

CEE Bankwatch Network comments on Project Complaint Mechanism Draft Rules of Procedure 2014

In addition to the comments submitted by the Accountability Counsel and supported by CEE Bankwatch Network and others, we would like to welcome the changes which have been made to:

- streamline the registration and eligibility processes to reduce the overall timeline for the processing of complaints
- widen the PCM's scope to projects in which the EBRD holds an equity stake (para 12.b) – however it is not clear whether this applies to compliance review complaints or only problem-solving ones? It should apply to both.

The text also appears to include the whole Public Information Policy under 'Relevant EBRD policies' and thus under the scope of the PCM. We have been advised that this is a mistake, however we would nevertheless like to suggest that the text stays as it is, as the current situation in which the PCM covers only project-related provisions of the PCM is confusing for potential Complainants. In addition we have not been satisfied with the responses we have had to complaints to the Secretary General on public information issues, and believe that the set-up for addressing complaints on the PIP within the Bank need to be changed to a more independent body such as the PCM.

We would also like to draw attention to some outstanding issues which have not yet been addressed within the scope of the PCM revision.

Purpose and scope of the PCM

There are still significant areas of the EBRD's operations which fall outside of the PCM and which are not adequately covered by transparent and effective recourse mechanisms.

- **Corruption and integrity issues** are covered by the Office of the Chief Compliance Officer, however there is no clear procedure for how the CCO will interact with the Complainant, whether s/he will report on the opening of an investigation or its closure, what are the outcomes etc. 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. The annual anti-corruption report by the Chief Compliance Officer gives only aggregated information on anonymised projects and does not enable Complainants to track the progress of their complaints.
- **(Lack of) economic viability or transition/development impact of projects:** General appeals can be made to the Board of Directors on these issues, however there is no clear obligation for anyone to look into the issues and come up with any conclusion. Once a project is financed, if it is economically unviable and affects public budgets or bills there is no effective recourse. Examples of this are the Vlore thermal power plant in Albania and the Sostanj thermal power plant in Slovenia. The former was approved by the bank in 2004,¹ and was subject to mass public protests, but has now been constructed. However, the plant is still not operating and it is questionable whether it will operate regularly at all, as it is planned to cover only shortfalls during dry periods, making its economic potential rather low.² The latter project in Sostanj has seen its costs double since initial public estimates (from around EUR 700 million to EUR 1.44 billion) and it is estimated that it will run with EUR 50 million in annual losses. However there is no mechanism by which the public hold the bank accountable for such projects.
- **Article 1 issues:** It is clear in the draft that the PCM cannot deal with cases in which the EBRD is alleged to have invested in countries which are not acting in line with Article 1 of the bank's mandate. This makes it extremely difficult to independently hold the bank accountable for compliance with this part of its mandate and risks enabling Article 1 to be interpreted according to political expediency.
- **Non-project specific public information policy issues**, if it is decided that the current draft text of

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

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

the PCM rules of procedure will not in fact cover the whole PIP.

We understand that it is not usual for project complaint mechanisms to cover fraud and corruption, however we would welcome a clearer framework on how such complaints will be dealt with by the Office of the Chief Compliance Officer and how this Office's independence from the bank's management will be assured. For the other issues, it should be made more explicit whether the PCM can deal with them or not, and if not, who can.

Independence of the mechanism

The Project Complaint Mechanism needs to report directly to the Board of Directors - just as the EBRD's Evaluation Department does - rather than being part of an office that reports to the President (ie. the Office of the Chief Compliance Officer). This is necessary in order to emphasise its independence from the bank's management.

Accessibility of the mechanism

While the PCM represents a significant improvement over the previous Internal Recourse Mechanism in terms of eligibility and accessibility, few complaints have been submitted by affected people without the assistance of NGOs. If this is because of a lack of faith that such a mechanism will bring results then there is little that can be done about it at this stage, but if it is because affected people do not know that the mechanism exists then information about the PCM should be included public consultation meetings regarding EBRD projects with environmental categories A or B. We suggest in-person consultation meetings rather than documents on purpose, as many people in the EBRD's country of operations are far from being used 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. Project sponsors should also be contractually obliged to inform anyone who accesses their own grievance mechanisms to inform them about the possibility of addressing a complaint to the PCM if the complaint is not handled satisfactorily by the EBRD client's own mechanism.

Additionally, paragraph 3 of the draft PCM Rules of Procedure states that: "The PCM Officer may also be contacted for guidance on how to write and submit a Complaint." The PCM must therefore be allocated adequate resources available to carry out such assistance in formulating complaints, including site visits if necessary.

Operational aspects

Timeline

One of the issues that has already been partly addressed by the new draft is the time it has taken to complete and publish Compliance Review reports. However, in the cases of the Ombla, Boskov Most and Paravani reports, it was not only the eligibility and compliance report writing stages which took an extremely long time, but also the period between the completion of the Compliance Review reports and their publication. In the draft policy, 30 days are allowed for Management to submit an action plan and any comments on the report, as well as 30 days for the Complainant to comment on the recommendations³, but there is an effectively unlimited possibility for time extension and there is no time limit in place on the publication of the report. Presumably the latter is due to the fact that the findings have to be noted by the Board, whose timetable cannot easily be defined by bank policies, however it is unfair on the Complainants to have to wait more than six months after the completion of the final Compliance Review report, and a time limit needs to be set within which the Management will submit a final response and/or Action Plan and the Board will note the report or the report will be automatically published.

Communication with the bank during the investigation

Some confusion is caused by the issue of communication with the EBRD staff after complaints have been submitted, and this has not been clarified in the new draft. 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 the staff, or whether the PCM should just be copied in all communication. It is also not clear how to approach information which is related to the

³ As stated in the Accountability Counsel letter, it is not clear why the Complainant does not have the same opportunities as the Management to comment on the Compliance Review report findings, nor the right to comment on the Management Action Plan.

project under investigation but is not 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.

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