

Complaint Form

In order for the PCM to address your complaint, you must provide the following information:



Project
Complaint
Mechanism

Step 1: Details of the Complaint

1. Name of the Person(s) or Organisation(s) filing the Complaint ("the Complainant"). Ne davimo Beograd/Don't Let Belgrade Drown, Cvijićeva 106, 11 000 Belgrade, Serbia CEE Bankwatch Network, Heřmanova 1088/8, Prague 7, 170 00, Czech Republic
2. Contact information of the Complainant (Please include address and, if possible, phone number and email address). Don't Let Belgrade Drown, Cvijićeva 106, 11 000 Belgrade, Serbia, [REDACTED] Contact person: [REDACTED] CEE Bankwatch Network, Heřmanova 1088/8, Prague 7, 170 00, Czech Republic. [REDACTED] Contact person: [REDACTED]
3. Is there a representative making this Complaint on behalf of the Complainant? No ☒
4. Are you requesting that this Complaint be kept confidential ? Yes (if yes, please explain why you are requesting confidentiality) No ☒
5. Please provide the name or a description of the EBRD Project at issue. Belgrade Solid Waste PPP, Serbia. The project has passed final review and is pending Board Approval: https://www.ebrd.com/work-with-us/projects/psd/belgrade-solid-waste-ppp.html
6. Please describe the harm that has been caused or might be caused by the Project (please continue on a separate sheet if needed): The project is likely to prevent the development of a sustainable waste management system in Belgrade and lock the city into a long-term contract obliging it to provide a certain amount of unsorted communal waste for the incinerator. This will make it difficult for Serbia to meet its EU waste recycling targets and may impact on informal waste collectors if the City cracks down on informal recycling in order to keep up the amounts of waste needed. It will also increase air pollution more than is strictly necessary as it is not in line with the latest EU standards for waste incinerators. We also seriously doubt that the Serbian authorities have the capacity or political will to enforce air pollution legislation, based on the experience so far with coal power plants.

Step 2: Problem-solving Initiative

7. If you are requesting the PCM's help through a Problem-solving Initiative , you must have made a genuine effort to contact the EBRD or Project Sponsor (Client) regarding the issues in this complaint. a. Have you contacted the EBRD to try to resolve the harm caused or expected to be caused by the Project? Yes ☒ (If yes, please list when the contact was made, how and with whom): We are seeking a compliance review rather than a problem-solving initiative. We believe it is important to underline that we have repeatedly communicated with the bank and the bank's answers have not resolved the issues. The communication has included the following: - Our representative travelled to the EBRD annual meeting in May 2018 and discussed the project with bank staff and the
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Board of Directors, as well as distributing an issue paper regarding the project.

- In September 2018 we contacted [REDACTED] and asked for a meeting.
- In September 2018, as Board approval of the project looked imminent, we wrote to the Board of Directors outlining our concerns and unanswered questions about the project.
- In September 2018, we met with EBRD representatives from the Bank's Belgrade Office: [REDACTED] (Director), [REDACTED] (Principal Banker), [REDACTED] (Principal Banker, Municipal & Environmental Infrastructure) and [REDACTED] (Principal Manager, CSEU, External relations and Partnerships).
- On 20 September 2018 we also sent a list of questions about the project to [REDACTED], with the Environmental and Social Department and CSO liaison in cc.
- On 27 November 2018 we sent a request for clarifications on some of the answers.
- On 10 December 2018, we submitted 92 pages of comments on the Environmental and Social Impact Assessment to [REDACTED]
- On 19 December 2018 we informed [REDACTED] of the City of Belgrade's publication of the ESIA which was not in line with the national legislation.
- On 24 January 2019 we notified the EBRD ([REDACTED]) that the scoping decision for the environmental impact assessment at the national level had been cancelled.
- On 28.02.2019 our representative discussed the project with [REDACTED] on the margins of the Good Governance Policy consultations.
- In May 2019 our representative travelled to the EBRD annual meeting in Sarajevo and raised the project at the sessions on MEI and climate financing. Colleagues from Bankwatch also raised the issue at the Board of Directors meeting.
- On 19 July 2019 we sent a response to [REDACTED] (cc. [REDACTED] and several others) regarding the response we received in May on our comments on the Environmental and Social Impact Assessment, outlining the unresolved issues.
- On 3 September 2019 we sent another letter regarding these unresolved issues to [REDACTED] (cc. [REDACTED] and several others).

