European Bank for Reconstruction and Development | Independent Project Accountability Mechanism

MAP Monitoring Report II

Monitoring Period: August – December 2020

CMI Offshore Project

EBRD Project Number 47096

Case 2017/10

February 2021

Note: This case was received under the Project Complaint Mechanism (PCM) - the former accountability mechanism of the EBRD - in accordance with the 2014 PCM Rules of Procedure and the Monitoring stage was initially conducted under PCM Rules and Procedures.

Effective 1 July 2020, the Project Complaint Mechanism was replaced with the Independent Project Accountability Mechanism (IPAM), brought into effect through the 2019 Project Accountability Policy. Under the Policy's provisions for case transition, monitoring of the CMI Offshore Management Action Plan from the date above is undertaken in alignment with the requirements of the 2019 Project Accountability Policy.

IPAM is the Independent accountability mechanism of the EBRD. It reviews environmental, social, and Project disclosure-related concerns raised by Project-affected people and civil society organisations. IPAM can address concerns through two avenues: i) Problem-solving, which supports dialogue between Complainants and Clients to resolve environmental, social and public disclosure concerns without attributing blame or fault; or ii) Compliance Reviews, which determine whether the EBRD has complied with its Environmental and Social Policy and Access to Information Policy in relation to the Project.

For more information about IPAM, please contact us at ipam@ebrd.com or visit the IPAM webpage.

Contact information	How to submit a complaint to the IPAM
Questions can be addressed to: The Independent Project Accountability Mechanism (IPAM) European Bank for Reconstruction and Development One Exchange Square London EC2A 2JN Telephone: +44 (0)20 7338 6000 Fax: +44 (0)20 7338 7633 Email: ipam@ebrd.com	Concerns about the environmental and social performance of an EBRD Project can be submitted by email, telephone or in writing, or via the online form at: https://www.ebrd.com/project-finance/ipam.html

EXECUTIVE SUMMARY

The EBRD Project Complaint Mechanism (PCM) completed a Compliance Review of the CMI Offshore Project (47096) in Turkmenistan in February 2019, identifying one instance of non-compliance with the EBRD's 2014 Environmental and Social Policy (ESP). The Compliance Review determined that Bank Management did not meet its obligations to consider the environmental and social risks presented by Project-related associated facilities / activities. The independent PCM Expert responsible for the Compliance Review made two recommendations to Bank Management:

> **Recommendation 1:** Develop detailed ESP Guidance clarifying the requirements for identifying and characterizing potentially significant environmental and social impacts of Project-related facilities / activities.
>
> **Recommendation 2:** Review the EIAs completed for the oil extraction operations serviced by the Client, in order to ensure that any critical environmental and social impacts influencing the EBRD Project were addressed through the Environmental and Social Action Plan (ESAP). The Expert highlighted the need for particular review of any direct, indirect or cumulative impacts to the Hazar State Nature Reserve, to ensure appropriate mitigation measures would be implemented within the scope of the Project.

Management Action Plan

In response to the findings of non-compliance, the Bank developed a Management Action Plan (MAP) to address the Expert's findings and recommendations, which was approved by the EBRD Board of Directors on 5 February 2019. Bank Management committed to undertake two actions - each involving two sub-actions:

1.1. Clarify the environmental and social appraisal requirements for Project-related existing facilities, associated facilities and functionally-related other projects through the revised 2019 ESP, in line with peer multilateral development banks (MDBs) and EU Environmental Impact Assessment (EIA) Directives; and

1.2. Develop ESP Guidance on:

   a) the scope and boundaries of past and present environmental and social issues / risks associated with existing or associated facilities, subject to the Bank's environmental and social appraisal; and
   b) the circumstances under which the Bank's environmental and social appraisal would need to consider environmental /and social risks / impacts related to existing and new facilities not financed by EBRD.

2.1. Amending EBRD Guidance on environmental and social appraisal, requiring Clients to identify publicly available EIAs for associated facilities. This would enable EBRD to review and identify any critical environmental and social risks for the Client's operations. In the event that any material environmental or social risks were identified - which fell within the Client's influence to mitigate - Management committed to work with the Client to develop appropriate risk mitigation measures for inclusion in the ESAP; and

2.2. Preparing internal procedures to record all elements of the Bank's environmental and social appraisal, even when issues were not identified.

