

EMS Electricity Network Upgrading

Complaint SG/E/2014/09

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

CONCLUSIONS REPORT

25 June 2018

Prepared by

Complaints Mechanism:

Valentina Stoeva
Complaints Officer

Roberto Rando
Senior Complaints Officer

Sonja Derkum
Head of EIB Complaints Mechanism

External Distribution

Complainant
Project Promoter: EMS (Electromreza Srbije)

Internal Distribution

Secretary General
Inspector General
Relevant EIB departments

The EIB Complaints Mechanism

The EIB Complaints Mechanism intends to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases whereby the public feels that the EIB Group did something wrong, i.e. if they consider that the EIB Group committed an act of maladministration. When exercising the right to lodge a complaint against the EIB Group, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) - and one external – the European Ombudsman (EO).

Complainants that are not satisfied with the EIB-CM's reply have the opportunity to submit a confirmatory complaint within 15 days of the receipt of that reply. In addition, complainants who are not satisfied with the outcome of the procedure before the EIB-CM and who do not wish to make a confirmatory complaint have the right to lodge a complaint of maladministration against the EIB Group with the European Ombudsman.

The EO was “created” by the Maastricht Treaty of 1992 as an EU institution to which any EU citizen or entity may appeal to investigate any EU institution or body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as set by the European Ombudsman, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group activities and to project cycle related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism intends to not only address non-compliance by the EIB Group to its policies and procedures but to endeavour to solve the problem(s) raised by complainants such as those regarding the implementation of projects.

For further and more detailed information regarding the EIB Complaints Mechanism please visit our website: <http://www.eib.org/about/cr/governance/complaints/index.htm>

Table of Contents

EXECUTIVE SUMMARY..... 5

1. THE COMPLAINT..... 6

2. BACKGROUND INFORMATION 7

3. APPLICABLE REGULATORY FRAMEWORK..... 8

4. THE INQUIRY OF THE EIB-CM.....12

5. FINDINGS.....13

6. CONCLUSIONS AND RECOMMENDATIONS.....16

7. ANNEX 17

CONCLUSIONS REPORT

EXECUTIVE SUMMARY

In September 2014, the European Investment Bank's Complaints Mechanism (EIB-CM) received a complaint raising issues concerning the EMS Electricity Network Upgrading project in Serbia. Specifically, the complainant alleged that there were irregularities with respect to two 400 kV lines connecting a new substation Beograd 20 to an already existing 400 kV line Belgrade 8 – Pančevo 2. The complainant made allegations related to the relevant transmission line connection passing in close proximity to a school, kindergartens and housing areas. He alleged that the project's planning did not take account of the proximity, that the public was not consulted and that the construction works were taking place in disregard of the lives and health of the local people.

In order to assess the allegations received, the EIB-CM was in communication with the EIB services involved in the project and carried out a stakeholder engagement and fact-finding mission to Belgrade. The EIB-CM also reviewed different project documents, under which all disbursements of the loan were made conditional on the promoter submitting to the Bank all environmental impact studies and approvals, also covering any new related 400 kV overhead lines. The EIB-CM also reviewed a decision by the Serbian Ombudsman of 12 November 2014 in which it is recommended that the Serbian authorities reassess the transmission line's influence on the environment. The EIB-CM was also informed that the complainant and a group of Serbian citizens had brought a case before the European Court of Human Rights, registered under no. 14901/15, in which they in substance complained that they had not been able to take part in the process leading to the approval of the construction of the transmission line.

Based on all the information gathered, the EIB-CM reviewed the complainant's allegations and found that the environmental impact study pertaining to the connecting lines of Beograd 20 substation was requested and received by the Bank only after disbursement had been made towards that component.