Please also describe any response you may have received.

We have received written responses from the bank as follows:

- 16.10.2018 E-mail from [REDACTED] with answers to our questions sent on 20 September.
- 21.12.2018 E-mail from [REDACTED] with answers to the questions sent on 27 November.
- 25.01.2019 E-mail from [REDACTED] thanking us for the update and stating that the bank is looking into the issues.
- 06.02.2019 Response from [REDACTED] stating that the bank is looking into the waste management issues and the ESIA comments.
- 03.05.2019 Response from [REDACTED] on our comments on the ESIA submitted in December 2018 (or rather, from the Client, passed on by [REDACTED]).
- 29.07.2019 Holding reply from [REDACTED] in response to our letter of 19.07.2019
- 20.08.2019 Response from [REDACTED] on the points we sent about the EIA process and contents and the new Waste Incineration standards on 19 July.

Please provide a record of this contact with the EBRD, as instructed at the end of this form.

b. Have you **contacted the Project Sponsor** (Client) to try to resolve the harm caused or expected to be caused by the Project?

Yes (if yes, please list when the contact was made, how and with whom)

The Project Sponsor was cc.ed in most of the communication with the EBRD, and provided the answers to our comments on the ESIA. However, in general, we do not consider the project sponsor the most relevant actor because our concerns relate to the choice of project, procedural aspects and the authorities' capacity to monitor and enforce the law, which are questions that should be answered by the public authorities and the EBRD, not the project sponsor.

Please also describe any response you may have received.

The response to our comments on the ESIA is the only written response from the project sponsor. The responses were technical in nature, as one would expect from the project sponsor, and avoided the most important questions related to waste management policy

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as being outside of the scope of the project.

Please provide a record of this contact with the Project Sponsor (Client), as instructed at the end of this form.

Step 3: Additional information

Although not required, it would be helpful to the PCM if you could also include the following information:

9. If you believe the EBRD may have failed to comply with its own policies, please describe which EBRD policies.

Failure to apply the mitigation hierarchy and lack of alternatives assessment

The Belgrade waste PPP project includes the construction of a 340,000 tonnes per year “waste-to-energy” incinerator that would burn around 66% of Belgrade’s communal waste, a landfill gas facility, a new municipal waste landfill, a facility for handling construction waste, and the partial rehabilitation of the existing municipal waste landfill. The project takes place in a context of a very low level of recycling in the city, which is mainly carried out by informal waste collectors, and in a context of heavy air pollution.¹

The EBRD Environmental and Social Policy, in section B.6. commits to follow the mitigation hierarchy: *“EBRD will seek within its mandate to ensure through its environmental and social appraisal and monitoring processes that projects are designed, implemented, and operated in compliance with applicable regulatory requirements and good international practice (GIP). Central to this approach is the application of the mitigation hierarchy.”* *“The mitigation hierarchy comprises measures taken to **avoid** creating environmental or social impacts from the outset of development activities, and where this is not possible, to implement additional measures that would **minimise, mitigate, and as a last resort, offset and/or compensate** any potential residual adverse impacts.”* (Our emphasis)

In PR 3.8, it is further specified that: *“The ☐ environmental and social ☐ assessment process will identify technically and financially feasible and cost effective pollution prevention and control techniques that are best suited to avoid or minimise adverse impacts on human health and the environment. The techniques applied to the project will favour the **prevention or avoidance of risks and impacts** over minimisation and reduction, **in line with the mitigation hierarchy approach** and consistent with GIP, and will be appropriate to the nature and scale of the project’s adverse impacts and issues.”* (Our emphasis).

In the case of any waste management project, avoiding adverse impacts must start with the application of the waste hierarchy, enshrined in the EU Waste Framework Directive, which prioritises those forms of waste management that save the most energy and resources. Thus, the first step must be **waste prevention**, followed by **preparing for re-use**, then **recycling**, and only then **energy recovery and disposal**.

