation workshop, where no resources are allocated for paying travel to regional stakeholders, is unfortunate and – ultimately – restrictive to effective external policy dialogue.

We recommend, therefore, that during financial and operations policy reviews the EBRD reserves a small, but necessary, dedicated budget to ensure the presence of stakeholders from the EBRD's borrowing countries at the consultation meetings, in such a way as it did in the case of the Environmental Policy and Public Information Policy reviews in 2008. Without the availability of such resources, it is undeniable and regrettable that such vital consultations will remain a highly academic debate between the bank and western NGOs, as in the case of the Gender Action Plan meeting in December 2008, or a poorly attended event, as in the case of the PCM consultation workshop this January.

¹ Independent Recourse Mechanism: Three years on the questions remain and who is it for – the EBRD or those affected by EBRD projects? UPDATED version. CEE Bankwatch Network. June 2008. (http://bankwatch.org/documents/bwn_comments_IRM_06_08_FINAL.pdf)

We would like to acknowledge the positive changes proposed in the draft Procedures, singling out just a few: NGO standing for Compliance Review, streamlining the Problem-solving Initiative and Compliance Review processes and establishment of a full-time PCM Officer to administer the mechanism.

At the same time, we believe that there is a space for other improvements of the draft that would reinforce the effectiveness of the PCM and, equally, reinforce the EBRDs accountability.

Some of the newly proposed amendments include:

1. Expansion of the PCM purview to a broader policy framework, including all the provisions of the Public Information Policy (PCM's role of an independent appeal body on disclosure matters).
2. Unrestricted access of unregistered organisations (NGOs, professional associations and civil initiatives) to PCM.
3. Broadening of opportunities for public engagement in the PCM process (public commenting on Eligibility Assessment Reports, Management Action Plan, Problem-solving Initiative and Compliance Review Reports).
4. Management and budgetary independence of the PCM (either through its independence from the Chief Compliance Officer (CCO) or CCO's direct reporting to the Board of Directors/President).

We would also like to call on the EBRD to ensure that the PCM Rules of Procedure stand in compliance with the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) and the further addenda.

According to Article 2 (c), the Aarhus Convention is not confined only to national governments and public administration but it also applies to “any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment [...]”.

We understand that by this definition the Convention applies also to inter-governmental organisations, including international financial institutions such as the EBRD.

Given that the EBRD itself is actively involved in the promotion of sustainable development, we believe that it should apply the Convention within the framework of its existing and evolving legislation in the field covered by the Convention in the manner that the European Community and its own institutions adhere to it.

We would note also that the shareholder countries of the EBRD that are Parties to the Aarhus Convention are obliged to: “promote the application of the principles of this Convention in

international environmental decision-making processes and within the framework of international organizations in matters relating to the environment”.²

To provide general guidance to the Parties on promoting the application of the principles of the Convention in international forums in environmental matters, the Almaty Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums were adopted in 2005. The Almaty Guidelines rest on the assumption that the Parties can improve administrative procedures and institutions on the global level and therefore invite “international forums [...], including their secretariats, to take into account the principles of the Convention [...] and to consider how their own processes might further the application of these Guidelines”.³

Building on its experience with the functioning of the IRM and the discussions with the bank’s Management and board members, as well as with Bankwatch partners in the region, Bankwatch would like to present its written recommendations on the draft PCM Rules of Procedure.

To aid EBRD consumption of the comments, the paper is divided into two sections: the comments – structured along the paragraphs of the draft Rules of Procedure – and a summary that aims to outline the main recommendations based on the criteria of the effective functioning of an appeal mechanism: accessibility, standing, policy and project framework, operations and independence.

1. DEFINITIONS

Complainant

As per the definition of the complainant, individuals or organisation(s) may submit a complaint to the PCM. We recommend that in line with the good practice at other IFIs and in compliance with the Aarhus Convention, an individual has an access to the PCM (for details see our comments on the Paragraph 1).

Furthermore, we would welcome if the Rules on Procedure could develop more on the definition of the term “organisation(s)”.

The definition should explicitly describe in general terms what type of organisations – such as NGOs, professional associations, citizen initiatives, etc. – can file complaints at the PCM in order to ensure that their representatives understand clearly that they have the right to access the accountability mechanism.

² Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. 1998. Article 3. 7.

³ Decision II/4 Promoting the Application of the Principles of the Aarhus Convention in International Forums. Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and

Access to Justice in Environmental Matters. Almaty, Kazakhstan, on 25-27 May 2005

For instance, the Asian Development Bank defines complainants as “any group of two or more people (such as an organization, association, society, or other grouping of individuals)”.⁴

Recommendations:

- ✓ *The Rules of Procedure should explicitly describe in general terms what type of organisations z such as NGOs, professional associations, citizen initiatives, etc. – can file complaints at the PCM in order to ensure that their representatives understand clearly that they have the right to access the accountability mechanism.*

Project

By the definition given by the draft Rules of Procedure, the proposed accountability mechanism applies exclusively to investment projects and it exempts projects that “are technical assistance projects or other activities that are funded exclusively by cooperation funds administered by the Bank and are either not subject to approval by the Bank's Technical Cooperation Review Committee, or are exempted from the application of these Rules or their predecessor by a Board decision.”

Technical assistance projects may have serious social, economic and environmental impacts because of the programs and activities resulting from the technical assistance, and they should, therefore, also be subject to the PCM's jurisdiction.

Moreover, we recommend that the Rules of Procedure clearly define project boundaries in order to provide comprehensive scope to the complaints submitted to the PCM.⁵

Normally, a project is defined, appraised, the expected economic and financial rates of return calculated and the financing recommended to the board of executive directors on the basis of its whole social and economic impact, and not merely on the basis of the parts or components directly financed by the EBRD. To do otherwise could involve the EBRD in projects with very negative outcomes and impacts.

In this sense, EBRD policies must apply to the whole project and not only to the parts or components against which EBRD disbursements are made; and the PCM should have jurisdiction also over the project as a whole.

Recommendations:

- ✓ *All activities financed by EBRD, unless specifically exempted by the board of directors, should be under the PCM purview.*
- ✓ *EBRD policies must apply to the whole project and not only to the parts or components against which EBRD disbursements are made; and the PCM should have*

⁴ Asian Development Bank. Review of the Inspection Function: Establishment of a New Accountability Mechanism. May 2003. Article 68. Who Can File a Complaint.

⁵

jurisdiction also over the project as a whole. The Rules of Procedure should clearly define project boundaries in order to provide comprehensive project-wide scope to the complaints submitted to the PCM.

