

11 October 2018

Dear Ms. Bach,

Thank you very much for the opportunity to comment on the Management Response and the draft of the Compliance Review Report (draft CRR) on the Southeast Europe Equity Fund II (SEEFII) complaint.

First of all, I would like to thank the PCM and the PCM expert, Mr. Thorpe, for the CRR and its findings. In his attempt to gain a more comprehensive understanding of the problem, the PCM expert went an 'extra mile' by conducting surveys with eleven former staff of the American Hospital in Kosovo. This is highly appreciated as it confirmed the "*marked deterioration in industrial relations following the change of management leadership in 2015-16 that eventually led to their terminating employment with AHK*". It also revealed that four respondents had raised legal complaints regarding alleged unjust dismissal, showing that the complainant was not the only person whose career and reputation were damaged by the EBRD client's unjust labour practices.

Although the CRR is very strong, I wish the PCM expert has scrutinized more deeply the replies from the Client. For example the fact that 94% of AHK staff is Kosovar in a hospital context is not really a strong argument. Hospitals are in majority employing nurses and technicians which make this impressive figure of 94%. The PCM and the EBRD should be interested in why key management level personnel like CEO, CFO, COO, Procurement Manager, Marketing Manager etc are occupied constantly by Albanian citizens at AHK? Are the PCM and the EBRD interested if AHK has made these positions available to local people by means of public call for recruitment? To my understanding, only if there is proof that no one from Kosovo was interested in AHK's public announcements for key managerial positions, or no one in Kosovo was competent to meet the required criteria, the EBRD could defend AHK or itself. What is the underlying reason to insist on having Albanians in key positions also today where you have a CEO with background in aviation? I strongly believe that these facts have not been analyzed thoroughly to-date.

Second, in view of the fact that this is the PCM's first compliance review concerning a FI category project, the importance of the CRR findings cannot be underestimated. In this regard the findings speak for themselves and I would like to highlight the following ones:

73. The EBRD representative to the Advisory Committee of the Fund during the period of the alleged problems stated that there had not been any discussion of social compliance issues at meetings with the Client management and there is no regular item on the agenda that required a report on this topic¹.

*84. An EBRD FI Sustainability Index Report was conducted by an external service provider with the Client for the year 2015 in respect to its investment in American Hospital. This took the form of a self-assessment questionnaire. Responses to the question "What level of concern does your institution have in relation to the following sustainability issues?" Evoked the responses:
'Worker/Management relationship – Slightly concerned
Community impact – Slightly concerned
Human rights – Very concerned'
There is no evidence that these responses were followed up within the Bank's monitoring procedure.*

In my view the lack of follow-up by the EBRD in 2015 cannot be excused by inadequate policy from 2003. It raises concerns if the weak monitoring by the bank is due to obsolete policy requirements or due to systemic failures in monitoring FI investments.

87. The internal regulations of the AHK in force since 2012 contain strong written policy against discrimination of any kind.² Those regulations do not, however, contain a robust mechanism for the

¹Information from EBRD Staff internal enquiry by telephone, 26th April 2018

²AHK Work Regulations 2012, section 1.6, *Work environment and professional conduct* and Section 6. *Harassment and Discrimination*

confidential reporting and investigation of specific instances of harassment or discrimination, instead relying simply upon a single-step procedure. The procedure requires only that any complaint should be addressed to the supervisor who will decide on action together with the HR Department. This is clearly inadequate to deal with cases where the matter in dispute concerns alleged discrimination by a member of the management team.

88. Respondents to the confidential questionnaire who claimed to have suffered harassment at AHK and who had used the grievance mechanism claimed either to have received no response or to have suffered a further worsening of their situation as a result of their complaining.

This finding is very important as it shows that the EBRD has not just failed to monitor, but it has also failed to adequately review its client's labour policies and grievance mechanism, as well as the client's capacity to implement internal policy and to deal properly with grievances.

Third, turning to the Management Response, while EBRD Management in its response has attempted to present the complaint as a personal issues, the PCM report has revealed the systemic failings of EBRD in ensuring protection of labour right of employees in FI investments.

As a result, Management has made some welcome yet rather vague commitments, namely:

- *the Bank can commit to renewing its FI monitoring strategy to take a more active approach to funds;*
- *commit to including elements of Continuous Risk Improvement in the Environmental and Social Management Plans that the Funds operate under.*

In this regard, I recommend that Management will make these commitments more explicit in the Management Action Plan and that the PCM will monitor closely their realization.

Last but not least, the claim from Management - that procedural and policy requirements have been updated since the time of signing the SEEFII - ring hollow. While the current CRR could not discuss if these new requirements and their implementation are adequate or not, as this perhaps was beyond the scope of the PCM review, the EBRD failure to follow up on a 2015 report by an external consultant (see #84 quoted above) speaks poorly about recent monitoring practices.

Management further claims that the “*2014 Policy is under review with a view to strengthening appraisal and monitoring requirements should such actions be deemed necessary*”. Hopefully the PCM findings will be taken seriously by both EBRD Management and the EBRD Board, so there will be not a speck of doubt that improvements in labour safeguards, especially in FI investments, are indeed deemed necessary.

In conclusion, I hope that my comments will reach the Board of Directors of the EBRD and will result in stronger labour safeguards in EBRD investments, both in Kosovo and beyond. Furthermore, I encourage the Board and the PCM to monitor the relevant improvements of EBRD's policy and implementation of monitoring requirements for investment funds and FIs.

I thank you again and I am looking forward to improvements in labour practices in EBRD investments in Kosovo as result of my complaint!

Respectfully,

██████████