



March 13, 2018

Office of the Compliance Advisor Ombudsman (CAO)

COMPLIANCE APPRAISAL: SUMMARY OF RESULTS

*Trans-Anatolian Pipeline (MIGA Project # 13661), Complaint 01
Georgia*

In March 2017, a complaint was lodged with CAO by a former worker (“the complainant”) of *Enka İnşaat ve Sanayi A.Ş.* (ENKA), operating on the construction of the South Caucasus Pipeline Expansion (SCPX) project in Georgia. MIGA recognizes the SCPX project to be an associated facility of the Trans-Anatolian Natural Gas Pipeline (TANAP) project in Turkey. MIGA is negotiating the terms of a guarantee for commercial banks lending to one of the TANAP shareholders, the Southern Gas Corridor Closed Joint-Stock Company (SGC).

The complainant raises concerns about working conditions and issues of occupational health and safety at a pressure reduction and metering station (Area 81) in Vale, Georgia. He also alleges that his employment was unfairly terminated.

In January 2018, the case transferred to CAO’s compliance function for appraisal. The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding E&S outcomes and/or issues of systemic importance to MIGA. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the E&S concerns raised in a complaint, results of a preliminary review of MIGA’s E&S performance in relation to these issues, the existence of questions as to the adequacy of MIGA’s requirements, and a more general assessment of whether a compliance investigation is the appropriate response.

While evidence beyond the complainant’s account of events is limited, these issues are potentially systemic and substantial in nature.

SCPX is acknowledged by MIGA to be an associated facility of TANAP, a project which they have approval to guarantee. However, MIGA determined that its E&S requirements would not be extended to cover SCPX. This decision was based on a conclusion that SCPX would be operated by third parties over which TANAP has no operational control or leverage. Considering the ownership structures of SCPX and TANAP, CAO has questions as to the robustness of the analysis that led MIGA to this conclusion.

Nevertheless, CAO has decided not to open a compliance investigation in response to this complaint. In reaching this conclusion, CAO has considered the following. Firstly, that the construction work, which is the subject of the complaint, has been completed and ENKA is no longer working on SCPX. Secondly, that the issues raised by the complainant occurred prior to MIGA providing a guarantee for project. And thirdly, that available evidence does not suggest that the impacts alleged constitute a legacy issue of such a serious nature as would require MIGA to refrain from supporting a proposed project on the basis of third-party risk. In these circumstances, CAO has determined that a compliance investigation is not the appropriate response.

About CAO

The Office of the Compliance Advisor Ombudsman (CAO) is an independent post that reports directly to the President of the World Bank Group. CAO reviews complaints from communities affected by development projects undertaken by the two private sector lending arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

The CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and thus to improve the environmental and social (E&S) performance of IFC and MIGA.

CAO consists of three unique and complementary functions, Dispute Resolution, Compliance and Advisory, which together provide a flexible framework for handling people's complaints and addressing systemic concerns about IFC and MIGA projects.

About CAO's Compliance Function

CAO's Compliance function provides oversight of IFC and MIGA investments with the objective of improving E&S performance of the institutions.

The compliance function is activated when either of the parties opt for it following CAO's assessment of the complaint or when the Dispute Resolution process does not lead to an agreement between the parties. The compliance function can also be initiated by the CAO Vice-President, the President of the World Bank Group or IFC/MIGA senior management.

Following a compliance investigation, CAO may determine that it is necessary to monitor actions taken by IFC or MIGA until such actions assure CAO that its compliance findings are being addressed.¹

For more information about CAO, please visit www.cao-ombudsman.org.

¹ CAO Operational Guidelines, 2013, para. 4.4.6.

Table of Contents

| | |
|---|-----------|
| Acronyms | 4 |
| I. Overview of the Compliance Appraisal Process | 5 |
| II. Background..... | 6 |
| Complaint | 6 |
| Project | 6 |
| Appraisal Methodology | 7 |
| III. Analysis..... | 7 |
| Issues Raised in the Complaint | 7 |
| Company Perspectives..... | 8 |
| MIGA’s Guarantee..... | 9 |
| Figure 1: Context of MIGA Guarantee in Relation to TANAP, SCPX & ENKA | 10 |
| MIGA’s Policy Framework Applicable to Third-Party Associated Facilities | 11 |
| MIGA’s E&S Due Diligence Review | 11 |
| IV. CAO Decision..... | 14 |