The EBRD also affirms its commitments to EU principles, practices and substantive standards in its Policy, section B.7: *“EBRD, as a signatory to the European Principles for the Environment, is committed to promoting the adoption of EU environmental principles, practices and substantive standards by EBRD financed projects, where these can be applied at the project level, regardless of their geographic location.”* The waste hierarchy and circular economy are both clearly EU environmental principles, thus it should be clear that the EBRD is committed to adopting them at the project level.

This project, however, does not include any element of municipal waste prevention, re-use or recycling, thus turning the waste hierarchy on its head, and skipping completely the “avoid” and “minimise” aspects of the mitigation hierarchy.

Waste incineration, even with energy recovery, is a highly inefficient way to obtain energy. A wide array of studies have demonstrated that waste incineration with energy recovery saves much less GHG emissions than waste prevention and recycling, and for some materials it offers little advantage relative even to landfilling (see here for references: <https://bankwatch.org/wp-content/uploads/2019/06/Waste-incineration-6-june-2019.pdf>). Incineration of refuse-derived fuel (RDF), waste and other ‘alternative’ fuels with energy recovery is also less resource-efficient than recycling. It destroys resources that need to be replaced, therefore creating demand for more extraction and manufacturing of new materials, while eliminating the far superior option to reuse and recycle. Incineration entails burning fossil fuels with mixed waste, as they do not burn very well on their own, thus generating air pollution, greenhouse gases, and ash and filter residues that are partly hazardous. Therefore, minimising pollution through the use of filters is only a fourth-best solution compared to preventing, preparing for re-use and recycling of waste.

¹ The ESIA admits that “In the 2010-2016 period, except in 2014, Belgrade had heavily polluted air of III category, mainly due to increased concentrations of PM10 particles or occasionally also due to the increased concentration of NO2, as was the case in 2016 (Figure D-74).”
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[Documents obtained by Transparency Serbia](#) seem to indicate that no less than 29% of Belgrade's waste is food waste. Paper and cardboard make up another 18%, plastics 14% and green garden waste 7%. Almost none of these - which amount to **68% of waste** altogether - need to be disposed of and should be prevented, recycled or composted. The response to the ESIA provided by the Client via the EBRD in May 2019 with figures for 2016 showed the following share of recyclable or compostable materials: glass 8.5%, paper 7.4%, cardboard 7.9%, metal packaging and other metal 2.8%, metal - Al cans 1.0%, plastic packaging waste 5.6%, other biodegradable waste 30.5% and garden waste 14.8% - a total of **78.5% recyclable or compostable materials**.

Right from the scoping phase of the EIA on the national level, we have consistently asked why non-incineration alternatives to the project were not considered. They were not described or evaluated in the request for a decision on the scope and content of the EIA study (scoping request), nor in the actual EIA studies. During the scoping process it was mentioned that alternatives had been studied in a document by Fichtner called the *Environmental and Social Scoping Study for the Belgrade EfW Project in Serbia*, but as the findings were not described in the official documentation in the scoping or EIA processes, we do not consider it relevant.

The EBRD's Environmental and Social Policy contains several provisions stipulating the examination of alternatives, each from a slightly different angle. We state below the extracts why we consider these particular provisions to have been breached.

PR 1.10 stipulates that: *"The ESIA will include an examination of technically and financially feasible alternatives to the source of such impacts, including the non-project alternative, and document the rationale for selecting the particular course of action proposed"*.

We cannot assess which alternatives are technically and financially feasible because none of the EIA documentation or other communication from the bank or client provides the information that would be needed to do this. We believe this undermines the whole idea of "meaningful stakeholder engagement", as it cannot be meaningful if the necessary data is not shared.

The non-project alternative was assessed in the EIAs as unacceptable because the existing landfill needs to be rehabilitated. As we have expressed to the EBRD several times, this is an unacceptable manipulation of the situation, in which the incinerator is artificially coupled in a joint project with the incinerator, and then we are told that if we want the landfill rehabilitation we have to take the incinerator too. It should not have been too difficult to assess alternatives which included the landfill rehabilitation but not the incinerator, and included for example a waste prevention programme, door-to-door separate collection and recycling, composting, and landfill only of the stabilised remainder.