Based on the above and in view of the seriousness of the interests at stake, and in particular with regard to any adverse impacts that the connecting lines to substation Beograd 20 may albeit potentially have on the health of the complainant and other affected people, the EIB-CM recommends that as a precautionary measure in the particular circumstances of the present complaint, the relevant EIB services obtain from the promoter, as part of the monitoring of the project, the relevant measurements of EMF and monitor the results in the light of the standards referred to in §§ 3.3.5, 3.4 and 3.5 of this Report.

Furthermore, the EIB-CM recommends that the EIB services concerned monitor the outcome of case no. 14901/15 before the European Court of Human Rights and take note of any subsequent result.

The EIB-CM will monitor the implementation of its recommendations within 12 months from the issuance of this Report.

CONCLUSIONS REPORT

EMS Electricity Network Upgrading

Complainant

Subject of complaint:

Lack of effective public consultation. Negative environmental (health) impact of the project.

1. THE COMPLAINT

1.1 On 21 September 2014 “the complainant” lodged a complaint with the EIB Complaints Mechanism (“EIB-CM”) by e-mail whereby he stated that he is a representative of a group of inhabitants of the Belgrade settlements of Ritopek, Leštane and Vinča.

1.2 According to the Complainant, EMS (“Electromreza Srbije”, “the promoter”) had provided the EIB with outdated project documentation. In this regard the complainant referred to the planning document for the construction of electric substation ‘Belgrade 20’, as well as the connection to the 400 kV ‘Belgrade 8 – Pančevo 2’ transmission line. The complainant argued that those documents had been created in 1987 and recorded the state of the field and the cadastral process back at the time.

1.3 The complainant submitted that the 1987 documents did not correspond to the actual situation on the ground at the time of the complaint. In particular, the transmission line connection would now pass only 49m away from the public primary school ‘Nikola Tesla’ in the suburb of Vinča (2500 students, built in 1989); it would also pass near kindergarten ‘Lane’ in Vinča (over 400 children up to 6 years of age, built in 1989) and over the roofs of more than 240 houses and other buildings.

1.4 The complainant claimed that EMS was performing the construction works forcibly and with assistance of the police, regardless of the lives and health of the people, including children and against a background of strong opposition from citizens, who had approached the Serbian authorities, as well as the European Commission, the UN and UNICEF.

1.5. The complainant called for the connection to the ‘Belgrade 8 – Pančevo 2’ transmission line to be relocated away from the school, kindergarten and houses. He also called for the relocation and building process to be transparent and to include the public participation of stakeholders, as well as the process to be directly supervised by the EIB and the European Commission.

1.6. The complainant sent additional documents related to his complaints on several occasions by e-mail (22 December 2014, 29 April 2015, 25 June 2015, 13 July 2015, 8 March 2016). In this correspondence he reiterated his complaints and stated that the construction of the connection to the ‘Belgrade 8 – Pančevo 2’ transmission line was contrary to the “International Convention of Human Rights” and the Aarhus Convention and that he and the citizens were not seeking to stop the project, but to have it relocated. The complainant stated that the 400/110kV transmission line connection was not separate and isolated project because it

served the power substation Belgrade 20. The complainant further submitted that all decisions had been made and all administrative documents prepared without any knowledge and without any public involvement of citizens. In addition, the Complainant challenged the Impact Assessment Study, covering the related 400 kV overhead line with its connection to substation Beograd 20, produced and approved in 2010, in particular because the study had concluded, only in a few sentences, that the project presented no danger to the environment and to human life and health. The complainant further questioned how the Bank could approve a loan without an assessment study of the impact on the environment conducted by any genuine and registered medical/biological institution.

1.7 In an e-mail of 29 April 2015 the complainant stated that the Serbian Ministry of Agriculture and Environmental Protection had ignored the recommendations made in a decision of the Serbian Ombudsman concerning the contested project as well as those issued by the Committee for the Protection of Children's Rights of the National Assembly of the Republic of Serbia. In addition, he informed the EIB-CM that a case had been submitted to the European Court of Human Rights. In this message, the complainant also waived confidentiality and stated that the whole process related to the complaint should be completely public. In an e-mail of 25 June 2015 the complainant reiterated his wish for the complaint to be treated publicly.

