

KOLUBARA: PCM COMPLIANCE REVIEW

MANAGEMENT ACTION PLAN

A. RECOMMENDATIONS TO ADDRESS THE FINDINGS OF THE PCM COMPLIANCE REVIEW REPORT AT THE LEVEL OF THE ENVIRONMENTAL AND SOCIAL POLICY AND PROCEDURES

A1 Recommendation: The process of due diligence to be undertaken by EBRD where it has been involved in multiple investments in a single client should be clarified, including how non-compliances with prior environmental or social commitments will be dealt with.

A specific procedure to review environmental and social management practices within the client organisation across all of its activities and to include necessary improvements within the project ESAP should be developed.

The recommendation has been reflected in the 2014 ESP. Management further commits to disclosing more information in the Bank's internal documents on how non-compliances with prior environmental or social commitments will be dealt with.

In accordance with paragraph 30 of the 2014 ESP, EBRD's environmental and social appraisal will consider the capacity and commitment of the client to implement the project in accordance with the relevant Performance Requirements. This involves a review of the existing environmental and social management systems and capacity specifically focusing on the client's department responsible for the implementation of the project. This applies to new and to existing clients.

It should also be noted that the 2014 ESP and PR1 set out a specific approach to environmental and social appraisal of projects involving general equity or corporate lending with no specific investments. The corporate level assessment will assess the client's ability to manage and address all relevant social and environmental impacts and issues associated with its operations and facilities against the requirements described in the PRs as well as the client's compliance record with applicable environmental and social regulatory requirements.

Actions:

- The recommendation is reflected in the 2014 ESP, Paragraphs 43-44: "EBRD reviews the environmental and social performance of projects and the compliance with the environmental and social commitments as agreed in the legal documentation... If the client fails to comply with its social and environmental commitments, as set out in the legal agreements, EBRD may agree with the client remedial measures to be taken by the client to achieve compliance. If the client fails to comply with the agreed remedial measures, the Bank may take such action and/or exercise such remedies contained in the financing agreements that it deems appropriate..."
- For follow-on projects with existing clients, EBRD, in case of identified non-compliance, may set corrective measures for addressing areas of material non-compliance as conditions precedent for disbursements or as covenants under the financing agreements for a new project, for example, by including remedial measures to address any outstanding ESAP actions in the new ESAP.
- EBRD will include a summary of a client's compliance with existing environmental and social commitments in submissions to the relevant EBRD decision making body with proposed remedial action, where necessary. ESD will ensure this as part of its assurance framework process.

A2. Recommendation: Particular guidance should be developed for situations where the client occupies a dominant position within a sector or region and where its approach and practices have broader socio-economic or environmental impacts. EBRD should be required to consider such broader impacts in its analysis of the required due diligence and AoI.

Management agrees that investments with clients which operate across a sector or a region can benefit from proactive engagement on wider environmental and social issues and that this can help achieve systemic improvements in performance. Consistent with the 2014 Environmental and Social Policy, EBRD, within its mandate, will work with these clients to help them manage environmental and social risks in their other operations that are not part of the project. Paragraph 18 of the 2014 ESP commits EBRD, through its technical cooperation and policy dialogue, to seeking opportunities to build capacity to consider and manage environmental and social issues in its countries of operation. EBRD will facilitate development of an enabling environment for its clients to achieve environmentally and socially sustainable outcomes in their projects.

Moreover, paragraph 17 of the 2014 ESP sets out that EBRD's country strategies as well as sector strategies and policies will contain information on the potential environmental and social challenges and opportunities associated with the EBRD's envisaged activities.

Actions:

- The 2014 Environmental and Social Policy sets out a well-defined approach to environmental and social appraisal. The appraisal will identify whether the client occupies a dominant position within a sector or region and its approach and practices may have broader socio-economic or environmental impacts that should be addressed through policy dialogue or in EBRD country strategies.
- The environmental and social sections of Board documents will include a summary of the broader socio-economic or environmental impacts resultant from a client's sectoral or regional approaches and propose appropriate technical cooperation and policy dialogue activities to address them. ESD will ensure as part of its assurance framework process that regional and sectoral approaches are appropriately considered in the environmental and social appraisal of all projects.
- In addition, EBRD has a robust Country Strategy process, which identifies priorities for a particular country within a defined time period. This summarises priority areas for policy dialogue, such as that with particular sectors or ministries, and these strategies are subject to public comment and published on EBRD's website in English and the relevant official language in the country. Each project submitted to the Board of Directors must explain how it meets the strategic priorities in the relevant country strategy.

