EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

PROJECT COMPLAINT MECHANISM

ELIGIBILITY ASSESSMENT REPORT

COMPLAINT: EPS EMERGENCY POWER SECTOR RECONSTRUCTION LOAN, EPS POWER II AND EPS KOLUBARA ENVIRONMENTAL IMPROVEMENT PROJECTS

REQUEST NUMBER: 2013/03

EXECUTIVE SUMMARY

The Eligibility Assessors have determined that the present Complaint satisfies the eligibility criteria for a Compliance Review as set out under the Project Complaint Mechanism (PCM) Rules of Procedure (RPs). The Complaint:

(i) concerns a Project(s) that has been approved for financing by the Bank and actions or inactions that are the responsibility of the Bank;
(ii) adequately describes the harm that potentially could be caused as a result of the alleged failure(s) to comply with the requirements of the 2008 Environmental and Social Policy;
(iii) adequately describes the PCM function requested, *i.e.* a Compliance Review;
(iv) adequately describes the outcomes sought;
(v) establishes that the Complainant enjoys standing to complain either in his individual capacity or as a representative of the Centre for Ecology and Sustainable Development, Belgrade (CEKOR).

Despite some overlap between the present Complaint and an earlier Complaint concerning the Kolubara Environmental Improvement Project (Request No. 2012/04), already registered with PCM, the Compliance Review for this earlier Complaint is still pending and, in the interests of procedural and administrative efficiency, the Eligibility Assessors herein recommend that the Compliance Review processes required for both related Complaints should be combined into a single process.

This Eligibility Assessment Report includes detailed instructions for amending the Terms of Reference prepared for the Kolubara I Complaint (Request No. 2012/04) in order that the compliance issues raised in the present Complaint can be addressed by means of being integrated into the pending Compliance Review process underway in respect of the earlier Complaint.

Project Complaint Mechanism

Eligibility Assessment Report

Complaint: EPS Emergency Power Sector Reconstruction Loan, EPS Power II and EPS Kolubara Environmental Improvement Project (Request No. 2013/03)

I Factual Background

1. On 1st October 2013, a Complaint was submitted to the Project Complaint Mechanism (PCM) in respect of the EPS Emergency Power Sector Reconstruction Loan, EPS Power II Project and Kolubara Environmental Improvement Project by Mr. Zvezdan Kalmar, a representative of the Centre for Ecology and Sustainable Development (CEKOR), Belgrade and the Serbian coordinator for CEE Bankwatch Network, and Ms. Natasa Djereg, Director of CEKOR. On 29th October 2013, this Complaint was registered by the PCM Officer according to PCM RP 10, notification of registration was sent to the Complainant and the Relevant Parties pursuant to PCM RP 12, and the Complaint was posted on the PCM website and noted on the web-based PCM Register according to PCM RP 13. On 18 November 2013, PCM Expert Dr. Owen McIntyre was appointed as an Eligibility Assessor to conduct an Eligibility Assessment jointly with the PCM Officer, in accordance with PCM RP 17.

2. The EPS Emergency Power Sector Reconstruction Loan involved provision by EBRD in 2001 of €100 million in financing towards emergency rehabilitation and upgrades to thermal power plants focussing on environmental improvement, and rehabilitation of hydro-power generation plants, including facilities in the Kolubara area, but the majority of the loan was for investment in the electricity transmission system. The EPS Power II Project involved provision by EBRD in 2003 of €60 million for mining equipment to overcome a serious backlog in the investment in the mine (in particular to address the backlog in overburden mining and hence subsequent lignite mining). The Kolubara Environmental Improvement Project was approved by the Bank in 2011 and consists of a coal management system to improve the efficiency and quality of the Client's operations in the Kolubara Basin, a coal excavator, conveyor and spreader system to allow a new area (Field C) to be opened up in the eastern part of the Kolubara basin, and a spreader system for the existing Tamnava West Field to improve the separation and handling of lignite, inter-burden (layers of earth between lignite seams) and over-burden (surface material covering the lignite). EBRD has agreed to provide €80 million in financing out of a total Project cost of €181.6 million. The present Complaint alleges a failure to carry out the cumulative impact assessment, that the Complainant believes was required for these three related Projects under the EBRD's 2008 ESP, and the incorrect definition of the "area of influence" of the Kolubara Environmental Improvement Project.

3. The first Complaint regarding EBRD financing of EPS's activities at Kolubara was received and registered by PCM in August 2012 in respect of the Kolubara Environmental Improvement Project (Request No. 2012/04. The present Complaint overlaps with this earlier Complaint to a certain degree, especially as regards the alleged failure to properly define the "area of influence" of this Project, the alleged failure adequately to consider cumulative impacts associated with the Project, the alleged failure to consider the impacts of the Kolubara Environmental Improvement Project on the community of Vreoci, and the alleged promotion of a climate-damaging approach to energy investments in Serbia.[1] The Compliance Review for this earlier Complaint is still pending.

4. A second Complaint was received by PCM in August 2013 relating to the EPS Power II Project and a specific family's resettlement issue.[2] This Complaint is currently undergoing an Eligibility Assessment.

5. The third present Complaint, which is the subject of this Eligibility Assessment, makes it quite clear that it is primarily concerned with the 2011 Project:

   > 'As the EBRD's current Environmental and Social Policy came into force only in 2008, for the purposes of this Complaint, we are focusing on the EBRD's project appraisal for the 2011 Kolubara Environmental Improvement Project.'[3]

   Thus, the Eligibility Assessors agree with Bank Management's view that, although the present Complaint lists all three Projects it is solely concerned with the matter of compliance of the most recent.[4] Therefore, this Eligibility Assessment focuses primarily on the Kolubara Environmental Improvement Project.

II Steps Taken in Determining Eligibility

6. The Eligibility Assessors have undertaken a general examination of the Complaint to determine whether it satisfies the applicable eligibility criteria as set down in the PCM Rules of Procedure. They have also taken account of the Response to the Complaint received from EBRD Management, as well as the extensive additional information related to the Complaint received from the Complainant.[5]

III Summary of the Parties' Positions

<u>Position of the Complainant</u>

[1] See PCM, *Eligibility Assessment Report: EPS Kolubara Environmental Improvement Project*, Request No. 2012/04, 9 August 2013, at 8-12, paras. 18-30 (hereinafter Kolubara I Complaint).
[2] Request No. 2013/02 (hereinafter Kolubara II Complaint).
[3] Request No. 2013/03, at 6 (hereinafter, Kolubara III Complaint).
[4] Management Response, at 1.
[5] *CEKOR additional info with the Complaint to the EBRD Project Complaint Mechanism*, submitted via e-mail, 1 October 2013.

7. Though the Complaint outlines each of the three EBRD-funded EPS Projects listed above, it is quite clear that it is primarily concerned with the 2011 Kolubara Environmental Improvement Project, in respect of which it sets out a series of alleged grounds of non-compliance with the Bank's 2008 ESP.

8. First of all, it claims that the Bank failed to correctly define the "area of influence" of the Project having regard to PR 1.6, with the result that it failed to carry out 'an analysis of the cumulative impacts of the development of the Kolubara mining basin including the whole mining complex and the existing thermal power plants which depend on it', possibly even 'including the planned thermal power plants which have not yet been built'.[6] In terms of the specific cumulative impacts which the Bank is said to have failed to assess, the Complaint describes in detail the Bank's alleged failure properly to assess the Project's cumulative impact on CO2 emissions in contravention of PR 3.18.[7]

9. Related to the issue of cumulative assessment, the Complaint also contends that the Bank failed to ensure that 'a regional, sectoral or strategic assessment' was carried out as required under PR 1.9. Although PR 1.9 only envisages a requirement to conduct such an assessment in 'exceptional circumstances', the Complainant argues that the present Project represents just such circumstances.[8]

10. In addition, the Complaint contends that the Bank's alleged failure properly to define the "area of influence" of the Project and to ensure an appropriate cumulative assessment has resulted in inadequate appraisal of the Project's social impacts. The Complaint specifically argues that the Bank's appraisal of the Project failed to take account of certain resettlements, which it suggests is all the more serious in the light of alleged shortcomings in the resettlement implemented under the previous Kolubara Projects.[9] Once again, the Complainant regards this alleged failure as an instance of non-compliance with PR 1.6.[10]

11. The Complaint expressly sets out three outcomes which the Complainant expects from the Compliance Review process sought, the most important of which is that the PCM will recommend the conduct of a cumulative strategic environmental assessment for the Kolubara Environmental Improvement Project taking account of all the elements included under PR1.6.[11] Where this would be impractical, it requests, as a minimum, a GHG assessment taking account of all the elements listed under PR 1.6.[12] Secondly, it requests that, if the Bank once again considers investing in the planned Kolubara B thermal power plant, it should assess regional and cumulative impacts as

[6] Kolubara III Complaint, at 6-7.
[7] Kolubara III Complaint, at 9-12.
[8] Kolubara III Complaint, at 7-8.
[9] Kolubara III Complaint, at 12-16.
[10] Kolubara III Complaint, at 16.
[11] Kolubara III Complaint, at 7 and 16.
[12] Kolubara III Complaint, at 10.

part of its Project appraisal.[13] Finally, it requests that policy guidance be drawn up concerning: '(i) specification on the circumstances under which a regional, sectoral or strategic assessment is required; and (ii) exploration of how to align the EBRD's Greenhouse Gas Emissions Accounting Methodology with the Environmental and Social Policy 2008.'[14]

Position of EBRD Management

12. Bank Management identifies three separate elements of alleged non-compliance in the Complaint

    a. 'cumulative impacts were not properly assessed;
    b. The GHG emissions were not properly calculated; and
    c. resettlement previously undertaken was not carried out properly and that the area of influence was artificially defined to exclude the resettlement of Vreoci'.[15]

13. Regarding the "area of influence" of the Project, Management argues that a '"project" is defined as the business activity that EBRD is financing' and, further, that while 'elements that comprise the area of influence are taken into account during the appraisal process', it is a misunderstanding of the ESP to assume that 'these elements are subject to the Performance Requirements'. Management also points out that, in reviewing the Environmental Impact Assessments covering the activities involved in the Project, and in preparing a gap analysis having regard to the requirements of the ESP in relation to the Project, it's consultant 'reviewed a number of documents that cover wider aspects of RB Kolubara's mining operations … including assessments of the basin-wide and cumulative environmental and social impacts and performance of the Kolubara basin'.[16]

14. In relation to the issue of cumulative impacts and definition of the "area of influence", EBRD Management cites the consultant's gap analysis report in detail, which concludes that

> "Both EIAs identify the scheme location and boundary and consider the areas around the scheme that may be impacted on. Both consider the wider implications of the schemes and refer to the Spatial Plan of the Republic of Serbia with the Field C EIA also referring to several Spatial Plans for the Kolubara Region. … The area of influence for the project includes the direct and indirect impacts that may arise from the construction and operation of the open cast mines at Tamnava West Field and Field C."

Management also cites the conclusion in the gap analysis report to the effect that

[13] Kolubara III Complaint, at 16.
[14] Kolubara III Complaint, at 17.
[15] Management Response, at 2.
[16] Management Response, at 3-5.

> “Other mining activities will continue within the Kolubara Mining Basin and these will be implemented in accordance with the agreed spatial plan, irrespective of whether a loan is reached. As such they are outside the scope of this project”.[17]

15. Management further points out that, while the Complaint refers to ESP PR 1.6 clauses (i) to (v) relating to the scope of the “area of influence”, it neglects to highlight PR 1.6 clause (vi), which provides that ‘the area of influence does not include potential impacts that would occur without the project or independently of the project’. Management argues that, despite the fact that the resettlement of households in Vreoci falls within this provision, EBRD has nevertheless ‘taken reasonable steps to appraise issues in Vreoci and will continue to encourage the company to be proactive in engaging with local people and to implement the resettlement both in line with national legislation and good practice standards’.[18]

16. Regarding the Complainant’s contention that a Strategic Environmental Assessment (SEA) should have been carried out, Management points out that an SEA was prepared on behalf of the Serbian Government in 2008, which was reviewed by EBRD and its consultant as part of the appraisal of the Project. In addition, Management argues that there is no specific requirement for SEA in the 2008 ESP.[19]

17. Regarding the Complainant’s allegation that the projected GHG reductions were not properly calculated, Management points out that the relevant calculations were in accordance with the Bank’s established methodology, which has been extensively peer-reviewed. It is also suggested that the estimations of GHG reductions might have been quite conservative.[20]

18. As regards the Complainant’s charge that EBRD’s investments in the Kolubara complex are “limiting investment opportunities in more sustainable and climate friendly developments”, Management refers to its very significant investments in Serbia in demand-side management, hydropower, energy efficiency and sustainable energy generally, and to the fact that Serbia has committed to meet the targets set out under the EU Renewables Directive.[21] It also reconfirms that it is not currently considering investing in the Kolubara B thermal power plant project.[22] Further, it refutes the Complainant’s suggestion that the Project will lead to increased coal production at Kolubara, arguing instead that ‘demand has not changed recently and is not expected to change in the near future’.[23]

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[17] Ove Arup & Partners, *Kolubara Environmental Upgrade Project: Environmental and Social Gap Analysis Report*, (April 2011).
[18] Management Response, at 5.
[19] Management Response, at 5.
[20] Management Response, at 6.
[21] Management Response, at 5-6.
[22] Management Response, at 6.
[23] Management Response, at 7.

19. Regarding the allegations concerning social impacts, Management points out that the Bank has always maintained that impacts on Vreoci are not within the scope of the 2011 Kolubara Project. Nevertheless, it had undertaken to investigate the issues raised previously by Vreoci Community Council and CEKOR and to facilitate a dialogue between the Client and local groups. It explains that it has engaged independent social consultants to manage this process and prepare a report, which concluded that EPS was operating in compliance with Serbian legal requirements. As part of this process, EBRD also held a public meeting in Vreoci in August 2011. In addition, Management explains that the resettlement in Barosevac was reviewed by independent consultants, who concluded that it had been carried out in accordance with EBRD Performance Requirements.[24]

20. More generally, Management insists that EBRD staff have replied to all correspondence received from CEKOR and other civil society groups and individuals, in accordance with the Bank's Public Information Policy. It is also pointed out that EBRD staff and management have met with CEKOR representatives on a number of occasions to discuss the various EPS and Kolubara projects.[25]

21. Regarding the Complainant's desired outcomes from the Compliance Review process sought, Management expresses the belief that EBRD has taken all reasonable steps and actions to appraise the Project in compliance with the requirements of the 2008 ESP. Also, it confirms that EBRD is not considering Kolubara B Power Plant for financing and has withdrawn from this project. Regarding the Complainant's request for policy guidance, Management notes that the current ESP does not place any obligation on EBRD or its clients to undertake strategic assessments, though it may in certain situations support their preparation and take existing strategic assessments into account in the course of its project appraisal. It also points out that EBRD's Greenhouse Gas Accounting Methodology will be revised in the context of the current review of the ESP.[26]

<u>Position of the Client</u>

22. The Client's position relating to the overlapping issues between the Kolubara I Complaint and the Kolubara III Complaint are set out in the Clients Response to the Kolubara I Complaint[27] and summarised in the Eligibility Assessment Report prepared in respect of the Kolubara I Complaint.[28]

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[24] Management Response, at 7-8.
[25] Management Response, at 8.
[26] Management Response, at 8-9.
[27] *Client's Response*, dated 12 March 2013, included as Annex 3 to PCM, *Eligibility Assessment Report: EPS Kolubara Environmental Improvement Project*, Request No. 2012/04, 9 August 2013
[28] PCM, *Eligibility Assessment Report: EPS Kolubara Environmental Improvement Project*, Request No. 2012/04, 9 August 2013, at 16-17.

IV Determination of Eligibility

PCM Function Requested

23. Pursuant to paragraphs 17 and 20a of the Project Complaint Mechanism Rules of Procedure (PCM RP 17 and 20a), the Eligibility Assessors must, in making their determination on the eligibility of a Complaint, take into account the PCM function requested by the Complainant. The Complainant expressly requests the PCM 'to undertake a compliance review of whether the bank has complied with its Environmental and Social Policy 2008'.[29] In addition, the Complaint sets out in detail the issues of non-compliance alleged in the Complaint under two principal headings:

(a) Cumulative impact on CO2 emissions; and
(b) Social impact.

It further suggests that 'a regional, sectoral or strategic assessment may be required' in respect of Kolubara Environmental Improvement Project.[30]

Standing to Complain

24. Both Mr. Zvezdan Kalmar and Ms. Natasa Djereg enjoy standing to make the present Complaint under PCM RP 2,[31] whether in their capacity as individuals or as the representative and Director respectively of the Centre for Ecology and Sustainable Development (CEKOR), which is 'a member of CEE (Central and Eastern Europe) Bankwatch Network and a partner with NGOs and local communities in the Kolubara region'.[32]

Bank Project

25. PCM RP 19a requires that 'the Complaint must … relate to a Project that has either been approved for financing by the Board or by the Bank Committee which has been delegated authority to give final approval to the Bank financing of such Project'. As the Kolubara Environmental Improvement Project was approved by the Board of Directors of EBRD on 26 July 2011,[33] the present Complaint satisfies PCM RP 19a to the extent that the grounds of non-compliance alleged in the Complaint can be understood to 'relate' to the Project.

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[29] Kolubara III Complaint, at 3.
[30] *Ibid.*, at 7.
[31] PCM RP 2 provides:

> 'One or more individual(s) or Organisation(s) may submit a Complaint seeking a Compliance Review.'

[32] [32] Kolubara III Complaint, at 3.
[33] See Project Summary Document, available at:
http://www.ebrd.com/english/pages/project/psd/2011/41923.shtml

26. In this regard, it is important to note that in assessing the eligibility of the earlier Complaint concerning the Kolubara Environmental Improvement Project made by the Ecological Society Vreoci and the Council of Mesna Zajednica Vreoci, which also claims, *inter alia*, that the Project scope and area of influence should be defined more broadly, the PCM Eligibility Assessors 'carefully weighed a variety of factors and conclude the Complaint meets the threshold requirements and intent of PCM RP 19a to the extent necessary to be eligible for a Compliance Review'.[34] In reaching this conclusion, the Eligibility Assessors refer to a host of Project-related documents which might be taken to imply the breadth of the Project's scope and area of influence, including the President's Recommendation and the Board Report, the Project Summary Document, the Stakeholder Engagement Plan and Non-Technical Summary, and the Environmental Impact Assessment Study of the Project: Supplementary Mining Design, Tamnava West Field.[35] For example, they point out that the Board Report confirms that 'the coal management system will analyse the coal as it is extracted from a variety of different fields and blended into a product that will meet the required standards of the power plants for quality and uniformity', thus 'improving the commercial and environmental performance of EPS's mining and power generation activities as well as enabling the implementation of the Kolubara B project and possibly the Nikola Tesla IPP'.[36]

27. This suggests, therefore, that the alleged failure of the Bank to take due account of cumulative environmental and social impacts, as set out in the present Complaint, can be understood to 'relate' to the Project for the purposes of PCM RP 19a. For example, the present Complaint maintains, in relation to alleged breach of PR 1.6 regarding the Project's "area of influence", that the Bank

> 'should have conducted an analysis of the cumulative impacts of the development of the Kolubara mining basin including the whole mining complex and the existing thermal power plants which depend on it. There would also be a case for including the planned thermal power plants which have not yet been built, according to [PR 1.6] clause (v)'.[37]

The Complainants take this position based on the 'interdependence of all mining fields … absolute dependence of TPPs on Kolubara coal production, planned increase of energy production connected to the increase of production in lignite fields'.[38]

28. One must remember that ESP PR 1.6 stipulates that '[e]nvironmental and social impacts and issues will be appraised in the context of the project's area of influence', which may include

[34] Request No. 2012/04: EPS Kolubara Environmental Improvement Project, Eligibility Assessment Report, 9 August 2013, at 18, para. 56.
[35] *Ibid.*, at 18-21, para. 56.
[36] *Ibid.* at 19, para. 56.
[37] Kolubara III Complaint, at 7.
[38] Kolubara III Complaint, at 6.

> 'assets and facilities directly owned or managed by the client that relate to the project activities to be financed;
> [a]ssociated facilities or businesses that are not funded by the EBRD as part of the project … yet whose viability and existence depend exclusively on the project;
> [a]reas and communities potentially impacted by: cumulative impacts from further planned development of the project or other sources of similar impacts in the geographical area, any existing project or condition, and other project-related developments that can realistically be expected at the time due diligence is undertaken;
> [a]reas and communities potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location'.

Thus, the various grounds of non-compliance alleged in the present complaint can reasonably be said to 'relate' to the Kolubara Environmental Improvement Project for the purposes of PCM RP 19a.

<u>Description of Harm</u>

29. As regards the requirement under PCM RP 19b, that the Complaint must 'describe the harm caused, or likely to be caused, by the Project', the Complaint outlines the alleged harm in respect of both environmental / climate impacts and social impacts. It explains that, as it is concerned with an alleged failure to conduct 'a serious analysis of its cumulative environmental and social impact on the whole Kolubara lignite mine complex', the Complaint therefore focuses on

> 'the overall climate impacts of its support for this complex, which the bank has measured much too narrowly, and the bank's excessively narrow drawing of its project boundaries thus making resettlement of the local communities as a result of mining in the Kolubara region out of the project scope and out of assessment.'[39]

30. Regarding the environmental harm represented by climate impacts in particular, it expresses general concern that the three EBRD Projects,[40] the cumulative impact of which it claims ought to have been assessed, together 'are limiting investment opportunities in more sustainable and climate friendly developments' and 'will preclude the utilization of Serbia's renewables potential (such as biomass, solar, wind)'.[41] In support of this contention, the Complaint cites the relevant energy

[39] Kolubara III Complaint, at 5.
[40] Project No. 17829 - 2001 EPS Emergency Power Reconstruction Loan; Project No. 27005 - 2003 EPS II; and Project No. 41923 – 2011 Kolubara Environmental Improvement Project. The Complaint also suggests, at 6, that the impacts of the mooted Kolubara B Project, involving a proposal for a new 750 MW lignite-fired power plant next to the Kolubara lignite mining basin, should be considered in addition to the above approved projects, despite the fact that 'the EBRD has stated that it is no longer appraising the project currently', … 'as it is closely linked with the EBRD's long-term involvement in the Kolubara mining basin'.
[41] Kolubara III Complaint, at 4.

strategy of the Serbian Government[42] as the basis for a plan by EPS and the Energy Ministry 'to increase in the period after 2013-2015 the production of lignite to levels of about 40mt/a (from the current 30mt/a)',[43] and concludes 'that support of machinery constructed with the EBRD's investments in C+B and Tamnava West field will cause much bigger volumes of lignite [to be] excavated, along with the opening of Field E and South Field'.[44] More specifically, the Complaint claims that the Kolubara Environmental Improvement Project will result in an increase in lignite production for the Kolubara basin from 30 million tonnes per annum in 2011 to 36 million tonnes per annum in 2020, amounting to 6 million additional tonnes of CO_2 annually by 2020.[45]

31. Regarding harmful social impacts alleged to be attributable to deficiencies in the Bank's appraisal of the current Project, the Complaint highlights putative problems with the quality of resettlement undertaken by EPS in the past and attempts by the Bank 'artificially' to minimise the 'area of influence' of the Project so as 'to avoid taking responsibility for certain resettlements'.[46] The alleged problems in respect of previous EPS resettlement include delayed and incomplete resettlement of affected residents, undervaluation of property and 'risks of creating long-term hardship for relocated populations',[47] as well as inadequate consultation regarding expropriations and 'repeated allegations of rife corruption'.[48] More specifically as regards EBRD's alleged failure properly to assess the cumulative impacts of the Project, the Complaint contends that 'in assessing the area of influence of the project, the EBRD artificially excluded the resettlement of Vreoci from the project appraisal'.[49] The Complainant appears to expect that the resettlement, which is anyway to be undertaken by EPS on behalf on the inhabitants of Vreoci, will not meet the standards that would have been required and ensured by EBRD, had such resettlement been included within the scope of the Bank's project appraisal.[50]

32. More generally in relation to the requirement under PCM RP 19b to 'describe the harm caused, or likely to be caused, by the Project', it is firmly established in the practice of PCM that specific material harm need not be established in the case of an alleged failure by the Bank to meet one of its core due diligence obligations arising

[42] *Strategy for Development of the Energy Sector in Serbia until 2015* (2005).
[43] Kolubara III Complaint, at 8. See further, the *General Regulation Plan for the Area of Barosevac, Medosevac, Zeoke and Burovo* (2008), at 5, cited in Kolubara III Complaint, at 11.
[44] Kolubara III Complaint, at 8.
[45] Kolubara III Complaint, at 11.
[46] Kolubara III Complaint, at 13.
[47] Kolubara III Complaint, at 13-14.
[48] Kolubara III Complaint, at 7.
[49] Kolubara III Complaint, at 14.
[50] See, Kolubara III Complaint, at 16, where the Complainant suggests that

> 'The EBRD has put itself in a position where, after financing three similar projects in the Kolubara area, local people are starting to see it as co-responsible for the problems they are suffering with pollution and resettlement, yet it has not properly assessed these issues and does not appear to have put itself in a position (e.g. through including the resettlement in its project contract) to influence EPS' handling of the resettlement.'

under the 2008 ESP, 'as such failure would inherently impact on the integrity of the relevant decision-making process, and thus on the quality and legitimacy of the decision taken. Harm can be presumed in the case of any such instance of non-compliance.'[51] As the Complaint expressly contends that the alleged failure properly to assess the cumulative impacts of the Project 'would impact the scope of the due diligence required',[52] it would appear intrinsically to satisfy the requirements of PCM RP 19b.