PR 3.14 states that: *"The client's environmental and social assessment process **will consider alternatives and implement technically and financially feasible and cost-effective options to avoid or minimise project-related greenhouse gases (GHG) emissions during the design and operation** of the project. These options may include, but are not limited to, **alternative project locations, techniques or processes**, adoption of renewable or low carbon energy sources, sustainable agricultural, forestry and livestock management practices, the reduction of fugitive emissions and the reduction of gas flaring."* (Our emphasis).

As we stated above, a wide array of studies have demonstrated that waste incineration with energy recovery saves much less GHG emissions than waste prevention and recycling, and for some materials it offers little advantage relative even to landfilling (References at: <https://bankwatch.org/wp-content/uploads/2019/06/Waste-incineration-6-june-2019.pdf>). Yet the project ESIA presented the project in a very skewed way in relation to greenhouse gases and did not present any alternatives in this respect: *"The project will have a positive impact on greenhouse gas emissions, thanks to the electricity and heat production and injection in the Serbian network (with a positive contribution due to the CO2 emission of the actual mix of Serbian electricity production), and the major reduction of CO2 emission from the old landfill. The huge continuous improvement in GHG emissions (due to the remediation of the landfill, the shift to more emission controlled process and the generation of heat and power) will lead to more than 11.5 millions of CO2 tons spared over the global period 2025-2046, the mean yearly GHG reduction being equivalent to more than 112,670 passenger cars driven per year or 250,800 hectares of forest."*

As Table E-4. of the ESIA shows, it is the remediation of the existing landfill which would stop the emission of harmful gases, whereas the construction of an incinerator would increase them. Likewise, the comparison should be made not only to Serbia's current electricity generation (which is around 70% coal, so cannot continue and must be reduced in line with the EU's long-term climate and energy policy anyway), but with alternative solutions. For electricity, most new solutions have lower emissions than incineration (e.g. wind, solar), while for waste management, prevention,

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composting and recycling certainly have lower emissions than burning waste, especially when one considers the need to manufacture new materials to replace those burnt.

It should also be pointed out that although the ESIA tries to present the incinerator as a sustainable energy source, which might appear to fit the “renewable or low carbon energy sources” description in PR 3.14, this is not an accurate portrayal of the situation. Only the biodegradable fraction of municipal waste can be counted as renewable, according to the EU’s Renewable Energy Directive 2018/2001 (Art.2), and the Preamble to the Directive also adds that: “Waste prevention and recycling of waste should be the priority option. Member States should avoid creating support schemes which would be counter to targets on treatment of waste and which would lead to the inefficient use of recyclable waste.” Much of the calorific value for waste incineration comes from plastic made from fossil fuels, and auxiliary fuels need to be added to make the waste burn properly. In the case of Belgrade, the auxiliary fuel would be diesel.

PR 3.6 states: “**The environmental and social assessment process will identify opportunities and alternatives for resource efficiency relating to the project in accordance with GIP. In doing so, the client will adopt technically and financially feasible and cost effective measures for minimising its consumption and improving efficiency in its use of energy, water and other resources and material inputs as well as for recovering and re-utilising waste materials in implementing the project.** The key focus will be on activities that are considered the project’s core functions, but similar opportunities in the client’s other business activities that are not part of the project will also be considered. Where benchmarking data are available, the client’s assessment will make a comparison of its operations with GIP to establish the relative level of efficiency.” (Our emphasis)

The ESIA process could identify opportunities and alternatives for resource efficiency on two levels:

- a) The project goal (dealing with Belgrade’s waste) and which is the most resource efficient way to do it and
- b) Based on the project itself, how processes can be optimised.

The second aspect was examined to some extent in the EIA studies, but it should be pointed out that even this was not done properly as the project’s compliance with the parameters from the 2018 Waste Incineration BREF were not examined (see below). But the first aspect is where the really large gains in resource efficiency can be made and should have been the main feature of any analysis on resource efficiency. Yet as explained above, no non-incineration alternatives were examined in the EIAs. The environmental and social impact assessments for the project only attempted to justify the incinerator project that was already decided on.