Acronyms

| Acronym | Definition |
|---------|---|
| AzSCP | Azerbaijan South Caucasus Pipeline Ltd. |
| BEJV | Bechtel–Enka Joint Venture |
| BOTAŞ | <i>Boru Hatları İle Petrol Taşıma Anonim Şirketi</i> [BOTAŞ Petroleum Pipeline Corporation] |
| BP | British Petroleum |
| CAO | Office of the Compliance Advisor Ombudsman |
| E&S | Environmental and Social |
| EBRD | European Bank for Reconstruction and Development |
| EIB | European Investment Bank |
| ENKA | <i>Enka İnşaat ve Sanayi A.Ş.</i> [Enka Construction and Industry Inc.] |
| ESIA | Environmental and Social Impact Assessment |
| ESMS | Environmental and Social Management System |
| ESRS | Environmental and Social Review Summary |
| IBRD | International Bank for Reconstruction and Development |
| IFC | International Finance Corporation |
| IFI | International Financial Institution |
| MIGA | Multilateral Investment Guarantee Agency |
| OHS | Occupational Health and Safety |
| PAD | Project Appraisal Document |
| PS | Performance Standard |
| SCPX | South Caucasus Pipeline Expansion |
| SD2 | Shah Deniz Stage 2 |
| SGC | Southern Gas Corridor Closed Joint-Stock Company |
| SOCAR | State Oil Company of the Azerbaijan Republic |
| TAP | Trans-Adriatic Pipeline |
| TANAP | Trans-Anatolian Natural Gas Pipeline |
| TPAO | <i>Türkiye Petrolleri Anonim Ortaklığı</i> [Turkish Petroleum Corporation] |
| WBG | World Bank Group |

I. Overview of the Compliance Appraisal Process

When CAO receives a complaint about an IFC or MIGA project, the complaint is referred for assessment. If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the CAO compliance function for appraisal and potential investigation.

A compliance appraisal also can be triggered by the CAO vice president, IFC/MIGA management, or the president of the World Bank Group.

The focus of the CAO compliance function is on IFC and MIGA, not their client. This applies to all IFC's business activities, including the real sector, financial markets and advisory. CAO assesses how IFC/MIGA assured itself/themselves of the performance of its business activity or advice, as well as whether the outcomes of the business activity or advice are consistent with the intent of the relevant policy provisions. In many cases, however, in assessing the performance of the project and IFC's/MIGA's implementation of measures to meet the relevant requirements, it will be necessary for CAO to review the actions of the client and verify outcomes in the field.

In order to decide whether a compliance investigation is warranted, CAO first conducts a compliance appraisal. The purpose of the compliance appraisal process is to ensure that compliance investigations are initiated only for those projects that raise substantial concerns regarding environmental and/or social outcomes, and/or issues of systemic importance to IFC/MIGA.

To guide the compliance appraisal process, CAO applies several basic criteria. These criteria test the value of undertaking a compliance investigation, as CAO seeks to determine whether:

- There is evidence of potentially significant adverse environmental and/or social outcome(s) now, or in the future.
- There are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA.
- There is evidence that indicates that IFC's/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection.

In conducting the appraisal, CAO will engage with the IFC/MIGA team working with the specific project and other stakeholders to understand which criteria IFC/MIGA used to assure itself/themselves of the performance of the project, how IFC/MIGA assured itself/themselves of compliance with these criteria, how IFC/MIGA assured itself/themselves that these provisions provided an adequate level of protection, and, generally, whether a compliance investigation is the appropriate response. After a compliance appraisal has been completed, CAO can close the case or initiate a compliance investigation of IFC or MIGA.

Once CAO concludes a compliance appraisal, it will advise IFC/MIGA, the World Bank Group President, and the Board in writing. If a compliance appraisal results from a case transferred from CAO's dispute resolution, the complainant will also be advised in writing. A summary of all appraisal results will be made public. If CAO decides to initiate a compliance investigation as a result of the compliance appraisal, CAO will draw up terms of reference for the compliance investigation in accordance with CAO's Operational Guidelines.

II. Background

Complaint

In March 2017, a complaint was lodged with CAO by a former worker (“the complainant”) of *Enka İnşaat ve Sanayi A.Ş.* (ENKA), operating as part of the Bechtel–Enka Joint Venture (BEJV) on the construction of the South Caucasus Pipeline Expansion (SCPX) project in Georgia.