2. BACKGROUND INFORMATION

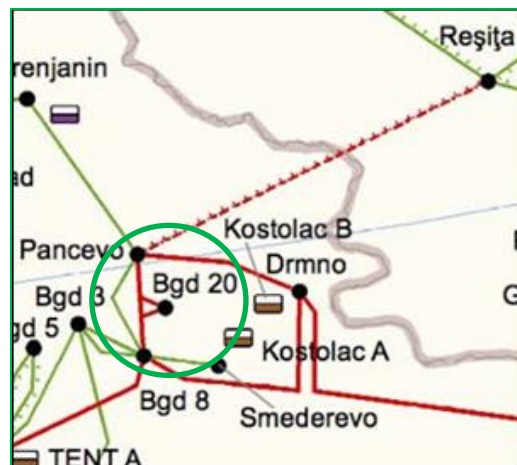
2.1. The Project

2.1.1 The project concerned by the complaint is EMS Electricity Network Upgrading. This project consists of the design, supply, construction, testing, commissioning and operation of ten power substations, either in the form of rehabilitation, extension or new construction. The borrower, promoter and financial beneficiary of the project is JP Elektromreza Srbije (EMS), Serbia's national high-voltage grid and transmission system operator, which is a limited liability company created in 2005 and fully owned by the Republic of Serbia.

2.1.2 The financing of the original project was approved by the EIB Board of Directors on 7 May 2008 and the finance contract was signed on 12 June 2009. The contract was subsequently modified by an agreement of both parties in July 2013. The modification concerned the amendment of the technical description to enable the use of the balance of the EIB project loan for the purchase of the control and protection systems (software, hardware and associated cubicles) of five substations, among which the 400/110 kV Beograd 20 substation.

2.1.3 The loan granted to the project in 2008 amounted to 24.5 MEUR, of which 1.8 MEUR was later allocated to the purchase of the control and protection system of the Beograd 20 substation; neither the construction works nor the primary equipment of this substation (high voltage measurement transformers, high voltage circuit-breakers and power transformers) were financed by the EIB.

2.1.4 The present complaint concerns the two 400 kV lines connecting the new substation Beograd 20 (hereafter the connecting lines) to the already existing 400 kV line Belgrade 8 – Pančevo 2. The connecting lines consist of two single circuit, 8.5-km long overhead lines running in parallel. The location of the two connecting lines is schematically indicated in the green circle in picture 1.



Picture 1

The connecting lines fall under the definition of facilities associated to Beograd 20 substation. No EIB funds were allocated to these connecting lines.

2.1.5 Substation Beograd 20 and its connecting lines are in operation since October 2015 according to the report submitted by the promoter to the Bank on 5 July 2017.

2.1.6 At present, the EIB loan for the project is fully disbursed.

2.2. Other actions undertaken by the complainant relevant to the present complaint

2.2.1 The complainant and other people affected by the connecting lines complained to the Serbian Ombudsman, raising issues concerning the construction of the power transmission line. In a decision of 12 November 2014 the Serbian Ombudsman found that the inhabitants were not adequately informed about the environmental impact of the envisaged transmission line route. The Serbian Ombudsman further found that it was inappropriate and to the detriment of the inhabitants' rights to continue with the construction of the transmission line on the basis of the old urban plan without taking into account that the situation had changed during the last thirty years, and that there was reasonable concern that the power line would adversely affect the environment and the health of the inhabitants. In his decision the Serbian Ombudsman questioned the legitimacy and the fairness of the implemented environmental impact assessment, even though all legal requirements may have been met. The decision noted the lack of any opinion expressed by the public during the environmental assessment stage of the project and the existing public opposition to it. The Serbian Ombudsman stated that the public interest had not been fully considered and that the fear of the inhabitants and their protest were justified.