Moreover, the project is not in line with the Belgrade Local Waste Management Plan 2011-2020, which, while far from satisfactory, at least foresees some separation of waste and pre-treatment in a mechanical-biological treatment facility before incineration of refuse-derived fuel. However the incinerator now planned will burn all kinds of communal waste and no pre-treatment is planned. When we addressed the EBRD about this issue in the comments on the ESIA, the Client answered that “The local plan provides guidance, and individual projects define specific activities and technology”. This is not our understanding, as the plan is, to the best of our knowledge, binding.

In its reply to our comments on the ESIA, the client also stated that “*The primary selection of waste is foreseen, which is realized and organized by the city of Belgrade, is foreseen (sic), so that all users of the service are enabled to perform waste separation for recycling. The City of Belgrade has started installing containers for recyclable waste in the territory of urban municipalities and this process is still ongoing, until all municipalities are covered by this system. In addition, the City of Belgrade has started activities on equipping recycling centers and it is foreseen that at least one recycling center will be equipped in each city municipality, where citizens will be able to bring all recyclable waste, including waste, electrical and electronic waste, green waste etc.*”

What this is referring to in reality is an ineffective system of placing a few containers per neighbourhood for certain recyclables. Such a system has for years failed to substantially raise recycling levels in numerous capitals in the EBRD regions, for example in Zagreb, Croatia. It is far easier for people to throw their waste in the nearest bin, resulting in the city having the lowest separate collection rate of all EU capital cities according to a [2015 EU report](#). This cannot be seen as a system which is going to ensure that Belgrade, and Serbia more widely, meets EU recycling targets.

Environmental impact assessment process not in line with Serbian law and the EBRD’s Policy commitments

Section B.15. of the Environmental and Social Policy states that: “*EBRD is committed to the principles of transparency, accountability and stakeholder engagement. It will disclose, on an on-going basis, summary information about the Bank’s performance on environmental and social issues and will engage in meaningful dialogue with the Bank’s stakeholders, in accordance with the EBRD Public Information Policy (PIP). The Bank will promote similar good practices amongst its clients.*”

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The ESIA and national-level EIA processes started with the EBRD's ESIA being subject to public consultation from October 2018 for sixty days. We submitted comments within the deadline (December 2018) and waited 5 months for the answers (May 2019) only to realise that the Bank just relayed responses from the Client, which avoided the main question about whether this project is in line with a sustainable waste management future for Belgrade. On 19.07.2019 we sent a response to the bank in which we had analysed all the responses to our comments and identified the outstanding issues. On 20 August we received a letter responding to the bullet points summarising our list of outstanding issues, but not to the list of outstanding issues themselves.

On the question of Belgrade's waste management system, the bank merely replied: *"We are now satisfied that the project will not prevent Belgrade or Serbia from meeting the target of 65% recycling of municipal solid waste by 2035. The energy from waste plant is fully reflected in Serbia's national waste planning. This planning envisages the introduction of source-separated household waste collection and recycling in 13 regions by 2025 and across the entire country by 2035. The City of Belgrade has reserved a right to exclude source-segregated recyclables from the project's waste envelope."* Again, no figures were published regarding current waste flows and future projections, and no details were given about Belgrade's right to exclude recyclables from the project's waste envelope and how this will work in reality. We do not see how "meaningful dialogue" can take place under such conditions of information asymmetry and consider that this type of communication does not meet the EBRD's commitment to transparency. We therefore sent another letter on 3 September and are awaiting a response.

In addition, although the ESIA was allegedly updated following our interventions, no updated version of the ESIA has been sent or published to date, and the same mistakes in the EBRD ESIA were repeated in the national-level one more than six months after our comments were submitted. This latter fact again calls into question whether the dialogue with the bank has been "meaningful", as well as causing us to spend needless time submitting similar comments twice.

