

## COMMENTS

### ON THE NEW PROJECT COMPLAINT MECHANISM [PCM] DRAFT PROPOSAL

**Agron Alibali**

The review of the current Independent Recourse Mechanism [IRM] by the EBRD is a welcome move.

The following comments and suggestions aim at improving the draft proposal, which nevertheless is an important document that reflects an excellent job done by the independent consultant

#### **Definitions:**

The new structure is called PCM, but a valid question might be raised as to whether the shift from the present IRM into the new PCM is warranted.

In order to improve your dwelling you do not necessarily need to raze the old house – you may just renovate it.

IRM is a well-established name that indeed represents a mechanism for recourse against harm potentially caused by EBRD's project. It is expected to be impartial, objective and balanced.

There is no valid justification for changing the name into PCM, an acronym that is not established and could be confusing [compare, for example with Project Cycle Management, or Process Control Monitor, etc].

Therefore, it is the view of this commentator that IRM name should remain.

#### **Who may submit a complaint:**

The draft establishes a registration requirement for NGO-s. While this is an important qualification for potential complainants, the draft should aim at not restricting the potential flow of legitimate and valid complaints if they do not meet the NGO registration requirement. There might be a situation where civil society is not well established in a country with weak judicial enforcement mechanisms, and yet there might be an EBRD project that raises compliance questions. The new mechanism must have the necessary authority and discretion to waive the registration requirement in specific cases, and this should be reflected in the Draft.

### **Where to submit a complaint:**

Complainants should be given the option to submit complaints via the Internet as well. Other international financial institutions allow this procedure and there is no reason why the EBRD should not.

### **16. Cooperation with other Financial Institutions**

The rationale for this provision is weak. Cooperation between IFI accountability mechanisms in syndicated loans is important but not necessary. Therefore, this provision should be left out or, at least, the language to be used should be “may” and not “will”. The reason for this is very practical and derives from the negative experience that the Civil Alliance for the Protection of the Bay of Vlora had with the IRM review in their first ever Compliance Review, which was conducted “ex cathedra” from London. With all due respect to the reviewing expert, there is no evidence that he ever visited the site of the project in question [the oil-based power plant at Treport Beach in Vlora, Albania] and, while being rich in his theoretical approach, he missed important facts in his analysis, thus leading him to wrong conclusions and recommendations.

If we were to have an obligatory cooperation between accountability mechanisms of co-lending IFIs’ there is the real danger that the wrong conclusions of one such mechanism may taint the reviewing process of other accountability mechanisms. This provision also defies the very principle of “independence” of the process, and may potentially dilute its integrity.

21. c. Again, there is a potential danger in this provision that valid complaints may be rejected due to the applicability of this provision. Complainants should not be restricted in their right to take their case wherever they consider important and beneficial to their cause. For the benefit of the entire IRM/PCM process, it is paramount that the Eligibility Assessor should make his/her Eligibility decision without being influenced by the factors presented in this provision. The EBRD IRM/PCM process is about EBRD compliance with its own policies, guidelines and procedures and, if applicable, should go forward without being influenced by “issues pending before a court, arbitration tribunal or review body,” which might have before them issues independent and/or different from those before the IRM/PCM. In the hypothetical case, for example, that there is an environmentally related case is being pursued simultaneously at the European Court of Human Rights, which has a very busy docket, how would this provision be practicably applicable? It is in the best interest of the process that this provision should be left out.

22. A similar analysis applies to this provision insofar as it involves parallel review from bodies other than IRM/PCM. It should therefore be amended to ensure that Complainants would have the option to complain before the IRM/PCM regardless of their efforts in other venues, tribunals and bodies.

24.f Although it contains the important exclusion regarding Compliance Review, this provision should be left out or rephrased. The standard should be that the Complainant's right to take his case to other *fora* should not be restricted, and it should not be a ground for dismissing his Complaint to the IRM/PCM process.

26. The deadline of 40 (forty) business days is reasonable. Language should be added to make it a strict deadline that cannot be extended for the issuing of the Eligibility Assessment Report. In the experience of the complaint by the Vlorë Alliance for the Protection of the Bay of Vlorë, such report was unduly delayed, thus diminishing the chances to prevent harm to become permanent at the EBRD-funded project site. Language should be included in this provision whereby the Eligibility Assessor is required, when necessary, to visit the site related to the Complaint. Again, in the case of the complaint by the Alliance for the Protection of the Bay of Vlorë, there is no evidence that the Eligibility Assessor ever visited the project site, leading her therefore to draw wrong conclusions and recommendations [See paragraph 28 of the Eligibility Assessor Report on the Vlorë case, referring to the Effect of the Complaint on the Bank Operation. IRM, RP 10].

30. This provision outlines important powers by the IRM/PCM Officer regarding the "interim recommendation" to suspend further bank processing or disbursement. It is important that in case the IRM/PCM Officer decides to make such "interim recommendation, this information is made public.

62. Time extension provision should include the consideration by the IRM/PCM Officer to issue an "interim recommendation"

Agron Alibali, LL.M.

Visiting Fellow

University of Massachusetts, Boston.

Tel: +1 617-230-7192

Email: aalibali@me.com

13 February 2008