Outcome Sought

33. PCM RP 20b provides, for the purposes of eligibility, that a Complaint 'should also include, if possible … an indication of the outcome(s) sought as a result of the PCM process'. The Complaint expressly sets out three distinct outcomes which the Complainants expect from the Compliance Review process sought. First of all the Complainants ask that 'the PCM will put forward recommendations and actions to … correct the EBRD's failure to include all elements of PR 1.6 in the project appraisal for the Kolubara Environmental Improvement project'.[53] This request for a cumulative assessment is very much the most important outcome requested and is centrally relevant to every aspect of the Complaint. Throughout the Complaint the Complainants assert, for example, that

> 'EBRD intentionally drew the project area of influence for the Kolubara Environmental Improvement Project very narrowly and never conducted … a serious analysis of its cumulative environmental and social impact on the whole Kolubara lignite mine complex',[54]

Similarly, the Complaint elsewhere contends that

> 'EBRD should have conducted an analysis of the cumulative impacts of the development of the Kolubara mining basin including the whole mining complex and the existing thermal power plants which depend on it. There would also be a case for including the planned thermal power plants which have not yet been built'.[55]

Quoting from PR 6.1(v) of the 2008 Environmental and Social Policy, the Complaint emphasises that this outcome essentially requires that

> '"Further planned development of the project or other sources of similar impacts in the geographical area" must take into account all fields at Kolubara, and must include plans to address the existing and future negative environmental and social impacts of the mining operations from all fields through rehabilitation of the affected land and satisfactory resolution of

[51] See, for example, PCM, *Eligibility Assessment Report: Ombla Hydropower Project (HPP),* Request No. 2011/06, at 14, para. 28.
[52] Kolubara III Complaint, at 9.
[53] Kolubara III Complaint, at 16.
[54] Kolubara III Complaint, at 5.
[55] Kolubara III Complaint, at 7.

> outstanding social issues such as resettlement and poor health of local residents.'[56]

Conceding that a very comprehensive cumulative impacts assessment, covering a wide range of implemented and potential projects spanning a very long period of time, might give rise to considerable practical difficulty for the Bank, the Complainants

> 'conservatively maintain here that at least for the 2011 [Kolubara] Environmental Improvement Project a greenhouse assessment should have taken place which would have included all the elements in PR 1.6.'[57]

Any such recommendations by the PCM might fall under PCM RP 40b, as they would be intended to 'address the findings of non-compliance in the scope or implementation of the Project'.

34. Secondly, the Complainants request the PCM to take steps to ensure

> 'if the EBRD once again takes up appraisal of the Kolubara B thermal power plant to assess regional and cumulative impacts … at least an integrated assessment of the whole Kolubara basin, beyond the project boundaries taking into account the results or lack thereof from the three EBRD-financed projects already carried out in the area as well as other aspects of EPS' operations, to capture indirect risks and prospects and look at the overall balances …'.[58]

Whilst any such recommendations by the PCM would not relate directly to the present Project, they could nevertheless be issued pursuant to PCM RP 40a, as they would be intended to 'address the findings of non-compliance at the level of EBRD systems or procedures to avoid a recurrence of such or similar occurrences'. Alternatively, such recommendations might be regarded as falling under PCM RP 40b, as they would indirectly 'address the findings of non-compliance in the scope or implementation of the Project'.

35. Finally, the Complainants request that the PCM recommends that EBRD takes steps to

> 'Draw up policy guidance such as
> (i) specification on the circumstances under which a regional, sectoral or strategic assessment is required
> (ii) exploration of how to align the EBRD's Greenhouse Gas Emissions Accounting Methodology with the Environmental and Social Policy 2008.'[59]

Any such recommendations by the PCM would clearly fall under PCM RP 40b, as they would 'address the findings of non-compliance at the level of EBRD systems or procedures to avoid a recurrence of such or similar occurrences'.

[56] Kolubara III Complaint, at 8.
[57] Kolubara III Complaint, at 10.
[58] Kolubara III Complaint, at 16.
[59] Kolubara III Complaint, at 17. It should be noted that the outcome requested under point (ii), *i.e.* PCM guidance on aligning the EBRD's Greenhouse Gas Emissions Accounting Methodology with the Environmental and Social Policy 2008, would not offend PCM RP 24e, as it need not

> 'relate to the adequacy or suitability of EBRD policies'.

Relevant Correspondence

36. PCM RP 20c provides that an eligible Complaint should, if possible, include 'copies of all correspondence, notes, or other materials related to communications with the Bank or other Relevant Parties'. Though the Complaint does not provide actual copies of such materials, it does provide sufficient detail, (including dates, subject-matter, identification of relevant signatories, *etc.*), to ensure that the relevant documentation can be obtained and verified, if necessary, during the course of any Compliance Review.[60] Regarding the exclusion of the resettlement of Vreoci from the Project appraisal, for example, the Complaint outlines letters to EBRD from the community formally requesting an extension of the timeline for Project approval and from international civil society raising this particular issue.[61]

37. Bank Management's Response to the Complaint likewise refers to the 'all correspondence received from CEKOR', which suggests that such correspondence should not be difficult to obtain in the course of any Compliance Review process.[62]

38. In addition, as two other Complaints concerning the present Project have been registered with the PCM to date,[63] one of which has already been found to be eligible for a compliance review,[64] it may be assumed that much of the relevant 'correspondence, notes, or other materials related to communications with the Bank or other Relevant Parties' will be readily available to the PCM Officer and / or to the relevant PCM Expert during the course of any compliance review.

Relevant EBRD Policy

39. Regarding the stipulation in PCM RP 20d that it should also include 'details of the relevant EBRD Policy at issue in the Complaint', the present Complaint expressly refers to the requirement under ESP PR 1.6 that '[e]nvironmental and social impacts and issues will be appraised in the context of the project's area of influence', with which it claims EBRD has failed to comply.[65] The Complaint reproduces the detailed description of the scope of a project's "area of influence" set out under PR 1.6(i)-(v) as the basis for its contention that

> 'the EBRD should have an analysis of the cumulative impacts of the development of the Kolubara mining basin including the whole mining

[60] See, for example, the reference to the letter from Mr Kevin Bortz, dated 17 April 2012, Kolubara III Complaint, at 11, or the reference to the personal correspondence between Zvezdan Kalmar from CEKOR and the EPS Technical Director for Kolubara's mining fields, Kolubara III Complaint, at 15.
[61] Kolubara III Complaint, at 15.
[62] Management Response, at 8.
[63] Complaint No. 2012/04 and Complaint No. 2013/02, available at: http://www.ebrd.com/pages/project/pcm/register.shtml
[64] Complaint No. 2012/04, *ibid.*
[65] Kolubara III Complaint, at 6-7.

complex and the existing thermal plants which depend on it. There would also be a case for including the planned thermal power plants which have not yet been built'.[66]

In addition, the Complaint expressly refers to PR 1.9, which sets out the key features to be included in the 'comprehensive environmental and/or social impact assessment' required in respect of a Category A project, and further provides that '[i]n exceptional circumstances, a regional, sectoral or strategic assessment may be required'.[67] The Complaint proceeds to explain that the Complainants believe that the present Project constitutes such 'exceptional circumstances' of the basis of

a) 'the Kolubara complex's significant influence on the whole energy sector
b) the complexity of the Kolubara complex's impacts themselves and
c) the EBRD's repeated loans supporting the Kolubara mine and the complex social and environmental impacts of the mining operations, including those of the related thermal power plants'[68]

40. Finally, the Complaint alludes to the requirement set out under PR 3.18 to conduct a greenhouse gas (GHG) assessment of the Project:

> 'During the development of projects that are expected to or currently produce significant quantities of GHGs, the client will procure and report the data necessary to enable both an assessment of baseline (pre-investment) GHG emissions and an estimate of post-implementation GHG emissions.'[69]

The Complaint once again refers to PR 1.6, and specifically to the "area of influence" outlined therein and the cumulative impact assessment required thereunder, to argue that EBRD erred in identifying both the baseline and the post-project estimate necessary to measure the Project's impact regarding GHGs, contrary to PR 3.18. It claims that

> 'considering that the EBRD has carried out three projects connected to the Kolubara mining complex, a true cumulative impacts assessment would look at the impact of these altogether and would have taken as its baseline what would have happened without all three of the projects.'[70]

Recognising the practical difficulties likely to be involved in undertaking such a long-term and comprehensive and cumulative impacts assessment, the Complainants 'conservatively maintain here that at least for the 2011 [Kolubara] Environmental Improvement Project a greenhouse assessment should have taken place which would have included all the elements in PR 1.6.'[71]

[66] Kolubara III Complaint, at 7.
[67] Kolubara III Complaint, at 7.
[68] Kolubara III Complaint, at 7.
[69] 2008 ESP, PR 3.18, see Kolubara III Complaint, at 9.
[70] Kolubara III Complaint, at 10.
[71] Kolubara III Complaint, at 10.

41. Therefore, it is readily apparent that the Complaint includes ‘details of the Relevant EBRD Policy at issue’ in accordance with PCM RP 20d.

<u>Responsibility of the Bank</u>

42. PCM RP 23a requires that the Eligibility Assessors, in their determination of the eligibility of a Complaint for a Compliance Review, ‘consider whether the Complaint relates to … actions or inactions that are the responsibility of the Bank’. While PR 1 relates generally to project appraisal required in order to manage the environmental and social issues and impacts associated with EBRD-funded activities, the 2008 ESP clearly states that ‘[t]his Performance Requirement (“PR”) 1 outlines *the client’s responsibilities* in the process of appraising, managing and monitoring environmental and social issues associated with projects proposed for EBRD financing’.[72] Similarly, regarding the key requirements of environmental and social appraisal, the ESP states that ‘[t]hrough appraisal activities such as … environmental and social impact assessment, *the client will consider* in an integrated manner the potential environmental and social issues and impacts associated with the proposed project’.[73] However, the PR 1.5 goes on to explain that, as a result of such appraisal activities,

> ‘The information gained *will inform the EBRD’s own due diligence related to the client and project* and will help to identify the applicable PRs and the appropriate measures to better manage risk and develop opportunities, in accordance with the applicable PRs.’[74]

Therefore, it is beyond question that the Bank has a responsibility to ensure the adequacy of the environmental and social impact assessment (ESAP) required in respect of a Category A project, such as the Kolubara Environmental Improvement Project, as the ESAP is an integral component of ‘the EBRD’s own due diligence’ related to the client and project’.

43. More specifically to the present Complaint, PR 1.6 outlines the context and scope of such environmental and social appraisal by listing five categories of facilities, activities, areas and communities which may be included within a project’s “area of influence”, and expressly stipulates that ‘[b]ased on the above [five categories], *the EBRD and the client will agree on the area of influence* for each project’.[75] Therefore, it is quite clear that determination of the “area of influence” of the project, and thus of the scope and content of the requisite ESIA, which is the key issue of contention in the present Complaint,[76] is the joint responsibility of the Bank and the Client.

[72] 2008 ESP, PR 1.3 (emphasis added).
[73] 2008 ESP, PR 1.5 (emphasis added).
[74] 2008 ESP, PR 1.5 (emphasis added).
[75] 2008 ESP, PR 1.5 (emphasis added).
[76] See Kolubara III Complaint, at 5, 6 and 10.

44. Similarly, regarding PR 1.9, which sets out the key features to be included in the ESIA required in respect of a Category A project, and further provides that '[i]n exceptional circumstances, a regional, sectoral or strategic assessment may be required', it is apparent that the Bank retains considerable authority under the ESP to dictate the nature of the due diligence studies required for appraisal of any project. On this point, PR 1.8 expressly provides that '[d]epending on the potential significance of issues and impacts, *the Bank may require* that some due diligence studies are conducted by independent third party specialists'.[77] This strongly infers the Bank's responsibility in determining whether 'exceptional circumstances' exist so that such 'a regional, sectoral or strategic assessment may be required'.

45. As regards the GHG assessment required under PR 3.18, this provision itself specifically provides that '[g]uidance on the *definition of project boundary should also be sought from the Bank*'.[78] Of course, the issue of the 'project boundary' for the purposes of the GHG assessment is absolutely central to the present Complaint.[79] In addition, in setting out the scope and requirements of PR 3 generally, which concerns 'Pollution Prevention and Abatement', the ESP states unequivocally that '[t]he *Bank will agree with the client* how the relevant requirements of this PR will be addressed and managed'[80] and, further, that '[f]or each project, *the Bank will identify and agree with the client* the relevant applicable environmental requirements and guidelines'.[81] Clearly, therefore, it is the joint responsibility of the Bank and the Client to ensure the adequacy of a GHG assessment carried out pursuant to PR 3.18.

<u>Minor Technical Violation</u>

46. As regards PCM RP 23b, which requires that the Eligibility Assessors consider whether the Complaint relates to 'more than a minor technical violation of a Relevant EBRD Policy unless such technical violation is alleged to have caused harm', it is quite clear that the failures alleged in the present Complaint adequately to assess potential environmental and social impacts would amount to more than mere 'minor technical violations'.[82] For example, PR 1 of the 2008 ESP stresses the central role of 'the process of appraising, managing and monitoring environmental and social issues associated with projects proposed for EBRD financing'[83] as part of the Bank's requirement for client companies to have 'a systematic approach to managing the environmental and social issues and impacts associated with their activities'.[84]

[77] 2008 ESP, PR 1.8 (emphasis added).
[78] 2008 ESP, PR 3.18 (emphasis added).
[79] See Kolubara III Complaint, at 9-12.
[80] 2008 ESP, PR 3.4 (emphasis added).
[81] 2008 ESP, PR 3.9 (emphasis added).
[82] A similar conclusion has been reached on this issue by the PCM Eligibility Assessors in respect of the Kolubara I Complaint. See Request No. 2012/04: EPS Kolubara Environmental Improvement Project, Eligibility Assessment Report, 9 August 2013, at 27, para. 60.
[83] PCM PR 1.3.
[84] PCM PR 1.1.

47. In addition, on the basis of the established practice of PCM, the current Eligibility Assessors have earlier determined that harm can be presumed in the case of any instance of non-compliance with the due diligence obligations set out under the 2008 ESP, such as that alleged in the Present Complaint.[85] Therefore, it is highly likely that any such Complaint would satisfy this particular eligibility criterion.

<u>Failure of the Bank to Monitor Client Commitments</u>

48. As the present Complaint does not allege a failure by the Bank to monitor Client commitments pursuant to Relevant EBRD Policy, PCM RE 23c is neither relevant nor applicable.[86]

<u>Other Factors Excluding Eligibility</u>

49. PCM RP 24 sets out a list of factors, any of which if found to apply would render a Complaint ineligible. In the present Complaint there is nothing to suggest that it 'was filed fraudulently or for a frivolous or malicious purpose',[87] nor that 'its primary purpose is to seek competitive advantage through the disclosure of information or through delaying the Project'.[88] Nowhere does the present Complaint raise allegations of fraud, related to procurement matters,[89] relate to 'Article 1 of the Agreement Establishing the Bank, the Portfolio Ration Policy or any other specified policy',[90] or relate to 'the adequacy or suitability of EBRD policies'.[91] Though there is nothing to suggest that the issues of non-compliance alleged in the present Complaint have been dealt with by the accountability mechanism of any parallel co-financing institution, such a review by another accountability mechanism would not in any case disqualify a Complaint seeking a Compliance Review from being processed by the PCM.[92]

50. Of relevance to the present Complaint, PCM RP 24f provides that a Complaint which 'relates to matters in regard to which a Complaint has already been processed by the PCM … will not be eligible for … a Compliance Review'. Though there is some overlap between the present Complaint and the Kolubara I Complaint previously registered with PCM, especially as regards the alleged failure to properly define the Project scope and area of influence, the alleged failure adequately to consider cumulative impacts associated with the Project, the alleged failure to consider the

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[85] See, *supra*, at 12-13, para. 31. See further, for example, PCM, *Eligibility Assessment Report: Ombla Hydropower Project (HPP)*, Request No. 2011/06, at 14, para. 28.
[86] See also PCM, *Eligibility Assessment Report: EPS Kolubara Environmental Improvement Project*, Request No. 2012/04, 9 August 2013, at 27, para. 61.
[87] PCM RP 24a.
[88] PCM RP 24b.
[89] PCM RP 24c.
[90] PCM RP 24d.
[91] PCM RP 24e. While the Complaint does point out apparent inconsistencies between the PR 1.6 and PR 3.18, on the one hand, and the ENRD's Greenhouse Gas Accounting Methodology, on the other, it in no way questions 'the adequacy or suitability of EBRD policies'. See Kolubara III Complaint, at 9-10.
[92] See PCM RP 24f.

impacts of the Project on Vreoci, and the alleged promotion of a climate-damaging approach to energy investments in Serbia,[93] the Compliance Review for this earlier Complaint is still pending and, in the interests of procedural and administrative efficiency, it should be possible to combine the Compliance Review required for both related Complaints into a single process.

Conclusion and Terms of Reference for the Compliance Review

51. On the basis of the findings set out above, the present Complaint can be deemed to satisfy all of the relevant and applicable eligibility criteria set out under PCM RPs 17, 19, 20, 23 and 24. Therefore, it is determined by the Eligibility Assessors to be **eligible for a Compliance Review.**

52. In order to integrate the Compliance Review process recommended in this Eligibility Assessment Report, it is merely necessary to amend the Terms of Reference included in the Eligibility Assessment Report for the Kolubara I Complaint (Request No. 2012/04) so as to include the key compliance questions arising under the present Complaint.

53. Specifically, the Terms of Reference for the Kolubara I Compliance Review should be amended so as to include:

    a. An additional Paragraph 11A providing:
    'As an additional initial step, the Compliance Review Expert will determine the precise requirements, in the specific context of the present Project and the Kolubara III Complaint, of each of the relevant provisions of the ESP and of the Performance Requirements contained therein, in respect of which non-compliance is alleged in the Complaint. Relevant provisions of the ESP include ESP PR 1.6, ESP PR 1.9 and ESP PR 3.18.'

    b. An additional Paragraph 12B providing:

        (i) 'Whether PR 1.6 required that the Project's "area of influence" should have been more broadly understood so as to require a cumulative assessment taking into account certain of the Bank's previous investments in the Kolubara mining basin and, possibly, planned or potential future projects?

        (ii) Whether the present Project, taken in combination with the Bank's previous investments in the Kolubara mining basin and, possibly, planned or potential future projects, amounts to "exceptional circumstances" requiring a regional, sectoral or strategic assessment?

[93] See PCM, *Eligibility Assessment Report: EPS Kolubara Environmental Improvement Project*, Request No. 2012/04, 9 August 2013, at 8-12, paras. 18-30.

(iii) Whether the GHG emissions associated with the present Project were correctly calculated in accordance with the requirements of PR 3.18.

ANNEX 1: COMPLAINT

Centar za ekologiju i održivi razvoj (CEKOR)
Center for Ecology and Sustainable Development, Belgrade
Subotica office: CEKOR, Korzo 15/13, 24 000 Subotica, SERBIA
Fax:381 (0) 24 523 191, www.cekor.org M: +381 655523191
Koordinator za CEE Bankwatch Network za Srbiju: **ZVEZDAN KALMAR**
zvezdan@bankwatch.org

Subotica
Tuesday, 01 October 2013

To: Project Complaint Mechanism
Attn: PCM Officer
European Bank for Reconstruction and Development

BegoyanA@ebrd.com

Dear Ms Begoyan Schliesing,

Please find attached a complaint for compliance review from CEKOR on the Kolubara Environmental Improvement project. I attach also some additional information that provides further analysis and evidence that may be useful for your eligibility assessment. We are aware that already there is an on-going PCM complaint on this project, and that there may be some duplication in starting a parallel compliance review. Nonetheless, CEKOR's complaint concerns the long-term involvement of the EBRD in the Serbian energy sector through a history of investments in the EPS, which we believe is not reflected in the assessment of the project and setting the project boundaries.

We hope to hear back from you soon and would be glad to reply to any question that you may have. Thank you very much for your time.

Sincerely yours,

Mr Zvezdan Kalmar
Serbian coordinator for CEE Bankwatch Network,
CEKOR, Korzo 15/13, 24000 Subotica, Serbia
zvezdan@bankwatch.org, vodana@gmail.com
www.cekor.org

Submission Via Electronic Mail

1 October 2013

Project Complaint Mechanism
Attn: PCM Officer
European Bank for Reconstruction and Development – EBRD
One Exchange Square
London EC2A 2JN, United Kingdom
Email: pcm@ebrd.com

CEKOR Complaint to the EBRD Project Complaint Mechanism

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COMPLAINT

COMPLIANCE REVIEW

Cumulative impact of

Project number 17829

Project number 27005

Project number 41923

And project area of influence of Project 41923

Dear Ms. Begoyan,

Allow us to bring to your attention the following deficiencies in relation to the EBRD assessment of the impacts of its investments in the Kolubara Mining Basin. We consider that the actual influence and impact of EBRD involvement is much wider than what was assessed in the scope of the project appraisal for the Kolubara Environmental Improvement Project, due to the fact that the EBRD has been involved in the Kolubara region for over 10 years in three different but interlinked projects and due to the fact that the fields in the Kolubara mining basin cannot be neatly separated as the EBRD has attempted to do in its project appraisal.

Therefore, we ask the Project Complaint Mechanism to undertake a compliance review of whether the bank has complied with its Environmental and Social Policy 2008 regarding the definition of the project boundaries and the resulting due diligence.[1]

INTRODUCTION

The Center for Ecology and Sustainable Development (**CEKOR**) is a non-governmental environmental organization with a long history in public mobilization on environmental issues, and in facilitation of public participation of monitoring policies, programnes and projects with potentially significant environmental impacts, in line with its statute and the Aarhus Convention.

CEKOR is a member of CEE (Central and Eastern Europe) Bankwatch Network and a partner with NGOs and local communities in the Kolubara region.

As a concerned organization, CEKOR is – among other things - interested in raising public awareness and transparency standards in regard to projects and programmes guaranteed by sovereign guarantees of Serbia and carried out by public companies of Serbia, in order to help

[1] Considering that the first two projects were signed before 2008 we realize that they cannot be subject to the 2008 ESP but that they should have been subject to ex-post evaluation by the EBRD according to the ESP valid at the time of their approval and that the result of this should have been taken into account in the appraisal of the 2001 project

local communities in realizing the substantive right to an adequate level of environmental quality.

Client information

The project sponsor is Electric Power Industry of Serbia (Elektroprivreda Srbije, **EPS**), which is a Serbian vertically integrated state power company with a monopoly in lignite mining, electricity generation, distribution and supply of electricity throughout the country. 55% of its installed capacity of 7,120 MW is provided by six lignite-fired power stations supplied by two basins, Kolubara and Kostolac.

