

Comments to the EBRD's draft Project Complaint Mechanism's rules of procedure.

The EBRD has made significant improvements in the design of its accountability mechanism with the draft PCM's rules of procedure. Numerous issues related to the standing, accessibility and outreach to mention few that were problematic for the implementation of the IRM have been addressed in the draft PCM's rules of procedure. I submit comments in this public consultation period, because some issues have remained unresolved and new issues have emerged that are relevant for the functioning of the accountability mechanism at the EBRD.

The complainant who is an organisation should have a right to ask its identity to be kept confidential in the Project Complaint Mechanism (PCM) procedures. Pursuant to the paragraph 4 of the draft PCM's rules of procedure individuals have a right to ask their identity to be kept confidential. Approach taken in the PCM is disproportional and unequal, because organisations do not have the same opportunity to request their identity to be kept confidential when submitting a complaint as individuals. *To solve this problem in the draft PCM organisations should be granted a right to request confidentiality in the proceedings.*

The complainant should have a right to submit a complaint by e-mail. Currently, this right is not set forth in the draft PCM's rules of procedure, especially its paragraphs 8 and 9. Electronic mail is the fastest means of communication. Because of its fastness e-mail is convenient and flexible for the complainant. This attribute of the e-mail is also important for the Bank and other Relevant Parties to become aware and/or act on the harm caused or likely to be caused by the project on a timely manner. The complainant may be obliged to submit more formal document that meets the requirements for a complaint that cannot be met by e-mail later. *Due to the above mentioned reasons the draft PCM's rules of procedure should be changed so that the complainant would have a right to submit complaint by e-mail.*

The complainant should have more opportunities to participate and to comment in the PCM procedures. The complainant's right to participate and comment in the PCM procedures is not only compatible with the purpose and principles of the Aarhus Convention, but also essential for the democratic governance of the EBRD and meaningful engagement of public in the PCM's procedures.

Compared to the Independent Recourse Mechanism (IRM) the complainant has less opportunities to participate and comment in the PCM. The draft PCM's rules of procedure should be reviewed to ensure that the complainant will have equally meaningful and implementable rights to participate and comment in the PCM procedures as it has had in the IRM procedures. Overview of three occasions where the opportunity to participate and comment for the complainant in the PCM has been reduced follows.

- a) The complainant does not have a right to comment on the Eligibility Assessors' determination whether the Complaint is eligible for the Problem Solving Initiative, a Compliance Review, for both or for neither. Please see paragraphs 20, 22, 27.(b)i-iii of the IRM and paragraphs 17, 27, 28 of the PCM.
- b) The complainant does not have a right to comment if the Eligibility Assessors find the Complaint ineligible and they will recommend that the Complaint be closed. Please see paragraphs of 20, 27.(b)i of the IRM and paragraph 27 of the PCM.
- c) The complainant does not have a right to comment if the Eligibility Assessors find the complaint

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eligible for a Problem Solving Initiative, but not eligible for a Compliance Review. Please see paragraphs of 22, 27.(b)ii of the IRM and paragraph 28 of the PCM.

The complainant should be able to comment on the recommendation to undertake the PSI. Complainant has indirectly opportunity to comment on the recommendation to undertaken PSI in the IRM pursuant to paragraph 44.(b) if the paragraph is read in conjunction with paragraphs 22 and 27.(b)ii, but does not have this opportunity in the PCM pursuant to paragraph 31. Regardless of the fact that there is no separate Problem Solving Initiative Report in the PCM it could be important for the complainant to comment on the recommendation whether the PSI should be undertaken. Even though the opportunity for the complainant to comment on the recommendation to undertake the PSI in the IRM is not sufficient it is still more participatory than respective regulation in the PCM.

In addition to the three above mentioned participation and commenting opportunities that are not available for the complainant in the PCM procedures compared to the IRM procedures there are two other issues related to the participation and commenting in the PCM procedures that have to be stressed.

a) **The complainant should have an equal right to the Management's right to participate in the Compliance Review process.** *The complainant should have a right to comment on the Compliance Review Report under the paragraph 41 as the Management does.*

b) **The complainant should have an opportunity to comment on the Management's Action Plan (set forth in the paragraph 41 of the PCM).** Management Action Plan contains information that is essential for the complainant to make substantive comments on it. Implementation of the Management Action Plan can lead to concrete changes or actions taken in respect of the controversial project that are important for the complainant. At this stage in the PCM, for example important decisions are taken that will affect how harm will be mitigated or non-compliance eliminated. *Due to the above mentioned reasons it is important for the complainant to be able to comment on the management plan.*

To summarize the above mentioned arguments about the participation and submitting comments, the draft PCM's rules of procedures should be revised and where appropriate amended to increase the opportunities for the complainant to participate and comment in the various stages and on the various documents of the PCM.

The Eligibility Assessors should have the authority to decide whether the EBRD needs to undertake a Problem-Solving Initiative (PSI). The counter argument has been that because the Bank is committing its resources to the PSI it should have the right to decide over the necessity and effectiveness of the PSI. While sympathetic to this argument, *to ensure the transparency and independence of the PCM procedures it is important that the Eligibility Assessors and not the EBRD's President decide whether the PSI should be undertaken.*

PCM Officer should report directly to the President or the Board of Executive Directors. The draft PCM's rules of procedure foresee that the PCM Officer reports directly to the Chief Compliance Officer (CCO). The discussion of the PCM Officer's mandate, extent of its rights and their supervision by the CCO at the Public Consultation workshop in London on 20th of January supports this interpretation of the draft PCM's rules of procedure. Paragraph 45 of the draft PCM's rules of procedure sets forth that the CCO is responsible that "the PCM Officer carries out the PCM functions and administrative responsibilities according to these rules of procedure". Furthermore, the independence of PCM Officer is a core stone of the independence of PCM as an accountability mechanism at the EBRD. Moreover, the independence of the PCM Officer affects how people, other members of civic society and other non-state actors outside the EBRD perceive the independence of PCM and how its

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rules of procedures will be implemented. If the PCM Officer is perceived to be not independent the lack of trust in the fair and impartial PCM procedure might reduce the number of complaints submitted and undermine the purpose of the accountability mechanism at the EBRD. *Due to the above mentioned reasons it is important that the PCM Officer should report directly to the President or the Board of Executive Directors and the draft PCM's rules of procedure should be changed respectively.*

The EBRD should include a commitment to participate in a Problem-Solving Initiative (PSI) to all project agreements. The counter argument is that the PSI is most effective when parties participate in it voluntarily. However, writing a commitment to participate in the PSI in the project agreements might create favourable attitude and willingness for the Client to participate in the PSI. It might also provide necessary impetus for the Client to commence the PSI. Furthermore, by including this provision to the agreements, the Bank signals that it is committed to the PSI and has taken steps that will increase the likelihood of its use. This requirement increases the certainty for the complainant who requests PSI, who finds out that its complaint does not warrant a compliance review or knows that the PSI is recommended that the PSI could be actually undertaken, because the Client is bound by the project agreement. *For the above mentioned reasons it is important that the commitment to participate in the PSI is included to all project agreements.*

In addition the above mentioned comments I support the CEE Bankwatch Network's comments made to the draft PCM rules of procedure in this public consultation period. I kindly ask the EBRD to acknowledge my support to the CEE Bankwatch Network's comments in its public consultation documentation.

If you have any questions please do not hesitate to contact me:

Kadri Sirg

Lauteri 1-63A

Tallinn 10114

Estonia

e-mail: kadri.sirg@gmail.com

Tel: + 372 51 20 719