2.2.2 The Serbian Ombudsman issued a non-binding recommendation to the Serbian administrative authorities urging them to reassess the transmission line's influence on the environment, taking into account the actual situation on the ground, fully informing the public and allowing all interested citizens to participate. The Serbian Ombudsman further recommended that if the authorities found that negative influences may occur, they should, with the involvement of the interested citizens, discuss an acceptable solution such as re-routing the transmission line or moving the settlements and facilities to another location.

2.2.3 It transpires from the documentation and information available to the EIB that no actions on the part of the promoter or the Serbian authorities have been undertaken as a follow-up to the Serbian Ombudsman's decision.

2.2.4 In 2015, after having unsuccessfully brought proceedings before the Serbian Constitutional Court, the complainant, together with 15 other applicants, lodged an application with the European Court of Human Rights complaining in substance that they had not been able to take part in the process leading to the

approval of the construction of the power transmission line. In his application, the complainant reiterated that he and the applicants he was representing had not been informed of that process although the construction could put their health and that of their families at great risk. The application was registered under no. 14901/15 and was communicated to the Serbian government on 20 October 2015. The proceedings before the European Court of Human Rights were still pending as of March 2018.

3. APPLICABLE REGULATORY FRAMEWORK

3.1 The Scope of the EIB-CM

3.1.1 The EIB Complaints Mechanism applies to complaints of maladministration lodged against the EIB Group (Article 4.1 of Title II “Principles” of the EIB Complaints Mechanism Principles, Terms of Reference and Rule of Procedure - CMPTR). Complaints may concern any alleged maladministration of the EIB Group in its actions and/or omissions (Article 4.1 of Title IV “Rules of Procedure” of the EIB CMPTR).

3.1.2 Maladministration occurs “when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights.” (Article 1.2 Principles of the EIB CMPTR).

3.2 EIB standards

3.2.1 The 2009 EIB Statement of Environmental and Social Principles and Standards (hereinafter, the Statement) sets forth the EIB’s policies, principles and standards with regard to environmental and social matters. The Preamble of the Statement provides that the EIB requires that the projects it is financing are acceptable in environmental and social terms by applying appropriate safeguards to all its operations (§1). Pursuant to §2 of the Preamble the promoters are responsible for fulfilment of the Bank’s requirements, while under §6 of the Preamble the EIB will not finance projects that do not meet its environmental and social requirements as described in the Statement. This includes projects that do not comply with appropriate national and EU environmental and social legislation in force at the time and projects which result in a violation of human rights. In line with §8 of the Preamble, the EIB monitors the environmental and social performance of the projects it is financing, especially the fulfilment of any specific obligations described in the Finance contract. Finally, pursuant to §9 of the Preamble, a breach of contract and/or poor project performance in other respects requires corrective action by the promoter, in agreement with the Bank.

3.2.2 §36 of the Statement specifically provides that for projects that it finances in the EU and in enlargement countries the EIB requires that they comply at least with applicable national environmental law, applicable EU environmental law and the principles and standards of relevant international environmental conventions incorporated into EU law. §63 of the Statement provides that outside of the EU, national law sets the minimum disclosure, consultation and participation requirements of the Bank.

3.2.3 The 2010 EIB Environmental and Social Practices Handbook translates the environmental and social principles and standards of the Statement into the operational practices followed by the EIB. §101, Part C of the Handbook prescribes that the Projects Directorate (PJ) establishes whether an environmental impact assessment (EIA) is needed and ensures that the promoter is fully aware of its obligations in this regard; where an EIA is required the Projects Directorate is also responsible for confirming the boundary of the project and the area of influence covered by the EIA and that this is in line with the EIA Directive, as well as confirms that the main stages of the EIA are complete and documented (screening, scoping, studies, public consultation, planning consent/authorisation, and public informed of decision); the Directorate reviews the environmental substance of the project using EIA documents and additional studies or where an EIA is not required, or is not yet completed, whatever sources of information are available, including appropriate site

visits, if practicable; the Directorate further determines what if any issues have been, or are being raised by stakeholders and how these are being dealt with in the project design, implementation and operation (Section C.9 of the Handbook).