Relevant EBRD Policy

The definition of the “Relevant EBRD Policy” limits the policies under the purview of the PCM to provisions under the past Environmental Policy and Procedures, the existing Environmental and Social Policy and project specific provisions of the Public Information Policy.

This definition is too restrictive because other policies related to the economic and financial evaluation and content of projects may also have significant adverse effects on affected people.

We would like to note in this respect that the European Investment Bank poses no policy restrictions on the complaints brought to its accountability mechanism.⁶ And that all operational policies – and not only the so-called “safeguard policies – fall under the purview of the independent World Bank Inspection Panel. The ADB Compliance Review Panel is not restricted to environmental and social policies either.

Under the currently proposed Policy framework, the EBRD in fact departs from its firmer requirement under the 2003 IRM Policy which deemed that: “In addition, the independent expert may consider compliance with other Bank policies that are related to the possible violation of the Environmental Policy or the project-specific provisions of the Public Information Policy which is the subject of the compliance review, if so directed in the expert's terms of reference”.

Furthermore, the definition of the “Relevant EBRD Policy” limits the PCM jurisdiction to project specific provisions of the Public Information Policy. We believe that all provisions of the Public Information Policy should be subject of the PCM, and include:

- (a) Project unrelated information which might relate to the matters of the environment and thus be subject of the requirements of the Aarhus Convention that is guiding EBRD policies
- (b) Other information not exclusively related to the environment, whose disclosure demonstrates the EBRD's commitment to good governance. The implementation of the information disclosure should be subject to independent compliance.

⁶ “The EIB Complaints Mechanism applies to all complaints of maladministration lodged against the EIB Group. Decisions concerning the investment mandate of the EIB, its credit policy guidelines or the EIB's participation in financing operations fall outside the scope of the present Mechanism.” Complaints Mechanism Policy. EIB. 2008. Paragraph 10.1

“The EIB Complaints Mechanism concerns any of the Group's activities with the exclusion of complaints concerning allegations of fraud or corruption, which fall within the mandate of the EIB Inspectorate General – Fraud Investigation Unit as well as of complaints lodged by the EIB Group's staff.” Complaints Mechanism Policy. EIB. 2008. Paragraph 10.2

While we welcome the possibility of submitting information complaints to the PCM in project-related cases involving harm, we would like to note that the EBRD lacks a proper independent appeal system for project non-specific information related complaints.

The internal appeal to the Secretary General is not an independent level of appeal as the Secretary General is a member of senior Management, who is in charge of the reviews of the Public Information Policy and who oversees the implementation of the disclosure requirements by the bank staff.

Such multiple functions naturally raise questions relevant to conflict of interest. The current mechanism of a formal appeal with the Secretary General does not provide independence that is necessary for an effective compliance mechanism which would be in line with the widely accepted international standards of good governance.

The example of the Asian Development Bank, which in 2005 created its Public Disclosure Advisory Committee made up of bank officials only for it to subsequently turn down every appeal sent to it, demonstrates clearly the need for an independent review of disclosure of information decisions.

The EBRD should have an independent appeal body for those dissatisfied by the Secretary General's response to their information appeals.

The PCM could duly exercise the independent appeal function if its purview is expanded to the entire Public Information Policy. Two complaints submitted to the IRM in 2006, against the Secretary General's failure to fulfil his appeal processing mandate, and against the EBRD non-disclosure of the date of Public Information Policy entry in force, clearly demonstrate the formal shortcomings of the IRM as an appeal body for information disclosure complaints. These could be removed under the new Rules of Procedure at the PCM.

Recommendations:

- ✓ *The PCM should be able to review compliance with all EBRD policies related to lending operations.*
- ✓ *The purview of the PCM should be expanded to all the provisions of the Public Information Policy, so as to allow it to exercise an independent appeal function for those dissatisfied by the Secretary General's response to their information-related complaints.*

2. WHO MAY SUBMIT A COMPLAINT

Paragraph 1

Paragraph 1 of the draft Rules of Procedure provides that “two or more individuals [...] may submit a Complaint seeking a Problem-solving Initiative”. Such procedural provision impedes

individuals affected by projects to file claims to the PCM. Moreover, it violates the Aarhus Convention which explicitly obliges its Parties to ensure that individuals have access to review procedures.

Specifically, Article 9.2 of the Aarhus Convention states that: “Each Party shall [...] ensure that members of the public concerned [...] have access to review procedures [...] to challenge the substantive and procedural legality of any act [...]”.

Article 2.4 of Aarhus Convention defines public as: “one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups.”

An individual should have equal access to file a claim with the EBRD accountability mechanism as a group. We would like to note in this respect that the European Investment Bank provides for individual standing at its accountability mechanism.⁷

Paragraph 1 also prevents organisations from accessing the Problem-solving Initiative.

To be absolutely clear, due to particular social or political conditions and possibly the fear of reprisal (situations which are not uncommon – still – in the region of central and eastern Europe), individuals might prefer to seek the Problem-solving Initiative through an organisation rather than as individuals. This provision might also prevent organisations that are concerned about impacts on the protected area, species, adjacent communities or affected workers, from addressing their issues through the Problem-solving Initiative.

At the consultation workshop, no rationale was given for the proposed restriction. Given the aforementioned reasons, organisations should be allowed to seek a Problem-solving Initiative in cases where it would difficult or risky for individuals to pursue this option or where they bring legitimate concerns over the project impacts on the environment, population or workers.

An additional restriction arises from the requirement that complainants should be “from impacted area”.

In some cases individuals or organisations could have legitimate interests in the impacted area although they are not physically based within its boundaries. For example, they can use the impacted area for recreational and other purposes.

We would note that some IFIs, such as the Asian Development Bank, provide for non-local representatives to submit complaints, in exceptional cases where local representation cannot be found.⁸

⁷ “Any person or group who allege there may be a case of maladministration within the EIB Group, including any person or group with an interest in the environmental, developmental or social impacts of the EIB Group’s activities, can lodge a complaint.” Complaints Mechanism Policy. EIB. 2008. Paragraph 11.2.1

⁸ Asian Development Bank. Review of the Inspection Function: Establishment of a New Accountability Mechanism. May 2003. Article 68. Who Can File a Complaint.