A3. Recommendation: The definition of project area of influence (AoI) and the applicability of the ESP, International Standards and the PRs to the AoI should be clarified. Because of the importance of stakeholders understanding how the requirements and standards of the project are applied, this clarification should be publicly disclosed. EBRD current practice is inconsistent and opaque. Any guidance utilised by EBRD in defining the AoI and application of standards to the AoI should be publicly disclosed and subject to stakeholder engagement and form part of the board agreed policy.

The recommendation has been reflected in the 2014 ESP. We note and agree with the principle behind the Compliance Recommendation, to provide external stakeholders with information and clarify policy language that is ambiguous or unclear. This principle will be taken into account as the 2014 policy is implemented and if the meaning of any terminology used in the policy appears to be uncertain. We note that the term *Area of Influence* used in the 2008 policy would have benefitted from a clearer explanation in the public domain and agree to disclose more information and clarifications on the 2014 ESP if specific terms are not well understood. In the revision of the 2008 policy confusion over this term led to its replacement. The 2014 ESP includes a clearer description of the scope of the environmental and social appraisal and clarity on the limitations of EBRD's requirements. The clarifications were welcomed by the public consultation, as many thought the *Area of Influence* was a confusing concept. EBRD received over 640 comments on its draft 2014 policy, and these were included in the policy consultation report and responded to on EBRD's website. <http://www.ebrd.com/downloads/research/policies/esp-sep.pdf>

With regard to the last point, it should be noted that EBRD guidance documents are not policy-level documents, are not approved at the Board level, and do not form part of the Board approved policy.

However, some guidance documents that are designed for external use are disclosed and subject to normal stakeholder engagement in accordance with the Bank's Public Information Policy.

With regard to environmental and social policy/PR guidance, as of 25 September 2015, there were 13 guidance notes currently posted on the EBRD website, including ones on EBRD's greenhouse gas methodology and on grievance management, and more will be added in due course

<http://www.ebrd.com/who-we-are/our-values/environmental-and-social-policy/implementation.html%20>.

Actions:

- The scope of applying EBRD PRs to facilities and activities that are associated with but not part of the project, corresponding to the concept of "area of influence" in the 2008 ESP, has been clarified in the 2014 ESP.
- As above, the revision of the ESP in 2014 removed the ambiguity of the terminology used in the 2008 ESP. As part of the implementation the 2014 ESP, if there is uncertainty over terminology, EBRD will provide greater clarity to stakeholders by publishing clarifications, for example, guidance notes, on its website.
- Guidance documents for external use designed to assist clients and consultants are disclosed on EBRD's website and subject to normal stakeholder engagement in accordance with the Bank's Public Information Policy.

A4 Recommendation: The definition of AoI and the scope and scale of E&S due diligence to be undertaken and which has been agreed between EBRD and the Client as part of the IESE or in other due diligence activities should be publicly disclosed.

In accordance with paragraph 30 of the 2014 ESP "EBRD's environmental and social appraisal includes consideration of three key elements: (i) the environmental and social impacts and issues associated with the project, (ii) the capacity and commitment of the client to implement the project in accordance with the relevant PRs, and (iii) to the extent appropriate, the facilities and activities that are associated with the project, but are not financed by EBRD. The scope of EBRD's environmental and social appraisal will be defined on a case by case basis, and may also review potential risks and liabilities associated with assets pledged as security."

EBRD's Project Summary Document (PSD) includes a summary of the environmental and social appraisal undertaken. This typically includes a description of the scope of issues covered by the appraisal, specifically whether it covered: (i) potentially significant environmental and social issues associated with activities or facilities which are not part of the project, but which may be directly or indirectly influenced by the project, exist solely because of the project or could present a risk to the project; (ii) cumulative impacts of the project in combination with impacts from other relevant past, present and reasonably foreseeable developments; (iii) unplanned but predictable activities enabled by the project that may occur later or at a different location; or (iv) primary supply chains central to the project's core operational functions.