The complainant raises concerns about working conditions and issues of occupational health and safety (OHS) at a pressure reduction and metering station, Area 81, in Vale, Georgia, near to the Turkish border. The complainant was employed by ENKA between June 2016 and January 2017, during which time BEJV managed the Area 81 site. The complainant alleges that his employment was unfairly terminated, with ENKA still owing him 215.5 Georgian lari (approximately 80 US dollars) in unpaid wages.

CAO found the complaint eligible and opened an assessment process in May 2017. CAO’s assessment period concluded in January 2018, noting that while the complainant expressed an interest in participating in a dispute-resolution process with ENKA, BEJV and/or British Petroleum (BP), the companies declined to participate in such a process.² The case therefore transferred to CAO’s compliance function in accordance with CAO’s *Operational Guidelines*.³

Project

MIGA recognizes the SCPX project to be an associated facility of the Trans-Anatolian Natural Gas Pipeline (TANAP) project in Turkey.⁴ The Area 81 site is part of the SCPX project. The TANAP project is part of the Southern Gas Corridor, which is being built to transport natural gas from Shah Deniz Gas Field in Azerbaijan through Turkey to Europe. The Southern Gas Corridor is comprised of several distinct projects:

- Sangachal Terminal, south of Baku, Azerbaijan, developed in two stages: the Early Oil Project and the Sangachal Terminal Expansion Programme⁵
- Shah Deniz Gas Field, southeast of Baku in Azerbaijan, developed in two stages: Shah Deniz Stage 1 and Shah Deniz Stage 2 (SD2)⁶
- South Caucasus Pipeline (SCP), originating in Azerbaijan and continuing through Georgia to the Turkish border
- South Caucasus Pipeline Expansion Project (SCPX), which involves laying of new pipeline across Azerbaijan and the construction of two new compressor stations in Georgia⁷
- Trans-Anatolian Natural Gas Pipeline (TANAP) carrying gas from the Georgian border across Turkey to its border with Greece
- Trans-Adriatic Pipeline (TAP) carrying gas through Greece, Albania, to southern Italy.

² CAO. 2018. *Georgia / Trans-Anatolian Pipeline-01/Vale*. Available at: <https://goo.gl/KrdHhe>.

³ CAO. 2013. *Operational Guidelines*. Available at: <https://goo.gl/tiSGqs>.

⁴ MIGA. 2017. *Environmental and Social Review Summary: TANAP Project / Turkey* (October 14th, 2016; updated May 9, 2017). Available at: <https://goo.gl/fe88Fw>.

⁵ British Petroleum (BP). *undated*. “Sangachal terminal.” Available at: <https://goo.gl/6HoZZi>.

⁶ BP. *undated*. “Shah Deniz Stage 1.” Available at: <https://goo.gl/QeMSvQ>; BP. *undated*. “Shah Deniz Stage 2.” Available at: <https://goo.gl/dbfPqQ>.

⁷ BP Azerbaijan. *undated*. “South Caucasus pipeline.” Available at: <https://goo.gl/aRRTCj>.

International financial institutions (IFI) are supporting some projects of the Southern Gas Corridor, including TANAP. In December 2016, the Executive Directors for the International Bank for Reconstruction and Development (IBRD) and MIGA's Board of Directors jointly approved a loan project proposed by IBRD and a guarantee proposed by MIGA for the TANAP project.⁸ SCPX is not being supported by any IFI.

At the time of writing this report, MIGA was negotiating the terms of the Board-approved guarantee for commercial banks lending to the Southern Gas Corridor Closed Joint-Stock Company (SGC), an Azerbaijani joint investment company with operational control of the TANAP project. SGC is a joint investment company of the Government of Azerbaijan (GoA) Ministry of Economy and Industry and the State Oil Company of the Azerbaijan Republic (SOCAR). MIGA rates the TANAP project as high risk (environmental Category A).⁹ The SCPX Area 81 site in Vale, Georgia, was in the commissioning phase. Construction activities had concluded and ENKA was no longer involved in the SCPX project.

Appraisal Methodology

This compliance appraisal is based on a review of the CAO's Assessment Report, MIGA documents, public project information on TANAP and SCPX, and discussions between CAO and the complainant and MIGA. The report considers MIGA's due diligence in preparing its guarantee to commercial banks, its reliance on IBRD project due diligence, and its decision relevant to the extent of application of MIGA policies. The analysis below includes MIGA's views.