Management Action Plan First Monitoring

The IPAM has a mandate to monitor the implementation of the Board-approved MAP, including MAPs that were adopted before IPAM came to being with the adoption of the new Policy. In August 2020 IPAM completed and published on IPAM Case registry its first Management Action Plan Monitoring Report in relation to the CMI Offshore Project ("**the Project**"). The Report covered the period March 2019 to July 2020 and provided update to the EBRD Board of Directors, Relevant Parties and the public on the Bank's implementation of the Board-approved Management Action Plan. It determined that Action 1.1 of the MAP had been completed, while Actions 1.2, 2.1, and 2.2 remained outstanding

Management Action Plan Second Monitoring

This is the Second Monitoring Report issued in relation to the Project for the period August 2020 to December 2020.

It presents:

a) the monitoring activities undertaken by IPAM during August 2020 – December 2020 reporting period; and
b) the findings and conclusions resulting from IPAM monitoring.

This Monitoring Report reflects the status of MAP implementation to date. Following a review of the documentation received from Bank Management regarding the three actions reported pending in the last monitoring report, IPAM has found that Actions 1.2 and 2.1 are completed. At the end of the period, Action 2.2 remains pending.

SUMMARY OF ACTIONS

S.No.	ACTIVTITY	TIMELINE
1.	Compliance Review completion	January 2019
2.	Management Action Plan approval	February 2019
3.	1st monitoring report covering period March 2019 – July 2020	August 2020
4.	2nd monitoring report covering period August 2020 – December 2020	February 2021

IPAM shall continue to monitor the implementation of Action 2.2 and update on progress in the third monitoring report scheduled for June 2021. If IPAM receives information regarding its completion prior to the end of the next monitoring period, the completion report will be issued at that time.

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ABBREVIATIONS LIST

EIA	Environmental impact assessment
ESAP	Environmental and social action plan
ESD	Environmental and social department
ESP	EBRD Environmental and Social Policy
IPAM	Independent Project Accountability Mechanism
MAP	Management Action Plan
MDB	Multilateral development bank
OGC	Office of the General Counsel
PCM	Project Complaint Mechanism
Policy	IPAM Project Accountability Policy

1 Introduction

This Monitoring Report provides an overview of:

c) the background and context of the IPAM case;
d) the monitoring activities undertaken by IPAM during the August - December 2020 monitoring period; and
e) the monitoring findings and conclusions.

2 Background and Context

2.1 Complaint Submission and Eligibility Assessment

In October 2017, PCM received a Complaint from civic activists within Turkmenistan and members of the *Turkmenistan Working Group of the Civic Solidarity Program*, comprised of: Development of Democracy and Human Rights (Russia); Freedom Files (Russia); and Crude Accountability (USA) ("the Complainants"). PCM found three concerns raised in the Complaint eligible for further assessment through a Compliance Review, namely:

1) the appropriateness of Project categorisation;
2) the sufficiency of the Project's Environmental and Social Impact Assessment (ESIA), in consideration of the differing 2014 ESP requirements dependent on categorisation; and
3) the concern that the Project was in fact an associated facility of an oil extraction project, with direct impacts to an internationally protected area.

Dr. Owen McIntyre was appointed to undertake the Compliance Review as an external PCM Expert.

2.2 Compliance Review Findings

On 5 February 2019, the PCM Expert found the Bank to be non-compliant with Performance Requirement 1.9 of the 2014 ESP. This instance of non-compliance related to the Complainants' third concern, finding that:

[...] the oil extraction operations in the Cheleken oil field serviced by the Client [were] associated facilities / activities of the Project and, thus, direct, indirect or cumulative impacts likely to be associated therewith ought to have been considered in the environmental and social assessment process for the [CMI Offshore] Project.

The Compliance Review found there to be no evidence that the EBRD considered the implications of the EIAs completed for the oil extraction facilities / activities serviced by CMI Offshore. While due diligence for the CMI Offshore Project would not have required a full appraisal of the oil extraction facilities / activities serviced by the Client, EBRD should have informed itself and considered the associated environmental and social risks of these associated facilities / activities.