Recommendations:

- ✓ *In line with the Aarhus Convention requirements, the EBRD should ensure the open access to the Problem-solving Initiative to individuals who are regarded as legitimate representatives of public.*
- ✓ *Organisations should also be allowed to seek the Problem-solving Initiative in cases where it would be difficult or risky for individuals to pursue this option or where they bring legitimate concerns over the project impacts on the environment, population or workers.*
- ✓ *Individuals and organisations based outside of the impacted area should have the right to complaints under the Problem-solving Initiative as they may have legitimate interests in the impacted area.*

Paragraph 2

We commend the EBRD for granting the access of the organisations to the Compliance Review in the draft Rules of Procedure.

This has addressed a significant shortcoming of the Independent Recourse Mechanism, the Rules of Procedure of which failed to provide unrestricted access to the accountability mechanism to organisations.

As noted on previous occasions, this past provision was in contradiction with the Aarhus Convention (articles 9.2 and 2.5) which states that non-governmental organisations are considered as members of the public concerned and, therefore, NGOs should have access to the review procedures.⁹

The issue of concern is the Paragraph 2 requirement that “organisations filing a Complaint must provide documentation to establish that they are registered as a NGO in a member country of the Bank”. While we fully appreciate the EBRD’s intention to deal only with legitimate organisations, we find this requirement to be highly problematic in countries which still cling to rigid and sometimes restrictive and discriminatory NGO registration laws, as in Russia, Uzbekistan and other Central Asian countries.

We would like to note in this respect that while in these countries NGOs, citizen initiatives and professional associations may be promoting genuine civic interests they may be operating outside of the national legislation for the sake of maintaining independence from state control.

⁹ “Each Party shall [...] ensure that members of the public concerned ... have access to review procedures ... to challenge the substantive and procedural legality of any act [...]”. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. 1998. Article 9.2

The Article 2.5 of the Aarhus Convention defines members of the public concerned as: “public affected or likely to be affected by, or having an interest in, the environmental decision making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.” Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. 1998. Article 2.5

It is therefore crucial that the EBRD allows access to the PCM to civil society groups, professional associations and other organisations that may act outside of the national legal regulations and removes a requirement of registration from the Rules of Procedure. Demonstrating an organisation's interest in the matter (by, for example, its good faith efforts in addressing the concerns with the bank or the project sponsor) should be sufficient to hold a complaint eligible.

Paragraph 2 of the draft Rules of Procedure provides that “two or more individuals [...] may submit a Complaint seeking a Compliance Review”.

We find this requirement to violate the Aarhus Convention, that explicitly obliges its Parties to ensure that individuals have access to review procedures (for details, see the observations on RP, Paragraph 1 above).

Recommendations:

- ✓ *The EBRD should grant access to the PCM to civil society groups, professional associations and other organisations that may have interest in the project and removes a requirement of organisation's registration from the Rules of Procedure. Demonstrating an organisation's interest in the matter (by, for example, its good faith efforts in addressing the concerns with the Bank or the project sponsor or its standing in the affected community) should be sufficient to hold a complaint eligible.*
- ✓ *In line with the Aarhus Convention requirements, the EBRD should ensure the open access to the PCM Compliance Review to individuals who are regarded as legitimate representatives of the public.*

3. HOW TO SUBMIT A COMPLAINT

Paragraph 4

Paragraph 4 stipulates that “a Complainant who is not an organisation may ask that the identity of some or all of the individuals be kept confidential”. It is believed that there are security reasons which may require that identity of organisations submitting complaints, particularly those operating in the Former Soviet Union countries, is kept confidential by the PCM. We would like to note that other IFIs such as the Asian Development Bank do guarantee that the identity of both individual and organisations complainants will be kept confidential upon request.¹⁰

Paragraph 4 also provides that “the request for confidentiality, and the reasons for the request, must be included in the Complaint”. For obvious reasons, such request and reasoning should be included as a confidential Annex to the Complaint, and not as a part that may become publicly available.

¹⁰ Asian Development Bank. Review of the Inspection Function: Establishment of a New Accountability Mechanism. May 2003. Article 69. How to File a Complaint.

Recommendations:

- ✓ *The PCM Rules of Procedure should allow for confidentiality to complainant organisations in the same manner as to the individuals. It is believed that there are security reasons which may require that identity of organisations submitting complaints, particularly those operating in the Former Soviet Union countries, is kept confidential by the PCM.*
- ✓ *The PCM Rules of Procedure should provide that the request for confidentiality and reasoning be included as a confidential Annex to the Complaint.*

4. LANGUAGE OF COMPLAINTS

Paragraph 6

We welcome the EBRD's decision to recognise and maintain communication in the official languages of the countries of its operation if that used by the claimant differs from the four working languages at the bank. We view this provision as an enhancement of the access of civil society members to accountability at the EBRD.

5. WHERE TO SUBMIT A COMPLAINT

Paragraph 8

While we welcome the EBRD's decision to adopt multiple channels for submitting the communication with the PCM, we note that electronic mail is not included among the proposed means of correspondence. Limiting the communication to the posted and fax forms increases the risks of lost mail, particularly in countries with unreliable postal service, adds to the costs and may lead to unnecessary time delays. We would therefore propose that communication with the PCM can take place via e-mail. This form of communication is user-friendly and reliable.

Recommendations:

- ✓ *The PCM rules of Procedure should provide that communication with the PCM can take place through e-mail. Limiting the communication to the posted and fax forms increases the risks of lost mail, particularly in countries with unreliable postal service, adds to the costs and finally may lead to unnecessary time delays.*

6. REGISTRATION OF COMPLAINTS

Paragraph 10

While we recognise positively the basic character of registration requirements applicable to claims, we find the provision of Paragraph 10/e claiming that "if the Complainant is an organisation, it

must affix its seal” as excessively bureaucratic. Also, in some countries there is no requirement for an organisation to have a seal and a signature of its representatives is sufficient. We recommend the EBRD to remove or liberalise this provision, which could otherwise impede equitable access to the PCM. The requirement can be modified accordingly: “includes the signature of the Complainant or Authorised Representative, if any; if the Complainant is an organisation, it is requested to include signature of its representative and affix a seal if it has one”.

Recommendations:

- ✓ *We recommend the EBRD to remove or liberalise the provision requiring the sealing of the claim as it impedes equitable access to the PCM to unregistered organisations or organisations with different by-laws. The requirement can be modified accordingly: “includes the signature of the Complainant or Authorised Representative, if any; if the Complainant is an organisation, it is requested to include signature of its representative and affix a seal if it has one”.*

Paragraph 11

In cases where the complaint is not registered, the PCM Officer should release the complaint in the online public registry provided the Complainant gives consent for this release. This might help the Complainant to seek assistance with correcting shortcomings in the document in case he or she wishes to resubmit the complaint. The unregistered complaint can also stand as a learning example of what shortcomings to avoid for other potential Complainants.