The national level EIA procedure was not carried out according to Serbian law or the EU Environmental Assessment Directive. The period of public availability of the studies (there were two - one for the incinerator and one for the landfill gas facility) appeared to be only 20 days - no clear deadline was given and the timeline could only be inferred from the date of the public hearing meeting, which by Serbian law comes at the end of the commenting period. This 20-day timeline was contrary to Article 6 of the 2011/2014 version of the Environmental Impact Assessment Directive which requires at least 30 days. Although the Ministry did open an additional 10 days for commenting, following complaints received during the public hearing, the addition was done contrary to the Law on environmental impact assessment's provisions on public announcements and contrary to the timeline set by the Ordinance on the procedure of public review, presentation and public hearing regarding the environmental impact assessment, which sees the public hearing as a final and not an intermediate step of the EIA disclosure. The 2014 amendments of the Directive have been binding for Serbia since 01.01.2019 under the Energy Community Treaty, and irrespective of the fact that Serbia has not yet transposed them, their provisions need to be implemented.

Thus, the EIA consultation process did not meet PR 10.24 *"In addition, the consultation process must meet any applicable requirements under national environmental impact assessment laws and other relevant laws. ..."* At the time of writing, the national-level EIAs have not been approved, so it is as yet unclear whether there will be further violations in the process.

Incomplete environmental and social impact assessments

Several elements were missing or insufficiently covered by the environmental impact assessments:

- As discussed above, baseline data and projections about Belgrade's waste flows were not included in either the EBRD ESIA or the national level studies.
- In none of the EIAs was any baseline information given about informal waste collectors who do not live on the Vinca site but who may be affected by the requirement for the city to provide 340,000 tonnes of waste annually to the incinerator. If the volume of waste in Belgrade does not grow as expected in coming years, the authorities may decide to clamp down on informal recycling in order to ensure a supply of waste to fulfill the contract. This impact is not guaranteed but is possible and should have been assessed.
- The national level EIAs did not cover the landfill rehabilitation project at all, despite it being claimed by the EBRD to be the most urgent component of the project, and despite the fact that the landfill contains dangerous items like sterilised medical waste and needs to be carefully planned. The EBRD claimed in its letter of 20.08.2019 that *"The ESIA disclosed in line with Lender requirements includes information on the existing landfill. This will be re-profiled to improve slope stability, capped and covered, and leachate collection and treatment and biogas collection systems will be installed."* However, basic information was not clear in this

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ESIA, for example it mentioned that approximately 800,000 m³ of waste would be moved and that a dam would be built to stop the waste sliding towards the river Danube, but it did not show how this would be done or whose responsibility it would be. In fact, the most urgent measure, building the dam, [has already been carried out](#) by [the city of Belgrade](#), outside of the PPP arrangement.

- Crucial data was missing regarding air quality:
 - a) Results of air quality monitoring after 2016;
 - b) More detailed map with the position of the air quality monitoring stations, especially in Belgrade;
 - c) Exact information on how many of these monitoring stations were active and to what extent at the time of the measurements (2016);
 - d) How many of them were active in 2017 and how many are actively collecting data today, on a daily and monthly basis?
 - e) How many of these monitoring stations are collecting data on PM2.5?
 - f) Data from how many of these PM2.5 stations are included in the yearly assessments of air quality?
 - g) In what way are the data from high pollution facilities being collected and how often are they presented to the public?
 - h) Is the system of collecting and publishing the data about air quality being managed in accordance with national and EU laws?

The project promoter merely answered that “Data for 2017 were not available at the time of ESIA redaction. The ESIA is not a document auditing the air quality monitoring network of Belgrade, and refer to competent public authority data to present a detailed but didactic and relevant baseline”. It is unacceptable that data for 2017 was not available by 2018 and 2019 when the EIAs were written, as it should be available on a constant basis if it is to be of any use to the public. We also find the Client’s answer regarding the monitoring network insufficient as a functional network is absolutely needed to ensure monitoring and mitigation measures around the project.

We assert that these deficiencies mean that PR 1.7 and PR 1.8 were not met: “The environmental and social assessment process will be based on recent information, including an accurate description and delineation of the project and the client’s associated activities, and **social and environmental baseline data at an appropriate level of detail**”, and “The assessment process will be commensurate with and proportional to the potential impacts and issues of the project and **will cover, in an integrated way, all relevant direct and indirect environmental and social impacts and issues of the project**, and the relevant stages of the project cycle (e.g. preconstruction, construction, operation, and decommissioning or closure and reinstatement).”