Kolubara Mining Basin is a Limited Liability Company and the biggest integral part of EPS. The basic task of the company is to supply power plants in Serbia with lignite for production of electric power. As the biggest exploiter of coal in Serbia, it is situated 60km South-West of Belgrade, occupying surface of 600 square km. Available reserves of coal in the region are estimated around 2 billion tonnes. Kolubara has four active surface mines: Field B, Field D, Tamnava West Field and Veliki Crljeni. There is an ongoing plan of opening a number of new fields : South Field as an extension of Tamnava West Field, E field as an extension of D and C+B fields and Radljevo as a direct follow field of Tamnava West from western side.

Ninety percent of the Kolubara coal is used in thermal power plants ("Nikola Tesla" I and II, "Kolubara A" and "Morava") for electricity production, while the remaining 10% supplies other sectors of industry and household consumption for heating. Official data shows that 52% or 17 billion kWh of electricity comes from Kolubara coal.[2]

Kolubara lignite basin has been considered by successive governments to have strategic importance for Serbia. In the structure of the state energy potential, nearly 99% of balance reserves is based on lignite. The basin provides 75 percent of Serbia`s lignite, and more than 50 percent of Serbian electricity is produced by power plants within the Kolubara complex.

EBRD support for projects and operations in the Kolubara mining basin, actually represents support for the dominant position and a possibility for extension of coal power in Serbia. At the same time, the projects are limiting investment opportunities in more sustainable and climate-friendly developments. Plans of expanding lignite production and coal-powered electricity generation are most likely driven by ambitions to export electricity, and will preclude the utilization of Serbia`s renewables potential (such as biomass, solar, wind).

Serbia has less than one percent of electricity produced from new renewable energy sources. The Law on Energy Efficiency was passed in 2010[3], and although it emphasized the

[2] www.rbkolubara.rs

[3] http://www.epcg.co.me/pdf/06_01/Zakon_o_energetskoj_efikasnosti1.pdf

importance of energy efficiency in energy consumption, the concept of energy efficiency is not clearly defined, neither in this or any other law or regulation. A low-carbon energy strategy for development of the Serbian energy sector is not developed. Such an alternative scenario is required in the framework of the European Union's Strategic Environment Impact Assessment Directive[4] that requires the development of alternative plans for programmes and policies.

Since opening its office in Serbia in 2001, the EBRD has provided financial support to five projects in the Power and Energy sector, all to EPS, and began to consider financing a further project – the Kolubara B thermal power plant, although it currently appears that this financing is not progressing. Of the projects financed, three related at least partly to the Kolubara mining basin: the EPS Emergency Power Reconstruction Loan (approved 2001); EPS II (approved 2003) and the Kolubara Environmental Improvement Project (approved 2011).

One of our main concerns is that the EBRD intentionally drew the project area of influence for the Kolubara Environmental Improvement Project very narrowly and never conducted (or did not disclose with regards to its massive involvement in the energy sector in Serbia) a serious analysis of its cumulative environmental and social impact on the whole Kolubara lignite mine complex. Although there are many other aspects which have not been properly examined, we concentrate in this complaint on the overall climate impacts of its support for this complex, which the bank has measured much too narrowly, and the bank's excessively narrow drawing of its project boundaries thus making resettlement of the local communities as a result of mining in the Kolubara region out of the project scope and out of assessment.

EBRD Investments in EPS projects

1. The EBRD support of Serbian lignite production started with the **EPS Emergency Power Sector Reconstruction** loan in 2001. The project aimed to finance emergency rehabilitation and upgrades to thermal and hydro power generation plants, including in the Kolubara area, and to the transmission system[5] EBRD support amounted to EUR100 million and it was classified as category B[6]

2. In 2003 the EBRD`s support continued with the **EPS Power II project**[7] A large quantity of lignite from the Tamnava West field in Kolubara is below the calorific value necessary for utilization in modern power plants, and therefore lignite excavated from that field has to be improved with better quality lignite from Field C and D. The project was categorised as a category A based on social criteria[8], and the EBRD investment was EUR 60 million.

[4] SEA Directive 2001/42/EC

[5] As a result of the project, EPS thermal capacities significantly upgraded and their lifetime prolonged for up to 20 years. However they are not in compliance with the EU Large combustion plants Directive, and should be closed by 2017.

[6] Project Summary Document: http://www.ebrd.com/english/pages/psd/2001/17829.shtml

[7] Project Summary Document: http://www.ebrd.com/english/pages/psd/2002/27005.shtml

[8] The project is A listed, if it can result in significant adverse social impacts to local communities and if the project may involve significant involuntary resettlement or economic displacement

3. The Kolubara Environmental Improvement project, approved in 2011, has similar goals as the previous EPS II loan. The equipment purchased from the project - coal excavator, conveyor and spreader system for Field C, and spreader system for Tamnava West - is supposed to improve the efficiency of EPS mining operations in Field C at the Kolubara basin, and to improve the quality and uniformity of the lignite it delivers to its power stations. The project cost is EUR 165 million, including also a parallel loan from KfW, and the EBRD part is EUR 80 million. The project is A category.

In addition to the approved projects, new 750 MW **Kolubara B** lignite fired power plant next to the Kolubara lignite mining basin is under development. The EBRD claims that the Kolubara B TPP will improve EPS`s environmental impact, but the reality is that EPS will extract and burn more lignite.[9]Although the EBRD has stated that it is no longer appraising the project currently, the project is crucial to mention as it is closely linked with the EBRD`s long-term involvement in the Kolubara mining basin. (See the quote from the EBRD board document later in the complaint)

As the EBRD's current Environmental and Social Policy came into force only in 2008, for the purposes of this complaint, we are focusing on the EBRD's project appraisal for the 2011 Kolubara Environmental Improvement Project.

According to PR1 para 6, the EBRD was obliged for its 2011 project (Kolubara Environmental Improvement project) to provide an analysis for all related activities, especially: coherence and interdependence of all mining fields, connection and the use of mechanization in all fields, absolute dependence of TPPs on Kolubara coal production, planned increase of energy production connected to the increase of production in lignite fields.

PR 1 para 6
Environmental and social impacts and issues will be appraised in the context of the projects influence. This area of influence may include one or more of the following, as appropriate:
(i) The assets and facilities directly owned or managed by the client that relate to the project activities to be financed (such as production plant, power transmission corridors, pipelines, canals, ports, access roads and construction camps).

(ii) Supporting/enabling activities, assets and facilities owned or under the control of parties contracted for the operation of the clients business or for the completion of the project (such as contractors).

(iii) Associated facilities or businesses that are not funded by the EBRD as part of the project and may be separate legal entities yet whose viability and existence depend exclusively on the project and whose goods and services are essential for the successful operation of the project.

(iv) Facilities, operations, and services owned or managed by the client which are part of the security package committed to the EBRD as collateral.

[9] It is not clear whether this new capacity is actually balanced with the decommissioning of old capacities of the same size, and even if it is going to replace older units, no alternatives to lignite have been considered.

(v) Areas and communities potentially impacted by: cumulative impacts from further planned development of the project or other sources of similar impacts in the geographical area, any existing project or condition, and other project-related developments that can realistically be expected at the time due diligence is undertaken.

According to this the EBRD should have conducted an analysis of the cumulative impacts of the development of the Kolubara mining basin including the whole mining complex and the existing thermal power plants which depend on it. There would also be a case for including the planned thermal power plants which have not yet been built, according to clause (v).

This would have been the case whether or not the EBRD had undertaken previous projects at the location, but we believe that the fact that the bank had undertaken previous projects in Kolubara strengthens this obligation.

In addition, PR1 para. 9 states that:

In exceptional circumstances, a regional, sectoral or strategic assessment may be required.

The ESP does not elaborate on the definition of 'exceptional circumstances', therefore it is left to the discretion of the bank's staff to determine the need for a regional, sectoral or strategic assessment. CEKOR believes that a) the Kolubara complex's significant influence on the whole energy sector b) the complexity of the Kolubara complex's impacts themselves and the c) the EBRD's repeated loans supporting the Kolubara mine and the complex social and environmental impacts of the mining operations, including those of the related thermal power plants, constitute 'exceptional circumstances'.

Since the approval of the project this need has been reinforced by a series of events: the partial and highly strung-out resettlement of the local communities to resettle, including the traumatic forced removal of the Vreoci graveyard, the recent landslide that destroyed private property and still threatens Junkovci households, controversial experiences with undervalued and inadequately consulted expropriations, the persisting failure of the Serbian judicial system to address numerous grievances of mine-affected people, the repeated allegations of rife corruption in the company, are only few examples of circumstances that, according to CEKOR, could have been identified as issues as part of a much wider assessment of the EPS operations and corporate and social responsibility record before the 2011 loan was approved.

PR 1 stipulates that the appraisal should include "assets and facilities directly owned or managed by the client," "supporting/enabling activities," "associated facilities or businesses," "faculties, operations, and services owned or managed by the client," "cumulative impacts" on nearby communities, "impacts from unplanned, but predictable developments."[10] However, the EIAs only cover Field C and Tamnava West Field. While the EIAs are fairly comprehensive in their coverage of these locations, they ignore the ramifications of supporting and associated facilities/activities.

[10] PR 1(6)

"Further planned development of the project or other sources of similar impacts in the geographical area" must take into account all fields at Kolubara, and must include plans to address the existing and future negative environmental and social impacts of the mining operations from all fields through rehabilitation of the affected land and satisfactory resolution of outstanding social issues such as resettlement and poor health of local residents.

If we look at the Kolubara Basin in its entirety, we can see that the open pits are bordering with each other. The fields are completely geologically and naturally linked, and their exploitation by the Kolubara Company is fully connected, integrated and coherently aimed to at feeding the TPPs in Kolubara and Obrenovac. Regardless of this direct inter-relation, the environmental and social impact assessment was done separately, in different time periods, for Tamnava West, Field C, and the future Radljevo field.[11]

The Kolubara mine Environmental Improvement project claims to finance activities only in Tamnava West and Field C, however geological and practical facts show that any such restrictions are impossible. For example the EIA for Field C stated: "*When it comes to the natural and geological structural features of the seams of coal and other accompanying sediments, the deposit Field C represents a natural continuation of Field B further towards the west and Field E. The future Field E cannot be feasibly developed without the proposed development of Field C, because Field C will act as a front allowing access to the particularly deep layers of coal in Field E.*"

The **Strategy for development of the energy sector in Serbia until 2015**, adopted by the parliament in 2005, also states that the main fields that Kolubara plans to open in the future, are Field E (which contains high quality lignite) South Field and Radljevo Field (capacity is anticipated for supply of the future TPP Kolubara B and Nikola Tesla B projects). The strategy contains data about the full capacity requirements of future planned coal excavation. Based on those calculations EPS and the energy ministry came forward with a plan to increase in the period after 2013-2015 the production of lignite to levels of about 40mt/a (from the current 30mt/a) in the period after 2013-2015. Therefore it is easy to find out exactly what volumes of lignite EBRD is directly signing its commitment, by simply reading through the balances of different fields.

According to the strategy, the physical precondition for opening up of E field is the development of the C field and completed excavation of D field. Field E will be a replacement capacity for Field D. In the same place the strategy reads that machinery from C+B and D fields will be completely utilized in the opening and production of coal from E field. One of the preconditions for opening Field E is the excavation of Istocna kipa dump site, which is anticipated with the Environmental Improvement project.

The above information supports the assumption that support of machinery constructed with the EBRD's investments in C+B and Tamnava West field will cause much bigger volumes of lignite excavated, along with opening of Field E and South Field.

[11] Radljevo Field is a natural extension of the Tamnava West Field

It is natural that all mine fields, due to exploitation, have a limited lifetime. The purchasing of machinery only for two fields would not be profitable unless it is planned to be used at other fields in the future. Therefore it can be assumed that all machinery is being purchased in order to be further utilised for the development of other fields and for accelerating lignite exploitation with all the consequences that excavation brings. Furthermore, the Serbian energy strategy states that machinery from B+C fields will be utilized in the future E field, and machinery from Tamnava West will be utilized in South Field.

In order to provide continuity of lignite excavation, it is necessary to dynamically align the opening and development of Field E, which will be replacement capacity for Field D. The newly purchased coal excavator financed by the Kolubara Environmental Improvement project will enable EPS to develop a front from C field, towards E field and D field. These fields will become a future source of better quality lignite for homogenization with low quality lignite from Tamnava West field. Homogenization has no point without developing all these fields at the same time.

On one hand, the EBRD cannot ensure that equipment intended for mine expansion will <u>not be used</u> to increase the production capacities of other areas in the mine, which would impact the scope of the due diligence required. On the other hand, if such measure was taken, it the financial viability of that machinery would be under question and may become a direct stranded cost for EPS and the state of Serbia, as the guarantor of the loan.[12]

Cumulative impacts and harm done which has not been properly assessed

a) Cumulative impact on CO2 emissions

For projects that currently produce significant quantities of GHGs there is an obligation in PR3 para. 18 on Environmental and Social Appraisal of the EBRD`s Environmental and Social Policy:

During the development of projects that are expected to, or currently produce significant quantities of GHGs, the client will procure and report the data necessary to enable both an assessment of baseline (pre-investment) GHG emissions and an estimate of post-implementation GHGs emissions.

This requirement does not stipulate where the project boundaries should be set – the EBRD's greenhouse gas accounting methodology is set out in another document.[13] However

[12] The latest EBRD investment is spent towards the construction and utilization of machinery worth more than 60 million EUR for less than 15 million ton of lignite in B field (including more than 40 million ton of overburden in that field). That would be a case of highly questionable project feasibility, with minimal or negative interest for the state of Serbia)

[13] http://www.ebrd.com/downloads/about/sustainability/ghgguide.pdf

neither does the greenhouse gas accounting methodology give clear guidance in complex cases such as where the EBRD is financing certain machinery for a larger mining complex. In addition there appear to be certain clashes between the approach set out in the GHG accounting methodology document and the EBRD's Environmental and Social Policy – for example the GHG accounting methodology document does not stipulate that coal mine project calculations should include the combustion of the mined coal, whereas PR1.6(iii) clearly leads to such a conclusion.

We see PR1.6 on the project's area of influence as giving the clearest guidance on what elements should be included in the greenhouse gas assessment for the project. Both a baseline and a post-project estimate are needed in order to measure the project's impact, and considering that the EBRD has carried out three projects connected to the Kolubara mining complex, a true cumulative impact assessment would look at the impact of these altogether and would have taken as its baseline what would have happened without all three of the projects. However given the practical difficulties associated with this (data on lignite combustion before 2003 for example is not precise) and the complications of assessing projects which span 2-3 different EBRD policy periods, we conservatively maintain here that at least for the 2011 Environmental Improvement Project a greenhouse assessment should have taken place which would have included all the elements in PR 1.6.

The baseline cannot be set as the situation in the year preceding the project approval as this situation would not continue indefinitely in the absence of the project – certain coal may not be mined, certain power plants may close. Instead, a comparison must be made over the lifetime of the project what would happen with the project and what would happen without it.

In this case establishing the baseline should have consisted of the following (elements to be included are inferred from PR1.6, however the assertion that it should be counted over the lifetime of the project, not statically as the moment before the project starts is ours as it is not defined in the Environmental and Social Policy):

- Emissions caused by the use of mining machinery in all Kolubara fields over the project period in the absence of the project (PR1.6 (iii))
- Emissions from the combustion of the extracted coal from all Kolubara fields by existing plants over the project period in the absence of the project. If some of the coal would not have been extracted and burnt due to its poor quality and if heavy fuel oil were to be burned instead, this should be reflected in the calculation. (PR1.6(iii)). Closure of power plants, whether due to EU compliance reasons or a lack of sufficient quality lignite should also be reflected in the calculation.
- Emissions from the combustion of coal in planned lignite plants fed on Kolubara coal which would still have been built in the absence of the project (if any) (PR1.6(v))

This would result in a baseline picture of emissions from EPS' Kolubara-related operations over the lifetime of the project which should then have been compared with the post-project estimate, to be calculated as follows:

- The emissions from the operation of the machinery financed by the EBRD (PR1.6(i))
- The GHGs from combusting the lignite extracted and blended by the machinery in existing coal power plants (PR1.6(i))
- The GHGs from combusting the lignite extracted from any other parts of the Kolubara mining basin (PR1.6(iii)
- Emissions from the combustion of coal in planned lignite plants fed on Kolubara coal which would not have been built in the absence of the project (PR1.6(v))

How does this compare with the EBRD's GHG emissions calculation?

The EBRD has claimed annual GHG emissions reductions of more than 200 000 tonnes per year from the Kolubara Environmental Improvement Project.[14] However it arrived at this figure by bypassing most of the above elements of the calculation and omitting important consequences of the Environmental Improvement Project. Mr Kevin Bortz explained in a letter of 17 April 2012 that:

“*This assessment has focused on the CO2 savings arising from improved boiler efficiency at the TENT A and TENT B power plant* [Nikola Tesla thermal power plants A and B]. *Carbon dioxide emissions from other sources are anticipated to remain roughly at current levels as coal production is not planned to change substantially in the next few years”.*

First, although 'substantially' can be open to interpretation, we would argue that production was planned to change substantially from 2011 onwards, and that this was known at the time of the appraisal of the project. This is shown for example in the General Regulation Plan for the Area of Barosevac, Medosevac, Zeoke and Burovo (2008) (p.5), which shows that in 2011 production for the Kolubara basin was planned to be at 30 million tonnes while in 2020 it will go up to 36 million tonnes *(see table below – the right hand column in bold constitutes the total for the Kolubara basin, while the year is marked on the left).* Considering that one tonne of lignite results in approximately one tonne of CO2 when combusted, this amounts to 6 million additional tonnes of CO2 annually by 2020 – a very substantial amount in our opinion.

Табела 1. Експлоатација угља Колубарског басена - пројекција до 2020. године - (у 10^6 t годишње)

Год.	ПОЉЕ "Б"	ПОЉЕ "Д"	ТАМ. ИСТОК	ТАМ. ЗАПАД	ВЕЛИКИ ЦРЉЕНИ	ПОЉЕ "Д" (ПРОШИР. ГРАНИЦЕ)	ПОЉЕ Е	ЈУЖНО ПОЉЕ	РАД-ЉЕВО	КОЛУ-БАРА
2007	1,0	14.3	5,O	9.0	/	/	/	/	/	**29,3**
2008	2.2	14.0	5,0	9.0	/	/	/	/	/	**30,2**
2009	2.5	14.0	2,0	9.0	2,5	/	/	/	/	**30,0**
2010	2.5	14,3	/	12,0	2,5	/	/	/	/	**31.3**
2011	2,5	/	/	12.0	3.0	12,50	/	/	/	**30.0**
2012	2,5	/	/	12.0	3,2	12.0	/	/	/	**29,7**
2013	3.0	/	/	12.0	5.0	12.5	/	/	/	**32,5**
2014	3,0	/	/	12.0	5.0	12.0	/	/	3,0	**35.0**
2015	0,7	/	/	12.0	5,0	12.0	3.0	/	3,3	**36.0**
2016	/	/	/	12.0	4,8	4,0	5,2	4,0	6.0	**36.0**
2017	/	/	/	12.0	/	/	11.0	6,0	7,.0	**36.0**
2018	/	/	/	11.0	/	/	12,0	6,0	7.0	**36.0**
2019	/	/	/	11.0	/	/	12,0	6,0	7,.0	**36.0**
2020	/	/	/	11.0	/	/	12,0	6,0	7,0.0	**36.0**
	19,9	**56,6**	**12,0**	**156,0**	**31.0**	**65.0**	**55,2**	**28,0**	**40.3**	**464.0**

[14] See fc

Additionally, the board document shows that the 2011 project is a direct precondition for the possibly forthcoming Kolubara B project:

"*It will allow Kolubara to meet the contractual commitments it will assume under the lignite supply agreements for the proposed Kolubara B power plant to be constructed with Edison as the strategic investor. The coal supply agreements to this proposed new power plant require coal within tight quality parameters (tighter than those of the present power plants), parameters which EPS cannot currently meet.* ***EPS therefore needs this project to be able to meet the coal quality parameters set out in this coal quality agreement****.*"

This means that without the 2011 Environmental Improvement Project, the Kolubara TPP plant cannot reasonably be constructed. Therefore the baseline should take into account that without the environmental improvement project, there would be no emissions from Kolubara B. Thus the EBRD's calculations of the Environmental Improvement Project should also include, at least in one scenario, the GHG emissions from Kolubara B as a consequence of the project.

Further adding to the question of whether Kolubara's coal extraction and combustion would stay the same or decrease in the absence of the Environmental Improvement Project is the fact that Kolubara units 1-5 will have to close at the end of 2017 in order to comply with the Large Combustion Plants Directive, which will have a clear impact on lignite demand, considering that lignite is not economic to transport over large distances to be sold to other markets.

Taking these three major factors into account, we conclude that the EBRD has set the boundaries of the project inappropriately narrowly to capture the project's direct and easily foreseeable impacts on GHG emissions. This has allowed the bank to claim that the project will reduce GHG emissions by 200 000 tonnes per year, while we believe that this is not the case, as it directly supports an increase in production and the construction of Kolubara TPP.

D) Social impact

For the last 10 years, the expansion of coal production in the Kolubara mine basin has been dependent on solving the problem of the open pit mine expanding towards settlements, causing conflict between settlements and mines. This problem effects around 6000 families.

Both EPS Power II and the Environmental Improvement Project are categorised as category A projects, and both of them have significant impact on local communities in the zones of the

Field C, B, D and South field - Barosevac, Zeoke, Medosevac, Vreoci, Radljevo, Brgule, Kalenic, Mali Borak, Skobalj, and Sarbane.

There are two issues here: a) the quality of the resettlement from the previous projects and the impact it should have had on the EBRD's appraisal of the 2011 project and b) the EBRD's attempt to artificially compartmentalize the impacts of the 2011 project to avoid taking responsibility for certain resettlements.

The quality of the previous resettlements conducted under the EPS II project

The whole process of expropriation is fully managed by EPS, as the company has been involved in exploiting lignite in the Kolubara basin for almost half a century. During the last decade, in almost all cases, EPS failed to provide adequate measures in social and resettlement issues[15]. During these years EPS has moved (voluntarily and involuntarily) hundreds of households, two complete villages and partially 10 villages.

Resettlement caused by the Tamnava West expansion was part of the EPS II project approved in 2003 and was not done according to good standards. Due to shortage of funds, land acquisition and development of the proposed infrastructure has been slowed down, and later on forgotten and never conducted.

As a result EPS lost its credibility of being able to attend to peoples' needs and this has caused a serious gap in their capacity for reaching agreements with communities. The mine continued to expand, thus relocation of households became urgent and residents were under enormous pressure to accept financial compensation and leave the territory designated for coal excavation. The value of their property was often underestimated.[16]

Considering this long term failure and inability to comply with the high standards of the EBRD, it would be reasonable to expect that the bank would refuse further financing for a client with such a poor corporate social responsibility record.

Social impacts of incorrectly drawn project boundaries regarding the Kolubara Environmental Improvement Project

The social harms of the Kolubara mining operations to date are significant, and the Project and associated mine expansion will only worsen those harms. Communities have either already experienced or are currently facing partial or full relocation to clear the path for increased coal

[15] In some cases the property is undervalued, and there are alleged cases of corruption in which property is overvalued. For more information on the latter point see http://bankwatch.org.bwmail/55/Kolubara-mine-crime-and-coruption

[16] Reference prices per square meter were very low, and in almost all cases expropriation did not include all owned parcels, nor all belongings.

excavation.[17] As recognized by the EBRD Social and Environmental Policy, any involuntary resettlement carries potent risks of creating long-term hardship for relocated populations.[18] **However, in assessing the area of influence of the project, the EBRD artificially excluded the resettlement of Vreoci from the project appraisal.**

Inhabitants of Vreoci have already submitted a complaint about the issues they are facing and this complaint is not intended to re-iterate these problems. It is, rather, aimed at establishing whether the EBRD was justified in excluding Vreoci from its project appraisal, and what can be done to correct this and avoid similar situations in the future.

Performance Requirement 1 governs the appraisal, planning, and oversight stages of a project and states that communities affected by the project should be included in the appraisal even if they would experience only "cumulative impacts" or impacts from "unplanned but predictable developments."[19] Vreoci is conspicuous in its absence from the appraisal process conducted for the Kolubara Environmental Upgrade Project.