III. Analysis

Issues Raised in the Complaint

The complainant alleges both systemic non-compliance with OHS protocols and specific worksite safety concerns at Area 81 of the South Caucasus Expansion Project in Vale, Georgia, as identified below.

Terms of Employment

- **Employee misclassification.** The complainant alleges to have been contracted and registered as a steel installer while working, and being remunerated, as a crane rigger. The complainant claims that other workers were similarly misclassified.
- **Issues of improper hours and overtime.** The complainant alleges that workers were required to work long shifts and numerous consecutive days. The complainant alleges that this led to workers' exhaustion. Sometimes, he asserts, compensation for overtime work was not properly calculated. The complainant alleges that workers did not raise grievances about long hours for fear of reprisal.

⁸ IBRD. 2016. *PAD 1665: International Bank for Reconstruction and Development Project Appraisal Document on a Proposed Loan in the Amount of US\$400 Million to the Southern Gas Corridor Closed Joint Stock Company with the Guarantee of the Republic of Azerbaijan and a Proposed Loan in the Amount of US\$400 Million to Boru Hatlari İle Petrol Taşıma Anonim Şirketi with the Guarantee of the Republic of Turkey for the Trans-Anatolian Natural Gas Pipeline Project November 22, 2016.* Available at: <https://goo.gl/FiHbTB>.

⁹ MIGA. *undated. Summary of Proposed Guarantee: Trans-Anatolian Pipeline.* Available at: <https://goo.gl/S8GwJa>.

- **Wage discrimination.** The complainant alleges that Turkish workers received significantly higher pay than Georgian workers holding the same position. He claims also that a greater number of positions within the company were reserved for Turkish workers.
- **Wrongful termination.** The complainant alleges that ENKA does not respect contractual terms when terminating employment and without providing advance written notice.

Occupational Health & Safety

- **Lack of training.** The complainant alleges that crane riggers had not taken appropriate training (such as for anchor handler, signalman, working at high elevation) and that staff were inexperienced.
- **Inadequate maintenance of equipment.** The complainant alleges that inspection of cranes and rigging equipment is perfunctory and not conducted by qualified specialists. The complainant alleges that he and others suffered from an electric shock as a result.
- **Worksite safety violations.** The complainant alleges that the crane rigger work involved excessive reliance on manual labor—often without access to appropriate tools (including ladders) and sometimes work occurred under severe weather conditions. The complainant also alleges that there were too few riggers for the crane work.
- **Inadequate workers' facilities.** The complainant alleges the cafeteria was too small to accommodate the size of the workforce, requiring workers to spend a disproportionate amount of time standing in line during lunch. The complaint also alleges that food quality was poor.

The issues raised by the complainant indicate the potential for adverse OHS outcomes, which may be systemic in nature. Although the amount of compensation sought by the complainant for unpaid wages is minimal, the complainant notes that his concern is not about the money owed but about institutional forms of discrimination and unsafe working practices. The complainant alleges that these issues apply also to other workers who feared coming forward would jeopardize their jobs and livelihoods.

Company Perspectives

During the assessment process, CAO's dispute resolution team met with SGC, BP, and BEJV to obtain their perspectives on the complaint.¹⁰

SGC noted that they have no control over SCPX and had never worked with ENKA.

BP noted that BEJV was the construction contractor at the Area 81 site in Vale, Georgia, with BP as technical operator of SCPX. BP assumed direct control for site operation from BEJV as the site transitioned from construction to commissioning. BP clarified that the construction work at the Area 81 site was essentially complete at the time of CAO's assessment.

BP further noted that, during site construction under BEJV, Area 81 had a strong safety record. BP managed the health and safety performance of BEJV by tracking health and safety performance by monitoring days away from work cases, recordable injury frequency, and other indicators, such as safe and unsafe acts and near misses. BP further indicated that, where they had identified issues with the competency of personnel or adherence to procedures at Area 81, they acted to address these deficiencies.

¹⁰ CAO. 2018. *CAO Assessment Report: Complaint regarding SCP's operations related to MIGA's TANAP project (#13661) Vale, Georgia*. Available at. <https://goo.gl/y6TEqL>

BEJV noted that, as a rule, they follow strict policies regarding safety, health, and employment. BEJV indicated that they devoted sufficient resources in attempting to address the complainant's claims. BEJV noted that they had investigated the allegations of unpaid wages, wrongful termination, and safety issues (which were brought to BEJV's attention directly by the complainant before CAO's involvement), and determined that none of those allegations were substantiated. BEJV noted that they engaged the complainant on two separate occasions to address the allegations raised.