Recommendations:

- *We recommend releasing the unregistered complaints in cases where the Complainant provides due consent. This might help the Complainant to seek assistance with correcting shortcomings in the document in case he or she wishes to resubmit the complaint. The unregistered complaint can also stand as a learning example of what shortcomings to avoid for other potential Complainants.*

7. DETERMINING ELIGIBILITY OF COMPLAINTS

Paragraph 18

Paragraph 18.a.i defines an opening point in the project cycle from which a claim can be held eligible under the Problem-solving Initiative. This is as soon as “the Bank has provided a clear indication that it is interested in financing the Project (such indication would usually be provided if the project has been approved by the Bank’s Technical Cooperation Committee or has passed Final Review by the Bank’s Operations Committee)”.

It needs to be said that the EBRD Public Information Policy provides no grounds for the public to learn about any one project’s approval by the Bank’s Technical Cooperation Committee and very loose grounds for external stakeholders to be informed about any one project’s passing of the Final Review by the bank’s Operations Committee. As a result, the public cannot easily learn about the

project's processing stage and it can take considerable time to find out. It should be noted that the earlier a complaint is received in the project cycle, the easier it should be for the EBRD to deal with it through additional consultations or agreed changes in project design or conditionality.

It should be recalled that the public can learn about the project's stage in two ways, either from the Project Summary Document (PSD) or from the Environment and Social Impact Assessment (ESIA) announcement (applicable, though, only to category A projects). As it will be demonstrated below, the EBRD's disclosure provisions act as a barrier to the early informing of the public about the project stage and therefore limit any meaningful engagement in the PCM for those affected.

The EBRD Public Information Policy guarantees that private sector project PSDs be released 30 days prior to consideration of the project by the Board of Directors,¹¹ and that public sector project PSDs are released "as soon as possible after the project has passed its Concept Review by the Bank's management (typically 4-5 months before Board consideration), and at least 60 days before Board discussion".¹²

The disclosure policy also rules that ESIA announcements are released "at least 60 days prior to consideration of the project by the Board of Directors for private sector projects and 120 days prior to Board consideration for public sector projects".¹³ Altogether, these provisions are ineffective for informing the public at the moment when the project has received an approval by the bank's Technical Cooperation Committee or when it has passed the Final Review.

Nevertheless, even if the disclosure provisions were amended as per the suggestions above, we are convinced that the project remains at a too advanced stage for the affected party to be able to influence effectively its further development by the time it reaches the approval of the Technical Cooperation Committee or passes the Final Review. The project design is a fait accompli by the time it reaches the final review and there is limited chance to modify it in case of shortcomings in the appraisal stage. As an example, crucial debates related to the project design of the Sakhalin II Phase 2 oil and gas extraction project, or currently the Western High Speed Diameter in Russia, took place precisely prior to the project's reaching of the Final Review.

The public should therefore have access to the Problem-solving Initiative under the PCM from the very start of the project appraisal process in the bank – namely at least from the Concept Review stage. Such ante position of the opening point in the project cycle from which a claim can be held eligible for a Problem-solving Initiative would need to be accompanied by amendments to the disclosure procedures of the bank to allow timely and pro-active informing of the public about the project's state.

As a matter of comparison, the World Bank Inspection Panel may receive complaints from the project design stage. Normally, the public is informed about the project through the publication of a Project Information Document (PID) on the World Bank's website. The PID should be issued even before the Concept Review Meeting.

¹¹ Public Information Policy. EBRD. 2008. Paragraph 3.1.2.

¹² Public Information Policy. EBRD. 2008. Paragraph 3.1.3.

¹³ Public Information Policy. EBRD. 2008. Paragraph 3.4.1.

Paragraph 18.a.ii defines an end point in the project cycle by which a claim can be held eligible under the Problem-solving Initiative. This is either 12 months after the date of the physical completion of the Project or within 12 months after “the date of the Bank’s final disbursement of funds for the Project” or “the date of cancellation of any amount not yet disbursed as this date is determined by the Bank”.

While the 12 months benchmark provides relative comfort to the affected communities seeking solution to their problems at the PCM, the current disclosure provisions of the EBRD Public Information Policy do not provide for timely informing of the public about the project status.¹⁴ The current format of PSDs does not list the date of the physical completion of the project.¹⁵

Similarly, under the current EBRD’s disclosure rules, those parties affected would not easily know if the project funds have been disbursed or whether the final disbursement was cancelled. Local communities can take an extensive time period to find out about the status of a project; the EBRD could be proactive in supplying the information they would otherwise have to seek at some risk of major time delay. The provision under Paragraph 19 cannot become truly functional unless the EBRD starts disclosing the dates of the physical completion of projects, as a minimum.

Recommendations:

- ✓ *The public should have access to the Problem-solving Initiative under the PCM from the very start of the project appraisal process in the bank that is at least from the Concept Review stage. Such ante position of the opening point in the project cycle from which a claim can be held eligible for a Problem-solving Initiative would need to be accompanied by amendments to the disclosure procedures of the bank to allow timely and pro-active informing of the public about the project’s state.*
- ✓ *The EBRD needs to ensure disclosure of dates of physical completion of projects, as a minimum, so that the end timeline in the project cycle by which a claim can be held eligible under the Problem-solving Initiative can become truly operational.*

Paragraph 19

In the light of the observations made in the earlier paragraph, it appears awkward that different conditions for eligibility apply to complaints related to the Problem-solving Initiative and the Compliance Review. We would like to reiterate that the appraisal stage is the most crucial stage for the effective engagement of those communities that are concerned about potential adverse impacts or who are aware of any given project’s formal shortcomings. The project design is a fait accompli by the time it is approved for financing and there is limited chance to modify it – in the case of identified shortcomings – during the appraisal stage.

The public should therefore have access to the Compliance Review under the PCM from the very start of the project appraisal process in the bank that is at least from the Concept Review stage.

¹⁴ “PSDs will be updated, if material changes as approved by the Board, are made to the project following the release of the original PSD.” Paragraph 3.1.6. EBRD Public Information Policy. 2008.

¹⁵ As an example see: Maritza East III Power Project PSD.
<http://www.ebrd.com/projects/psd/psd2002/5877.htm>

Such ante position of the opening point in the project cycle from which a claim can be held eligible for Compliance Review would need to be accompanied by amendments to the disclosure procedures of the Bank to allow timely and pro-active informing of the public about the project's state.