Vreoci's resettlement was already governed by a 2007 agreement between Vreoci's representatives and EPS. The resettlement issue has been resolved in the legal framework, by the planning documents "Program Basics for Resettlement of Vreoci settlement"[20] and "General Regulation Plan for Settlement of Vreoci"[21]

Vreoci is surrounded by mining operations in Field D and Tamnava West.[22] The community suffers significant environmental harm from the mine, including wastewater pollution in close proximity to homes, the loss of drinking water or water of any usable quality in their wells, and air pollution from excavation activities. For years the proposed mine expansion has threatened Vreoci with forced relocation, and the EBRD funding to facilitate the expansion has made the threat significantly more immediate. At the time it approved project funding, the EBRD had full knowledge of these impacts from both direct correspondence from Vreoci and through references in the Environmental Impact Assessment.[23]

The environmental and social impacts on Vreoci from mine expansion are intimately tied to the Project funded by the EBRD. Although project documents claim to fund only activities relating to Fields C and Tamnava West, both the geological and practical facts underlying coal excavation in Kolubara and the intended use of the equipment financed by the EBRD loan show the falsehood of any such restriction.

The expansion of Tamnava West and the development of Field C are integral to the opening of new fields, including planned Field E which is one of the prime causes of Vreoci's

[17] See, e.g., the communities listed in the SEP p. 8-10.
[18] See, e.g., the communities listed in the SEP p. 8-10.
[19] PR 1(6)
[20] Dated November 12th 2007 on which Government of Serbia gave consent
[21] Dated December 17th 2008
[22] Resettlement Program "2.5. Area development upon completion of mining activities"; EIA Field C p.61

displacement.[24] In fact it was impossible to separate the development and expansion of certain fields from others. Field E cannot be feasibly developed without the proposed development of Field C, because Field C will act as a front allowing access to the particularly deep layers of coal in Field E. Field C is also closely connected with Field D, one of the fields proximate to Vreoci whose expansion is implicated in the resettlement of the community. As a matter of both geological and practical fact, the mine expansion enabled by the Project is inseparable from the mine expansion impacting the Vreoci community.

In addition to its effects on Vreoci through mine field expansion, the Project carries environmental consequences for the community through impacts connected to the Kolubara Processing Plant located there. Coal from Field C is currently transported directly to that facility and coal excavated with project equipment will continue to be processed there, saddling the community with associated pollution from coal transport and wastes and emissions from the processing plant.[25]

Moreover, the equipment financed by the project is intended to enable excavation of different qualities of coal that can be blended to create a uniform product for EPS power plants.[26] This homogenization with EBRD financed equipment will take place in a new facility close to Vreoci, exposing the community to any environmental impacts of the blending process.[27] The economic logic of the homogenization equipment also depends on the excavation of higher quality lignite, which will include high quality coal excavated from under Vreoci's current location through Field E.[28]

Despite these inextricable links between the Project and externalities the mining operations impose on Vreoci, the EBRD approved the Project under a description that wholly excluded Vreoci from its ambit.[29] The EBRD took this action despite formal requests from the community for extension of the timeline for approval,[30] public briefing by NGOs on the problematic implications for Vreoci[31] and a sign-on letter from international civil society raising the issue,[32] and extensive media coverage of the controversy around resettlement in Vreoci.

Ceding only grudgingly to this reality, the EBRD has acknowledged that expansion of the Kolubara mine will negatively impact Vreoci. In the section of its fact-finding mission report

[24] Personal communication between Zvezdan Kalmar from CEKOR and the Technical Director for Kolubara's mining fields.

[25] CEKOR Investigation.

[26] NTS p. 1, Board Report p. 5.

[27] CEKOR Investigation.

[28] Resettlement Program, "2.2. Development of the Kolubara basin till the end of exploitation".

[29] This myth pervades project documents, which only make reference to coal exploitation in Field C and Tamnava West (See project summaries in the NTS, Board Report, and SEP). See also the assertion in the SEP that the equipment will only be used "in areas where coal mining has already taken place" (SEP p. 1) despite an acknowledgment in the Board Report that the equipment will allow for new development in Field C (Board Report p. 5); the review of impacts on "archeological" resources including the Barosevac graveyard and 5 houses near Tamnava West Field, but omitting any mention of the Vreoci buildings and graveyard (NTS p. 4-5); the discussion of resettlement of other communities without any reference to Vreoci (NTS p. 5-6, SEP p. 8-10).

[30] Letter to EBRD 1.

[31] Bankwatch Briefing p. 3.

[32] Letter to EBRD 3. The EBRD's response continued to deny the connection between Vreoci and the scope of the project. EBRD Response Letter 1 p. 3.

covering Vreoci, the EBRD acknowledges “environmental and other impacts from the mine’s operations” that need to be mitigated.[33] The EBRD also highlights that there will be significant environmental impacts on the surrounding areas.[34]

However without formal inclusion of Vreoci as part of the EBRD project covered by the project contract, the EBRD has difficulty to ensure that the resettlement is carried out according to its standards. It is beyond the scope of this complaint to go into details about how the resettlement is being carried out, however some of the details were covered by the Vreoci council who submitted a complaint in 2012 on this topic. The resettlement should be completed by 2014 but so far there is no sign that this will happen. The EBRD has put itself into a position where, after financing three similar projects in the Kolubara area, local people are starting to see it as co-responsible for the problems they are suffering with pollution and resettlement, yet it has not properly assessed these issues and does not appear to have put itself in a position (eg. through including the resettlement in its project contract) to influence EPS' handling of the resettlement.

We are therefore of the opinion that the EBRD has not acted in compliance with PR 1.6 in assessing the social impacts of the project, and that this has serious material consequences for the people of Vreoci.

<u>Desired outcomes</u>

The compliance review requested by CEKOR hopes to revisit the EBRD's responsibility that is stated in the 2008 ESP PR 1.6 to assess the project's area of influence, including all the elements outlined in the PR.

In addition we believe there is a case for following PR 1.9 “*In exceptional circumstances, a regional, sectoral or strategic assessment may be required*.” Given the environmental legacy around Kolubara, its heavy influence on Serbia's energy sector, various resettlements taking place and the EBRD's long history of engagement with the area, we believe that the 'exceptional circumstances' criteria is fulfilled in this case.

As a result of the complaint we expect that the PCM will put forward clear recommendations and actions to:
a) correct the EBRD's failure to include all elements of PR 1.6 in the project appraisal for the Kolubara Environmental Improvement project

b) if the EBRD once again takes up appraisal of the Kolubara B thermal power plant to assess regional and cumulative impacts, we would expect at least an integrated assessment of the whole Kolubara basin, beyond the project boundaries taking into account the results or lack thereof from the three EBRD-financed projects already carried out in the area as well as other aspects of EPS' operations, to capture indirect risks and prospects and look at the overall balances In regard with the resettlement of about 3000 households in the whole Kolubara basin area directly affected with EBRD projects, we also expect an action plan to be developed.

[33] SFR

[34] NTS p.4-7

c) Draw up policy guidance such as I) specification on the circumstances under which a regional, sectoral or strategic assessment is required ii) exploration of how to align the EBRD's Greenhouse Gas Emissions Accounting Methodology with the Environmental and Social Policy 2008. The latter requires a much wider scope of elements to be taken into account in the environmental assessment than does the GHG Emissions Accounting Methodology.

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Submission Via Electronic Mail

1 October 2013
Project Complaint Mechanism
Attn: PCM Officer
European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom
Email: pcm@ebrd.com

CEKOR additional info with the Complaint to the EBRD Project Complaint Mechanism

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CEKOR hereby submits this additional information with the complaint for Compliance Review to the European Bank for Reconstruction and Development ("EBRD" or "Bank") Project Complaint Mechanism ("PCM") regarding human rights and environmental violations caused by EBRD client, Elektroprivreda Srbije ("EPS" or "Client"), with regard to the EPS Kolubara Environmental Improvement Project ("the Project") in the Republic of Serbia.

Introduction

CEKOR is a Serbian environmental NGO. We submit this information to the PCM about significant, widespread violations of EBRD's Social and Environmental Policy Requirements by the "EPS Kolubara Environmental Improvement" Project ("the Project").[1]

The violations of EBRD Policy are directly linked to grave environmental and social harms to surrounding communities. As described in detail below, EBRD is responsible for the following violations of its policies, both directly and in its supervisory role:

- EPS' project will contribute to perpetuating pollution, and health hazards for local communities.
    - EPS failed to provide adequate information about the health and safety risks of being located near the project. Furthermore, EPS has failed to undertake appropriate mitigation measures to protect community members from exposure to health harms caused by hazardous materials from the coal mine.
    - EPS mining operations have in the past and recently contributed to landslides and irreversible damage to local rivers; as these harms will only continue with the mine expansion. Moreover, where mitigation plans have been developed, they have not been followed.
    - EPS failed to apply pollution prevention and control technologies to eliminate, or at least mitigate, impacts resulting from the mine expansion.
    - EPS failed to dispose of its waste materials in an environmentally sound manner that reduces that harmfulness.
- EPS is displacing segments of the Vreoci community over the vigorous objections of the community and in violation of a 2007 agreement providing for collective resettlement. Moreover, EPS/Kolubara is failing to provide sufficient compensation or adequate resettlement planning and assistance to families facing relocation.
- EPS has poisoned the environment of the Barosevac community to the degree that

[1] EBRD Project Number 41923, described on the EBRD website, available at http://www.ebrd.com/pages/project/psd/2011/41923.shtml.

families can no longer safely remain in their homes, but is not providing compensation or resettlement planning for families suffering this involuntary displacement.

- EPS has failed to protect cultural heritage of project-affected communities including by: the improper and disrespectful removal of gravesites in violation of Serbian national law, the use of security personnel to keep community members away from the site of their families' graves, and the disruption of cultural practices required under Orthodox Christianity.
- EPS has failed to adequately disclose information to either community or engage in sufficient stakeholder engagement practices.

Project Overview

1. EBRD Investment

On July 26, 2011, the EBRD approved a project to provide up to €80 million in a sovereign guaranteed loan to EPS, a Serbian-owned utility;[2] German KfW agreed to provide a parallel loan of €60 million.[3] The total cost of the project is an estimated €165.2 million.[4]

2. Client Information

EPS is a state owned, vertically integrated electricity company[5] formed in 1991.[6] EPS has a monopoly on generation and distribution of electricity throughout Serbia and is the primary operator, generator and supplier of lignite coal mining.[7] In 2009, EPS employed roughly 31,000 people, as the largest company in Serbia.[8]

Kolubara Mining Basin (Kolubara) is a subsidiary of EPS.[9] Power plants within the Kolubara complex produce more than fifty percent of Serbian electricity.[10] Seventy percent of electricity in Serbia comes from coal power plants.[11] Moreover, seventy-five percent of the lignite EPS uses for thermal generation (about 30 million tonnes per year) comes from the Kolubara Mining Basin.[12] Serbia consumes three times more energy per unit of GDP than the average in the EU-15.[13] The mine covers a surface area of 600km squared and overlaps with 7 municipalities.[14]

2 FFM_Serbia p. 1; NTS p. 1; PSD p. 2

3 FFM_Serbia p. 1; NTS p. 1; PSD p. 2

4 FFM_Serbia p. 1; PSD p. 2

5 FFM_Serbia p. 1

6 Board Report p. 6

7 Board Report; see also SEP p. 2.

8 Board Report p. 7

9 SEP p. 1.; NTS p. 2.

10 Bankwatch Briefing p. 1.

11 Bankwatch Briefing p. 1

12 SEP p. 2; NTS p. 2

13 Bankwatch Briefing p. 2.

14 NTS p. 1

The Kolubara management was alleged to have engaged in various forms of corruption relating to: the procurement of equipment, leasing of equipment, and selling of coal.[15] This corruption was documented in a series of films aired on Serbian national TV in 2009-2010.[16] Seventeen people (former EPS executives Dragan Tomic and Vladan Jovicic, eight executive managers and seven owners of private firms with which Kolubara conducted business) were arrested on suspicion of fraudulent practices. The specific allegations for the arrests did not relate to an EBRD-financed project, but included numerous speculations about other instances of fraudulent activity that may have occurred in EPS for more than a decade.[17] There have also been further allegations raised in the Serbian media in relation to EPS.[18]

3. Elements of the Project

The Project finances equipment to allow EPS to expand the Kolubara mining operation. Specifically, the loan finances the purchase of (1) a coal excavator, conveyor and spreader system for Field C of the Kolubara mining basin, (2) a spreader system for the Tamnava West field and (3) a coal management system for the whole of the Kolubara mining operations.[19] The loan is for EPS to "purchase and install a coal management system for the whole Kolubara mining operations."[20] EPS explained in their Board Report that the excavator, conveyor and spreader system will allow a new field (Field C) to be opened[21] and allow for an increase in lignite output and blending of higher and lower calorific value lignite.[22] The spreader for Tamnava West will also allow for "selective mining of lignite, inter-burden and overburden."[23] The coal quality management system will allow for the purchase of equipment permitting an online analysis of lignite quality "as it is excavated from various different fields in the basin."[24] The loan also provided for consultancy support for both procurement and implementation.[25] The new blending protocol and the development of Field C are intimately connected to the overall expansion of the mine, as described in greater detail below.

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15 Bankwatch Briefing p. 2-3.

16 Bankwatch Briefing p. 2-3.

17 Letter to EBRD 5 p.1; see also Bankwatch Briefing p. 2-3.

18 Letter to EBRD 5 p.1; see also Bankwatch Briefing p. 2-3. EBRD, in a letter to CEKOR admitted they were aware of these allegations but suggested that EPS was "appropriately addressing these concerns". EBRD claimed they would not disburse any loan funds where EBRD reasonably determined there was a possibility of fraud or corruption and that since the fraud and corruption charges were unconnected with the EBRD-financed project they would not withhold funds. EBRD Response Letter 3 p. 1-2.

19 FFM_Serbia p. 1.; PSD p. 1; SEP p. 4; NTS p. 1; Board Report p. 7-8.

20 Board Report p. 3.

21 Board Report p. 5.

22 SEP p. 4; NTS p. 1.

23 SEP p. 4; NTS p. 1.

24 SEP p. 3; NTS p. 1.

25 Board Report p. 5.

Harm Already Caused or Likely to be Caused by the Project

1. The impact of Continued Dependence on Coal in Serbia

In financing EPS, EBRD is contributing to increased Serbian dependence on coal. EPS coal-fired power plants within the Kolubara and Kostolac complexes currently produce more than fifty percent of Serbian electricity, and the Kolubara coal mine produces about 30 million tons of lignite each year.[26] The process of burning coal already produces 70 percent of Serbia's energy.[27] This creates tension with Serbia's petition to join the European Union, which requires strict greenhouse gas emission standards. CEKOR brought this inability of the project to promote this important EU goal to the attention of EBRD in 2011.[28]

EPS claims that the project will result in lower emissions levels;[29] however, EBRD is only relying on EPS's own analysis, which has not been authorized or verified by government authorities.[30] Moreover, EPS and the Serbian government proposed two more power plants in the area, one of which, Kolubara B, will be able to take advantage of the increased coal availability from the expanded mines.[31] Because the mine operation is contiguous and operated by the same company, EBRD did not take adequate measures to ensure that the equipment intended for mine expansion will not also be used to increase the production capacities of other areas of the mine, which would impact the scope of due diligence required.

2. Conditions Throughout the Kolubara Mining Region

The Project is being implemented in a region already significantly burdened by the environmental and social impacts of the Kolubara mining operations. As described below, these impacts include an environment saturated with toxic pollutants and the disruption of local agricultural livelihoods. Now, the mine expansion enabled by the EBRD's funding builds on this legacy of vulnerability, inflicting further environmental damage and social dislocation on surrounding communities.

a) Environmental and Health Conditions

EBRD is aware and acknowledges that EPS' current mining activities have contributed to water, air, and soil pollution and that EPS has failed to mitigate these harmful impacts.[32] Furthermore, EBRD acknowledges that EPS has failed to create the detailed implementation plans for environmental protection required of them under the Environmental and Social Action Plan ("ESAP").[33] The Kolubara mining basin has a

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26 SEP p. 2; Bankwatch Briefing p. 1; NTS p. 1.
27 Letter to EBRD 3.
28 Letter to EBRD 3.
29 Board Report p. 8, 10.
30 FFM_Serbia p. 5. The Environment, Mining and Spatial Planning Ministry of Serbia does not possess any data from EPS regarding their greenhouse gas emissions.
31 Board Report p. 5.
32 SFR p.1-3; Board Report p. 10.
33 Board Report p. 10.

history of environmental harms, which EPS' EBRD-funded project will exacerbate. EBRD's failure to ensure that EPS is in compliance with EBRD's environmental standards directly contributes to the environmental and health harms in the Kolubara mining basin.

Coal combustion and extraction emit pollutants such as sulfur compounds, mercury, arsenic, other heavy metals, and particulate matter, into the air and surrounding water. These pollutants have been known to cause or contribute to cancer, lung diseases, respiratory problems, and kidney diseases like nephritis, among other health impacts.[34] Expansion of these facilities will only lead to greater release of these pollutants, as EPS and EBRD are aware.[35]

In 2008, EBRD recognized "substantial variation in compliance with environmental standards from the coal mines."[36] In 2009 EBRD could foresee that mine expansion would increase particulate matter in the air by 20-40 percent, release toxic gases (carbon monoxide, sulfur dioxide, and ozone, among others), degrade soil, and deteriorate the ground water supply through planned and accidental pollutant discharges from the mine, and overburden dump sites.[37] Moreover, in the 2009 Environmental Impact Assessment for Field C, EPS stated that water sources for Vreoci, Viliki Crljeni, Medosevac, and Tamnava-Istok, have been or would be jeopardized or destroyed by the mine expansion.[38] By 2009, two years before EBRD's final approval of the project, Tamnava-Istok had already lost their drinking water supply due to the mine, and were dependent on another water system which was also under the direct influence of the mine's drainage.[39] Hazardous gases, including carbon monoxide, carbon dioxide (greenhouse gas), and smoke with unnamed pollutants, are released unpurified into the atmosphere from the casting plant furnace of Kolubara-Metal-Vreoci.[40] Other facilities in the complex release pollutants with no stated form of pollution control.[41] EBRD has worked with EPS since 2003 and should have been aware of EPS's consistent failures.[42] Nevertheless, EBRD still approved the Project in 2011.

In the EIA EPA provided to EBRD, EPS did not analyze or quantify problems that could arise from road and railway transport, though they admitted "harmful impacts . . . can be numerous."[43] EPS reported to EBRD that the "soil is devastated and destroyed by coal exploitation" to which EPS's coal mining expansion will contribute pollution, and studies show it would be difficult to return the soil to its previous condition even

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34 *Health risks of particulate matter from long-range transboundary air pollution*, World Health Organization, 2006; *Pollution Prevention and Abatement Handbook for Mercury*, World Bank Group, July 1998; *Pollution Prevention and Abatement Handbook for Sulfur Dioxide*, World Bank Group, July 1998. *Health risks of heavy metals from long-range transboundary air pollution*, World Health Organization, 2007.

35 EIA Field C p. 46-54.

36 Board Report p. 10.

37 EIA Field C p. 46-50.

38 EIA Field C p. 25-26.

39 EIA Field C p. 25.

40 EIA Field C p. 60.

41 EIA Field C p. 60-61.

42 Letter to EBRD 2 p. 1.

43 EIA Field C p. 60.

theoretically.[44] EPS stated that noise has increased to a considerable extent and represents a serious problem for the neighboring areas.[45] Chronic bronchitis amongst workers is prevalent and nephritis is very pronounced in the area.[46] EPS generates and piles up interburden, a material lying between coal seems, at dump sites leading to spontaneous combustion and consequent fires at the dump site.[47] The uncontrolled burning of interburden and coal extraction wastes causes the release of hazardous pollutants into the air.[48] These pollutants include particulate matter, sulfur compounds and heavy metals, all of which have the potential to cause the adverse human health impacts experienced by the communities.[49] This information from the EIA, combined with EBRD's ongoing relationship with EPS alerted EBRD that the project would cause numerous environmental and health harms.

Furthermore, EPS notified EBRD they would take certain precautions to prevent air, water, and soil pollution.[50] Some of these precautions included sprinkling the interburden with water to prevent hazardous dust from flying near the communities and covering the pit to prevent escape of hazardous dust.[51] Other actions included building settlement ponds, treating wastewater in grease and oil separators, and building a green belt buffer zone and forest belt.[52] EBRD staff visited the Project site and should be aware that EPS is not spraying down or covering the waste piles to prevent spreading of the dust, has failed to build the forest belt, and discharges mine wastewater into the tributaries untreated, uncooled, and un-piped.[53]

b) Social, Economic, and Environmental Impacts

The social harms of the Kolubara mining operations to date are significant, and the Project and associated mine expansion will only worsen those harms. A host of communities have either already experienced or are currently facing partial or full relocation to clear the path for increased coal excavation.[54] As recognized by the EBRD Social and Environmental Policy, any involuntary resettlement carries potent risks of creating long-term hardship for relocated populations.[55] EBRD was placed on notice that the resettlement process being carried out in Vreoci fully realizes this potential for harm.[56] By failing to provide for collective resettlement, in violation of an agreement reached in 2007 between EPS and the Vreoci community, expropriation by EPS is

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44 EIA Field C p. 64.
45 EIA Field C p. 101.
46 EIA Field C p. 108.
47 SEP p. 2.
48 EIA Field C p. 46-49.
49 EIA Field C p. 46-49.
50 EIA Field C p. 50-52; NTS p. 5; Regulation Plan for the Settlement Barosevac – Summary of Findings Following EBRD Visit p. 2.
51 EIA Field C p. 54.
52 EIA Field C p. 54.
53 CEKOR Investigation.
54 See, e.g., the communities listed in the SEP p. 8-10.
55 PR 10(4).
56 Letter to EBRD 1.

threatening to disrupt social ties by breaking up the community.[57]

Furthermore, the relocation of grave sites has been conducted with flagrant disrespect for the cultural heritage of the community: exhumation has been conducted without proper consent and in unsanitary conditions,[58] access to grave sites for religious and cultural purposes has been severely restricted and subjected to security controls,[59] and the new site for the cemetery is of poor quality.[60]

EPS/Kolubara is additionally failing to provide even minimally sufficient compensation for expropriated land and homes,[61] much less the resettlement assistance required to adequately mitigate the economic impact of relocation.[62]

The communities that will not be relocated also face acute harm caused by the cumulative social and environmental impacts of Kolubara coal mining operations. Those communities that remain on the border of the mine are exposed to the serious health consequences of the environmental degradation described above, compromising their ability to safely remain in their homes. Mining operations have disrupted the local agricultural economy by consumption of agricultural land through mine expansion and development of infrastructure corridors.[63]

3. Vreoci

a) Introduction

Vreoci, a middle class, predominantly ethnically Serbian community of some 3000 citizens,[64] is listed in the EIA as one of the two locations in the Kolubara basin where the population is concentrated due to the location of a production plant for coal processing.[65] The community is also surrounded by mining operations in Field D and Tamnava West.[66] The community bears significant environmental burdens from the mine, including wastewater pollution in close proximity to homes,[67] the loss of potable water or water of any quality in their wells,[68] and air pollution from excavation activities. Vreoci has the misfortune to be sited directly above high quality lignite deposits.[69] For years the proposed mine expansion has threatened Vreoci with forced relocation, and the EBRD funding to facilitate the expansion has made the threat significantly more immediate. At the time it approved project funding, the EBRD had full knowledge of these impacts from both direct correspondence from Vreoci and through references in the

57 Letter to EBRD 1 p. 2.
58 Letter to EBRD 1 p. 3.
59 Letter to EBRD 1 p. 3.
60 CEKOR Investigation.
61 Letter to EBRD 1.
62 Letter to European Parliament p. 3.
63 Resettlement Program, Section 2.4 “Perspectives of Development in the Planning Period”.
64 CEKOR Investigation.
65 EIA Field C p. 62.
66 Resettlement Program “2.5. Area development upon completion of mining activities”; EIA Field C p. 61.
67 CEKOR Investigation.
68 FFM_Serbia at 2; Ministry Letter p. 1.
69 Letter to European Parliament p. 2.

Environmental Impact Assessment.[70]

The environmental and social impacts on Vreoci from mine expansion are intimately tied to the Project funded by the EBRD. Although project documents claim to fund only activities relating to Fields C and Tamnava West, both the geological and practical facts underlying coal excavation in Kolubara and the intended use of the equipment financed by the EBRD loan show the falsehood of any such restriction.