BEJV indicated their position that CAO has no jurisdiction regarding this complaint and stated that they are not willing to engage with CAO any further on this matter.

MIGA's Guarantee

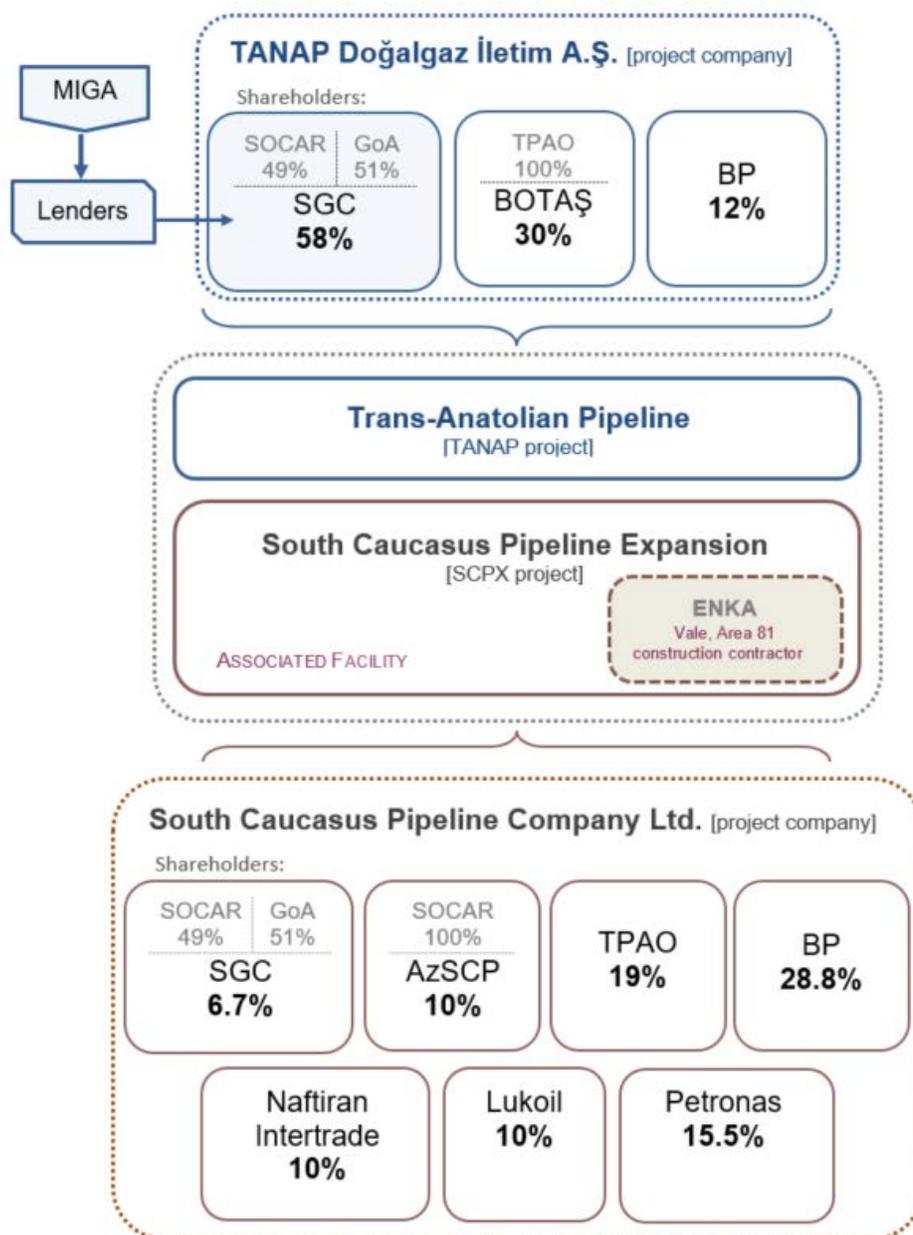
MIGA has approval to provide a Non-Honoring of Sovereign Financial Obligation guarantee of \$950 million US dollars for a period of up to 15 years to commercial banks that are lending to SGC to fund SGC's share in the TANAP project.¹¹ MIGA's approved guarantee covers the risk of non-payment by SGC under the loan agreement with the commercial banks and the failure of the Government of Azerbaijan to honor its sovereign guarantee. MIGA's guarantee would establish a contractual relationship directly with the lenders. The lenders, in turn, would agree to loan terms with SGC. MIGA's guarantee would involve no direct contractual agreement with SGC. However, the guarantee would contain covenants to be passed on by the lenders to SGC through the loan agreement. These covenants would include E&S provisions, environmental guidelines and the Environmental and Social Action Plan.