2.3 Compliance Review Recommendations

In response to the findings of non-compliance, the PCM Expert made two recommendations to the Bank: one that was systemic / procedural in nature, and the other, specific to the Project.

Systemic / Procedural Recommendation 1 – Develop detailed ESP Guidance, clarifying the requirements for identifying and characterizing potentially significant environmental and social impacts of associated facilities / activities, in consideration of direct, indirect and cumulative impacts on the EBRD Project. The Expert identified that this Guidance should be aligned with best practice from peer MDBs, EU EIA Directives, and national EIA requirements.

The PCM Expert highlighted that the Bank's 2019 Environmental and Social Policy Review offered an opportunity to clarify the environmental and social appraisal requirements applied to functionally-related projects.

Project-Specific Recommendation 2 – Review the EIAs completed for the oil extraction operations serviced by the Client, in order to ensure that any critical environmental and social impacts influencing the EBRD Project are addressed appropriately through the Environmental and Social Action Plan (ESAP). The Expert highlighted the need for particular review of direct, indirect or cumulative impacts to the Hazar State Nature Reserve, to ensure appropriate mitigate measures would be implemented within the scope of the Project.

2.4 EBRD Management Action Plan

In response to the PCM findings of Project non-compliance, the Bank prepared a Management Action Plan (MAP), dated 5 February 2019 and outlining their proposed measures to respond to the findings of non-compliance.

Bank Management confirmed that the Compliance Review identified areas of the 2014 ESP that needed clarification through Bank's 2019 ESP policy review. Bank Management maintained its view that "[a]ppropriate environmental and social due diligence was carried out proportionate to the nature and scale of the Project and commensurate with the level of its environmental and social risks and impacts." Bank Management further informed PCM that despite the Project having been approved by the Board of Directors on 18 October 2017, the loan agreement was never signed and the Project was officially cancelled on 7 December 2017.

Management committed to undertake two actions (each consisting of two sub-actions):

Management Action 1:

1.1. Clarify the environmental and social appraisal requirements for Project-related existing facilities, associated facilities and functionally-related other projects through the revised 2019 ESP, in line with peer multilateral development banks (MDBs) and EU Environmental Impact Assessment (EIA) Directives; and

1.2. Develop ESP Guidance on:

a) the scope and boundaries of past and present environmental and social issues / risks associated with existing or associated facilities, subject to the Bank's environmental and social appraisal; and
b) the circumstances under which the Bank's environmental and social appraisal would need to consider environmental /and social risks / impacts related to existing and new facilities not financed by EBRD.

Management Action 2:

Considering that the Project was subsequently cancelled, the Bank identified that it would not be in a position to address the second, Project-level recommendation. However, to implement lessons learned from the Project, Management committed to strengthen its systems and practices for other similar Projects by:

2.1. Amending EBRD Guidance on environmental and social appraisal, requiring Clients to identify publicly available EIAs for associated facilities. This would enable EBRD to review and identify any critical environmental and social risks for the Client's operations. In the event that any material environmental or social risks were identified - which fell within the Client's influence to mitigate - Management committed to work with the Client to develop appropriate risk mitigation measures for inclusion in the ESAP; and

2.2. Preparing internal procedures to record all elements of the Bank's environmental and social appraisal, even when issues were not identified.

3 Monitoring Update

3.1 Monitoring Activities undertaken during the period August - December 2020

IPAM tracks progress on MAP implementation until it is determined that all Actions have been completed as agreed, in accordance with the applicable to the case 2014 PCM Rules of Procedure.

In preparation of this Monitoring Report, IPAM requested written confirmation (and associated documentation) from Bank Management on its MAP progress. The Mechanism carefully reviewed Management's submissions and associated documentation.

3.2 Monitoring Findings

In the last Monitoring Report covering March 2019 – July 2020, IPAM closed the period with three actions still outstanding: Actions 1.2, 2.1, and 2.2.

Bank Management reported the following:

In reference to Action 1.2 Management shared the PR1 Guidance Note with IPAM on October 2020 and expects to disclose it on the EBRD website in early 2021.