Unfortunately, some of the most serious social and environmental impacts outlined below are affecting Vreoci, but the EBRD's role in ensuring that these are mitigated remains ambiguous.

b) Resettlement Dispute to Date

The Serbian government declared it necessary to expropriate the entire settlement of Vreoci in the public interest in 2007.[71] This aligns with the EBRD's definition of an involuntary resettlement as one where "affected individuals or communities do not have the right to refuse land acquisition that results in displacement."[72] The Serbian Government subsequently entered into negotiations with Vreoci representatives.[73] The main goals of community members during these negotiations were: (1) resettling the whole community in one locality in Lazarevac municipality; (2) establishing a fair value for properties and a methodology for compensation; and (3) resolving the removal of the local cemetery.[74] These goals were incorporated in the "Programme for setting the framework for relocation of the settlement of Vreoci," dated 12 November 2007 ("2007 Plan"). The 2007 Plan guarantees that the whole community of Vreoci will be resettled to a single location, and that the process will be carried out in phases. The Client's documents from 2007 state, "it is necessary to execute the expropriation of property, which includes resettlement of entire Vreoci in which lives about 3300 residents in 1180 households and relocation of the local cemetery with about 5000 of burial sites."[75]

On 4 July 2011, police arrived in Vreoci, without any warning to local inhabitants, and blocked all public access to local gravesites.[76] The process of grave exhumation began without consultation with locals, both violating their rights of consultation and offending their religious beliefs and customs.[77] Due to the high summer temperatures, the citizens of Vreoci were also concerned about sanitation hazards and the endangerment of their community's health through this unannounced exhumation.[78]

The two forms of resettlement-related compensation that have been offered to residents of Vreoci are inadequate. The first is an offer of cash compensation only provided to those households that have agreed to the expedited exhumation of their

70 Letter to EBRD 1, EIA for Field C, see e.g. p. 61.
71 See 2007 Resettlement Program.
72 PR 5(2).
73 Letter to European Parliament p. 1.
74 Letter to European Parliament p. 1.
75 See Program for Resettlement of Vreoci p. 3.
76 Letter to EBRD 1 p. 2.
77 Letter to EBRD 1 p. 2.
78 Letter to EBRD 1 p. 3.

family graves.[79] Conditioning compensation in this manner constitutes a form of duress. These households have received 30% of the assessed value of their property, and will purportedly receive the remaining 70% of their compensation at an unspecified time when or if their property is actually seized by the Client.[80] The Client has not released a timeline detailing when residents will receive full compensation, leaving resolution of this issue uncertain for those families.[81] Additionally, the assessments of land values for this compensation were not performed by independent appraisers on the basis of the valuations of a neutral body, like the Tax Administration, but rather by a commission that included representatives from the local municipalities and the Client.[82]

Second, the Client also offered replacement housing as compensation. After public hearings in Vreoci in 2006 and 2007, the community rejected the proposed location “Lazarevac 2” for the cemetery and the proposed location “Radasnik” for resettlement.[83] The community considers “Radasnik” an unacceptable relocation site because it is prone to landslides.[84] Furthermore, in “Radasnik”, there are fewer properties, and those that are available are much smaller than what residents currently have in Vreoci, and they also lack backyards.[85] The apartments that are being offered cost 1000 Euros per square meter.[86] Due to the size of these new apartments, even 300-400 Euros per square meter is unaffordable to Vreoci residents, based on the compensation values that have been assessed for their expropriated properties.[87] The citizens of Vreoci requested collective relocation to “Petka,” an alternative site.[88]

Out of 1180 families in Vreoci (according to the 2002 census), only 170 families have been resettled and 365 families have received the first installment of compensation for resettlement.[89] Vreoci representatives claim that the expropriation process is “significantly behind schedule” if it is to be completed by 2014, as promised.[90] The citizens of Vreoci are concerned that they are not being resettled collectively as a community.[91] There are currently no laws in Serbia regulating the process of forced evictions and providing protection for the impacted communities, creating a situation of fear and uncertainty for residents.[92] The Municipality of Lazarevac has blocked financial support for Vreoci because of its impending expropriation.[93] Infrastructure in Vreoci has suffered from this lack of funding currently and wells are drying out as a result of water usage by the mine.[94]

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79 Letter to European Parliament p. 3.
80 Letter to European Parliament p. 3.
81 Letter to European Parliament p. 2.
82 Letter to EBRD 1.
83 Letter to EBRD 1 p. 2.
84 Letter to EBRD 1 p. 2.
85 CEKOR Investigation.
86 CEKOR Investigation.
87 CEKOR Investigation.
88 Letter to EBRD 1 p. 2; Ministry Letter p. 1.
89 Ministry Letter p. 1.
90 Ministry Letter p. 1.
91 Ministry Letter p. 1.
92 Investigation by CEKOR.
93 Ministry Letter p. 2.
94 Ministry Letter p. 1.

In August 2011, EBRD representatives visited the Kolubara mine area and consulted with local communities.[95] Following the visit, the EBRD officially recommended that "EPS/MB Kolubara ensures that all measures defined by the [regulation] plan are implemented."[96] Discussing Vreoci, the EBRD further declared that EPS is "under the obligation to keep residents fully informed of new timelines, particularly if there are to be significant delays in the implementation of resettlement."[97]

Although the EBRD has claimed that, under the Expropriation Law, "a multi-tier process of protection of rights through lodging complaints to the competent Ministry or the courts is available,"[98] legal decisions about resettlement have had no practical effect in the community. Additionally, the community has not been meaningfully informed of any grievance mechanism provided by the Client that fulfills EBRD's policy mandate to provide "a recourse mechanism designed to resolve disputes in an impartial manner."[99] The absence of a mechanism "to receive and address in a timely fashion specific concerns about compensation and relocation that are raised by displaced persons and/or members of host communities,"[100] forced citizens of Vreoci to seek remedies for the flawed resettlement process in national legal institutions. In response, the Serbian Ombudsman published Recommendation No. 8260 on 21 April 2011 confirming the violations alleged by the Vreoci representatives and affirming, among another things, that consent should be obtained from relatives for the removal of remains and that the "whole community of Vreoci" should be removed.[101] However, the community in Vreoci has reported that this decision has not offered any practical relief or changes on the ground.[102] The failure of all avenues to provide meaningful redress has left the citizens of Vreoci with a "feeling of insecurity, feeling of autocracy of authorities and general feeling of threat."[103]

c) Health Impacts

The resettlement process and the mine expansion have already generated significant health impacts in Vreoci. The client and local authorities have failed to enact any meaningful mitigation procedures, as is required. Without this necessary response, families in this region will bear a significantly increased risk of adverse health impacts.

The bodies exhumed from the cemetery were excavated in the summertime, during high temperatures, endangering the health of the Vreoci community because the cemetery is located close to the village center and some of the graves were recently dug.[104] This graveyard was in use until 2009.[105] A primary school with approximately 500

95 Investigation by CEKOR.
96 SFR.
97 SFR.
98 SEP p. 9.
99 PR 5(13).
100 PR 5(13).
101 Letter to EBRD 1 p. 2.
102 Letter to European Parliament p. 2.
103 Letter to European Parliament p. 2.
104 Letter to the EBRD 1.
105 Letter to European Parliament.

students is located a few hundred meters away from the cemetery.[106]

Additionally, poor water quality is a significant concern for Vreoci residents. Since at least May 2007, residents have been completely dependent on bottled water to replace tap and well water that has been contaminated by mine pollutants in the groundwater.[107] The Pestan River is being diverted south to make room for the mine. This river has become heavily polluted and people are not eating fish from it. In July of 2011, Vreoci notified the national Ministry for the Environment, Mining, and Spatial Planning of water shortages, but nothing has been done.[108]

Families in Vreoci live within a few meters of an exposed channel that contains wastewaters from Fields D, C, and B and from the Processing and Drying Plant.[109] Many families living near this channel suffer from chronic diseases, including cancer and lung diseases.[110] Vreoci community members documented an untreated sewage canal coming from the Kolubara field that dumped directly into a tributary that flows into the Sava River to Belgrade.[111]

d) Community Safety

Accidents

Heavy traffic from mining trucks and equipment routinely cause road damage and accidents on roads in the heart of Vreoci. The trucks also create higher amounts of mud in the roads, which have caused unsafe driving conditions and more accidents. There have been cases of mining trucks colliding with people’s property.

Landslides

Historically landslides occurred around Lazarevac north of the mine because of the removal of hills south of Field C to aid the mine’s expansion. Recently a landslide occurred in the village of Junkovac causing, according to CEKOR's witnesses and local people and media, the collapse of 5 houses, the relocation of 2 households, a plan to expropriate and relocate additional 10-13 households quickly and the remaining approximitaly 30 houses later, a plan to relocate the graveyard. A letter was sent by CEKOR to inform the EBRD about the landslide and its impacts, however no reply has been received to date.[112]

Using the right to access to information of public importance, CEKOR requested information from Mining inspection regarding to what was the cause of landslide in Junkovac. Mining inspection confirmed that Landslide was not caused by natural disasted. The real cause was disregard of project documentation and excessive accumulation of overbureden. Accumulation occurred because of the lack of storage

106 Letter to the EBRD 1.

107 Letter to the EBRD 1 p. 3; Ministry Letter p. 1.

108 Ministry Letter p. 1.

109 FFM_Serbia, 2-3.

110 FFM_Serbia, 3.

111 FFM_Serbia.

112 Letter to EBRD, Alistair Clark, of 13 June 2013.

space required for overburden disposal.

A letter was sent by CEKOR to the EBRD, however no reply has been received to date.

e) Effects on Cultural Heritage

The Vreoci and Barosevac community graveyards affected by the project play a central role in the Orthodox Christian belief systems of these communities and are vital to the identity, values, and emotional well-being of the communities.[113] Older Vreoci community members tend to visit the graveyards daily regardless of when the decedent passed away.[114]

Furthermore, the graveyards are culturally and historically important for reasons not associated with religious beliefs. The graveyards are mostly from the Middle Ages.[115] They also contain tombstones of soldiers from the National Liberation Movement.[116]

The folk architecture, churches, and monasteries in Vreoci and Barosevac are important elements of cultural heritage that are located within the project boundaries.[117] Preserved old homes are important examples of local folk architecture.[118] Churches and monasteries are significant structures of spiritual, architectural and cultural importance.[119] Additionally, the entire Kolubara Basin area has symbolic value because it was the location of an important battle in the First World War.[120]

EPS drastically underestimated the number of graves in the Vreoci cemetery, placing the number at just 4000 in both media and official documents.[121] The Archive Institution in the City of Belgrade and the Belgrade Administration states that there are at least 8906 graves in the Vreoci cemetery.[122] An EBRD study agreed that there may be graves that were not identified by the original studies.[123] Citizens' fears that more than half of the graves will be forgotten and excavated without the proper exhumation procedure and church ceremony have not been addressed.[124]

Vreoci community members were not adequately consulted about grave relocation

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113 The communities believe that bodies are sanctified in life through sacraments such as baptism and must be honored in death as religious relics. (*Euchologion*). The deceased are placed in specially consecrated graveyards, and families visit the graves of the deceased daily for forty days after the death of a loved one. It is believed that, during these forty days, the soul of the deceased undergoes judgment to determine where the soul will remain until the second coming of Christ. After the initial forty days, memorials take place every three months for the first year and then in each subsequent anniversary of death.

114 CEKOR Investigation.

115 EIA Field C, Section 2.8.

116 EIA Field C, Section 2.8.

117 EIA Field C, Section 2.8.

118 EIA Field C, Section 5.5.

119 EIA Field C, Sections 2.8, 5.5.

120 EIA Field TZP, Section 2.2.

121 Letter to EBRD 1 p. 3.

122 Letter to EBRD 1 p. 3 (based on official data from the Book of death from 1837 to 2009).

123 SFR p. 3.

124 Letter to EBRD 1.

and resettlement. Collective relocation, rather than the piecemeal relocation that has been offered in Vreoci, will greatly mitigate damage to the local cultural, historical, and spiritual heritage.[125] This will allow main structures of public importance in the community to be relocated in order to allow continuation of their unique local identity.[126] Instead, community members have been pressured to agree to removal of graves from the cemetery in exchange for some immediate financial compensation and promises of resettlement, and grave relocation.[127] If members do not agree to a quick removal of graves, they may not be able to secure a future home, monetary compensation for property, and the ability to support themselves financially.[128]

EPS carried out the graveyard expropriation process without the consent of the Vreoci community. The client did not assure Vreoci citizens that their rights would be respected in the process of graveyard relocation before beginning expropriation.[129] More importantly, the client signed contracts that govern the conditions for the excavation of the bodies with people who are not legal holders of the rights on grave use.[130] This violates Serbian national law.[131] Accordingly, Vreoci filed a complaint alleging that EPS violated Article 354 of the Criminal Law of Serbia when it began expropriation without the consent of the legal holders of the rights on grave use.[132] The case was never opened.[133]

The manner in which the graves are being exhumed does not respect the Vreoci community or provide proper compensation. Since 7 April 2011, there was a strong police presence around the graveyard, which has prevented community members from accessing the graves of loved ones or performing any religious rites there.[134] This graveyard expropriation and exhumation started before any discussion of reimbursement.[135] The Vreoci community invested significant labor and resources to create the graveyard, chapel, and other infrastructure.[136] Forced exhumation demolished some monuments and made it impossible to establish the real value of invested labor and resources.[137]

Civil society groups sent a letter to the EBRD on 19 July 2011 requesting that the Bank not fund the project because it negatively affects the graveyards and forces relocation of both the Vreoci and Barosevac communities.[138] This prompted a visit by the

[125] Letter to EBRD 1 p. 2.
[126] Ministry Letter. The structures include the culture house, post office, house of pensioners, youth house, playgrounds, kindergarten, local fair, sport hall, shopping mall, veterinary station, local cemetery and the church. Ministry Letter; Letter to EBRD 1.
[127] Letter to European Parliament.
[128] Letter to European Parliament.
[129] Letter to EBRD 1.
[130] Letter to EBRD 1.
[131] Letter to EBRD 1.
[132] Letter to EBRD 1.
[133] Letter to EBRD 1.
[134] Letter to EBRD 1; Letter to European Parliament.
[135] Letter to European Parliament.
[136] Letter to European Parliament.
[137] Letter to European Parliament.
[138] Letter to EBRD 3.

EBRD in November 2011. After that visit, the EBRD required the client to take steps that it failed to take.[139]

4. Barosevac

Barosevac is located on the edge of C field, directly exposed to the mining activities.[140]

a) Resettlement Dispute to Date

The EIA stated that the Field C mining operations would have the "biggest impact" on the population of Barosevac, which was 1293 according to a 2000 census.[141] The settlement is "located in the close vicinity of the area in question."[142] The EIA warned that two different processing plants ("Kolubara-Prerada" – Vreoci, and Termoelektrana "Kolubara A") could have potential impact on the population of Barosevac due to climatic factors such as wind.[143] It stated that it is "necessary to stress that on the basis of the position of the open cast mine and the settlement Barosevac, the impact of mining activities will be most pronounced with respect to the settlement Barosevac" which is "very important primarily from the viewpoint of the direct impact of the object in question on the health of the people in its environment, and subsequently even further."[144] It further stressed that "the settlement Barosevac south of the open cast mine, *1293 inhabitants in total*, may be exposed to the negative influences during the execution of the mining activities in the mine, in the case of the west and northwest wind blowing," meaning that the EIA contemplated that the potential detrimental effects could impact the entire community and not just the portion directly adjacent to the open cast mine.[145]

The General Regulation Plan for Barosevac, Zeoke, Medosevac and Burovo (OG RS No. 58/2008) ("GRP for Barosevac") is one of the principle planning documents governing the mine-related activities in Barosevac.[146] One of the key stipulations of the Plan was the guarantee that a "belt of temporary protective vegetation would be formed, approximately 150 meters wide, as a biological protection from harmful influences of mining on the settlement and environment." This belt was supposed to be created before the mine exploitation near the Barosevac settlement, but was not done. It is no longer possible for Kolubara to create the belt to the guaranteed specifications because the pit is located only 57 meters away from some houses.[147] Additionally, given that the exploitation has already begun, the creation of a "wind-protective forest belt" would not

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139 SFR.

140 Resettlement Program "2.5. Area development upon completion of mining activities"; EIA Field C p. 61.

141 EIA Field C p. 32.

142 EIA Field C p. 58.

143 EIA Field C p. 59.

144 EIA Field C p. 109.

145 EIA Field C p. 109 (emphasis added).

146 SEP p. 6.

147 SFR p. 4.

provide effective protection.

According to the General Regulation Plan for Barosevac, 65 out of a total of 303 households were to be resettled by 2010.[148] No other households were scheduled to be relocated between 2010 and 2020 at the time of the creation of the plan.[149] There are plans for households being displaced from Field C expansion to be resettled to a new "Jelav" location in Barosevac.[150] A new school is in the final phase of construction in the Jelav location and new sports-recreational facilities have been agreed upon.[151]

A referendum on the relocation site for the Barosevac graveyard was held on 23 November 2008 during the Planning Development Phase.[152] The relocation of the village cemetery in Barosevac was planned to take place in 2012, to a site at Petkovci that according to the SEP was agreed to through public consultation and the 2008 referendum.[153]

New cemetery Petkovci is constructed, deceased citizens of Barosevac are being buried in the new location since the end of 2012. Excavation was planned to start in spring 2013, but minor delay happened regarding use permit and landslides. Survey of population concerning excavation issue is taking place right now.

Construction site of new machinery for Field C and future Field E is also located at the edge of the open pit, next to Barosevac household of local inhabitants. Despite the fact of various harmful mining impacts, and the fact that local inhabitants are requesting to be expropriated and resettled from this polluted environment, EPS and EBRD are refusing to take responsibility, allegedly because relocation activity is not predicted by planning documents, and it is not under the scope of any project.

b) Health Impacts

In 2009, EPS warned the EBRD that Barosevac inhabitants would be most negatively affected by the "high risk" of individual impact from inhaling the mine's dust emissions.[154] Additionally, the EBRD recommended that EPS consider making infrastructural improvements in the Barosevac community "to offset some of the negative impacts from the previous period," including pollution, demonstrating that the EBRD recognizes that EPS has not complied with established agreements.[155]

As described above, the Regulation Plan for the Settlement Barosevac required EPS to build a protective green belt to shield the community from negative health impacts.[156] The EBRD acknowledges that the mine is now too close to the houses, and it is no longer possible to build the required green belt.[157]

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148 GRP for Barosevac.
149 GRP for Barosevac.
150 SEP p. 9.
151 SEP p. 9.
152 SEP p. 10.
153 SEP p. 10.
154 EIA Field C p. 109.
155 SFR p. 3.
156 SFR p. 4.
157 SFR p. 4.

Recently, there have been high rates of cancer in Barosevac, including cancer of the lungs, bones, stomach, liver, pancreas, and intestines. In addition to cancer, the Barosevac communities have been diagnosed with a number of diseases correlated with environmental pollution, specifically pollution associated with mining. These diseases include bronchitis, thyroid disease, heart disease and angina pectoris. Children have experienced high levels of illness, and more than 10 percent of children in Barosevac have asthma.

Families in Barosevac also have experienced adverse impacts from excessive noise and vibrations resulting from their proximity to mining operations. EPS foresaw and notified the EBRD of the potential for noise problems, especially since the mine is only "several hundred meters" from houses.[158] Families in Barosevac live within 100 meters of mining operations at Field D.[159] One family stated that nearby excavators produced such significant vibrations that the walls cracked and layers of dust built up to more than a foot deep.[160]

c) Community Safety

Please, see above.

d) Effects on Cultural Heritage

Like Vreoci, Barosevac is an Orthodox Christian community with strong religious beliefs and cultural practices connected with gravesites.[161] The *Economic Impact Study: Field C* notes the customary, traditional, and religious role the graveyard plays in the community.[162] The study also stresses that Barosevec community members purposefully live near the graveyard for social and personal reasons.[163] Furthermore, it states that the expanded mining activities will have the biggest impact on Barosevac because of the 160 meter distance between the closest mine and the settlement.[164] In the time period between publishing EIA for Field C and writing this complaint distance reduced, so now the nearest houses are 50 meters distance from active open cast mine.

The Barosevac graveyard is located just 200 meters north of the center of the village along state road R 201.[165] The total area is 14,505 meters squared. Prior to the mining project, the united real estate records show that the local community is the primary holder of land, with some privately owned cadastral parcels in the expanded area of the cemetery.[166] *T*here are 1377 burial places in the graveyard with 1669 graves, 115 of which are in reservation.[167] After a referendum held on November 23, 2008, the

158 EIA Field C p. 51.
159 FFM_Serbia p. 3-4.
160 FFM_Serbia p. 4.
161 See discussion in Section above regarding cultural practices.
162 EIA Field C p. Section 6.8.
163 EIA Field C p. Section 6.8.
164 EIA Field C p. Section 2.9.
165 GRP for Barosevac.
166 GRP for Barosevac.
167 GRP for Barosevac.

community agreed to relocate the graveyard to Petkovci.[168] The relocation was to begin in 2011 and finish in 2012[169] however it has been delayed.

5. Information Disclosure & Stakeholder Engagement Issues

Vreoci and Barosevac lack information about the project, information about how to communicate with EPS, and information about the Project's impacts on the environment and future damage the mine will cause.[170] In Vreoci, residents lack basic information about the timeline for mine field expansions (and thus for their potential displacement); where they will be resettled to, what will happen if they do not accept the relocation package; whether, when, and how EPS/Kolubara intends to address their water concerns, and a host of other crucial information about the impacts of the mine expansion.[171] Also, the community states that they typically receive information through information leaks, media, and friends rather than direct engagement from EPS.[172] The modes of communication identified by the SEP do not fulfill this purpose either.[173] Likewise, Barosevac has had significant difficulty communicating with EPS, receiving little information and few responses to their questions and concerns.[174]

For months after the project was approved, neither Barosevac nor Vreoci community contacts were aware of a grievance mechanism or how it could be accessed. At the time project was approved (2011), an inquiry from CEKOR about the grievance mechanism produces a Bank response identifying that the head of the legal department, who is also overseeing the expropriation process and acting as the liaison, was the approptiate contact for the grievance mechanism.

EBRD has reported that there is a liaison assigned to communicate with the communities.[175] However, the communities do not know who this person is. Nor have the communities had contact with the liaison.[176]

Consequently CEKOR continued the communication with the company, relaying on the Law on access to information of public importance, and asked a copy of grievance mechanism manual, which should been published in accordance with Stakeholder engagement plan, but the answer was that there is no such thing as a grievance mechanism manual. * reference

As a result it is clear that since the beginning of the project – the grievance mechanism form was very difficult to access, because it was located only incorporated in a document situated in a location on the EBRD internet site.

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168 SEP.
169 SEP.
170 CEKOR Investigation.
171 CEKOR Investigation.
172 CEKOR Investigation.
173 CEKOR Investigation.
174 CEKOR Investigation.
175 EBRD Response Letter 4.
176 CEKOR Investigation.

Long term lack of grievance mechanism prevented local people to communicate and to inform EBRD through official channels (eg. on harmful emissions from the mining and transport, pollution of the water, drinking water shortage and resettlement problems).

As with all the other project documents, Vreoci was unjustifiably excluded from the Stakeholder Engagement Plan. The inclusion of Lazarevac, the municipality in which Vreoci is located, is not equivalent to the inclusion of Vreoci in the list of stakeholders receiving information about the Project. There are currently conflicts between Vreoci and Lazarevac; Vreoci is getting none of the municipal funds that would normally be budgeted to support their communal development costs and community development because they are supposed to have been resettled.[177] Moreover, Vreoci is not meaningfully represented in the Lazarevac legislature due to its small size.[178]

Violations of EBRD Policy

PR 1 – Environmental and Social Appraisal and Management

Inadequate Management Program

PR 1 requires a comprehensive Environmental and Social Action Plan (ESAP).[179] The ESAP must consist of the development and implementation of "a programme of mitigation and performance improvement measures and actions that address the identified social and environmental issues, impacts and opportunities."[180]

However, the ESAP does little more than restate the language of PR 1. The first item on the ESAP states: "Prepare an Inception Report…. This will include an Environmental Protection Plan, Environmental Action Plan and a budget…."[181] Items two and three refer to mitigation measures described in the EIAs without elaborating on project specific directives.[182]

If a complete plan was prepared, it has not been disclosed despite the request of the communities on 7 February 2012. The mitigation measures and corrective actions that should have been identified in an action plan were not implemented, resulting in the social and environmental harm that is outlined above and below. The failure to create a meaningful action plan translated into the EBRD's failure to confirm that EPS was taking the precautions required to avoid environmental and social damage.