MIGA's Environmental and Social Review Summary (ESRS) concluded that the E&S performance of SCPX is outside the scope of MIGA's guarantee. The ESRS stated that "*MIGA's E&S requirements will not be extended to cover the associated facilities. These projects are operated by third parties over which TANAP has no operational control or leverage. This is consistent with both Performance Standard 1 and IBRD's approach to associated facilities in this project.*"¹² Figure 1 below shows the context of MIGA's guarantee in relation to the TANAP and SCPX projects and to the SCPX sub-contractor, ENKA.

¹¹ MIGA. *Summary of Proposed Guarantee: TANAP*.

¹² MIGA. 2017. *Environmental and Social Review Summary: TANAP*.

Figure 1: Context of MIGA Guarantee in Relation to TANAP, SCPX & ENKA¹³



¹³ Information on TANAP project ownership derives from IBRD’s 2016. Project Appraisal Document [1665], available at <https://goo.gl/FiHbTB> and the SOCAR Midstream website, “TANAP: Trans Anatolian Natural Gas Pipeline (TANAP),” available at <https://goo.gl/3ftrFe>. Information on SCPX project ownership derives from the BP Azerbaijan website, “South Caucasus Pipeline,” available at <https://goo.gl/KMutFp>; from the Asian Development Bank 2016 *Report and Recommendation of the President to the Board of Directors: Proposed Partial Credit Guarantee Shah Deniz Gas Field Expansion Project (Azerbaijan) [Project Number: 49451-002]*, available at <https://goo.gl/Bx1yhM>, and from the EBRD website, “SOCAR – South Caucasus Gas Pipeline,” available at: <https://goo.gl/YV9ArH>.

MIGA's Policy Framework Applicable to Third-Party Associated Facilities

MIGA's 2013 *Policy on Environmental and Social Sustainability* provides that high-risk projects are to be carried out in accordance with the Performance Standards (PS).¹⁴ With respect to risk identification, it further provides that when IFC or IBRD or any World Bank Group (WBG) entity is involved with the project, "MIGA may rely on and use such entity's environmental standards, environmental and social due diligence and/or monitoring, in accordance with WBG common or shared guidance."¹⁵

MIGA's 2013 Performance Standards require identification of E&S risks and impacts in a project's area of influence. This includes risks and impacts with respect to associated facilities, which "are not funded as part of the project and that would not have been constructed or expanded if the project did not exist and without which the project would not be viable."¹⁶ In cases where third parties are responsible for aspects of E&S risk management at associated facilities, MIGA's PS stipulate: "an effective ESMS [Environmental and Social Management System] should identify the different entities involved and the roles they play, the corresponding risks they present to the client, and opportunities to collaborate with these third parties in order to help achieve environmental and social outcomes that are consistent with the Performance Standards."¹⁷ The PS also require clients to "address those risks and impacts in a manner commensurate with the client's control and influence over the third parties, and with due regard to conflict of interest."¹⁸

Where MIGA's guarantee holder (MIGA's client¹⁹) is a lender that does not control the project enterprise, MIGA requires the client, to the extent practicable under the circumstances: "(i) to include covenants in their loan documents or some other agreement with the Project Enterprise that require compliance with MIGA's environmental and social standards; and (ii) to diligently enforce these covenants against the Project Enterprise."²⁰ MIGA's sustainability policy further provides that, when the client has no control or influence over the actions of third parties, MIGA will determine whether project risks are manageable, and if so under what conditions. Certain risks may require MIGA to refrain from supporting a proposed project.²¹

MIGA's E&S Due Diligence Review

IBRD conducted an environmental and social due diligence review of the TANAP project prior to MIGA's involvement. IBRD determined that SCPX was an associated facility of TANAP, but requested and received from the Board of Executive Directors a safeguard policy waiver²² for

¹⁴ MIGA. 2013. *Policy on Environmental and Social Sustainability*, paragraph 3. Available at: <https://goo.gl/QZzbbN>.

¹⁵ MIGA. 2013. *Policy on Environmental and Social Sustainability*, paragraph 6.

