

29 May 2015

**DEG and FMO Management Response to the Independent Expert Panel's
Compliance Review Report regarding the Complaint on the Investment in the
Barro Blanco Hydroelectric Project**

On 29 May 2015 the Independent Expert Panel (IEP) issued its report (available [here](#)), concluding the investigation of a complaint issued by Cacica General de la Comarca Ngäbe-Buglé and the Presidente General de M-10, under the Complaint Mechanism of DEG and FMO (together: the Lenders). This complaint refers to the construction of a 29 MW hydroelectric power plant, a project which had been structured on the basis of a public bidding process in Panama. The scope of work of the IEP comprised a compliance review, i.e. a review of how the Lenders assessed and monitored the project, by comparing their methods with the environmental and social policies to which the Lenders had committed themselves in 2011, when the credit agreement with the client was signed.

In response to this report, the Management Boards of DEG and FMO wish to express **their appreciation** for the efforts made by the IEP and for the thorough report that has been produced. We also wish to express our appreciation to the client subject to this complaint. At the time the loan agreement was signed, the referred mechanism was not yet in place, and so their co-operation and information sharing with the IEP has been on a purely voluntary basis. We also thank the complainants for their patience, as the complaints process has taken more time than was foreseen.

DEG and FMO are committed to extract **lessons learned** from the report with the purpose of improving the quality of our appraisal and monitoring process of environmental and social risks and impacts related to our investments.

The IEP comments on the **social and environmental appraisal process of DEG and FMO**. We acknowledge the conclusion of the IEP that DEG and FMO were not fully appraised at credit approval and we will further raise the bar on the required level of information on stakeholder consultation available to us at the time of credit approval. In case of the Barro Blanco project, the Lenders engaged an international renowned technical advisor team, as the engineering, environmental and social advisor to monitor and advise us during due diligence and the construction period. The Lenders have, in line with their investment policies and procedures, consciously included multiple milestones and conditions in the various stages of their decision-making process. This did not stop at the moment the project was approved because important conditions were attached to the signing of the credit agreement and to each of the disbursements of the loan. We appreciate the conclusion of the IEP that at the time of first disbursement Lenders were fully appraised regarding material issues.

The IEP also discusses the initial **Environmental and Social Action Plan (ESAP)** that Lenders agreed on with the company. We are receptive to the IEP's recommendation to have a more comprehensive ESAP at the time of signing of the credit agreement and not as a condition precedent to first disbursement. We note that over the duration of the relationship with the client, the ESAP was amended to include new findings and to adjust it to new realities and recommendations, e.g. on reforestation and biodiversity. The implementation of actions as laid down in an ESAP is subject to periodic review by the Lenders' Independent Environmental and Social Advisor.

With regard to **land, resettlement and displacement**, we will strive for a more elaborate formal opinion from lawyers or other experts, with defined expertise in indigenous peoples' rights and the local legal context, on the matter of the formal representative structures in (indigenous areas like) the Comarca and we will structurally consider this recommendation for future investments. DEG and FMO have considered the regional congress and the general Cacica in power as well as the relevant agreement duly signed and authorized by these bodies as legitimate at time of signing the credit agreement. Later it became clear that this legitimacy was being challenged by certain representatives from the indigenous community. We realize that we should have taken these concerns more seriously.

DEG and FMO have always encouraged and supported the client to engage in good faith negotiations with the communities and support the UNDP led process. This has unfortunately not been successful to date in the affected part of the annex area to the Ngäbe Buglé Comarca. We agree with the IEP that governmental bodies also have a role to play in order to come to a satisfactory consultation and agreement with all stakeholders involved, and that the client and the Lenders are facing limitations in their influence over this process.

DEG and FMO value the preservation of **cultural heritage**. In the IEP's report reference is made to the importance of the conservation of petroglyphs for the surrounding communities. We are glad that the IEP recognizes that the Lenders have reviewed the efforts made by the company and have been correct in considering these efforts to co-operate with the official governmental institution responsible for cultural heritage (INAC) in the country adequate, given the fact that this process is in the hands of this institution.

With regard to the **biodiversity and environmental issues**, the Lenders and the client still seek an acceptable solution for the small remaining fraction of the total shoreline where access is still under discussion. It is worth noting that Lenders have observed that progress is being made with managing, mitigating and compensating impacts on (gallery) forest regarding the vast majority of the affected shoreline.

With regard to **water** issues we take note of the IEP's recognition of the challenges faced and of the way the Lenders have dealt with these aspects. We agree with the IEP that explanation efforts related to flood levels need to continue and that water quality management and monitoring will be of significant importance and therefore subject to the Lenders' ongoing reviewing of the project.

In conclusion, DEG and FMO would like to re-emphasize their appreciation for the work done by the IEP and express their commitment to implement the recommendations to continuously improve the way investment decisions are made and projects are executed in a sustainable manner. It is in the mandate of our institutions to empower entrepreneurs in developing countries to contribute to development in their countries. With the contribution to this hydropower project in Panama, DEG, FMO and our client aim to deliver clean, affordable and stable energy to the people of Panama and thereby assist them in their economic growth and livelihood improvement ambitions. We fully support the current dialogue table and hope that all involved parties and stakeholders will reach out to achieve a constructive dialogue and a solution for a way forward. DEG and FMO will remain committed to contribute to this solution.

Yours sincerely,

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