Lack of Engagement, Disclosure, Consultation, and Monitoring

177 CEKOR Investigation.
178 CEKOR Investigation.
179 PR 1(14).
180 PR 1(14).
181 ESAP p. 2.
182 PR 1(3).

Considering the level of feedback EBRD has been getting from the communities about the social and environmental impacts occurring in the communities, EBRD should know that implementation of the ESAP has been, and continues to be, inadequate.

Failure of ESAP to Adequately Incorporate the Organizational Capacity and Commitment Principles from PR 1

PR 1 calls for the "client…to establish, maintain, and strengthen…an organizational structure that defines roles, responsibilities, and authority to implement the ESAP and associated management systems."[183]

As the foregoing facts show, EPS has failed to do this. If they have, they have refused to release the information demonstrating compliance with the requirements for implementing the ESAP, despite multiple community and civil society requests for documentation. EBRD must work with Vreoci to reconcile the 2007 agreement with current resolutions. Additionally, EBRD should investigate the lack of compliance with regard to the foregoing violations including the inadequacy of Barosevac's inclusion in the initial appraisal.

PR 3 – Pollution Prevention and Abatement

Pollution Prevention, Resource Conservation and Energy Efficiency

The EBRD has failed to adequately prevent the problems caused by EPS's current and past mining practices, which pollute the air, water, and soil in violation of PR 3(10). PR 3(10) requires EPS to "apply pollution prevention and control technologies . . . best suited to avoid or, where avoidance is not feasible, minimize or reduce adverse impacts on human health and the environment."[184] Additionally, under PR 3(10), EPS must "avoid the release of pollutants or, when avoidance is not feasible, minimize or control their release … due to routine, non-routine, or accidental circumstances."[185]

The EBRD failed to ensure that EPS apply pollution prevention and control technologies to avoid or minimize the release of pollutants. EPS discharges wastewater from the Kolubara processing plant untreated, uncooled, and un-piped.[186] Hazardous mining dust accumulates in people's houses close to the mine[187] because EPS failed to follow most, if not all, planned dust suppression precautions. Some communities are completely dependent on bottled water due to mining pollution.[188] Even if the water were potable, EPS's mines have dried out the wells[189] in violation of the resource conservation

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183 PR 1(17).

184 PR 3(10).

185 PR 3(10).

186 CEKOR Investigation.

187 FFM_Serbia p. 4.

188 Ministry Letter p. 1; Letter to EBRD 1 p. 3.

189 Ministry Letter p. 1; Letter to EBRD 1 p. 3.

requirement of PR3.[190]

The EBRD acknowledges the environmental impacts from the site, including "air and surface and groundwater quality, soil contamination" among others,[191] and has been informed that EPS has failed to implement even basic pollution control procedures.[192] The EBRD acknowledges that the Regulation Plan for Vreoci "contains detailed activities which need to be undertaken to mitigate some of the environmental and other impacts" of the mine.[193] In some cases, the EBRD's actions came too late to fix the noncompliance problem; for example, EPS failed to build a promised green belt around the mine and now the mining operations have moved too close to houses to make the green belt feasible.[194] This is further evidence of the EBRD's failure to follow and enforce its own policies as a supervisor in this high-risk project. These significant concerns raise serious questions about the EBRD's exercise of due diligence over EPS's environmental practices and warrant further investigation.

Wastes and Safe Use and Management of Hazardous Substances and Materials

EPS is violating PR 3(12-13), which requires that EPS "avoid or minimize the generation of hazardous and non-hazardous waste materials and reduce its harmfulness as far as practicable,"[195] "seek to avoid, reduce or eliminate the use of hazardous substances and materials,"[196] and consider alternatives "to protect human health and the environment from their potential harmful impacts."[197]

EPS generates and piles up overburden at dump sites leading to spontaneous combustion and consequent fires at the dump site.[198] The uncontrolled burning of interburden and coal extraction wastes causes the release of hazardous pollutants into the air.[199] These pollutants include particulate matter, sulfur compounds and heavy metals,[200] all of which have significant potential to cause adverse human health impacts.

Because wastes are already being generated by the expansion and operation of Fields C, D, E, and Tamnava West, a waste management plan should have already been created as required by the EU Waste Directive.[201] Additionally, an Industrial Waste Management Plan (WMP) for Field C should have been created before operation of Field C to satisfy the requirements of the EU Waste Framework Directive and Serbian waste legislation.[202] There is no evidence that a waste management plan has been created. The

190 PR 3(11).
191 NTS p. 5.
192 FFM_Serbia p. 3-4; Letter to EBRD 1 p. 3; Ministry Letter p. 1.
193 SFR p. 1.
194 SFR p. 3.
195 PR 3(12).
196 PR 3(13).
197 PR 3(13).
198 EIA Field C p. 46-50.
199 EIA Field C p. 46-50.
200 EIA Field C p. 46-50.
201 NTS p. 7.
202 ESAP p. 7.

foregoing facts strongly suggest that a further investigation should be conducted to determine whether the EBRD conducted due diligence in connection with EPS's problematic waste management practices.

Emergency Preparedness and Response

EPS has failed to develop adequate emergency preparedness plans or to adequately communicate existing plans to local communities. Under PR 3(14), EPS must "be prepared to respond to process upset, accidental, and emergency situations." Potential emergency situations include landslides, which have occurred and will continue to occur because of the project's expansion of Fields C, D, E, and Tamnava West.[203] Recent situation from Junkovac shows that such claims are justified.[204] Additionally, higher traffic has led to accidents on roadways due to vehicles transporting materials and equipment to and from the mine.[205] EPS understands the dangerous potential for accidents along roadways and train lines, but has not analyzed the potential or created emergency procedures.[206] Recurring and uncontrolled coal combustion in the dump sites at the Kolubara mine may lead to emergency situations.[207] Further, EPS lacks pollution control technology to decrease or eliminate the pollutants emitted during these combustion events.[208] Further investigation should be conducted to determine whether EPS has established an adequate emergency response plan that deals with all of these contingencies as well as other potential emergencies that could occur during normal mine operations.

Ambient Considerations

The project is violating PR 3(16), which requires EPS to "consider…existing and future land use…and the potential for cumulative impacts with uncertain and irreversible consequences; and promote strategies that avoid or, where avoidance is not feasible, minimize or reduce the release of pollutants...including evaluation of project location alternatives and emissions' offsets."[209]

Redirecting the River Kladnica to allow for mine expansion has already caused "uncertain and irreversible" impacts including, but not limited to, landslides and changes in existing and future land use of the area.[210] Additionally, as stated under the section on PR 3(10) above, the water, air, and soil pollution cited by the EBRD have generated serious and potentially irreversible impacts. The impacts of these projects should be further evaluated to determine if the EBRD has exercised due diligence in monitoring the

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203 CEKOR Investigation.

204 http://bankwatch.org/news-media/blog/campaign-update-kolubara-landslide-images-devastation-people-waiting-compensation

205 CEKOR Investigation.

206 EIA Field C p. 60.

207 SEP p. 2.

208 SEP p. 2.

209 PR 3(16).

210 NTS p. 5.

client's compliance with the standards of PR 3(16), particularly whether offsets have been proposed for these harms.

PR 4 – Community Health, Safety, and Security

Community Health

The EBRD has violated a key objective of PR 4, to "avoid or minimise risks to and impacts on the health and safety of the local community during the project life cycle."[211]

The EBRD failed to ensure that the client, EPS, "identif[ied] and evaluate[d] the risks and potential impacts to the health and safety of the affected community during the design, construction, operation, and decommissioning of the project."[212] The ESAP specifically required the preparation of a "Heath and Safety (H&S) Risk Assessment for possible hazards and risks to the community from [the] project."[213] The assessment was due within six months of the signing of the loan agreement.[214] The EBRD required that the assessment follow "international best practice" in determining the "possible hazards and risks to the community from this project and equipment."[215] Despite requests for these health and safety plans, Vreoci and Barosevac communities and NGOs have not received any plans to date. Moreover, the harm to the communities' health and safety is evidence that even if these plans were created, they have not been carried out or are not sufficient.

Furthermore, the EBRD failed to ensure that EPS disclosed "relevant project-related information to enable the affected communities and relevant government agencies about the proposed measures before they were finalised" and did not take the communities' "concerns and comments into account," as required.[216] Again, despite requests for this information, Vreoci and Barosevac communities and NGOs have not received any health and safety information to date. The harm the communities have experienced indicates that even if these plans were created, they have not been sufficiently communicated, have not taken communities' comments into account as required, and are insufficient to address the communities' health and safety concerns.

The Project as planned will serve to expand the mine and will compound the health problems reported by the Vreoci and Barosevac communities, including high rates of cancer and respiratory disease. The EBRD and EPS have conducted insufficient "preventive measures and plans to address" the health impacts, as required by PR 4.[217] By

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211 PR 4(4).
212 PR 4(7).
213 ESAP p. 8.
214 ESAP p. 8.
215 ESAP p. 8.
216 PR 4(8).
217 PR 4(7).

failing to do so, EBRD has harmed the health of residents of Vreoci and Barosevac.

PR 5 – Land Acquisition, Involuntary Resettlement and Economic Displacement

PR 5 is Applicable to the Land Acquisition, Involuntary Resettlement and Economic Displacement Ongoing in Vreoci and Barosevac

In its Environmental and Social Policy, the EBRD affirms its commitment "to monitor the projects' compliance with its environmental and social covenants as long as the Bank maintains a financial interest in the project."[218] The EBRD was thus required prior to and during the financing of the Project to conduct due diligence on its impacts on land acquisition, involuntary resettlement, and economic displacement in affected local communities. In both Vreoci and Barosevac, the EBRD failed to honor its commitment to ensure that the Project "respect[s] the rights of affected workers and communities . . . and are designed and operated in compliance with applicable regulatory requirements and good international practice."[219]

Both Vreoci and Barosevac fall within the scope of the Bank's Environmental and Social Policy. It is the Bank's responsibility to ensure that the Client meet the requirements set forth in this policy. Numerous violations of PR 5 in both settlements demonstrate that the proper oversight of the Project activities by the Bank has been lacking thus far.

1. Vreoci: The ongoing situation of involuntary resettlement in Vreoci falls within the scope of the Bank's due diligence obligation to ensure compliance with PR 5.

The Client's failure to name Vreoci as a stakeholder in the SEP or address the community's concerns in its ESAP demonstrates that the Bank did not conduct its due diligence to ensure the accuracy and completeness of either plan.

The resettlement in Vreoci is involuntary according to the definition in PR 5. The Serbian government declared it necessary to expropriate the entire settlement of Vreoci in the public interest in 2007,[220] therefore "affected individuals or communities do not have the right to refuse land acquisition that results in displacement."[221] Community members in Vreoci who have not reached private compensation agreements with EPS/Kolubara, are currently in a situation of involuntary resettlement due to "lawful expropriation or restrictions on land use based on eminent domain."[222] The community members who agreed to compensation and relocation in accordance with the "2007 Program" fall into

[218] EBRD Soc. & Env. Policy Section B(3).
[219] EBRD Soc. & Env. Policy Section B(3).
[220] Program for Resettlement of Vreoci.
[221] PR 5(2).
[222] PR 5(2).

the category of involuntary resettlement of "negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail."[223]

PR 5 states that "[w]here involuntary resettlement has occurred prior to the Bank's involvement, due diligence will be carried out to identify a) any gaps and b) the corrective actions that may be required to ensure compliance with this PR. An action plan shall then be agreed."[224] While involuntary resettlement in Vreoci officially began "prior to the Bank's involvement" in 2011, the incomplete resettlement process and ongoing disruption due to EPS/Kolubara activities is a clear "gap[]" in prior involuntary resettlement. The Bank was under an obligation conduct due diligence in Vreoci to "identify . . . corrective actions" in any instances not meeting the standards of the PR.[225] Therefore, the foregoing violations of PR 5 in Vreoci constitute violations of the Bank's own policy of due diligence and compliance with its Environmental and Social Policy.

2. Barosevac: Environmental degradation and health hazards in Barosevac as the direct result of project-related land acquisition has effectively resulted in physical displacement and an affirmative right to resettlement.

As evidenced in the EIA, stakeholders in the Project were given full notice of the serious potential environmental impacts Field C expansion would have on the Barosevac.[226] The General Regulation Plan for Barosevac's planned environmental safeguards to protect against potential harms were never implemented, resulting in a change of needs on the ground from building a protective belt to providing for resettlement of households. The incomplete description of the impacts on Barosevac to date contained in both the SEP and the ESAP demonstrates that the Bank has failed to uphold its commitment to "monitor the projects' compliance with its environmental and social covenants."[227] Although the SEP and the ESAP recognize the General Regulation Plan, neither document specifically addresses the activities being undertaken to ensure those aspects of the plans were carried out or being monitored.

Since the creation of the planning documents in 2008, Field C expansion has caused severe environmental degradation in Barosevac with residents living in a "totally polluted environment." Impacted residents have effectively experienced a "loss of shelter" within an environment suitable for human health.[228] The "project-related land acquisition" due to Field C expansion, resulting in the encroachment of the open cast mine to within 57 meters of some homes, has resulted in a "restriction of access to natural resources" including clean water and air.[229] Therefore, project-related environmental degradation and health impacts have resulted in the loss of safe shelter and effective physical displacement in Barosevac, constituting a situation of involuntary resettlement under PR 5.

223 PR 5(2).
224 PR 5(10).
225 PR 5(10).
226 EIA Field C p. 32.
227 EBRD Soc. & Env. Policy Section B(3).
228 PR 5(1).
229 PR 5(1).

EPS/Kolubara has Provided Inadequate Consultation to both Vreoci and Barosevac Throughout the Implementation of the Negotiated Resettlement Plans

The Bank has failed to comply with its commitment under PR 5 of "ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected."[230] The provisions of PR 5 require consultation at all stages of the resettlement process: (1) to "facilitate [host communities'] early and informed participation in decision-making processes related to resettlement" and (2) continuing "during the implementation, monitoring, and evaluation of compensation payment and resettlement."[231] EPS/Kolubara and the relevant government ministries consulted with Vreoci and Barosevac during the initial planning phases of resettlement, resulting in governing planning documents recognized by each community. However, the Bank has not ensured adequate consultation during the implementation phase.

1. *Vreoci: The Client has not consulted with the citizens of Vreoci throughout the implementation process.*

EPS/Kolubara has not consulted with the community members of Vreoci throughout the implementation of the 2007 Program which itself states that "the important factor in this process is a timely and continuous relationship with the public."[232] Vreoci leaders have identified seven unfulfilled obligations in the implementation of the planning process which shows that the consultation process has not continued "during the implementation, monitoring, and evaluation of compensation payment and resettlement" in their community.[233]

In its failure to properly implement the 2007 Program with continued communication with the effected population, EPS/Kolubara has frustrated the basic purpose of the negotiated settlement which is to "help avoid expropriation and eliminate the need to use governmental authority to remove people forcibly."[234] The lack of governmental regulation of forced evictions creates immense pressure on the Vreoci community to either reach private agreements regarding resettlement and compensation with EPS/Kolubara or accept the terms offered if an agreement had already been reached. Vreoci's repeated objections to the proposed collective resettlement site "Rasadnik" and the process of graveyard relocation have not been negotiated "by mitigating the risks of asymmetry of information and bargaining power" as contemplated in the PR.[235]

2. *Barosevac: The Client has either not consulted with the citizens of Barosevac or is utilizing an ineffective manner that is unresponsive to the concerns of the local community.*

EPS/Kolubara failed to conduct a continued consultation process throughout the

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230 PR 5(6).
231 PR 5(12).
232 Program for Resettlement of Vreoci p. 5.
233 Ministry Letter; PR 5(12).
234 PR 5(5).
235 PR 5(5).

"implementation, monitoring, and evaluation of compensation payment and resettlement so as to achieve outcomes that are consistent with the objectives of [PR 5]" implementation of the General Regulation Plan for Barosevac. Proper consultation would have revealed the failure of EPS/Kolubara to erect environmental safeguards and the effective physical displacement of families near the open mine pit in accordance with the General Regulation Plan. Given the failure to implement the General Regulation Plan, Barosevac was entitled to "options for resettlement assistance" which "should be generated through consultation with the displaced persons and reflect their priorities and preferences."[236]

<u>EPS/Kolubara Has Neither Established Nor Made Accessible an Effective Grievance Mechanism to Address the Concerns of the Local Communities</u>

Thus far, EPS/Kolubara has failed to provide an effective channel for addressing the concerns of Vreoci and Barosevac throughout the resettlement and relocation of property, failing to meet its duty to establish a grievance mechanism "as early as possible in the process."[237]

Using the right of access to public information, CEKOR recently requested information from RB Kolubara concerning number of complaints filed through official grievance mechanism. Their reply informed us that director of Kolubara approved procedure for dealing with complaints on 20.02.2013 – two years after Stakeholder engagement plan prescribed that as an obligation. * reference missing

No "summary of complaints and the measures taken to resolve them" have been "made public on a regular basis, in accordance with PR 10" in either Vreoci or Barosevac.[238]

The absence of a mechanism "to receive and address in a timely fashion specific concerns about compensation and relocation that are raised by displaced persons and/or members of host communities," forced citizens of Vreoci to seek remedies for flaws resettlement processes in national legal institutions. The failure of all avenues to provide meaningful redress has left the citizens of Vreoci with a "feeling of insecurity, feeling of autocracy of authorities and general feeling of threat."[239] This unfortunate outcome could have been prevented by "appropriate measures to mitigate adverse impacts on displaced persons" mandated by the Bank's policy.[240]

CEKOR informed office of European Union Delegation to the Republic of Serbia in Belgrade about numerous cases of irregular expropriation in Kolubara Region. They replied that Ministry is going to provide detailed information. * reference missing

236 PR 5(32).
237 PR 5(13).
238 CEKOR Investigation; PR 5(13).
239 Letter to European Parliament p. 2; PR 5(13).
240 PR 5(4).

EPS/Kolubara Failed to Develop and Implement Effective Resettlement Planning for the Displaced Residents of Vreoci and Barosevac

1. *Client's Failure to Create Resettlement Action Plan (RAP) or Implement Negotiated Settlement for Residents of Vreoci Indicates EBRD's Noncompliance with PR 5*

Although the Bank was on notice that the residents of Vreoci were impacted by the activities of EPS/Kolubara, the EBRD did not require the Client to develop a formal Resettlement Action Plan for this community within six months of the signing of the loan agreement as required by this performance requirement.[241] Despite correspondence between the EBRD and representatives of Vreoci notifying the Bank of the Client's failure to implement the negotiated settlement of 2007 and the consequent creation of a situation of forced resettlement, the EBRD failed to halt displacement in Vreoci until the RAP was created, or ensure that displacement was taking place under an equivalent framework.[242] The Bank's oversight of the Client's failure to comport with the 2007 negotiated settlement plan and failure to prepare an RAP upon the dispersal of the loan is a contravention of PR 5's directive that "the Client will engage a suitably qualified specialist to carry out a census and a socio-economic baseline assessment within a defined affected area, and assist in the preparation of the Resettlement Action Plan…where involuntary resettlement is unavoidable."[243]

Furthermore, the demonstrated lack of clear communication of any resettlement plan and the widespread uncertainty among the residents of Vreoci as to their resettlement fate[244] indicates that the Client has failed to "ensure that affected people understand the compensation procedures and know what to expect at the various stages of the project."[245]

2. *Client's Failure to Comply with Terms of Negotiated General Regulation Plan for Barosevac and Subsequent Failure to Create Resettlement Action Plan Illustrates the Bank's Lack of Due Diligence and Violates PR 5*

In the town of Barosevac, the Bank had similarly been on notice that the residents were facing severe negative impacts from the operations of the mine and its expansion.[246] The EBRD was aware of the Client's failure to implement a "protective green belt" in contravention of the agreed upon General Regulation Plan for Barosevac,[247] and the resulting exposure of the residents to harmful impacts of open-pit coalmines. At the point where the EBRD dispersed the loan, and the failure to mitigate the harmful impacts of open-pit mining activities created a condition of constructive displacement, the Client, EPS/Kolubara, should have been required to create and implement a Resettlement Action Plan for those households whose environments had become uninhabitable and were consequently facing constructive eviction. The Bank failed to demand the creation of a

241 ESAP p. 11.
242 Letter to EBRD 1.
243 PR 5(14).
244 CEKOR Investigation.
245 PR 5(20).
246 SFR.
247 GRP for Barosevac.

RAP for the households in Barosevac directly harmed by the open-pit mining. It also failed to require the Client's compliance with the existing action plan that implied the provision of resettlement to households in Barosevac "directly threatened by the development of open-pit mining." This is a violation of the EBRD's required "due diligence…to identify a) any gaps [in the involuntary resettlement that occurred prior to the Bank's involvement] and b) the corrective actions that may be required to ensure compliance with this PR."[248]

EPS/Kolubara Failed to Provide Adequate Replacement Housing, Cash Compensation, and Resettlement Assistance to Physically Displaced Households in Vreoci and Barosevac

1. Failure of EPS/Kolubara to Provide Displaced Residents of Vreoci with Choices of Feasible Resettlement Options Violates PR 5(34)

From the Client's documents prepared in 2007 stating that "it is necessary to execute the expropriation of property, which includes resettlement of entire Vreoci in which lives about 3300 residents in 1180 households and relocation of the local cemetery with about 5000 of burial sites," it is clear that the residents of Vreoci are being physically displaced by the mining operations and forced to move to a new location.[249] At the time of the Bank's involvement in the project, 1110 households had not been resettled,[250] which brought this ongoing involuntary resettlement that had begun prior to the EBRD's involvement under the scope of the Bank's due diligence under PR 5 and required the Bank to address the gaps that clearly exist in the Client's resettlement process.[251] The residents of Vreoci have made their dissatisfaction with the settlement location proposed by the Client explicitly clear to the Bank.[252]

During the public hearings held in 2006 and 2007, the residents of Vreoci expressly stated that they did not consent to the proposed location "Lazarevac 2" for relocation of their cemetery and "Rasadnik" for the relocation of their households. They have further reiterated their dissent through correspondence with the EBRD, stating, "those locations are forced solutions, despite our publicly stated needs and request for relocation of the whole settlement to location 'Petka.'"[253] The proposed resettlement locations are highly prone to landslides, are not large enough for the entire community to be resettled, offer not only fewer but also smaller properties than the residents currently have, and do not provide the necessary infrastructure for collective relocation of the residents and places of public importance as requested.[254] The conditions of the Client's single proposed resettlement option are significantly inferior and the location considerably disadvantageous as compared to the current living conditions in Vreoci. Thus, the Client's failure to provide feasible resettlement options that include adequate

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248 PR 5(10).
249 Program for Resettlement of Vreoci p. 3.
250 Ministry Letter p. 1.
251 PR5(10).
252 Letter to EBRD 1.
253 Letter to EBRD 1.
254 Letter to EBRD 1.

replacement housing that meets the communities stated needs is a violation of PR 5 that "resettlement sites built for displaced persons offer improved living conditions."[255]

2. Failure of EPS/Kolubara to Provide Displaced Residents of Vreoci with Adequate Cash Compensation or Replacement Housing Violates PR 5(34)

The Bank has been on notice that the cash compensation scheme for the expropriated properties and for residents subject to forced resettlement fails to comply with PR 5's insistence that "adequate… cash compensation be made available to physically displaced community members prior to relocation."[256] In August 2011, when EBRD officials visited the Vreoci mining region and met with community members, the Bank recorded "allegations of unfair compensation being offered."[257] Only households that have agreed to the early exhumation of their graveyards, in violation of their cultural rights, have received any compensation for the impending expropriation of their properties.[258] The Client flagrantly violated PR 5(34)'s requirement for "adequate" compensation by conditioning partial payment on the waiver of what should be inviolable cultural heritage rights. It is unconscionable to require the citizens of Vreoci to bargain under these coercive circumstances. EPS/Kolubara has given these households 30% of the assessed value of their property, and told these families that the remaining 70% of the compensation amount will be allocated when the property is actually seized.[259] Families cannot purchase alternative housing with a mere 30% of the assessed value of their properties and are consequently unable to resettle with this inadequate compensation.[260] It is unclear if or when EPS/Kolubara will disperse the remainder of their compensation, and therefore these families have been rendered paralyzed and incapable of escaping the mine-affected region, despite the earlier enumerated uninhabitable conditions. This compensation scheme, which is window-dressing for EPS/Kolubara's true purpose of coercing residents to agree to the hasty exhumation of their family graves, violates the PR's directive to provide cash compensation *prior to relocation* that is "sufficient to replace the lost land and other assets."[261]

As an added harm, the initial partial dispersal of 30% of the total compensation amount, in this context where communities cannot use that money immediately for resettlement and where the activities of the Client create costly health problems among the community as well as contribute to the decrease of public services, increases the likelihood that this money will be used for immediate needs. This fundamentally compromises the long-term ability of residents to ever find alternative housing if the remaining 70% is ever provided and effectively defeats the stated goal of the PR to "to improve or, at a minimum, restore the livelihoods and standards of living of displaced persons to pre-project levels."[262]

Even if the EBRD instructed EPS/Kolubara to dispense the full amount of the

[255] PR 5(34-35).
[256] PR 5(34).
[257] SFR.
[258] Letter to European Parliament p. 3.
[259] Letter to European Parliament p. 3.
[260] Letter to European Parliament p. 3.
[261] PR 5(footnote 20).
[262] PR 5(6).

assessed property value to the residents of Vreoci, the compensation would still fail to meet the stipulated in PR 5 because the assessed value was not “calculated at full replacement cost, that is to say, the market value of the assets plus transaction costs.”[263] As Vreoci communicated to the EBRD, the value of the land to be expropriated is not being assessed in a way that ensures the provision of market value and transaction costs. The value has been calculated not according to the Serbian Law on Expropriation, which relies on the valuations made by the Tax Administration, but according to the recommendations made by representatives from the municipality and EPS who have long-standing interests the cheap acquisition of land and a stake in the mining operations.[264] As the residents of Vreoci have asserted, “it is not logical that our assets and land are being assessed by the user of land acquisition” because this creates the perfect recipe for their property to be undervalued as it has been.[265]

Moreover, even without a finding that the process for valuation has been compromised, it is clear that the EBRD requirement to provide full replacement costs for property losses that, for houses, equals “the cost of purchasing or building a new structure with an area and quality similar to or better than those of the affected structure” has not been met.[266] Residents of Vreoci are distraught because the compensation amount is not enough to enable them to afford a new home and residents have not been able to resettle.[267] It is thus clear that the EBRD’s failure to ensure the Client’s compliance with the Bank’s compensation requirements has left Vreoci in a worse position than before the resettlement.