There is no assessment of potential impacts on informal waste collectors who do not live at the site but may be affected by a potential clampdown on informal recycling in order to keep waste volumes up. This is also in our opinion a breach of PR 1.9: “The environmental and social assessment process will also identify and characterise, to the extent appropriate, potentially significant environmental and social issues associated with activities or facilities which are not part of the project, but which may be directly or indirectly influenced by the project, exist solely because of the project or could present a risk to the project. These associated activities or facilities may be essential for the viability of the project, and may either be under the control of the client or carried out by, or belong to, third parties. **Where the client cannot control or influence these activities or facilities, the environmental and social assessment process should identify the corresponding risks they present to the project. Where potentially significant adverse environmental and/or social risks relating to third party activities or facilities are identified, the client should collaborate with those relevant third parties to manage and mitigate these risks.**”

The PR is unfortunately worded in a way that it appears to be more concerned with the risks to the project than the risks to people and the environment, but putting this aside, the PR also states that the client should collaborate with third parties to manage and mitigate these risks. In this case, the relevant third party would be the City of Belgrade. We do not know, because the issue is not explored in the EIAs, whether the client has done so, but given that in its response to our comments from May 2019, the client did not recognise the possibility of this impact occurring as a result of the project, we believe this has not happened.

Another “potentially significant adverse environmental and/or social risk relating to third party activities” relates to the Serbian environmental authorities’ ability to properly monitor pollution and enforce environmental legislation. Serbia does not have a laboratory that can analyse concentration of the carcinogens, dioxin and furan, which are a direct product of the waste incineration process. The Serbian authorities have shown that they are not able to enforce air

pollution legislation regarding coal power plants, as exemplified by Serbia's failure to comply with the Large Combustion Plants Directive² - an obligation under the Energy Community Treaty - and the fact it hosts 3 of Europe's 10 most polluting coal plants, with coal plants overall causing an estimated 570 deaths in Serbia in 2016.³

The EBRD itself also has painful experience with trying to get Serbia's Elektroprivreda Srbije (EPS) to improve its environmental standards - which again largely depends on the environmental authorities to enforce the law. We have raised this capacity issue with the bank several times regarding the incinerator project but it remains unclear whether the EBRD assessed the capacity of the Serbian authorities to enforce mitigation measures, to what extent mitigation depends on these authorities and how this impacts the chances of successful implementation of the E&S management plans and mitigation measures.

Non-compliance with EU pollution control standards

The incinerator project is not in line with the new EU Waste Incineration BREF standards (approved on 17th June 2019). We argue that this is contrary to PR 3.9: *"Clients will structure the projects to meet relevant EU substantive environmental standards, where these can be applied at the project level. Certain projects that, due to their nature and scale, would be subject to the EU Industrial Emissions Directive will be required to meet EU Best Available Techniques (BAT) and related emission and discharge standards, regardless of location."*

Although the Belgrade incineration facility would receive its integrated permit well after the publication of the new BREF in the Official Journal of the EU, neither the ESIA published by the EBRD nor the EIA published by the Serbian authorities consider the new BREF to be a requirement.

PR 3.8 states that: *"The client's environmental and social assessment process will determine the appropriate pollution prevention and control methods, technologies and practices ("techniques") to be applied to the project. The assessment will take into consideration the characteristics of the facilities and operations that are part of the project, the project's geographical location and local ambient environmental conditions. The assessment process will identify technically and financially feasible and cost effective pollution prevention and control techniques that are best suited to avoid or minimise adverse impacts on human health and the environment. The techniques applied to the project will favour the prevention or avoidance of risks and impacts over minimisation and reduction, in line with the mitigation hierarchy approach and consistent with GIP, and will be appropriate to the nature and scale of the project's adverse impacts and issues."*

As explained above, the EBRD did not ensure that the client prioritised avoidance of risks and impacts, but rather concentrated on mitigating impacts of an already pre-decided project. But even this was not done to an extent which would properly reflect the precautionary principle, and although the 2017 BREF was briefly mentioned in the national level EIA for the plant, the compliance comparison carried out in the EIA was with the provisions of the 2006 BREF, not the newer one.

The EBRD is providing contradictory information on the issue.

