



June 16, 2016

Office of the Compliance Advisor Ombudsman (CAO)

Terms of Reference for Compliance Investigation of IFC

enso Albania (IFC Project #30979)

Albania

Complaint 01

About CAO

CAO's mission is to serve as a fair, trusted, and effective independent recourse mechanism and to improve the environmental and social accountability of IFC and MIGA.

CAO (Office of the Compliance Advisor Ombudsman) 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 arms of the World Bank Group, the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA).

If CAO concludes that the parties are not willing or able to reach a facilitated solution, the case is transferred to the compliance function of CAO, to appraise whether the concerns raised in the complaint merit a compliance investigation of IFC/MIGA.

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 services. 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.

CAO discloses the findings of its compliance investigation in an investigation report to inform the President and Board of the World Bank Group, senior management of IFC/MIGA, and the public about its decision.

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

Background to the investment

On September 28, 2011, IFC approved an early stage equity investment in enso hydro energji sh.p.k., an Albanian holding company established by enso hydro GmbH (referred to jointly as "enso" or "the client"). Enso hydro GmbH is an Austrian company specializing in investments in small-scale and medium-scale hydropower projects. IFC's investment was for equity of up to EUR 6 million, representing up to twenty percent of the client's outstanding share capital. The investment was to provide support for the construction of the Lëngarica and Mati hydropower projects, as well as future envisaged projects. This compliance investigation relates to an 8.9MW run-of-the-river hydropower project on the Lëngarica River in Përmet district, Gjirokaster prefecture, Albania that has been developed by the client (the "project").

The complaint

On 22 June 2015, CAO received a complaint submitted by the Organic Agriculture Association on behalf of project affected people. CAO determined that the complaint was eligible on July 15, 2015. Following an attempt at dispute resolution the complaint was transferred to the CAO compliance function for appraisal in February 2016.

The complainants contend that the project lies inside the boundaries of Bredhi Hotovës National Park. The complaint alleges violations of IFC's environmental and social (E&S) standards, including: failure to respect national legislation; failure to protect and conserve natural and critical habitats; inadequate community involvement; and adverse impacts on tourism based livelihoods.

Scope of the compliance investigation

In May 2016, CAO released a compliance appraisal report regarding IFC's pre-investment review and supervision of the E&S impacts of the Lëngarica hydroelectric project. CAO found the complaint to raise substantial issues related to IFC's appraisal and supervision of the project, resolution of which requires detailed consideration by technical experts.

The focus of this CAO compliance investigation is on IFC, and how IFC assured itself of the environmental and social performance of its investment at appraisal and during supervision.

The approach to the compliance investigation is described in the CAO Operational Guidelines (March 2013), and states that the working definition of compliance investigations adopted by CAO is as follows:

An investigation is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with the compliance investigation criteria.

As set out in CAO's appraisal report, CAO will conduct a compliance investigation of IFC's investment in the client in relation to the issues raised in the complaint. The compliance investigation will consider whether IFC's investment in enso Albania was appraised, structured and supervised in accordance with applicable IFC policies, procedures and standards. It will also consider whether IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information as applied to this project provide an adequate level of protection.

In the context of IFC's E&S policies, Performance Standards and procedures, CAO's compliance investigation will consider:

1. whether IFC's pre-investment E&S review of the project, in particular its potential impact on biodiversity and ecosystem services was commensurate to risk;
2. whether IFC ensured proper application of Performance Standard 6 to the project, in particular given the project's location in a national park and the presence of rare and/or endangered species in the area; and
3. whether IFC ensured proper application of its consultation and disclosure requirements to the project.

In addition, CAO will consider whether IFC's pre-investment review adequately considered project impacts on eco-tourism livelihood activities.

As in all cases, the scope of the investigation includes developing an understanding of the immediate and underlying causes for any non-compliance identified by the CAO.

Compliance investigation process and preliminary timeline

The preliminary time schedule is for CAO to have a draft compliance investigation report ready by December 2016.

A draft investigation report will be circulated to IFC senior management and all relevant IFC departments for factual review and comment. IFC comments should be submitted in writing to CAO within 20 working days of receipt by IFC.

Upon receiving comments from IFC on the consultation draft, the CAO compliance function will finalize the report. The final report will be submitted to IFC senior management for official response. A notification will be posted on CAO's website. IFC has 20 working days to submit a written response to CAO. CAO will forward the investigation report and the IFC response to the President of the World Bank Group. The President has no editorial input as to the content of the compliance investigation report, but may take the opportunity to discuss the investigation findings with CAO.

Once the President is satisfied with the response by IFC senior management, the President will provide clearance for the investigation report and the response. The President retains discretion over clearance. After clearance, CAO will disclose the investigation report and the IFC response to the Board. CAO will also alert relevant stakeholders of the disclosure of both documents on CAO's website, and share the documents with the complainants.

External Panelists

As per its established practice, CAO will engage one or more external experts to work with it on this task. For this compliance investigation, CAO considers the following as necessary for the compliance investigation panel:

- Significant expertise in biodiversity assessment and management in the context of international finance, as relates to river ecology in the hydropower sector.
- Knowledge of IFC's E&S policies, standards and procedures, particularly Performance Standard 1 (Social and Environmental Assessment and Management Systems) and Performance Standard 6 (Biodiversity Conservation and Sustainable Natural Resource Management).
- Experience and knowledge relevant to the conduct of compliance investigations.
- Demonstrated ability to analyze policies and practices and develop proposals for reform in complex institutional contexts.