EBRD discloses information on the EBRD website in accordance with the requirements of the *Public Information Policy*, primarily in the form of PSD. The PIP requires that PSDs are released 30 days before Board consideration for a private sector project and 60 days prior to Board consideration for a public sector project.

PIP 3.1.1 A Project Summary Document (PSD) will be prepared for each private and public sector project where approval is sought from the Board of Directors. PSDs provide a factual summary of the main elements of a given project and potential investment which includes the following information: (i) the identity of the project company; (ii) total project cost (where applicable); (iii) the project location; (iv) a brief description of the project and its objective; (v) the amount and nature of EBRD's investment; (vi) the target date for a decision on the project by the Board of Directors; (vii) the anticipated transition impact, and for public sector projects, expected transition impact rating; (viii) a summary of environmental and social impacts associated with the project and agreed mitigation measures; (ix) if applicable, details of project related technical

cooperation funding and grant financing; and (x) guidance on how and where information about the project can be obtained, including contact points for the project sponsor and the EBRD Operation Leader.

The PIP requires the following environmental and social information:

PIP 3.4.2 The Project Summary Document will summarise i) the rationale for categorisation of a project; ii) a description of the main environmental and social issues associated with the project; iii) key measures agreed to mitigate the risks and impacts; iv) where greater than 25,000t CO₂ equivalent/year, the expected GHG emissions of the project; v) a summary of any disclosure or consultation activities, and vi) a link to the ESIA page for Category A projects.

The new PSD requirement to include the rationale for the environmental and social category assigned will help to inform the public about the potential environmental and social issues associated with the project. Internal guidance for ESD staff on what goes into a Project Summary Document was developed in 2015 and includes instruction to staff to describe the scope of environmental and social due diligence covered.

Actions:

- PIP Operational Guidelines for preparing Project Summary Documents will be updated to include instruction to describe clearly the project financed by EBRD.
- ESD internal guidance for preparing the environmental and social sections of Project Summary Documents includes a description of the scope of environmental and social appraisal. All PSD draft environmental and social sections will be reviewed as part of ESD's assurance framework process.

A5 Recommendation: Policy guidance should be expanded and formalised with respect to the circumstances under which sectoral, regional or strategic studies are required to support the diligence on a project and provide clarity over who is responsible for such analysis and the role that EBRD will play in its absence.

Strategic (environmental) assessments are undertaken of policies, plans or programmes and are a tool for and responsibility of national or regional authorities. EBRD may through its technical cooperation and policy dialogue with such authorities support preparation of strategic assessments where they relate to the environmental and social appraisal of EBRD's projects, especially when there is a significant concern for the potential cumulative impacts of a number of similar projects in the same geographical area.

EBRD has the ability to use a wide range of appraisal tools, depending on the needs of the project. The templates used to draft terms of reference for environmental and social due diligence specifically require the consultants who are undertaking due diligence to identify, review and take into consideration available strategic level assessment documentation. PSDs and Board documents will now clarify what type of environmental and social due diligence was undertaken.

Actions:

- EBRD will ensure that the due diligence identifies and assesses relevant regional and strategic environmental and social assessments or studies that might affect the project. Where regional or strategic assessments or studies are identified and reviewed, these will be included: in the summary of due diligence undertaken, included in the Bank's internal documents, and disclosed in PSDs.
- EBRD will identify the need for technical cooperation and policy dialogue to support strategic assessments in the country strategy process, which identifies priorities for a particular country within a defined time period.

A6 Recommendation: Policy guidance on the scope and scale of required GHG emissions analysis should be substantively improved in line with current good practice, combined with expanded disclosure requirements. The EBRD GHG emissions assessment 'guidance' should be updated in line with current good practice and made mandatory for all EBRD investments.

EBRD GHG assessments are undertaken in accordance with a specific EBRD Methodology for Assessment of Greenhouse Gas Emissions, which was developed in line with good international practice in 2003 and has been subsequently amended. EBRD's guidance note on GHG accounting using EBRD methodology is publicly disclosed on EBRD's website and the current version available on EBRD website is dated 2010. The scope of GHG assessments is defined in accordance with this methodology and it is separate from the scope of environmental and social appraisal and Area of Influence. The scope of activities to be taken into account in the GHG assessment follows good international practice.