For Action 2.1. Management considers that the revisions made in reference to PR1 in the 2019 ESP coupled with the PR1 Guidance above provide the required criteria to include the consideration of associated facilities and their impact assessments (as available).

Finally, in regard to Action 2.2 Management is proposing to incorporate the recommended actions into E&S Procedures and ESD's Internal Assurance Framework. A revision version has been approved and is to be circulated within the Bank for further review. Additionally, Management states that the Assurance Framework clearly requires recording and a Database is used for such purposes. Therefore, in their view, a stand-alone guidance is not required.

Bank Management's progress on the MAP implementation, accompanied by the IPAM's comments, are presented in **Table 1** below.

3.3. Table 1: MAP Implementation Progress

Management Action Plan Commitment Approved by the EBRD Board of Directors	EBRD Management Implementation Update	Status of Management Action Plan Commitment	IPAM Comments
Procedural / Systemic Management Actions			
Action 1.2: Management will develop guidance on: a. the scope of past and present E&S risks relevant to existing/ associated facilities, subject to the Bank's E&S appraisal; and b. the circumstances under which Management's E&S appraisal will need to consider E&S risks and impacts related to existing and new facilities / activities not financed by the EBRD.	An external Guidance Note (GN) for Performance Requirement (PR) 1 has been developed and approved by ESD management and OGC. This GN was shared with IPAM on 23/10/2020. The PR1 GN, together with PR1, addresses Action 1.2. PR1 and the PR1 GN also describe the approach to a client's existing facilities business activities, which are subject to modernisation or upgrades as part of the project as well as the approach to other facilities or activities in the vicinity of the project, existing facilities, and facilities or activities outside the control of the client. The GN, together with others, is due for external publication on www.ebrd.com in early 2021.	**Completed**	IPAM received and reviewed the internal Guidance Note for PR 1
Project-Specific Management Actions			
Action 2.1: Management will amend its ESP guidance on environmental and social appraisal, requiring Clients to identify publicly available EIAs for associated facilities for EBRD's review. In the event that any material environmental or social risks are identified - which remain within the Client's control of influence to mitigate - Management will work with the Client to develop and agree on appropriate risk mitigation measures for inclusion in the ESAP.	PR 1 of 2019 ESP and the developed PR1 GN describes the criteria for determining associated facilities, the approach to associated facilities including the integration of any associated facilities into the E&S assessment for a project (including consideration of available impact assessments for such associated facilities), what standards apply and the responsibilities of the Client.	**Completed**	

Action 2.2: Management will prepare internal procedures to record all elements of the Bank's E&S appraisal process, even when they do not identify relevant issues.	ESD's appraisal (and monitoring) activities are conducted in accordance with the E&S Procedures and ESD's internal Assurance Framework, which have recently been revised to reflect the 2019 E&S Policy. The E&S procedures have been approved by ESD management and will soon be circulated within the Bank for further review. The Assurance Framework defines various procedures and terms of reference for conducting appraisal, recording and presenting the outcomes thereof and agreed actions and record management and storage. Record management is further a key requirement in the E&S procedures. This is coupled with ESD's internal Environmental Management Database in which lead specialists record, for each project, the compliance status for each aspect of the Performance Requirements and the outcomes of ESDD. ESD lead specialists are required to clearly define and record the Project and associated facilities and existing facilities, if any, and associated impacts in ESD records and outputs. It has been determined that a further internal guidance is not required for this action.	**Incomplete - continued monitoring required.**	IPAM understands that Management has integrated the recommended action into the ESD Internal Assurance Framework and therefore agrees that no separate guidance is required. This action will be considered by IPAM once the following takes place: 1. The revised E&S Procedures are circulated and reviewed by IPAM 2. IPAM has access to the Environmental Management Database to confirm that it addresses the requirements set in the recommendation

3.4 Monitoring Conclusions

During this period, Management completed two of the three actions pending and at the end of the period only Action 2.2 is still pending.

IPAM shall continue to monitor the implementation of Action 2.2 and update on progress in the third monitoring report scheduled for June 2021. If IPAM receives information regarding its completion prior to the end of the next monitoring period, the completion report will issued at that time.