Paragraph 19 omits definition of an end point in the project cycle by which a claim can be held eligible under the Compliance Review. The same requirements as in the case of the Problem-solving Initiative should apply to the Compliance Review. They should also be accompanied by amendments to the Public Information Policy to ensure pro-active and timely disclosure of the project completion date.

Recommendations:

- ✓ *The public should have access to the Compliance Review under the PCM from the very start of the project appraisal process in the bank that is at least from the Concept Review stage. Such ante position of the opening point in the project cycle from which a claim can be held eligible for a Problem-solving Initiative would need to be accompanied by amendments to the disclosure procedures of the bank to allow timely and pro-active informing of the public about the project's state.*
- ✓ *Paragraph 19 omits definition of an end point by which a claim can be held eligible under the Compliance Review. The same requirements as in the case of the Problem-solving Initiative should apply to the Compliance Review. They should be also accompanied by amendments to the Public Information Policy to ensure pro-active and timely disclosure of the project completion state.*

Paragraph 20

For a claim to be held eligible for Problem-solving Initiative and Compliance Review, it should include among other things “if applicable, details of the Relevant EBRD Policy at issue in the Complaint”.

While the provision of identification of specific violations of the bank's policies can help for quicker analysis of the issues by the experts, it may also place excessive burden on the affected communities and deter them from filing the claims out of the fear of technicalities. A project affectees' description of the harm suffered or likely to be suffered from EBRD operations should act as a sufficient requirement of eligibility in case the affectee does not feel knowledgeable enough to specify the policy at issue. On the basis of the described harm, the PCM could determine itself what specific operational policies and provisions may have been violated. We propose that the wording of the paragraph is adjusted accordingly: “The Complainants are encouraged to provide details of the Relevant EBRD Policy at issue in the Complaint”.

The ADB's existing accountability mechanism¹⁶ and the World Bank Inspection Panel¹⁷ no longer require that a claimant cites specific policy violations and it simply requires the party affected to describe the harm.

¹⁶ Asian Development Bank. Review of the Inspection Function: Establishment of a New Accountability Mechanism. May 2003. Article 70. Contents of the Complaint.

Recommendations:

- ✓ *The provision to provide "details of the Relevant EBRD Policy at issue in the Complaint" might place excessive burden on the affected communities and discourage them from filing the claims for the fear of technicalities. A project affectee showing the harm suffered or to be suffered from the Bank operations should act as a sufficient requirement of eligibility in case the details of the policy at issue are missing from the complaint. We propose that the wording of the paragraph is adjusted accordingly: "The Complainants are encouraged to provide details of the Relevant EBRD Policy at issue in the Complaint, if applicable".*

Paragraph 21

Paragraph 21 (a) poses an already mentioned restriction on accessibility to the PCM due to the requirement that complainants should be "located in Impacted Area". In some cases individuals or organisations could have legitimate interests in the impacted area, although they are not physically based within its boundaries. For instance, they may use the impacted area for recreational and/or other purposes.

We would note that some IFIs, such as the Asian Development Bank, provide for non-local representatives to submit complaints, in exceptional cases where local representation cannot be found.¹⁸

Recommendations:

- ✓ *Individuals and organisations based outside of the impacted area should have the right to lodge complaints under the Problem-solving Initiative as they may have legitimate interests in the impacted area.*

¹⁷ The 1999 Clarifications of the Resolution that established the Inspection Panel Paragraph 9. C includes among the "technical eligibility" criteria the following: "The request does assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the requester". Based on this provision the Panel does not require a specific reference to the policies and procedures. Furthermore, Paragraph 2 of the Resolution that established the Panel provides that policy violations include "situations where the Bank is alleged to have failed in its follow-up on the Borrower's obligations under loan agreements with respect to such policies and procedures."

¹⁸ Asian Development Bank. Review of the Inspection Function: Establishment of a New Accountability Mechanism. May 2003. Article 68. Who Can File a Complaint.

Paragraph 23

This should clarify that the “actions or inactions that are the responsibility of the Bank” referred to in the sub-paragraph include situations where the EBRD has failed to monitor and follow-up on a client’s obligations to apply the relevant EBRD policies to the project in question, as provided in the legal agreements between the EBRD and the client. Otherwise, inaction by the EBRD with respect to harm caused by a client as a result of a violation of its contractual obligations would not be investigated by the PCM, on the premise that the client is solely responsible for that harm.

In this respect we would like to recall the practice of the IFC Compliance Advisor/Ombudsman who in the framework of the compliance audit within IFC/MIGA examines whether “the failure to address social or environmental issues as part of the review process resulted in outcomes that are contrary to the desired effect of the policy provisions”.¹⁹

Recommendations:

- ✓ *The Rules of Procedure should clarify that the “actions or inactions that are the responsibility of the Bank” include situations where the EBRD has failed to monitor and follow-up on a client’s obligations to apply the relevant EBRD policies to the project in question, as provided in the legal agreements between the EBRD and the client. Otherwise, inaction by EBRD with respect to harm caused by a client as a result of a violation of its contractual obligations would not be investigated by the PCM, on the premise that the client is solely responsible for that harm.*

Paragraph 24

As set out in Paragraph 24. e., the PCM refuses to accept complaints for the compliance review if they “relate to the adequacy or suitability of EBRD policies.” The PCM cannot judge the suitability, adequacy or quality of policies if these give rise to unacceptable harm nor can it register as eligible complaints that raise such issues. In other words, even if the EBRD’s standards are inherently flawed, the PCM will not deal with complaints from citizens negatively impacted by EBRD-financed projects if a bank policy says the EBRD has done nothing wrong.

This limitation is regarded as unreasonable, considering that the task of the Compliance Review is to identify potential cases of non-compliance with policies and procedures and address the findings “at the level of EBRD systems or procedures to avoid a recurrence of such or similar occurrences”. Bearing in mind that there is a policy and procedure assessment function already incorporated in the Compliance Review, there would appear to be no reason for not formalising this competence.

The PCM should be able to advise the EBRD on the improvement of lending portfolios, policies and procedures that lead to systematic environmental, social and developmental negative impacts under the Compliance Review, and if applicable under the Problem-solving Initiative.

¹⁹ Compliance Advisor/Ombudsman Operational Guidelines. IFC. Article 3.3.3. Appraising audit requests.