EBRD is currently working with other MDBs, IFIs and the UNFCCC to harmonise approaches to GHG assessment. The latest phase of this work is expected to be concluded in October 2015, ahead of the COP21. EBRD's methodology and the guidance note will then be revised to reflect the agreed approach, and will be published on the EBRD's website.

Since 2003, all projects have been screened by EBRD for GHG impacts. Where the GHG emissions of a project have been expected to exceed the set thresholds, GHG assessments have been undertaken in accordance with the EBRD GHG assessment methodology by independent consultants or by EBRD's sector specialists. In most years, all direct investment projects with emissions, or emission reductions, exceeding 20 kt CO₂e per annum have been assessed, the focus has been on large projects, i.e. those emitting >100 kt per annum, mainly in the energy and industrial sectors, which dominate the portfolio GHG footprint. In the 2014 ESP, the threshold that triggers GHG assessment was reduced from 100k tons CO₂ eq. to 25k tons CO₂ eq. Prior to publication, all GHG data is reviewed by an independent GHG consultant, engaged by EBRD to provide expert advice and assurance.

Action:

- EBRD guidance on GHG assessment will be updated and disclosed.
- The revised guidance, including relevant project screening criteria and guidance on defining the scope of the GHG assessment will be applied to all EBRD investments by Q2 2016.
- Information on the scope and scale of project-specific GHG assessments will be disclosed in PSDs.

B. RECOMMENDATIONS REGARDING THE KOLUBARA BASIN

Recommendation: EBRD should commission a review with EPS of future environmental, social and energy investment strategy for the Kolubara basin.

B1 Recommendation: EBRD priorities based upon its revised energy strategy and Serbia Country strategy, GHG Emissions baseline and future emissions projections based upon projected future mining, transportation and power plant developments. To include assessment and disclosure of information and objectives relating to effects on Serbian Carbon intensity.

B2 Recommendation: Analysis of cumulative environmental and social impacts based upon future strategic development of the basin.

Much of the strategic information that EBRD has relied on in its engagement with EPS is publicly available but not easy to find and access. EPS has produced strategic environmental investment plans that cover the Kolubara basin and its other activities, including *The Green Book of the Power Industry of Serbia* and the *White Book of the Power Industry of Serbia*. EPS also produced a *Strategic Environmental Assessment for the Kolubara Basin*. The Bank will update its PSD of the project to include links to these documents so as to make these documents accessible in one place and provide greater clarity and transparency for stakeholders on cumulative impacts and the future development of the Kolubara basin.

Implementing the 2012 project allows EPS to better manage the quality of coal provided to the TENT thermal power plants, with resulting improvements in efficiency, lower coal consumption and reduced CO₂ emissions per megawatt-hour of energy generated. The GHG assessment for the Project was carried out by an industry specialist of EBRD in accordance with EBRD GHG assessment methodology, which is aligned with good international practice and publicly available. Prior to publication, the GHG assessment was reviewed by an independent GHG consultant, engaged by EBRD to provide expert advice and assurance.

The GHG assessment provided the EBRD's Board of Directors and other stakeholders with quantitative information on the benefits of the project. In order to give more context for these benefits, Management will disclose additional information on the GHG emissions of the TENT thermal power plants and the overall emissions for EPS. Management is not able to commit at this time to providing projections of future GHG emissions, as this is best done at the country level.

As part of its Sustainable Resource Initiative, EBRD has developed selected country-level GHG studies and EBRD will review whether it is appropriate to include Serbia in this programme. It should be noted that the government of Serbia has produced a number of studies that provide analysis of the country's emissions profile and which go some way toward addressing this recommendation:

- Serbia's programme of Nationally Appropriate Mitigation Actions (NAMAs): (http://www.nama-database.org/index.php/Main_Page)
- *Study on Achievements and Perspectives towards a Green Economy and Sustainable Growth in Serbia* includes scenarios for demand and investment in the energy sector (<http://sustainabledevelopment.un.org/content/documents/984serbia.pdf>)
- *The White Book of the Power Industry of Serbia* presents EPS strategy for reducing reliance on carbon-intensive energy (<http://www.eps.rs/Eng/Documents/The%20White%20Book%20of%20PE%20EPS.pdf>)
- *Renewable Energy Strategy* (<http://www.energy-community.org/pls/portal/docs/2144185.PDF>).

