

Review of the EBRD's Project Complaint Mechanism – comments on the existing policy

For more information

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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 closed after the EBRD was already no longer involved in the projects in question (D1 motorway in Slovakia; Tbilisi Railway in Georgia), the conclusions that can be drawn are necessarily somewhat limited. We may therefore submit additional comments once the Ombla, Boskov Most and Paravani cases are closed in the near future. Nevertheless we hope our comments below will emphasise the PCM's strengths while leading to further improvements in the EBRD's accountability mechanisms.

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 to the European Investment Bank's complaint mechanism, in which complaints on a wide range of issues are possible. 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/PIP (for example the climate provisions of the ESP are relatively weak and unclear; the PIP provides for abrogations from the obligations 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 needs from 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.

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 or wider (lack of) 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 there is no effective recourse. A good example of this is the Vlore thermal power plant in Albania, approved by the bank in 2004¹, 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 regularly. This is partly due to technical problems. At the same time, 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.²
- The fact that accountability for the Public Information Policy implementation is divided between the PCM and the Secretary General, is rather confusing for potential complainants. Access to information should be also subject to an accountability mechanism independent from Secretary General who is responsible for the implementation of Public Information Policy – thus it is logical that PCM should fully cover all areas of the Public Information Policy.

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. For the other issues, we believe it should be made more explicit whether the PCM can deal with them or not, and if not, who can. The Project Complaint

Mechanism needs to be responsible either for all PIP complaints or none of them in our opinion, as the current half-half situation is confusing.

Independence of the mechanism

In our opinion the 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

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/PIP and have faith in its ability to bring them certain results than that informal groups or local affected individuals will do so.

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 due to local affected people not being aware of the existence of the mechanism, and if so, it is difficult to see how to solve this. Another barrier may be simply people's scepticism that institutions will assist them, as well as a lack of experience in making written complaints.

The PCM Officer has made considerable outreach efforts, but it is naturally 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 they are aware that the local people are likely to be

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>

affected by a project, however this also can never be a comprehensive solution due to capacity constraints. Perhaps one suggestion would be 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 on purpose, as most 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 be contractually obliged to inform anyone who accesses their own grievance mechanisms (according to PR10 of the Environmental and Social Policy) 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, the PCM needs to be able to assist complainants with formulating complaints and should have the resources available to carry out such work.

In a complaint from inhabitants of Barosevac, Serbia, submitted in 2011 in relation to the Kolubara Environmental Improvement Project, the PCM rejected the complaint at the registration stage, on the grounds that the complaint was not related to this EBRD-financed project. In our opinion this was not in line with the existing PCM policy provisions on registration. However, in such complex cases where the project boundaries are disputed, it may be useful to clarify the policy to stipulate that the PCM needs to undertake further communication with the complainants in order to establish whether there are in fact grounds for complaint.

This should be undertaken as part of an eligibility assessment (but the complaint does first need to be registered). Thus we propose a change to the PCM policy under paras 18.b.i and 19.b. as follows: *"In cases of complex projects where project boundaries are disputed, a field visit and assistance to the complainants in formulating their concerns and their*

relation to the project may be undertaken as part of the eligibility assessment".

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 Report³ take longer than expected when the PCM was set up. Having publication of the Compliance Review Reports so we cannot give suggestions for improvements.

said this, there are varying experiences. While for the Ombla hydropower plant case in Croatia there was a large delay in preparing the eligibility assessment, for the Boskov Most case in Macedonia, the process around the eligibility of the complaint was well organized and conducted. The PCM expert was very open to hearing the Complainant's concerns and was in general very good to talk to. The Complainant's comments on the eligibility report were fully taken into account.

We understand that the length of the process is an issue both for the Complainants and for the relevant bank staff. One possibility is the engagement of more experts on the types of complaints which have occurred most often. Another possibility is splitting up formal eligibility assessment from the terms of reference for the expert's investigation. We find it 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 splitting up of responsibilities should still enable Complainant comments on these aspects.

³ 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

Visit of experts

In the Ombla case the visit by the appointed expert was extremely positive. It was greatly appreciated that sufficient time was allowed for meetings to go into great depth, and especially that 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. We believe that visits to the project location are extremely valuable, as when writing complaints it is easy to overlook background information which the expert may find important and which may come out in later discussions.

Communication with the bank during the investigation

A certain amount of confusion is being caused by the issue of 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 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 project under investigation but is not particularly related to the complaint (for example 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.