We would like to recall the specific advisory role of the IFC Compliance Advisor/Ombudsman who can examine and advice on general concerns relating to the application of a policy, guideline, or procedure that may adversely affect social and environmental outcomes. The advisory role focuses on “bringing about systemic improvements in environmental or social performance of IFC/MIGA by addressing deficiencies in systems, policies, guidelines, or procedures, or their interpretation or application” and “helping IFC/MIGA understand how their environmental or social obligations may be met more effectively”.²⁰

Recommendations:

- ✓ *The PCM should be able to advise the EBRD on the improvement of lending portfolios, policies and procedures that lead to systematic environmental, social and developmental negative impacts under the Compliance Review, and if applicable under the Problem-solving Initiative.*

Paragraph 25

This mentions that “Relevant Parties”, including the complainant, “may also” be consulted during the Eligibility Assessment process. The Rules of Procedures should explicitly require the PCM to consult the complainant and other parties throughout the eligibility assessment in order to make a fully informed decision. The wording of the paragraph should be adjusted accordingly to: “In conducting the Eligibility Assessment, the Eligibility Assessors will consider the Bank Response to the Complaint and will also consult with any of the Relevant Parties [...]”.

Recommendations:

- ✓ *The Rules of Procedures should explicitly require the PCM to consult the complainant and other parties throughout the eligibility assessment in order to make a fully informed decision. The wording of the paragraph should be adjusted accordingly to: “In conducting the Eligibility Assessment, the Eligibility Assessors will consider the Bank Response to the Complaint and will also consult with any of the Relevant Parties [...]”.*

Paragraph 27

The engagement of the complainant in the entire complaint-processing cycle is essential for a well-informed and accountable handling of the case. In the light of remarks in Paragraph 25, the complainant should be given also the opportunity to comment on the Management Response to the Complaint and, importantly, on the Eligibility Assessment Report. The Complainant’s comments should be attached to the documentation going as information to or the approval of the board or the president.

²⁰ Compliance Advisor/Ombudsman Operational Guidelines. IFC. Article 4.2.2 Determining the objectives and scope of advice

Recommendations:

- ✓ *The complainant should be given also the opportunity to comment on the Management Response to the Complaint and, importantly, on the Eligibility Assessment Report. The Complainant's comments should be attached to the documentation going as information to or the approval of the board or the president.*

Paragraph 29

We commend the EBRD for proposing an amendment to the Rules of Procedure which no longer requires the president's or board's approval of the Eligibility Assessment Report. This change streamlines significantly the Eligibility Assessment process.

8. CONDUCT OF A PROBLEM-SOLVING INITIATIVE

Paragraph 31

An explanation of reasons should accompany the president's decision, in cases where he does not approve a Problem-solving Initiative. The justification should be made publicly available.

Recommendations:

- ✓ *In cases where a Problem-solving Initiative is being rejected, the president should provide a justification for his or her decision. The justification should be made publicly available.*

Paragraph 34

The EBRD is congratulated for making a commitment to concrete benchmarks for monitoring the implementation of the agreements reached during a Problem-solving Initiative, such as the issuing of the Problem-solving Initiative Monitoring Reports with at least a biannual interval. It is recognised that the follow-up and effective monitoring is crucial for successful implementation of the resolution of the dispute. In order to make this measure even more effective, we suggest that the draft Monitoring Reports be disclosed to the Relevant Parties for comments, and only then be circulated to the president and the board.

9. CONDUCT OF A COMPLIANCE REVIEW

Paragraph 37

Site visits are listed among the methods of conducting the Compliance Review. We reiterate our recommendation that field visits become an inherent part of each Compliance Review and act as a complementary method to the desk-top review method.

Paragraph 41

While according to Paragraph 41, the EBRD Management can comment on the draft Compliance Review Report in a Management Action Plan, the claimant is not given an opportunity to present his or her views on potential contentious points of the Report. The PCM should ensure that the claimant be informed and engaged at all stages of the Compliance Review process on an equal footing with the management. The claimant should be therefore given the opportunity to provide input on the draft Compliance Review report.

The ADB Accountability Mechanism indeed provides for the claimant to be able to comment on the draft Compliance Review report before the panel submits it to the board of directors.²¹ The responses from the claimants and management ought to be attached to the final Compliance Review report and made publicly available after the board's decision.²²

Importantly, the Management Action Plan should be prepared in consultation with the claimant and project affectees in order to ensure that remedial actions truly address their concerns or harm. As direct project affectees, the claimants can provide first hand observations on what remedies can provide solutions to their problems and bring the project back on the track of the compliance. Without claimants' participation in the development of the Management Action Plan, the EBRD risks that the plan imposed by the management may fall short of adequate resolution of the problems.

Recommendations:

- ✓ *The PCM should ensure that the claimant has equal right as the management to comment on the draft Compliance Review report before the panel submits it to the board of directors. The claimant's comments should be made available to the board for acceptance and posted together with the final report to the EBRD website.*
- ✓ *The Management Action Plan should be prepared in consultation with the claimant and project affectees in order to ensure that remedial actions truly address the concerns or harm.*

²¹ "At the completion of its review of compliance, CRP [Compliance Review Panel] will issue a draft report of its findings and recommendations to Management and the requester for comments." Asian Development Bank. Review of the Inspection Function: Establishment of a New Accountability Mechanism. May 2003. Article 124. Step 6: CRP's Draft Report.

"Both Management and the requester will have 30 days from receipt of CRP's draft report to provide their responses to it. Each party is free to provide comments on the draft report, but only CRP's final view on these matters will be reflected in its final report." Asian Development Bank. Review of the Inspection Function: Establishment of a New Accountability Mechanism. May 2003. Article 125. Step 7: Management's Response and Requester's Response to CRP's Draft Report.

²² "Within 21 days from receipt of CRP's final report, the Board will consider the report and make the final decision regarding any recommendations on how to bring the project into compliance and/or mitigate any harm, if appropriate. Within 7 days from the Board's decision, the Board decision and CRP's final report, with the responses attached, will be released to the requester, and then posted on the web site." Asian Development Bank. Review of the Inspection Function: Establishment of a New Accountability Mechanism. May 2003. Article 127. Step 9: Board's Decision.

Paragraph 44

The EBRD is applauded for making the commitment to concrete benchmarks for monitoring the implementation of the remedial actions designed as a result of the Compliance Review inspection, such as the issuing of the Compliance Review Monitoring Reports with at least a biannual interval. It is recognised that the follow-up and effective monitoring is crucial for successful implementation of the resolution of the dispute. In order to make this measure even more effective, we suggest that the draft Monitoring Reports be disclosed to the Relevant Parties for comments, and only then be circulated to the president and the board.