Action:

- Management will update the PSD for the Kolubara Environmental Improvement Project to include links to the Green Book of the Power Industry of Serbia, the White Book of the Power Industry of Serbia and the Strategic Environmental Assessment for Kolubara Basin. Details of GHG emissions for the TENT thermal power plants and for EPS will also be included in the PSD (by end Q4 2015).

B3 Recommendation: Upgrading of the EPS Environmental and Social Governance capacity and management systems implementation.

The proposed corporate restructuring of EPS will include the adoption of new, company-wide environmental and social management systems. EBRD commissioned a corporate environmental and social audit in 2015 and developed an action plan (ESAP) that commits EPS to implementing best practice management systems for the restructured company. All of EPS's subsidiaries, including the Kolubara basin, have attained ISO 14001 and OSHAS 18001 certified environmental and safety management systems. These were introduced with the assistance of TC funding provided by EBRD donors and working with the client in capacity building.

Action:

- EBRD will publish a Non-Technical Summary of the work undertaken in 2015 in due course, along with a summary of the associated ESAP (Q4 2015). EBRD will continue to monitor implementation of commitments under existing loans with EPS (on-going).

B4 Recommendation: Updates to the action plan relating to implementation of environmental audit findings.

Following completion of detailed EHS audits by independent consultants, action plans were agreed with each of the 11 EPS subsidiaries in 2012. Follow-up audits were undertaken in 2015 and updated action plans will be adopted by each of EPS' operating units. The audit programme will continue on a three-yearly basis throughout EBRD's involvement with the client.

Action:

- The 2012 action plans will be updated by EPS for subsidiaries by Q4 2015. Management will ask EPS to publish the summary report for these audits (by Q1 2016).

B5 Recommendation: Review of environmental and social conditions affecting the mining communities within the basin including Vreoci and action plans relating to the management of public services and timely completion of the resettlement process.

B6 Recommendation: Outputs from this work should be publicly disclosed and consulted upon and an appropriate action plan developed.

Management agrees that the situation in Vreoci is difficult for the people affected by it. The community is located between two large coal fields not included in the EBRD financed KEIP, and the residents have been significantly affected by the mining activities adjacent to the village. The situation was further exacerbated by the floods.

At EBRD's request, EPS commissioned independent EHS audits of each of its subsidiary companies and developed action plans in 2012. These audits included a review of environmental and social conditions affecting the mining communities within the Kolubara mining basin, including Vreoci. The audits were repeated in 2015 to assess progress, and this process will be repeated on a three-yearly basis going forward.

EBRD will continue to work with EPS to try to improve implementation its resettlement programmes in Vreoci and generally will assist in helping the client resolve disputes with stakeholders. With EBRD's support in 2015, EPS has agreed to develop an overall Resettlement Framework which will apply to all of its activities, including across the Kolubara mining basin, EBRD will monitor its implementation. EPS has also adopted a corporate Stakeholder Engagement Plan to improve its disclosure of information and relations with its stakeholders.

Actions:

- EBRD will update the PSD for the Kolubara Environmental Improvement Project to include a summary of the social consultant's report on Vreoci (by end Q4 2015).
- Management has committed to publicly disclose additional information and will continue to work with EPS in the areas of transparency and accountability. More clarity will be provided in PSDs on what EBRD is financing.

C. MONITOR AND REPORT ON THE IMPLEMENTATION OF ANY RECOMMENDED CHANGES

C1 Recommendation: The Compliance Review Expert recommends that implementation of the various recommendations proposed above is monitored by Bank officials and that a report be prepared upon completion of these tasks and agreed with relevant Bank officials and the PCM Officer.

Action:

- EBRD staff will cooperate with the PCM officer's in the preparation of the bi-annual reporting on Action Plan until items are closed.