In an answer of 16.10.2018, the EBRD stated only that *"EBRD's Environmental and Social Policy requires that projects comply with applicable EU standards adopted at the time of project appraisal."* Considering that appraisal of this project has so far taken at least a year and a half, it is not clear what point in the appraisal is the relevant cut-off date. It should be emphasised that no-one can say they have not seen the new BREF coming - its creation was stipulated by the 2010 Industrial Emissions Directive, and successive drafts of the document have been published, meaning that even when not adopted, it was reasonably clear what provisions it would contain, especially as these are based on expert assessment of real-life plant technologies, not political negotiations.

Parallel to the process of the ESIA and the national EIA public disclosure, in a letter dated 20.08.2019, the EBRD on one hand states that as the BREF was only recently approved, it was not possible to take it into account during the EIA process, but at the same time states *"Nevertheless, the broad requirements of the new BREF have been anticipated in the project design and the project will be able to meet these requirements with some adjustments to the project's design and operation. The exact nature of these adjustments is currently being assessed by the project company and the expectation is that they will be fully adopted at or around the time the project becomes operational at the end of*

² Energy Community Secretariat: Implementation report 2018: <https://www.energy-community.org/implementation/IR2018.html>

³ The Health and Environment Alliance (HEAL): Chronic coal pollution: EU action on the Western Balkans will improve health and economies across Europe, Brussels, 2019.
Please write on a separate sheet wherever needed.

2022.” So the exact nature of these adjustments is going to be assessed by the Client, not by the relevant EBRD body, and this process will take place outside of the ESIA procedure.

Whether or not the PCM finds that the letter of PR 3.9 on Best Available Techniques should have meant the application of the 2019 BREF and not the 2006 one, we emphasise the second Objective of PR3: “*To adopt the mitigation hierarchy approach to addressing adverse impacts on human health and the environment arising from the resource use and pollution released from the project.*” While we argue above that impacts should have been avoided by examining other waste management options, at the very least they could have been minimised by insisting on the application of the current Best Available Techniques - not only in a legal sense, but in the sense of what technologies are actually available that can best protect human health. We are sure that no investor in an EU country would at this moment invest in a plant that is not in line with the new BREF, and the EBRD’s failure to insist on this in Belgrade gives the impression of double standards.

10. Please describe any other complaints you may have made to try to address the issue(s) at question (for example, court cases or complaints to other bodies).

.....

11. Are you seeking a Compliance Review where the PCM would determine whether the EBRD has failed to comply with a Relevant EBRD Policy in respect of an approved Project? Yes ☒ No ☐

12. Are you seeking a Problem-solving Initiative which has the objective of restoring a dialogue between you and the Project Sponsor (Client) to resolve the issue(s) underlying your Complaint without attributing blame or fault? Yes ☐ No ☒

13. What results do you hope to achieve by submitting this Complaint to the PCM?

We ask the PCM to undertake a Compliance Review to assess whether the EBRD has acted in accordance with its own policies. We also ask the PCM to recommend the Board to suspend the project in view of its imminent and irreparable harm. Ultimately we hope that the EBRD will not go ahead with approving, signing or disbursing financing for this project.

Date: 11.09.2019.

Supporting documents

If possible, please provide the following supporting documents by email to pcm@ebrd.com:

- Proof that the Representative has been authorised by the Complainant to file the Complaint. For example, this can be in the form of a letter signed by the Complainant giving permission to the Representative to make the Complaint on his behalf.
- A written record of your correspondence with the EBRD in regards to this problem (these may be letters, emails or other form of correspondence and communication).
- A written record of your correspondence with the Project Sponsor (Client) in regards to this problem (these may be letters, emails or other form of correspondence and communication).

Please send your Complaint by fax, post, or email to:

Project Complaint Mechanism
Attn: PCM Officer
European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
Fax: +44 20 7338 7633
E-mail: pcm@ebrd.com

Alternatively, a Complaint may be delivered by post or hand, at any one of the [EBRD Resident Offices](#) in the countries of operations. Please mark these “For the attention of the Project Complaint Mechanism Officer”. , indicating that it is for transmission to the PCM. Complaints may be sent using the Complaint [online form](#), available at: http://www.ebrd.com/eform/pcm/complaint_form

Please write on a separate sheet wherever needed.