10. ROLE OF THE CCO, PCM EXPERTS AND PCM OFFICER

Paragraph 45

The Rules of Procedure charge the Chief Compliance Officer (CCO) with responsibility to supervise the PCM Officer and oversee the proper functioning of the mechanism. We would like to note that such construction is quite unique among accountability mechanisms at other IFIs and could be regarded as a compromise to the independence of the PCM. The EBRD should strengthen the provisions protecting the independent status of the PCM either through establishing the direct reporting function of the PCM Officer to the Board of Executive Directors and/or the President or through CCO's reporting to the Board of Executive Directors and/or the President on the PCM Officer's acts. In this latter case, the CCO would be accountable to the Board for the PCM officer's actions or lack thereof.

Recommendations:

- *The EBRD should strengthen the provisions protecting the independent status of the PCM either through establishing the direct reporting function of the PCM Officer to the Board of Executive Directors and/or the President or through CCO's reporting to the Board of Executive Directors and/or the President on the PCM Officer's acts. In this latter case, the CCO would be accountable to the Board for the PCM officer's actions or lack thereof.*

Paragraph 47

We commend the Bank for enhancing the transparency of the procedures for nomination of the PCM experts. The involvement of external people in the nomination committee and experts selection process should reinforce the independence of the PCM. However, the procedures should be elaborated further and specify how the internal and external committee members can be nominated, what the conditions of such nomination are and how the committee members will be selected. It is unclear whether representatives of the bank's management, civil society organisations or clients could become members of the committee; neither is it clear what the proportion between internal and external members of the nomination committee will be.

Recommendations:

- ✓ *The procedures should be elaborated further and specify how the internal and external committee members can be nominated, what the conditions of such nomination are and how the committee members will be selected.*

Paragraph 55

In contrast to the PCM experts who upon the completion of their term of service are not entitled to work for the EBRD at all, the PCM Officer upon completion of his or her term is not “entitled to work for the Bank (either as a staff member, Bank official, Director, Alternate Director, Director’s Adviser or consultant) for at least the three (3) years immediately following”. This difference is striking considered that the responsibilities of the PCM officer outweigh those of the PCM experts. Posterior employment of the PCM officer in the bank might provoke questions over his or her actual independence. It is therefore advised that the PCM Officer has the same post-employment bar as the PCM experts.

Recommendations:

- ✓ *The same post-employment bar (not entitled to work for the EBRD at all) that applies to the PCM experts upon completion of the term of service should apply to the PCM Officer, in order to guarantee actual independence.*

Paragraph 57

We recognise positively that the EBRD is placing importance on PCM outreach by establishing the responsibility of the mechanism members to “develop and implement an outreach program to effectively inform people in EBRD countries of operations, NGOs, and civil society groups about the PCM”. The PCM outreach program should be disclosed and consulted with external stakeholders as they can offer ideas for effective ways how the PCM could reach out to the potentially affected communities.

We would like to note that, in order to pursue effective outreach activities over distance and in the borrowing countries, the PCM will need adequate budget allocation.

Recommendations:

- ✓ *The PCM outreach program should be disclosed and consulted with external stakeholders as these can offer ideas for effective ways how the PCM could reach out to the potentially affected communities.*
- ✓ *In order to pursue effective outreach activities, the PCM will need adequate budget allocation.*

Paragraph 60

Paragraph 60 on Access to Staff, Information and Confidentiality imposes that “the PCM Officer’s and Expert’s access to, use and disclosure of, information gathered during their respective activities will be subject to the Bank’s Public Information Policy and any other applicable requirements to maintain sensitive information confidential.” We believe that PCM staff should have unrestricted access to all the project-related information possessed by the bank and its clients.

Furthermore, a literal reading of this provision could suggest that the PCM Officer's and Expert's access to project information may be limited to information that is available to the public at large. No accountability mechanism can perform meaningful compliance review without full access to all relevant project documents and other records. This section should be reformulated in a way to grant the PCM Officer and Experts with unrestricted access to all the information possessed by the bank and to the project-related information possessed by its clients.

When it comes to disclosure, we would like to note the provision put forward by the Aarhus Convention Article 4. 6. which provides that: "Each Party shall ensure that, if information exempted from disclosure [...] can be separated out without prejudice to the confidentiality of the information exempted, public authorities make available the remainder of the environmental information that has been requested." We encourage the EBRD to ensure that PCM staff discloses information exempted of sensitive information whenever possible.

Recommendations:

- ✓ *PCM staff should have unrestricted access to all the information possessed by the bank and to the project-related information possessed by its clients.*
- ✓ *Eliminate the words "access to" from the second sentence of Paragraph 60.*

11. GENERAL PROVISIONS

Paragraph 65

According to Paragraph 65, it is the responsibility of the Chief Compliance Officer to compose the PCM budget. We find this provision unsatisfactory given the lack of CCO's direct involvement in the day-to-day work of the PCM. We are convinced that the PCM Officer has better insight into the budgetary resources required for the PCM activities and should therefore be responsible for the composition of the budget. We are also afraid that CCO's influence in the budgetary matters of the PCM could be interpreted as undue interference in the mechanism's independence.

Recommendations:

- *The PCM Officer has better insight into the budgetary resources required for the PCM activities than the CCO and should therefore be responsible for the composition of the budget. CCO's influence in the budgetary matters of the PCM could be interpreted as undue interference in the mechanism's independence.*

Summary

STANDING:

1. In line with the Aarhus Convention requirements, the EBRD should ensure the open access to the PCM Problem-solving Initiative to individuals who are regarded as legitimate representatives of public.

2. Organisations should also be allowed to seek a Problem-solving Initiative in cases where it would be difficult or risky for individuals to pursue this option or where they bring legitimate concerns over the project impacts on the environment, population or workers.
3. Individuals and organisations based outside of the impacted area should have the right to complaints under the Problem-solving Initiative as they may have interest in the impacted area.
4. The EBRD should grant access to the PCM to civil society groups, professional associations and other organisations that may have legitimate interest in the project and removes a requirement of organisation's registration from the Rules of Procedure. Demonstrating organisation's interest in the matter (by i.e. its good faith efforts in addressing the concerns with the Bank or the project sponsor) should be sufficient to hold a complaint eligible.
5. The Rules of Procedure should explicitly describe in general terms what type of organisations – such as NGOs, professional associations, citizen initiatives, etc. – can file complaints at the PCM in order to ensure that their representatives understand clearly that they have the right to access the accountability mechanism.