According to recent information provided in internal document made by independent expert engaged by EBRD*, under the section – planned and spent funds for the Vreoci village resettlement under the resettlement program – it is clearly shown that planned and spent funds regarding compensation payments for the expropriated properties and for collective resettlement site acquisition are not matching

3. Failure of EPS/Kolubara to Provide Displaced Residents of Vreoci with Meaningful Resettlement Assistance Violates PR 5(34)

Under the EBRD PR 5, the fact that the community is being compelled to relocate means that EPS/Kolubara was required to “provide relocation assistance suited to the needs of each group of displaced persons.”[268] This resettlement assistance must be “sufficient for them to restore their standards of living at an adequate alternative site.”[269] To date, there has not been any resettlement assistance offered or provided aside from the apartments that were reserved on the market that are unaffordable to the residents based

263 PR 5(footnote 17).
264 Letter to EBRD 1 p. 2.
265 Letter to EBRD 1 p. 2.
266 PR 5(footnote 17).
267 CEKOR Investigation.
268 PR 5(34).
269 PR 5(36).

on their compensation.[270]

4. Failure of EPS/Kolubara to Provide Any Resettlement Assistance or Implement a Compensation Program for 25 Barosevac Households Forced to Move Violates PR 5

As earlier articulated, EPS/Kolubara's failure to implement the mitigation mechanisms it agreed to construct in the 2007 Plan is forcing Barosevac residents living in the critical area affected by mining activities to seek resettlement. Twenty-five households in Barosevac "are living in a totally polluted environment" that threatens their health and is constructively displacing these members of the community. Even after receiving notice that the residents were desperately seeking resettlement, EPS/Kolubara failed to provide resettlement assistance of any kind. They further failed to provide any feasible resettlement options, neither replacement housing nor cash compensation to meet resettlement costs. This constitutes a blatant violation of PR 5.[271]

PR 8 – Cultural Heritage

Disturbance of Vreoci and Barosovec community graveyards and cultural buildings violates PR 8.

EBRD is required to "monitor the projects' compliance with its environmental and social covenants as long as the Bank maintains a financial interest in the Project."[272] EBRD is also required to provide guidance during the appraisal and implementation of the Project.[273] Because the Project has contributed to the destruction of "irreplaceable cultural heritage,"[274] it falls within the scope of PR 8. Furthermore, the entire Project is subject to PR 8 because it involves "significant excavations."[275] EBRD was made aware of EPS' disruptive and disrespectful practices in violation of PR 8, documented by the Vreoci community and civil society,[276] and should have exercised their oversight and guidance authority on the matter.

The Vreoci and Barosevc graveyards and community buildings are elements of physical cultural heritage because they have been "inherited from the past" and the community members "identify [with them], independently of ownership, as a reflection

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270 CEKOR Investigation.
271 PR 5(34).
272 PR 8(36).
273 PR 8(14-15).
274 PR 8(6).
275 PR 8(8).
276 Letter to EBRD 1.

and expression of their constantly evolving values, beliefs, knowledge, and traditions."[277] These communities have laid their ancestors to rest in these graveyards since the Middle Ages, and the graveyards are essential to the fulfillment of practices required by the Orthodox Christian faith.[278] Also, the community buildings, which include homes, churches and monasteries, are relics of folk architecture.[279]

The Bank has been on notice that the Project continues to destroy elements of the Vreoci and Barosevac cultural heritage. The Project's Environmental Impact Assessments named the Vreoci and Barosevac graveyards and cultural buildings as elements of cultural heritage that would be affected by the Project, the Stakeholder Engagement Plans have included Barosevac graveyard relocation in its plans, and the EBRD's November 2011 visit to the Kolubara mine involved discussion on graveyard relocation and resettlement. Furthermore, the Vreoci community alerted the EBRD and other related governing bodies directly to how the inability to visit the graves prevents community members from paying their proper respects as their religion dictates, how the bodies are being exhumed in a manner disrespectful to their religious beliefs through practices such as exhumation during heat of the summer months and placement into shallow graves, how resettlement without their cultural buildings and in a piecemeal fashion is detrimental to their identity and existence as a village, and how these actions have caused them mental anguish.[280] Though the Vreoci citizen letters were specific to events in Vreoci, the fact that these events are occurring should have signaled EBRD to monitor both the Vreoci and Barosevac graveyard relocation and mining because these events are indicative of the ESP general posture towards relocation and resettlement. Civil society wrote to the EBRD about how the Project has caused these occurrences in the Kolubara region as a whole.[281] This track record of disrespect should have alerted EBRD that it needed to provide more oversight and guidance on these matters.

The Bank did not do its due diligence properly during the Project assessment phase as evinced by the gross miscalculation of the number of affected graves and lack of Vreoci consultation.

EBRD was required to use due diligence to "assess the level of information disclosure and consultation conducted by the client."[282] PR 8 states that proper appraisal of the Project requires that "the intensity of study of cultural resources should be sufficient to fully characterize the risks and impacts" and that "the client will consult with relevant ministries, experts, and local communities as appropriate."[283]

EBRD did not perform its due diligence in accepting a gross miscalculation in the number of affected graves. EPS informed EBRD that there were 4,000 graves in Vreoci,

277 PR 8(7).
278 Letter to EBRD 1; EIA Field C, Section 2.8.
279 EIA Field C, Sections 2.8, 5.5.
280 Letter to EBRD 1; Ministry Letter; Letter to European Parliament.
281 Letter to EBRD 2; Letter to EBRD 3.
282 PR 10(5).
283 PR 10(10).

whereas the Archive Institution in the City of Belgrade and the Belgrade Administration states that there are approximately 9,000 graves.[284] Such a large discrepancy suggests that EPS' initial study was insufficient. EBRD should have been aware of this miscalculation. Community members fear that, as a result of the errant figures, more than half of their deceased will be forgotten and disrespected.[285] Similar miscalculation of graves may have occurred with the Barosevac graveyard.

EBRD also failed to perform its due diligence because Vreoci sent a letter on 7 May 2011 to EBRD informing it that EPS failed to consult with the community before the Project began. EBRD should have made sure EPS properly consulted with the Vreoci community on grave relocation as required under Bank policy.[286]

The Bank did not properly monitor consultation during the enactment phase as evidenced by the letters written to the EBRD describing the general lack of communication between the ESP and Vreoci and Barosevac communities and the pressure the EPS places on the Vreoci and Barosevac communities to accept EPS terms for resettlement and relocation .

PR 8 requires EPS to "enter into a good faith negotiation with the affected communities" and "provide information to affected communities."[287] EBRD did not properly monitor and guide the Project's good faith negotiations with affected communities. Letters and other documents sent to the EBRD, the European Parliament, and the Serbian government described the lack of consultation and the force used in graveyard relocation and community resettlement, documenting the lack of good faith negotiations between the communities and EPS.[288] The lack of good faith negotiations is exemplified by the unfair resettlement and relocation compensation terms that the EPS pressures the Vreoci and Barosevac citizens to agree to through media and government pressure.[289] The compensation terms are unfair because they are based on municipal studies rather than neutral bodies like the tax administration.[290] They are unfair also because the citizens that have consented have only received 30% of the value of their land according to these municipal studies and it is unsure if or when they will receive the remaining 70%.[291] The media pressures these communities by publishing negative news reports.[292] The government also pressures these communities through police presence in the cemeteries and police force to remove individuals from their homes.[293] The EPS tactics of equating cultural rights with monetary value, asserting unfair terms without adequate and constructive communication, and using the media and police to pressure the communities constitutes a process that is irrevocably in conflict with consultation values

284 Letter to EBRD 1 p. 3; SFR p. 3.
285 Letter to EBRD 1.
286 Letter to EBRD 1 p. 3.
287 PR 8(17).
288 Ministry Letter; Letter to European Parliament; Letter to EBRD 2; Letter to EBRD 3. Note that the Letter to European Parliament lists the various Serbian and European government agencies to whom Vreoci have reached out.
289 Letter to EBRD 3; Letter to European Parliament.
290 Letter to EBRD 1; Letter to European Parliament.
291 Letter to EBRD 1; Letter to European Parliament.
292 Letter to EBRD 3.
293 Letter to EBRD 3.

of EBRD's social and environmental policy.

EBRD visited the Project site in November 2011, after which EBRD affirmatively required ESP to take steps to improve consultation, communication, and ease tension between the communities and EPS. However, the communities state that EPS has failed to undertake these measures and that the degree of consultation and lack of information remains unchanged.[294] This is highlighted by the fact that the Project started operating an excavator in the Vreoci cemetery area.

The Bank should not have financed the Project because it violates international law.

EBRD states that it “[w]ill not knowingly finance, directly or indirectly, projects involving . . . (c) Activities prohibited by host country legislation or international conventions relating to the protection of biodiversity resources or cultural heritage.”[295] PR 8 states that EBRD is “guided by and supports the implementation of applicable international conventions.”[296] The international community has been increasingly focused on the protection of the physical and intangible cultural heritage of communities over the past few decades, and these treaties embody this shift in concern.[297]

EBRD should not have financed the Project because it violates these conventions by taking deliberate measures that directly and indirectly damage the cultural heritage of the Vreoci and Barosevac communities. The Project prevents community members from paying their proper respects as their religion dictates, relocated the bodies in a manner disrespectful to their religious beliefs by exhuming them in the heat of the summer and placing these bodies in shallow graves, resettled individuals without their cultural buildings and in a piecemeal fashion damaging to their identity and existence as a village, and causes extreme mental anguish.[298]

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[294] CEKOR Investigation.

[295] EBRD Soc. & Env. Policy Section B, Appendix 2.

[296] PR 8(3). The Convention concerning the Protection of the World Cultural and National Heritage adopted by Serbia in 2001, mentioned in PR 8 as a guiding international convention, and mentioned in EIA Fieldtrip TZP states that “[e]ach State Party to this Convention undertakes not to take any deliberate measure which might damage directly or indirectly the cultural and natural heritage.” (Aritcle 6). The Convention for the Safeguarding of the Intangible Cultural Heritage adopted by Serbia in 2010 and mentioned in PR 8 as a guiding international convention aims to protect and preserve intangible cultural heritage. Intangible cultural heritage includes “(c) social practices, rituals.” (Definitions, Article 2). The Council of Europe Framework Convention on the Value of Cultural Heritage for Society adopted by Serbia in 2011 and mentioned in PR 8 as a guiding international convention discusses the need to conserve cultural heritage. Conservation “requires the retention of an appropriate visual setting and other relationships that contribute to the cultural significance of the place. New construction, demolition, intrusion or other changes which would adversely affect the setting or relationships are not appropriate.” (Definitions, Article 8).

[297] See Siegfried Wiessner, The Cultural Rights of Indigenous Peoples: Achievements and Continuing Challenges, 22 Eur. J. Int'l L. 121 (2011); Federico Lenzerini, Intangible Cultural Heritage: The Living Culture of Peoples, 22 Eur. J. Int'l L. 101, 102 (2011); Gui Conde e Silva, An Illustration of Substantive Transnational Public Policy in International Arbitration, 13 VJ 275, 289 (2009).

[298] Ministry Letter; Letter to European Parliament; Letter to EBRD 2; Letter to EBRD 3.

PR 10 – Information Disclosure and Stakeholder Engagement

Despite inadequate information disclosure and stakeholder engagement with affected communities, the Bank failed to require additional engagement in violation of PR 10.7

Vreoci and Barosevac continue to lack information about the project, information about how to communicate with EPS, and information about the project`s impacts on the environment and future damage the mine will cause. The lack of effective information disclosure vilates provisions throughout PR10, including 10(12) (mandanting disclosure of details about project activities and "any risk to and potential impacts with regard to environment, public health and safety, and other social impacts on communities, and proposed mitigation plans); 10(13)(requiring disclosure early in the environmental and social appraisal process) and 10(21) (requiring ongoing information disclosure throughout the life of the project)

EPS has violated the requirement in 10(24) to establish a grievance mechanism for the project. For months after the project was approved, neither Barosevac nor Vreoci community people were aware of a grievance mechanism or how it could be accessed.

The lack of consultation and failures of information disclosure and stakeholder engagement with regard to both Vreoci and Barosevac violate EBRD Social and Environmental Policy Safeguards in PR 10. These violations stem from the Project's unjustified exclusion of Vreoci; Bank and EPS efforts to circumvent the elected leadership of the Vreoci community; the ongoing failure to provide sufficient information about a grievance mechanism, the Project, and its impacts to both communities; and finally the failure to engage in meaningful consultation with Project-affected communities.

The responsibility for these violations lies squarely with the Bank. Not only has the Bank actively recommended culturally inappropriate courses of action, the Bank assumes the duty of ensuring compliance through the requirements in PR 10(7), which require that the Bank independently assess the level of information disclosure and consultation conducted by the client and take step to reach compliance with PR 10.

The Bank failed to require inclusion of Vreoci as an affected party in the stakeholder engagement planning process, in violation of PR 10.7.

Although Vreoci faces serious environmental and social harms resulting from the Project, as described in detail above, the community was not included in the Stakeholder Engagement Plan required by PR 10(11), in violation of PR 10(8)'s directive to identify stakeholders who are affected or likely to be affected, whether directly or indirectly.[299]

[299] SEP, Table A.

Vreoci's exclusion is even more shocking, and the Bank's indifference[300] even more reprehensible, in light of this mandate of broad inclusion. As shown exhaustively above by the environmental and social harms imposed on Vreoci by the Project, the community is a directly affected stakeholder, placing it within the scope of PR 10 requirements. By failing to identify EPS's omission of Vreoci from stakeholder engagement plans, and then actively refusing to recognize Vreoci's connection to the Project when urged to do so by the community and civil society, the Bank violated the requirements of PR 10(7).

Communications with EBRD by CEKOR and the Communities

On 5 July 2011, Vreoci residents requested that the EBRD postpone the loan decision until the resettlement dispute is resolved and the 2007 plan was either upheld or until Vreoci was resettled as a complete community.[301] The EBRD did not respond to this letter. On 19 July 2011, CEKOR sent a letter to the EBRD requesting information on: the EBRD's assessment of EPS' behavior towards affected communities, how the EBRD defined the Project's area of influence, and the EBRD's justification for increased coal production in Serbia.[302] This letter also highlighted EPS' use of media and other types of force to move Vreoci out of their land to a place they reject. The EBRD responded on 29 July 2011 stating that the assessment was done through EIAs which were reviewed by independent consultants and the Bank's environmental and social specialists and that EPS has committed to compliance with the EBRD's PRs.[303] The Bank additionally stated that the project's area of influence was determined based on review and analysis of various documents which led the bank to conclude that Vreoci was not an affected community. Finally, the EBRD stated that this project would not increase the amount of coal produced from the Kolubara mining basin and instead that the project would unify the quality of the coal and "to replace other fields in the Kolubara basin which are close to depletion."

Also on 19 July 2011, thirty civil society organizations sent a joint letter to the Bank requesting that it reject the loan based on human rights violations and increased reliance on coal in Serbia.[304] The EBRD did not respond to this letter. On 2 August 2011, CEKOR sent a letter to the EBRD requesting the loan contract signed with EPS, the portions of the EIAs that demonstrate that the new equipment will only be used in field C, and the EBRD's report on its visit and consultation with Barosevac and the response to the letter from Barosevac from 12 July 2011.[305] On 9 September 2011, the EBRD responded that pursuant to its policies, loan agreements are not disclosed and therefore

300 EBRD Response Letter 1 p. 2.
301 Letter to EBRD 1.
302 Letter to EBRD 2.
303 EBRD Response Letter 1.
304 Letter to EBRD 3.
305 Letter to EBRD 4.

the request for the loan was denied.[306] This response did not address the other requests made in the 2nd August letter.

On 25 October 2011, CEKOR sent a letter to the EBRD requesting information on how the bank took recent fraud charges against EPS officials into account prior to approving the loan.[307] On 7 November 2011, EBRD responded that such charges were being dealt with by local officials in an appropriate manner and that the fraudulent charges were deemed to not be connected to the EBRD project.[308]

On 26 January 2012, CEKOR sent a letter to EBRD requesting information on progress with the Stakeholder Engagement Plan, the establishment of community liaisons, progress on grievance mechanisms, and progress on community development programs.[309] On 14 February 2012, EBRD responded by simply stating that EPS informed the EBRD that it hired individuals to implement the stakeholder engagement plan, that it hired a liaison to communicate with the communities, that the public has been informed about the grievance mechanism, and that the community leaders are aware of community development activities.[310] However, throughout the letter, the EBRD references the Manager of the SEP team as the appropriate community point of contact rather than the EBRD.

On 7 February 2012, CEKOR requested specific documents from the EBRD, including inception reports, resettlement action plans, industrial waste management plans, risk assessments for the use of hazardous materials, health and safety risk assessments, and emergency preparedness and response plans.[311] CEKOR did not receive a response until 15 March 2012 when the EBRD sent a short email stating that, "[a]ll of these documents requested are EPS documents, and therefore your request should be directed to EPS."[312] The next day, CEKOR requested information on how the EBRD's due diligence process took the requested documents into account and why other serious problems were not included in the scope of the Project.[313] On 19 March 2012, the EBRD emailed CEKOR stating that the due diligence process involved site visits and document review of EIAs and others, but that the documents requested by CEKOR on 7 February 2012 "are additional items that EBRD has requested RB Kolubara to produce to enable them to implement the project in line with the Bank's environmental and social requirements. These documents are to be produced before the start of project implementation."[314] This demonstrates that EBRD did not in fact review the client's plans to address many social and environmental impacts prior to signing the loan agreement and as of 19 March 2012, still have not reviewed or provided feedback on such plans.

Junkovac I grievance mechanism

306 EBRD Response Letter 2.
307 Letter to EBRD 5.
308 EBRD Response Letter 3.
309 Letter to EBRD 6.
310 EBRD Response Letter 4.
311 Letter to EBRD 7.
312 March Correspondence with EBRD.
313 March Correspondence with EBRD.
314 March Correspondence with EBRD.

Unsuccessful Attempts to Resolve Disputes in Serbia by the Communities

Vreoci citizens sent a letter to the Serbian Ministry for Environment, Mining, and Spatial Planning on 7 July 2011 requesting that the community be relocated in full to "Petka."[315] The Vreoci community also wrote a letter to the European Parliament on 5 August 2011 seeking help to ensure that the project was implemented in a manner that respects the community.[316] Vreoci citizens have also reached out to the Construction Inspection in the Lazarevac municipality, Republic of Serbia public attorney, Ombudsman for information of public interest, the court in Lazarevac, the administrative courts, the constitutional courts of Serbia, and the Kolubara mining company. None of these attempts at addressing the issues have received a response.[317]

We in front of CEKOR are signing this additional information to the complaint on Kolubara Environmental Improvement project on behalf of our organization.

Director: Natasa Djereg

Ђерег Nataša

LIST OF QUOTED COMMUNICATION AND DOCUMENTS/ in zip file

- CEKOR letter to EBRD, request 30.3.2013.doc- Friday, March 20, 2013: Subject: Questions- energy investments in Serbia
- CEKOR letter Kolubara EBRD, 30.3.2012.pdf- Up-date and questions on Kolubara project
- CEKOR letter CO, Kolubara 26.10.2011.doc- 25 October 2011- fraud connected with EPS' operations
- Letter to EBRD 2.pdf- Tuesday, July 19, 2011- LETTER OF INFORMATION REQUEST REGARDING KOLUBARA MINING
- Dopis Cekor EBRD 8 May.doc- 08.05.2013- the impacts of project 27005 "EPS Power II"
- EBRD Response Letter 1.pdf- 29 july 2011
- EBRD Response Letter 2.pdf- 1 September 2011
- Kolubara approved grievance mechanism form.jpeg- 19 july 2013
- EU delegation response.jpeg
- EPS response NO grievance mechanism.jpeg- 30 april 2013
- EPS Kolubara Board Report.pdf
- EBRD Response Letter 4.pdf- 14 february 2012
- March Correspondence with EBRD.pdf- Mar 19, 2012

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[315] Ministry Letter.
[316] Letter to European Parliament.
[317] Letter to European Parliament.

- Letter to EBRD 7.pdf- 07 February 2012, Request for documents regarding Kolubara environmental improvement project
- Letter to EBRD 6.pdf- 26 January 2012, update information on the Kolubara project
- Letter to EBRD 4.pdf- August 02, 2011, REQUEST for contract with EPS and technical details of EIA regarding KOLUBARA MINING

Management Response to a PCM Complaint on Serbia: EPS Emergency Power Sector Reconstruction Loan (17829), EPS Power II (27005) and EPS Kolubara Environmental Improvement Loan (41923).

EBRD has received and reviewed the complaint received in relation to the three projects listed above, which are being implemented and operated by EPS and its subsidiary, the Kolubara Mining Basin. The details of the Bank's response at this time are presented below as input for the Eligibility Assessment. Although the complaint list three projects, the Complainants have chosen to focus on the most recent, the Kolubara Environmental Improvement Project ("the project"). In this response EBRD management has also focused primarily on this project. This is the third PCM complaint received by EBRD to which CEKOR is a party. The first, received in August 2012, also relates to the Kolubara Environmental Improvement Project; it raises many of the same issues as this this latest complaint and is currently undergoing a Compliance Review. The second was received in August 2013, and relates to the EPS Power II project and is currently undergoing an Eligibility Assessment.