3.2.4 Section C.4 of the Handbook prescribes that in order to judge the quality of the EIA for EIB purposes, PJ should take into account whether the following aspects have been adequately covered, which among others includes a description of the physical characteristics of the whole project and the land-use requirements during construction and operational phases; an outline of the main alternatives studies by the promoter and an indication of the main reasons for this choice, taking into account the environmental and associated social effects; a description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, the population; a summary of the public consultation carried out including a description of the process and the stakeholders that participated and the concerns raised and public disclosure, notably “how was this done and when”, “how were stakeholders informed about the consultation process”.

3.2.5 Section D of the Handbook prescribes the monitoring obligations of the Bank during the implementation and operation of projects. §260 provides that “[c]lose follow up of environmental and social actions that are required as part of the Finance Contract (in particular those related to disbursement conditions) is essential, since it is at this stage that the EIB can have most impact in ensuring that any outstanding environmental and social issues are thoroughly and correctly followed by the promoter, in compliance with the Bank’s requirements.” Furthermore, §261 requires that the promoter provide during project implementation evidence to the Bank that among others any specific environmental and social conditions/undertakings have been fulfilled; regular promoter progress reports (PPRs) including general and specific information requested such as results of environmental/social monitoring; information to the Bank in case of any complaints or litigation about environmental and/or social issues, even if not addressed to the Bank; at completion, a report on environmental/social legal compliance and implementation of proposed mitigation/compensation measures. Under §264 it is required that: “[e]nvironmental and social aspects of the project should be summarised when the EIB Project Completion Report is completed. The environmental and social section should summarise due diligence issues such as compliance with environmental and social covenants and reporting requirements, completion of mitigation measures and their success or otherwise and should in addition, where required, add further information to focus on aspects important for the EIB internal learning process.”

3.3 EU and International Law

3.3.1 Directive 2011/92/EU (the EIA Directive) on the assessment of the effects of certain public and private projects on the environment applies to “the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment” (Article 1.1). In contrast to the type of projects listed in Annex 1 of the directive and which are explicitly subject to an EIA, Member States shall determine for projects listed in Annex II “ [...] whether the project shall be made subject to an assessment [...]. Member States shall make that determination through: (a) a case-by-case examination; or (b) thresholds or criteria set by the Member State. Member States may decide to apply both procedures referred to in points (a) and (b).”

3.3.2 Article 4.3 establishes that “Where a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account”. These criteria include the characteristics of the project, with determining factors such as the size of the project or pollution and nuisances (Annex III, Article 1). Further criteria are the location of the project, which includes the consideration of factors such as the existing and approved land use and densely populated areas (Annex III, Article 2), as well as the type and characteristics of the potential impact (Annex III, Article 3).

3.3.3 In addition to the EIA Directive, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention), to which the EU and Serbia are party, aims to guarantee access to documents, public participation as well as justice in environmental matters. In particular, the Convention stipulates that *“Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention”* (Article 3).

3.3.4 Furthermore, the Aarhus Convention specifically provides that there shall be public participation in decisions concerning specific activities which may have a significant effect on the environment and that the public concerned shall be informed early in an environmental decision-making procedure, and in an adequate, timely and effective manner *inter alia* of the opportunity for the public to participate in the envisaged procedure (Article 6).