ACCESSIBILITY:

1. The PCM Rules of Procedure should provide confidentiality to complainant organisations in the same manner as to the individuals. It is believed that there are security reasons which may require that identity of organisations submitting complaints, particularly those operating in the Former Soviet Union countries, is kept confidential by the PCM.
2. We recommend the EBRD to remove or liberalise the provision requiring the sealing of the claim as it impedes equitable access to the PCM to unregistered organisations or organisations with different by-laws.
3. The PCM Rules of Procedure should ensure that the request for confidentiality and reasoning be included as a confidential Annex to the Complaint.
4. The PCM rules of Procedure should provide that communication with the PCM can take place through e-mail. Limiting the communication to the posted and fax forms increases the risks of lost mail, particularly in countries with unreliable postal service, adds on the costs and finally leads to unnecessary time protractedions.
5. The provision to provide "details of the Relevant EBRD Policy at issue in the Complaint" might place excessive burden on the affected communities and discourage them from filing the claims for the fear of technicalities. A project affectee showing the harm suffered or to be suffered from the Bank operations should act as a sufficient requirement of eligibility in case the details of the policy at issue are missing from the complaint.
6. We recommend releasing the unregistered complaints in case the Complainant provides the consent. This might help the Complainant to seek assistance with correcting shortcomings in the document in case he wishes to resubmit the complaint. The unregistered complaint can also stand as a learning example of what shortcomings to avoid for other potential Complainants.

POLICY AND PROJECT FRAMEWORK:

1. The PCM should be able to review compliance with all EBRD policies related to lending operations.

2. The PCM should be able to advise the EBRD on the improvement of lending portfolios, policies and procedures that lead to systematic environmental, social and developmental negative impacts under the Compliance Review and if applicable under the Problem-solving Initiative.
3. The purview of the PCM should be expanded to the entire Public Information Policy so it is able to exercise the independent appeal function and act as a superior appeal body for those dissatisfied by the Secretary General's response to their information appeals.
4. All activities financed by EBRD, unless specifically exempted by the Board of Directors, should be under the PCM purview.
5. EBRD policies must apply to the whole project and not only to the parts or components against which EBRD disbursements are made; and the PCM should have jurisdiction also over the project as a whole. The Rules of Procedure should clearly define project boundaries in order to provide comprehensive project-wide scope to the complaints submitted to the PCM.
6. The public should have access to the Problem-solving Initiative under the PCM from the very start of the project appraisal process in the Bank, that is, at least from the Concept Review. Such ante position of the opening point in the project cycle from which a claim can be held eligible for a Problem-solving Initiative would need to be accompanied by amendments to the disclosure procedures of the Bank to allow timely and pro-active informing of the public about the project's state.
7. The EBRD needs to ensure disclosure of dates of physical completion of projects, at the minimum, so that the end timeline in the project cycle by which a claim can be held eligible under the Problem-solving Initiative can become truly operational.
8. The public should have access to the Compliance Review under the PCM from the very start of the project's processing in the Bank, that is, at least from the Concept Review. Such ante position of the opening point in the project cycle from which a claim can be held eligible for a Problem-solving Initiative would need to be accompanied by amendments to the disclosure procedures of the Bank to allow timely and pro-active information of the public about the project's state.
9. Paragraph 19 omits definition of an end point by which a claim can be held eligible under the Compliance Review. Same requirements as in the case of Problem-solving Initiative should apply to the Compliance Review. They should be also accompanied by amendments to the Public Information Policy to ensure pro-active and timely disclosure of the project completion state.
10. In case of rejecting a Problem-solving Initiative, the President should provide justification for his or her decision. The justification should be made publicly available.
11. The Rules of Procedure should clarify that the "actions or inactions that are the responsibility of the Bank" include situations where EBRD has failed to monitor and follow-up on a Client's obligations to apply the Relevant EBRD Policies to the project in question, as provided in the legal agreements between EBRD and the Client. Otherwise, inaction by EBRD with respect to harm caused by a Client as a result of a violation of its contractual obligations would not be investigated by the PCM, on the premise that the Client is the sole responsible for that harm.

PUBLIC ENGAGEMENT:

1. The Rules of Procedures should explicitly require the PCM to consult the complainant and other parties throughout the eligibility assessment in order to make the fully informed decision. The wording of the paragraph should be adjusted accordingly as: “In conducting the Eligibility Assessment, the Eligibility Assessors will consider the Bank Response to the Complaint and will also consult with any of the Relevant Parties [...]”.
2. The complainant should be given also the opportunity to comment on the Management Response to the Complaint and importantly, on the Eligibility Assessment Report. The Complainant’s comments should be attached to the documentation going for the information or the approval of the Board or the President.
3. The PCM should ensure that the claimant has equal right as the Management to comment on the on the draft Compliance Review report before the panel submits it to the Board of Directors. Claimant’s comments should be made available to the Board or the Board for the acceptance and posted together with the final report to the EBRD website.
4. The Management Action Plan should be prepared in the consultation with the claimant and project affectees in order to ensure that remedial actions truly address the concerns or harm.
5. The PCM outreach program should be disclosed and consulted with external stakeholders as these can offer ideas for effective ways how the PCM could reach out to the potentially affected communities.

INDEPENDENCE:

1. The same post-employment bar (not entitled to work for the Bank at all) that applies to the PCM experts upon completion of the term of service should apply to the PCM Officer to guarantee the actual independence.
2. The EBRD should strengthen the provisions protecting the independent status of the PCM either through establishing the direct reporting function of the PCM Officer to the Board of Executive Directors and/or the President or through CCO’s reporting to the Board of Executive Directors and/or the President on the PCM Officer’s acts. In this latter case, the CCO would be accountable to the Board for the PCM officer’s actions or lack thereof.
3. The PCM Officer has better insight into the budgetary resources required for the PCM activities than the CCO and should therefore be responsible for the composition of the budget. CCO’s influence in the budgetary matters of the PCM could be interpreted as undue interference in the mechanism’s independence.

OPERATIONS:

1. The procedures should be elaborated further and specify how the internal and external committee members can be nominated, what the conditions of such nomination are and how the committee members will be selected.
2. PCM staff should have unrestricted access to all the information possessed by the Bank and to the project-related information possessed by its clients.

For more information, and for any questions regarding these comments, please contact:

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