Background

EPS is the largest company in Serbia, with around 35,000 employees. It forms the bulk of Serbia's electricity and lignite mining sector and, as such, contributes between 5%-10% of the country's GDP. The activities are extensive, encompassing mining, thermal and hydro power generation and electricity distribution and supply. RB Kolubara ("the Company") is one of 11 EPS subsidiaries, and is responsible for open cast mining in the Kolubara mining basin. The mining basin covers an area of around 1,200 km^2 and is made up of a series of separate fields at different stages of development – exhausted; in production; and yet to be opened [see attached map]. Open cast mining has been carried out in this mining basin since the 1950s. In addition to mining, RB Kolubara provides some local services and amenities such as water supply, district heating and sports and recreational facilities. Both RB Kolubara, and its parent, EPS, are large, complex organisations.

EBRD has financed five projects with EPS and its subsidiaries since 2001. Initially these projects focused on the need to rehabilitate electricity generation and supply after the conflicts in the Balkans. The 2001 project involved the rehabilitation of power transmission and thermal power plants, with most of the loan being used to fund an important environmental improvement project at the Kostolac thermal power plant. This loan did not finance any activities in the Kolubara mining basin. The 2003 loan financed a new control system and new mining equipment for the Tamanava West mine. More recently, EBRD has made targeted investments aimed at improving the environmental performance and long term sustainability of the industry. These investments have involved advanced electricity metering to improve demand-side management (2010), the rehabilitation and expansion of small scale hydro power (in 2011), and the Kolubara Environmental Improvement Project (signed in July 2011).

The Project

While the Complaint mentions all three projects, and the Bank's history of involvement with the client, the specific issues focus on the Kolubara Environmental Improvement Project. This project, which is being financed jointly with KfW, comprises three components:

(1) A coal management system, to be located at the site existing coal storage yard adjacent to the Tamnava West Field.
(2) A coal excavator, conveyor and spreader system for the new open cast mine Field C in the eastern part of the Kolubara Mining Basin; and,
(3) A spreader system for over-burden and inter-burden at the Tamnava West Field open cast mine.

The Project will allow Kolubara to extract coal more efficiently and cleanly. Currently, part of lower quality lignite is dumped together with inter-burden, which is not cost-effective and is wasteful. Moreover, this increases the dumped overburden volume and causes uncontrolled fires on the dump sites and increased Greenhouse Gas emissions.

In the Nikola Tesla A and B power plants (supplied with lignite from the Kolubara fields) the present high variations in the quality of the lignite causes significant operational and hence environmental problems, which this project will address. Low quality lignite has to be supplemented by heavy fuel oil, which is polluting, or if the quality is too low the boiler has to be shut down. Heavy fuel oil is then needed to restart the boiler. Lignite that has too high a calorific value is also a problem as it can melt ash and damage the boilers, and also leads to shut downs (again requiring the use of heavy fuel oil to restart the boilers). EPS estimate that 70% of unplanned outages are caused by coal quality problems.

Once the project is complete, RB Kolubara will supply lignite that is of a more uniform quality. This will allow the power plants to generate in accordance with their design parameters, leading to more stable and efficient operation and controlled uniform emissions. This will result in lower levels of CO_2 and other emissions as well as reduced wear and tear and maintenance costs, and a significant reduction in the use of polluting heavy fuel oil. EPS estimated that providing uniform quality coal to its thermal power plants will add 1.5%-2% to their operating efficiency.

As of November 2013, the Project is still at the detailed design stage (procurement has been completed) and EBRD has disbursed EUR 10.8 m. Land acquisition and resettlement required for Field C is complete and for Tamnava West is complete for mining operations scheduled to 2018. RB Kolubara has begun extracting lignite from Field C using old bucket excavators. This activity is not being financed by the Bank.

The Complaint

The complainants believe that the project was not appraised in compliance with the requirements of the Bank's Environmental and Social Policy and Performance Requirements, and allege that: a) cumulative impacts were not properly assessed; b) the GHG emissions were not correctly calculated; and c) resettlement previously undertaken was not carried out properly and that the area of influence was artificially defined to exclude the resettlement of Vreoci.

Environmental and Social Appraisal

EBRD Management believes that the project was appraised in line with the requirements of the Bank's 2008 Environmental and Social Policy and Performance Requirements. 'The project' is defined as the business activity that EBRD is financing and is subject to environmental and social appraisal. Projects should be structured to comply with the Performance Requirements and the policy allows that data gaps and ex-ante non-compliances can be addressed over time through an Environmental and Social Action Plan (ESAP). The project appraisal takes place "in the context of the area of influence". This means that elements that comprise the area of influence are taken into account during the appraisal process; however, it should not be interpreted that these elements are subject to the Performance Requirements, and it appears that this misunderstanding of the policy wording is behind much of the complaint.

In summary, the environmental and social due diligence comprised the following steps:

- An Initial Environmental and Social Examination was carried out on 15-16 September 2010 by EBRD's environmental specialist. This determined that the project should be categorised "A", requiring an Environmental and Social Impact Assessment.
- RB Kolubara had already prepared Environmental Impact Assessments for Field C and the expansion Tamnava West prior to EBRD's involvement in the Project. Public consultation and most of the land acquisition and resettlement were also completed in accordance with Serbian legislation/ requirements.
- EBRD engaged an Environmental and Social Consultant, Ove Arup & Partners ("Arup") to review the existing documents and processes and carry out a "gap analysis" to identify any additional requirements needed to meet EBRD's Policy and Performance Requirements. Arup also prepared a Non-Technical Summary (NTS), Stakeholder Engagement Plan (SEP) and an Environmental and Social Action Plan (ESAP).
- In preparing these documents, Arup reviewed a number of documents that cover wider aspects of RB Kolubara's mining operations, including the *Strategic Environmental Impact Assessment of the Spatial Plan for the Area of Kolubara Lignite Basin (2008), the Green Book of the Electric Power Industry of Serbia* and *the Spatial Plan of the Exploitation Area of Kolubara Basin.*
- The EIAs, Non-Technical Summary (NTS), Stakeholder Engagement Plan (SEP) and Environmental and Social Action Plan (ESAP) were disclosed on EPS's website in Serbian and English on 2 March 2011 and the EBRD disclosed the project ESIA webpage (http://www.ebrd.com/english/pages/project/eia/41923.shtml), including links to the Client's website at the same time. They were also made available in hard copy by the Client locally and in EBRD's Belgrade office. The Project was approved by EBRD's Board of Directors on 26 July 2011 and signed on 28 July 2011.
- Following Project approval, EBRD's environmental and social specialists have carried out monitoring visits in August 2011, March 2012, September 2012 and September 2013, which is appropriate for a project with this level of complexity. EBRD specialists have also met with the Company (December 2011) to follow up on progress being made on issues it had agreed

to address. The Project is currently at the design and equipment manufacturing stage and implementation on the ground has not yet started. The Company has progressed with implementing the environmental and social commitments in the ESAP. This is generally on schedule, although with some slippage in dates. Recognising that the original ESAP schedule was overly ambitious, EBRD and RB Kolubara agreed to revise some of the dates. The updated ESAP, along with an updated Project Summary Document, was posted on EBRD's website in March 2012.

The 'gap analysis' carried out by ARUP included a detailed assessment of the project against each of the relevant provisions of EBRD's Performance Requirements. Where actual or potential non-compliances were identified, these were rated as *Minor, Moderate* or *Major Risks*. *Minor Risks* were defined as "Issues which result in improvements… [and] do not represent any issues with compliance to national or EU legislation and regulations[1]". *Moderate Risks* were defined as those that are "likely to require measures to be conditional as part of the loan agreement and subsequent monitoring to demonstrate compliance". *Major Risks* were identified as "Clear non-compliance with EU or national legislation" or a "Fundamental non-compliance with EBRD Policy and related standards and guidelines… [that] cannot be resolved through the imposition of conditions". The gap analysis did not identify any *Major Risks.* Issues classified as *Minor* or *Moderate Risks* are being addressed through the ESAP. On this basis EBRD management are satisfied that the project was appraised in line with the Bank's 2008 Environmental and Social Policy and Performance Requirements and is structured to meet those Performance Requirements, and is being monitored through project implementation appropriately through reporting, site visits, and meetings.

The Compliant raises the question of the scope of the appraisal for this project, including cumulative impacts and the question of how the *Area of Influence* was defined. In considering the cumulative impacts and the Area of Influence, Arup found that "Both EIAs identify the scheme location and boundary and consider the areas around the scheme that may be impacted on. Both consider the wider implications of the schemes and refer to the Spatial Plan of the Republic of Serbia with the Field C EIA also referring to several Spatial Plans for the Kolubara Region", "The area of influence for the project includes the direct and indirect impacts that may arise from the construction and operation of the open cast mines at Tamnava West Field and Field C. These include impacts from air pollution, noise, diversion of roads and rivers, water discharge, landscape, habitats and species, buried archaeology and features of cultural heritage importance associated with the excavation of the pits and the operation of the coal mining machinery within the mining fields. It also includes the social impacts associated with the resettlement required for the project" and "Other mining activities will continue within the Kolubara Mining Basin and these will be implemented in accordance with the agreed spatial plan, irrespective of whether a loan agreement is reached. As such they are considered outside of the scope of this project"[2].

Despite not being formally considered part of the Area of Influence of the project, ARUP reviewed extensive documentation, including assessments of the basin-wide and cumulative environmental

[1] *Kolubara Environmental Upgrade Project , Environmental and Social gap Analysis Report, April 2011*

[2] *Kolubara Environmental Upgrade Project , Environmental and Social gap Analysis Report, April 2011*

and social impacts and performance of the Kolubara basin. A list of this documentation is included at Annex A. EBRD management therefore rejects the suggestion that the project appraisal was too narrow.

The Complaint quotes clauses (i) to (v) of the definition of area of influence and uses this to suggest that the whole of the Kolubara basin should be subject to EBRRD Performance Requirements. The Complaint does not quote clause (vi) which says that "The area of influence does not include potential impacts that would occur without the project or independently of the project". The issue of the relocation of the cemetery and the resettlement of households in Vreoci falls within this provision as they are happening as result of other Kolubara activities unconnected and occurring regardless of the investments at Field C and Tamnava West. This is evidenced by the fact that relocation of the Vreoci cemetery has been completed and mining at that location has started from Field D, while the EBRD-financed project is still at the preparatory stage. Despite this, as described above EBRD has taken reasonable steps to appraise issues in Vreoci and will continue to encourage the company to be proactive in engaging with local people and to implement the resettlement both in line with national legislation and good practice standards.

Also in the relation to the scope of appraisal, EPS agreed to commission independent environmental audits of each of its subsidiary companies, including the Kolubara mining company. This work was carried by independent environmental consultants, Tekon/Dekonta, in 2011 and the results were presented to EBRD in March 2012. This was an extensive and detailed piece of work, with the final reports running to around 2,000 pages. The reports include recommended action plans and some of these actions will require considerable capital expenditure to implement (in excess of several hundred million Euros in the case of thermal power plant upgrades) and take a significant period of time. These action plans have been adopted by the management of each of EPS's subsidiaries and EPS plans to conduct a follow up audit in 2014 to review progress in implementing them.

The Complaint suggests that a Strategic Environmental Assessment (SEA) should have been carried out for the Kolubara basin. In fact an SEA was produced for the Serbian Government in 2008 and was reviewed by EBRD and Arup as part of the appraisal of the Project. EBRD can provide CEKOR with a copy of this SEA if they have not seen it. There is no specific requirement for SEA in the 2008 Environmental and Social Policy. If one is available and relates to a proposed project, it should be reviewed during due diligence, as was done in the case of this project.

EBRD's Approach to the Energy Sector in Serbia

The Complaint states that EBRD's investments with EPS are "limiting investment opportunities in more sustainable and climate friendly developments". It is not explained why this would be the case and does not acknowledge that of the five EBRD projects with EPS, one involved a substantial environmental improvement component, one is for smart-metering to improve demand side management, one involves the rehabilitation and expansion of 22 small and medium hydro-power facilities, and one is intended to improve energy efficiency at existing thermal power plants. It should be noted that Serbia already produces 23% of primary energy from renewable sources, a figure that should increase to 29% by 2020, based on the commitment to meet the targets adopted under the EU Renewables Directive, which Serbia has committed to.

Since 2009 EBRD has invested almost €600 million in Serbia under the Bank's Sustainable Energy Initiative. EBRD's draft Strategy for Serbia will be available for public comment in December 2013 and will set out in more detail the Bank's proposed involvement with the energy sector in Serbia. Developing renewable energy and promoting improved energy efficiency form the core of the Bank's strategic orientation in the energy sector in the next strategy period.

On the question of potential EBRD finance for the Kolubara B thermal power project, it can be re-confirmed that the Bank is not actively considering this project. While any developer of new coal-fired power capacity in Serbia would want to source a consistent quality of coal, the coal management project is not in itself a sufficient pre-condition to justify any new investment. It is also the case that the financial and environment benefits of the Project for EPS's existing generating capacity are sufficient to justify the cost of the Kolubara Environmental Improvement Project.

Regarding the potential future use of equipment, it is of course possible that the equipment will be used by the company at another of its sites once the Tamanava West and Field C are exhausted. Alternatively the equipment could be sold to another operator at another site. At this stage, we have no information on this potential future use in 15 years, and see no way of meaningfully trying to appraise the future impacts. It is, however, the case that any such use would be subject to relevant legislation in place at that time, which in Serbia, is likely to be further aligned with EU standards.

GHG Emissions

The Complaint makes the allegation that greenhouse gas reductions were not properly calculated for this project. The GHG impact of the project was estimated using the Bank's established methodology. The methodology has been extensively peer reviewed and is in the public domain. This methodology aims to estimate the impact of the Bank's investment by comparing the pre-investment situation with expected emissions once the project is complete and operational. In this case, the Project will undoubtedly lead to a reduction in emissions through more efficient combustion at the power plants. The introduction of new mining equipment will also lead to more efficient operations and further GHG saving versus the existing equipment, but these benefits are relatively minor and their exclusion from the assessment adds to the conservativeness of the calculations.

The net GHG reductions were estimated by EBRD's technical experts at 200,000 tonnes per year. The Government of Serbia included the Project in a report on the Green Economy presented at the UN Rio+20 conference in 2012.[3] This report estimated the GHG reduction as a result of the Project at 555,350 tonnes per year, again suggesting the EBRD has been conservative in its estimation. The report also cited SO2 emission reductions of 3,648 t/yr, NO2 emissions reductions of 21,370 t/yr and a 3% or 885,000 t/yr reduction in ash and slag quantities. Financial savings in the power generation and mining companies are estimated at €36.7 million annually.

[3] *Study on Achievements and Perspectives towards a Green Economy and Sustainable Growth in Serbia*

On a related point, the Complaint also suggests that the Project will lead to increased coal production. This actually not expected to be the case as Field C will substitute for Field B at roughly the same production level. Overall coal production at the mines is driven by demand from the power plants. This demand has not changed recently and is not expected to change in the near future. The figures cited by CEKOR projection that were predicated on new generating capacity coming on line in 2013[4]. This has not happened, no new thermal capacity is imminent, and any future new generating capacity would most likely be balanced out by the decommissioning of older units.

Social Impacts

The Complaint makes various allegations about social impacts in the villages of Vreoci and Barosevac, some of which were not related to EBRD's investments but rather to other EPS's activities. During the disclosure period prior to Board approval, EBRD staff and Board members received letters from the Council of the Local Community of Vreoci and from CEKOR, a Serbian NGO. These raised issues about resettlement in Vreoci and the relocation of a local cemetery, both of which were planned to enable the expansion of a mine, Field D, which is adjacent to the town. The issue of pollution from the coal processing plant in Vreoci was also raised. EBRD responded that it did not regard the impacts on Vreoci to be part of the scope of the EBRD Project, but that it would investigate the issues and facilitate a discussion between the Company and the local groups. The Bank engaged independent Serbian social consultants, Link011, to manage this process and prepare a report. A public meeting was held in Vreoci on 24 August 2011, attended by 11 local people (plus EBRD staff and consultants and EPS representatives). This meeting was followed by a visit to the cemetery and to a waste water settling pond. The Consultants' report was shared with the groups who attended the meeting. The Consultants' overall conclusions were that it was difficult to untangle genuine grievances from attempts to advance personal agendas and that EPS was operating in line with Serbia legal requirements, but that communication and engagement with the local community could be improved. We continue to encourage the company to be open and proactive in its engagement with affected people, and we understand that the relationship between the company and the Vreoci village council has much improved since 2012.

In Barosevac, the resettlement was reviewed by independent consultants, who found that it has been carried out in line with EBRD Performance Requirements. An agreement has been reached between the company, the village council and the municipality for investments by Kolubara in the village, including new roads, upgrades to the water supply and sewage system, a new school and sport facilities. Local people were also involved in the choice of the design and location of the new cemetery. The village is close to the boundary of the mine and this has been the case for many years, although the direction of mining is now further away from Barosevac. Analysis carried out by EPS suggests that the air quality in Barosevac will not be materially affected by the Project at Field C. The introduction of new equipment will reduce noise and dust compared the current machinery. The company has also committed to carrying out annual health checks for the people in Barosevac.

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[4] See the *Strategic Environmental Impact Assessment of the Spatial Plan of Kolubara Mining Basin Area*, *1.2.2 Scenario 'B': Development of the area in case that the Spatial Plan is implemented*

CEKOR notified EBRD of one resettlement case involving the Simic family's request for additional compensation. EBRD offered to meet CEKOR to discuss the issue but it was then lodged as a PCM complaint by CEKOR before this meeting could take place. The eligibility assessment for this complaint is currently on-going.

Communication with CEKOR

Contrary to suggestions in the Complaint, EBRD staff have replied to all correspondence received from CEKOR and other civil society groups and individuals, as required by the Bank's Public Information Policy. The Complaint refers to a letter from CEKOR regarding the Junkovac landslide and claims that EBRD did not respond. CEKOR has now confirmed that this letter was never actually sent to EBRD. CEKOR then submitted the letter on 13 October 2013 and EBRD replied on 4 November 2013, within the 20 working day time period allowed by the Public Information Policy.

EBRD staff and management have also met with CEKOR representatives on a number of occasions to discuss the various EPS and Kolubara projects, and we would very much hope to move forward with a constructive and positive dialogue. The filing of multiple complaints, however, makes it more difficult to communicate, as most of the issues they wish to discuss have been included in complaints, and therefore are under investigation. We therefore rely on advice from the PCM Officer with every letter or communication from/to the Complainant.

Desired Outcomes

The Complaint includes three 'Desired Outcomes' that can be summarised as: (a) a request for a new appraisal of the Kolubara Mining Basin; (b) a commitment for a comprehensive appraisal of the Kolubara B project, if EBRD were to proceed with financing; and (c) (i) policy guidance on the use of SEA and (ii) align of the Bank's GHG Methodology with CEKOR's suggested approach.

Management Responses

EBRD Management's response to each of the above Desired Outcomes is as follows:

(a) Management believes that EBRD has taken all reasonable steps and actions to appraise the project in compliance with its Environmental and Social Policy and Performance Requirements, including in the context of the EPS and Kolubara wider on-going activities.

(b) EBRD is currently not actively considering Kolubara B for financing. If the Bank were to consider this project in the future, it would be subject to the relevant Performance Requirements and the provisions for coal fired power as set out in the EBRD draft Energy Strategy (subject to its approval by the Board of Directors).

(c) (i) Management notes that the current Environmental and Social Policy does not place any obligation on EBRD or its clients to undertake strategic assessments. Strategic (environmental) assessments are undertaken of policies, plans or programmes and are, therefore, a tool for national or regional authorities. The Bank may, through its policy dialogue with such authorities, support preparation of strategic assessments where they support the Environmental and Social Appraisal of the Bank's projects, especially when there is a significant concern for the potential cumulative impact of a number of similar projects in the same geographical area. The Bank also takes into consideration existing strategic

assessments, when available, in its project-specific Environmental and Social Appraisal, as the Bank did in its appraisal of Kolubara Environmental Improvement Project.
(ii) EBRD's Greenhouse Gas Accounting Methodology will be revised in the context of the current review of EBRD's Environmental and Social Policy, with the aim of providing additional clarity and reflecting the requirements of the *International Financial Institution Framework for a Harmonised Approach to Greenhouse Gas Accounting, agreed in January 2013*. EBRD will provide CEKOR with a copy of the revised *Methodology* once it is available.

Annex A: Documents reviewed by Arup during the environmental and social appraisal[5]

1. Institute for the protection of heritage (2010) Asleep in Time - Rescue of archaeological excavations on RB Kolubara.

2. Ministry of Agriculture, forestry and water management (2008) Decision on issuance of water management requirements

3. The institute for nature conservation of Serbia (2008) Environmental and nature conservation requirements for development of the study of environmental impact assessment of coal exploitation in the open pit mine "Tamnava west Field"

4. Institute for the protection of Cultural Monuments of Serbia (April 2009) Requirements for development of Environmental Impact assessment Study

5. Institute for the protection of Cultural Monuments of Serbia (Sep 2009) Requirements for development of Environmental Impact assessment Study

6. Public water management enterprise (2008) Opinion for issuance of water management requirements for defence of open pit mine Tamnava West Field against surface and ground water

7. Nature preservation office (Dec 2008) Nature preservation and environmental protection conditions for environmental impact assessment development for coal mining on OCM field C with dump site "Istocna Kipa" excavation

8. Approach to relocation of the settlement and displacement of infrastructure systems from the zone of mining operations in Kolubara mining basin - Expropriation procedures and basic relocation information about "Tamnava - West Field and Field C"

9. Republic of Serbia: Ministry of Environment and Spacial Planning (Dec 2009) Approval for Field C

10. Republic of Serbia: Ministry of Environment and Spacial Planning (Jan 2010) Approval for Tamnava West mine

11. Official Gazette of the republic of Serbia No. 135/2004 (2004) Law on Environmental Impact Assessment

12. Arup (Oct 2010) Serbia: Capacity development for occupational health and safety management in Elektroprevreda Srbije

13. MBEG (Feb 2009) Final Design for the Introduction of the system for operational management and coal quality control on Tamnava open pit mines

14. Electrical Power Industry of Serbia (2008?d) Environment Impact Assessment Study of the project: "Supplementary Mining Design "Tamnava West Field"

15. HPC Harress Pickle Consult. LDK Consultants (2002) Environmental Impact Assessment Study for open cast mine "Tamnava West Filed" European Agency for Reconstruction CARDS FRAMEWORK CONTRACT

16. Electrical Power Industry of Serbia (2008) Strategic Environment Impact Assessment of the spatial plan of Kolubara mining basin area

[5] Kolubara Environmental Upgrade Project , Environmental and Social gap Analysis Report, April 2011

17. Electric Power Industry of Serbia (2009) Environmental Impact Assessment Study for the project: "Coal exploitation in the open cast mine "Field C", For the capacity of 5 mil. Tons annually, with the excavation of the east dump site "Istocna Kipa"

18. Nuclear Science Institute „Vinca‟ (oct 2010) IMPACT ASSESSMENT STUDY OF COAL HOMOGENISATION ON TPP (TENT) OPERATION TECHNOLOGY EFFICIENCY AND THE ENVIRONMENT Laboratory for Heating and Air Conditioning and Energy

19. "Rudarski institute Zemun (Nov 2008) EPS II Power II – Tamnava West Lignite Mine –Consulting Services for Lender's Environmental Engineer Inception report

20. Rudarski institut Zemun (March 2009) EPS II Power II – Tamnava West Lignite Mine – Consulting Services for Lender's Environmental Engineer Joined I and II Quarterly Report

21. Rudarski institut Zemun (June 2009) EPS II Power II – Tamnava West Lignite Mine – Consulting Services for Lender's Environmental Engineer III Quarterly Report

22. Rudarski institut Zemun (Sep 2009) EPS II Power II – Tamnava West Lignite Mine – Consulting Services for Lender's Environmental Engineer VI Quarterly Report

23. Rudarski institut Zemun (Dec 2009) EPS II Power II – Tamnava West Lignite Mine – Consulting Services for Lender's Environmental Engineer V Quarterly Report

24. The decision on the scope and content of the EIA study – Filed C

25. The decision on the scope and content of the EIA study - Tamnava West Field

26. Waste Management Plan for PD RB Kolubara, Branch “Open pit mines”.

Map of the Kolubara Mining Basin