3.3.5 Council Recommendation 1999/519/EC¹ specifies the recommended limitation of exposure of the general public to electromagnetic fields (EMF)² and provides general principles and methods for the protection of members of the public. Under Annex II of the Recommendation, depending on frequency, physical quantities are used to specify the basic restrictions on electromagnetic fields. Further basic restrictions are set so as to account for uncertainties related to individual sensitivities, environmental conditions, and for the fact that the age and health status of members of the public vary. The Council Recommendation provides that *“the framework should be regularly reviewed and reassessed in the light of new knowledge and applications of sources and practices giving rise to exposure to electromagnetic fields;”* According to the Bank’s operational services the limits for residential exposures to low-frequency electrical and magnetic fields, which are relevant for this complaint, set out in Council Recommendation are 5 kV/m and 100µT, respectively.

3.4 Serbian Law

3.4.1 Article 74 of the Constitution of Serbia provides that everyone has the right to a healthy environment and the right to timely and complete information about the state of the environment.

3.4.2 Section 9 of the 2004 Environmental Protection Act (EPA) requires that every activity be planned and implemented in a way that causes the least possible change in the environment and poses the smallest risk to the environment and human health. In addition, section 78 of the EPA prescribes the obligation of state authorities to provide regular, timely, complete and objective information to the public regarding the state of the environment.

3.4.3 Section 3 of the 2009 Protection from Non-Ionizing Radiation Act provides that, in accordance with the principle of proportionality, the conditions and lawfulness of the use of non-ionizing radiation sources of particular interest are determined and assessed in the light of the benefit for society in comparison with the potential risks of adverse effect and taking into account the level and duration of exposure of the population in a particular case, the age and health structure of the potentially exposed population and the manner, time and place of the use of the source in question. According to the Bank’s operational services the limits to residential exposures to low-frequency electrical and magnetic fields, which are relevant for this complaint, set out in the Serbian Act are 2 kV/m and 40µT, respectively.

¹ A recommendation is not binding. It allows the institutions to make their views known and to suggest a line of action without imposing any legal obligation on those to whom it is addressed.

² For the purpose of Council Recommendation 199/519/EC the term EMF includes static fields, extremely low frequency (ELF) fields and radiofrequency (RF) fields, including microwaves, encompassing the frequency range of 0 Hz to 300 GHz.

3.5. World Health Organisation (WHO) standards³

3.5.1. With respect to extremely low frequency fields and electromagnetic fields (ELF EMF) the WHO encourages its Member States to establish effective and open communication programmes with all stakeholders to enable informed decision-making. In particular, the WHO recommends that measures include improving coordination and consultation among industry, local government and citizens in the planning process of ELF EMF-emitting facilities.⁴ In terms of possible adverse health effects related to exposure to electromagnetic fields, the WHO notes that there are no accepted biophysical mechanisms that would suggest that low-level exposures are involved in cancer development and that further regarding long-term effects, given the weakness of the evidence for a link between exposure to ELF magnetic fields and childhood leukaemia, the benefits of exposure reduction on health are unclear.⁵

3.5.2 The exposure limits for EMF fields developed by the International Commission on Non-ionizing Radiation Protection (ICNIRP) - a non-governmental organization, are recognised by the WHO. The main conclusion from the WHO reviews is that EMF exposures below the limits recommended in the ICNIRP international guidelines do not appear to have any known consequence on health.⁶ In particular, the ICNIRP assessment points out that evidence for cancer in adults from low frequency exposure is very weak and that there is no substantial scientific evidence for an association between low frequency exposure and Parkinson's disease, multiple sclerosis, developmental and reproductive effects, and cardiovascular diseases, while for Alzheimer's disease and amyotrophic lateral sclerosis the evidence is inconclusive. Studies of symptoms, sleep quality, cognitive function have not provided consistent evidence of an effect from this type of exposure. In addition, overall research has not shown to date that long-term exposure to low-frequency EMF has detrimental effects on health.⁷ The guidelines issued by the ICNIRP will be periodically revised and updated as advances are made in the scientific knowledge concerning any aspects relevant for limiting exposure of low-frequency time-varying electric and magnetic fields. According to the Bank's operational services the limits for residential exposures to low-frequency electrical and magnetic fields, which are relevant for this complaint, recommended by ICNIRP are 5kV/m and 100µT, respectively.

