

# Review of the EBRD's Project Complaint Mechanism

## Pointers for improvements

After three years of operation, Bankwatch has gathered a certain amount of experience with using the EBRD's Project Complaint Mechanism (PCM). However considering that the cases closed so far were done so after the EBRD was no longer involved in the projects in question (the D1 motorway in Slovakia and the Tbilisi Railway in Georgia), the conclusions that can be drawn are somewhat limited. Nevertheless we hope these comments will emphasise the PCM's strengths and lead to further improvements in the EBRD's accountability mechanism.

## Purpose and scope of the PCM

The PCM covers the EBRD's Environmental and Social Policy (ESP) and project-related aspects of the Public Information Policy (PIP). This is different for example from the European Investment Bank's complaint mechanism, in which complaints are accepted on a wide range of issues. The existence of the PCM means that the EBRD's accountability mechanism for its ESP (and to some extent the PIP) is much clearer and more transparent than for other aspects of EBRD operations which the public may have concerns about. In our experience these are:

- Problematic **environmental issues** which are not well-covered by the ESP or PIP: for example the climate provisions of the ESP are relatively weak and unclear, and the PIP provides for abrogations from the obligation to publish project summary documents which are very difficult to challenge as the Secretary General simply replies that this is allowed by the policy. An effective compliance mechanism needs to be able to give recommendations for changes in EBRD policy based on experience.
- **Corruption and integrity issues**: these are covered by the Chief Compliance Officer's office, however there is no clear procedure for how complaints will be dealt with, so there is no obligation on the office to report on whether it has investigated, whether the investigation is finished, and if so, what are the outcomes. This makes it difficult to understand how seriously the office takes public complaints, whether public submissions have been found to be valid, and whether it is useful to continue communicating about the topics with the bank.

For more information

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CEE Bankwatch Network's mission is to prevent environmentally and socially harmful impacts of international development finance, and to promote alternative solutions and public participation.

- **Economic viability** of projects: general appeals can be made to the Board of Directors on the economic viability of projects, however there is no clear obligation for anyone to look into the issues and come up with any conclusion. Once a project is financed, even if it is economically unviable, there is no effective recourse. A good example of this is the Vlore thermal power plant in Albania, approved by the bank in 2004,<sup>1</sup> which was subject to mass public protests but which has now been constructed. However, as far as we are aware the plant is still not operating. While this is in part due to technical problems, it is questionable whether the plant will operate regularly at all, as it is planned to cover only shortfalls during dry periods, making its economic potential rather low.<sup>2</sup>
- The fact that accountability for implementation of the PIP is divided between the PCM and the Secretary General is confusing for potential complainants, and this arrangement should be reconsidered. It would be clearer if the PCM was responsible for all PIP complaints or none of them.

## Accessibility of the mechanism

The PCM represents a significant improvement over the previous Internal Recourse Mechanism in terms of eligibility. The provision that organisations are eligible for Compliance Reviews means that the mechanism is much more usable than the IRM because it is more realistic that NGOs will understand the concept and provisions of the ESP and PIP and have faith in its ability to bring certain results more so than informal groups or local affected individuals.

Nevertheless, as has been recognised during discussions with the PCM officer, some barriers appear to remain, especially in terms of problem-

solving initiatives. Most complaints have been submitted by formal NGOs and few requests for problem-solving initiatives have been received by the PCM. This may be the result of local affected people not being aware of the existence of the mechanism, and if so, it is difficult to know how to solve this. Another barrier may be simply scepticism that institutions will assist local people, as well as a lack of experience in making written complaints.

The PCM officer has made considerable outreach efforts, but it is impossible to cover every location where EBRD projects take place. NGOs in the Bankwatch network are active in informing local people of the existence of PCM in cases where people are likely to be affected by a project, however this can never be a comprehensive solution due to capacity constraints. One suggestion is to build in information about the PCM into public consultation meetings regarding EBRD projects with environmental categories A or B. We suggest here in-person consultation meetings rather than documents, as most people in the EBRD's country of operations are far from accustomed to reading official documents, especially online ones. Consultations have sometimes been carried out before the EBRD gets involved in projects but are often repeated during the project appraisal process.

## Operational aspects

### Timeline

One of the issues we have already discussed with the PCM officer is the length of time required to deal with the complaints. Complaints are registered in a timely manner, however the eligibility assessment and finalisation of the Compliance Review Report<sup>3</sup> longer than was expected when the PCM was established. Having said this, there are varying experiences. While the eligibility assessment for the Ombla hydropower

<sup>1</sup> <http://www.ebrd.com/pages/project/psd/2004/33833.shtml>

<sup>2</sup> <http://documents.worldbank.org/curated/en/2012/09/16791284/albania-power-sector-generation-restructuring-project>

<sup>3</sup> We do not have direct experience with problem-solving initiatives. So far we do not have a clear overview of the reasons for the delays in the publication of the Compliance Review Reports so we cannot give suggestions for improvements.

plant in Croatia was delayed, the process around the eligibility of the Boskov Most complaint in Macedonia was well organised and conducted. The PCM expert was open to hearing the complainant's concerns and was in general very good to talk to. The complainant's comments to the eligibility report were fully taken into account.

We understand that the length of the process is an issue both for the complainants and relevant bank staff. One possibility is retaining more experts for the types of complaints that occur most often. Another possibility is separating the formal eligibility assessment from the terms of reference for the expert's investigation. It is important that the complainant has an opportunity to comment on a) the eligibility assessment b) the bank and client's response to the complaint and c) the terms of reference for the investigation, so any separation of responsibility should still enable complainant comments on these aspects.

### Visit of experts

In the Ombla case the visit by the appointed expert was extremely positive. Sufficient time was allowed for in-depth meetings, and it was possible to give further feedback after the expert had met with the project promoter. The process was less clear in the Boskov Most case, as it was first reported that the expert would visit Macedonia, but later it was decided that this would not be the case. Visits to the project location are extremely valuable, as when writing complaints it is easy to overlook background information that the expert may find important and discover only in later discussions.

### Communication with the bank during the investigation

A certain amount of confusion is caused by communication with the EBRD after complaints have been submitted, and this needs to be clarified. It is clear that if additional information relevant to the

complaint comes to light, it should be submitted to the PCM. However it is not clear whether the requirement is for the information to be sent only to the PCM and not to bank staff, or whether the PCM should receive all communication. It is also not clear how to approach information that is related to the project under investigation but is not particularly related to the complaint eg the complaint is related to biodiversity but information related to state aid comes to light. This should be clarified in the PCM Rules of Procedure.