¹⁶ MIGA. 2013. "Performance Standard 1" *Performance Standards on Environmental and Social Sustainability*. PS1, paragraph 8. Available at <https://goo.gl/abeZyh>. Footnote 15 further clarifies that associated facilities "may include railways, roads, captive power plants or transmission lines, pipelines, utilities, warehouses, and logistics terminals."

¹⁷ MIGA. 2013. PS1, paragraph 2.

¹⁸ MIGA. 2013. PS1, paragraph 9.

¹⁹ MIGA's 2013 *Policy on Environmental and Social Sustainability* (paragraph 2, footnote 1) defines a MIGA client as "the Project Enterprise or the Guarantee Holder (as these terms are formally defined in MIGA's Contract of Guarantee), or the borrower of any loan guaranteed by MIGA, as is appropriate in the context. The Project Enterprise takes the actions necessary to implement the Performance Standards."

²⁰ MIGA. 2013. *Policy on Environmental and Social Sustainability*, paragraph 2, footnote 1.

²¹ MIGA. 2013. *Policy on Environmental and Social Sustainability*, paragraph 3. Available at: <https://goo.gl/QZzbbN>.

²² IBRD requested a waiver for OPs/BPs 4.01 (Environmental Assessment), 4.04 (Natural Habitats), 4.36 (Forests), 4.09 (Pest Management), 4.11 (Physical and Cultural Resources), 4.12 (Involuntary

“associated projects”, including SCPX. The basis for the waiver given in the PAD is that “*the Bank has little to no reasonable expectation that it will:*

- (a) be able to have access to all of the project documentation of the Associated Projects;*
- (b) be allowed to take part in the supervision of the Associated Projects; or*
- (c) be able to negotiate a legal framework that would allow the Bank to exercise remedies in the case of non-compliance with safeguard instruments under the Associated Projects, all of which are necessary for the proper application of the Bank’s environmental and safeguard policies.”²³*

The PAD notes that the above conclusions were based on the following:

- (a) The ownership structures for the Associated Projects differ from that of TANAP. BOTAŞ is not a shareholder in any of the three Associated Projects. SGC is a minority shareholder, with 6.7 percent in SD2 and SCPx and 20 percent in TAP;*
- (b) The Bank has no participation in the financing of any of the Associated Projects;*
- (c) Two of the three Associated Projects are in advanced stages of implementation, and the third Associated Project has started construction; and*
- (d) While the Bank has had some success in getting access to safeguard information about the Associated Projects, the Bank has been told that unlimited access would not be possible due to the confidentiality considerations of the other projects.²⁴*

The PAD further notes that, “*recognizing the functional and perceptual linkage between TANAP and these other investments,*”²⁵ IBRD carried out due diligence review of the potential risk levels and management systems of these associated projects, including reviewing the publicly-available Environmental and Social Impact Assessments (ESIAs). IBRD’s review concluded that the “*ESIAs of associated projects generally comply with the Bank’s safeguards procedures and are of high quality.*”²⁶ The review “*identified no significant compliance issues*”, deeming the associated projects to be “*of moderate risk, well planned, and executed with documentation and procedures comparable to the Bank’s environmental and social safeguard policy requirements.*”²⁷

MIGA’s E&S due diligence confirmed that IBRD’s own E&S due diligence to be of sufficient quality and scope to adequately inform MIGA’s approval process. Based on the provisions in the PS that risks and impacts related to associated facilities be addressed “*in a manner commensurate with the client’s control and influence over the third parties,*”²⁸ MIGA’s approval process did not require a safeguard waiver in the same manner as IBRD.

Resettlement) and 4.37 (Safety of Dams). No waiver was sought for OP/BP 4.10 (Indigenous Peoples) or OP/BP 7.60 (Disputed Territories) as these policies were not triggered. Refer to: IBRD. 2016. PAD 1665, paragraph 113, footnote 4.

²³ IBRD. 2016. PAD 1665, paragraph 113.

²⁴ IBRD. 2016. PAD 1665, paragraph 114.

²⁵ IBRD. 2016. PAD 1665, paragraph 115.

²⁶ IBRD. 2016. PAD 1665, paragraph 115.

²⁷ IBRD. 2016. PAD 1665, paragraph 116.

²⁸ MIGA. 2013. PS1, paragraph 9.

Determination of Control and Influence

MIGA examined SGC's control in relation to the TANAP associated facilities, including SCPX. Important to MIGA's review was the minority shareholder's position of SGC in all the associated facilities. With respect to SCPX in particular, SGC has only a 6.7% share and therefore does not have control of SCPX operations. MIGA noted that, with respect to the Area 81 site, construction works were complete and ENKA was no longer active on the project site.

MIGA reported that it explored the question of SGC influence in the TANAP project associated facilities in terms of coordinating with other IFIs on opportunities to collaborate and share information.²⁹ MIGA noted that IFI coordination would not be an avenue of influence in SCPX, as no other IFI is providing support to the project.

MIGA noted that it did not engage with SCPX as part of its due diligence review. MIGA also reported that it did not require SGC to include identification of E&S risks posed by associated facilities in the TANAP project ESMS as the PAD included this analysis.

CAO notes that, except for the discussion in the PAD on associated facilities, MIGA provided no documentation containing deliberation or analysis of the potential influence of SGC or the TANAP project in associated facilities, including SCPX.

MIGA did not engage with TANAP project shareholders (other than SGC) about either the extension of its Performance Standards to associated facilities or avenues of information sharing between TANAP and associated facilities *"to help achieve environmental and social outcomes that are consistent with the Performance Standards."*³⁰ MIGA did not provide analysis of the conditions under which third party risks, including those from associated facilities, would be manageable or discussion of whether certain risks would require MIGA to refrain from supporting the project.³¹

CAO notes similarities in the ownership composition of TANAP and SCPX projects. In addition to the direct participation of SGC and BP in both the TANAP and SCPX projects (see Figure 1 above). In particular, CAO notes that the Government of Azerbaijan and the corporate groups that hold equity in TANAP (SOCAR, BP, and TPAO) together own 64.5% of SCPX.

CAO understands the concept of "influence" as used in the Performance Standards to include the ability to leverage relationships to achieve outcomes consistent with MIGA's E&S requirements.

In this context, CAO has questions as to the robustness of the analysis that led MIGA to the conclusion that there was no prospect to work through the lenders or TANAP equity holders to influence SCPX, as an associated facility, or to share information that would help support the achievement of outcomes consistent with the Performance Standards.

²⁹ IBRD. 2016. PAD 1665, paragraph 116. The PAD provides that the *"Bank team will seek to coordinate with the other IFIs on opportunities to collaborate and share information in this respect"* (paragraph 116). The Asian Development Bank, the European Bank for Reconstruction and Development, and the European Investment Bank indicated their willingness to collaborate with the World Bank during the implementation of TANAP and associated projects. MIGA notes that SGC confirmed its support to IFI collaboration.

³⁰ MIGA. 2013. PS1, paragraph 2.

³¹ MIGA. 2013. PS1, paragraph 21.

IV. CAO Decision

The purpose of a CAO compliance appraisal is to ensure that compliance investigations are initiated only in relation to projects that raise substantial concerns regarding E&S outcomes and/or issues of systemic importance to MIGA. In deciding whether to initiate an investigation, CAO weighs factors including the magnitude of the E&S concerns raised in a complaint, results of a preliminary review of MIGA's E&S performance in relation to these issues, the existence of questions as to the adequacy of MIGA's requirements, and a more general assessment of whether a compliance investigation is the appropriate response in such circumstances.

In this case, the complainant raises concerns regarding working conditions on the construction of SCPX. While evidence beyond the complainant's account of events is limited, these issues are potentially systemic and substantial in nature.

SCPX is acknowledged by MIGA to be an associated facility of TANAP, a project which they have approval to guarantee. However, MIGA determined that its E&S requirements would not be extended to cover SCPX. This decision was based on a conclusion that SCPX would be operated by third parties over which TANAP has no operational control or leverage. Considering the ownership structures of SCPX and TANAP, CAO has questions as to the robustness of the analysis that led MIGA to this conclusion.

Nevertheless, CAO has decided not to open a compliance investigation in response to this complaint. In reaching this conclusion, CAO has considered the following. Firstly, that the construction work, which is the subject of the complaint, has been completed and ENKA is no longer working on SCPX. Secondly, that the issues raised by the complainant occurred prior to MIGA providing a guarantee for project. And thirdly, that available evidence does not suggest that the impacts alleged constitute a legacy issue of such a serious nature as would require MIGA to refrain from supporting a proposed project on the basis of third-party risk. In these circumstances, CAO has determined that a compliance investigation is not the appropriate response.