4. THE INQUIRY OF THE EIB-CM

4.1 In the course of its inquiry, the EIB-CM reviewed the project documentation, the documents received from the complainant, as well as from the promoter and the relevant regulatory framework.

4.2. Initial Assessment

4.2.1 Besides engaging with the EIB's relevant services in order to clarify the understanding of the complaint, as well as to gather information on the process that was followed during the due diligence of the project in question, the EIB-CM carried out a fact-finding and stakeholder engagement mission in Belgrade on 8 -11 July 2015. During the mission a site visit as well as meetings with the complainant and other citizens and a meeting with the promoter took place. In addition, meetings with the Ministry of Environment, the Parliamentary Committee on Children's Rights, the Ministry of Infrastructure, the Serbian Ombudsman and the European Commission took place.

³ The World Health Organization is a specialized agency of the United Nations, which among others promotes research in the field of health and makes recommendations with respect to international health matters. A WHO recommendation is not binding. It is intended to assist providers and recipients of health care and other stakeholders to make informed decisions.

⁴ Electromagnetic fields and public health. Exposure to extremely low frequency fields. Backgrounder, June 2007: <http://www.who.int/peh-emf/publications/facts/fs322/en>

⁵ *Ibid.*

⁶ Concrete information about the different recommended limits could be found at <http://www.icnirp.org/en/applications/power-lines/index.html> and <http://www.icnirp.org/cms/upload/publications/ICNIRPLFgdl.pdf>.

⁷ *Ibid.*

4.2.2 During the fact-finding and stakeholder engagement mission the complainant reiterated his complaints. The EIB-CM also met other project-affected people who raised the following concerns about the impact of the transmission line:

- The transmission line can have a serious negative impact on health, and especially on the health of children, since it passes through a residential area, close to houses, shops, a school and two kindergartens;
- None of the experts who carried out the environmental impact assessment study had medical competence;
- The effects of non-ionizing radiations were not taken into consideration at all;
- The expropriation and compensation procedures relating to the building of the towers of transmission were partial and no compensation was paid for the decrease in market value of the rest of the parcels concerned;
- One project affected person complained that his property was taken from him forcibly without compensation;
- Other persons complained that they did not receive compensation or that the compensation was inadequate;
- Concerns were also expressed about the possible collapse of the towers of the transmission line.

4.2.3 The EIB-CM considers that the submissions made by the complainant can be characterised as falling under two groups of allegations: 1) alleged lack of effective public consultation concerning the building of the connection of substation Beograd 20 to Belgrade 8 - Pančevo 2 and 2) alleged negative impact on health of the Beograd 20 - Belgrade 8 – Pančevo 2 connection.

4.2.4 As part of its inquiry, the EIB-CM reviewed other documents provided by the competent EIB services and the complainant. In particular, the EIB-CM reviewed the project documents and the decision of the Serbian Ombudsman and its recommendation no. 69-1378/14 of 12 November 2014.

4.2.5 After the notification of the complaint to the EIB concerned services, on 13 November 2014 the latter obtained from the promoter the environmental impact study pertinent to the connecting lines questioned by the complaint. In addition, the EIB operational services accompanied the EIB-CM in its mission to Belgrade in July 2015 and organised a monitoring mission to Belgrade in July 2017. During the 2015 mission the EIB-CM and the EIB operational services specifically visited the area of substation Beograd 20 and the village of Vinča in the municipality of Grocka where the connecting lines pass over. The EIB operational services observed that the construction of the overhead lines was well advanced and that there was a considerable distance between the local school and the lines.

5. FINDINGS

5. 1 Alleged lack of effective public consultation concerning the building of the connection of substation Beograd 20 to Belgrade 8 – Pančevo 2

5.1.1 The applicable regulatory framework (§§ 3.1 - 3.5) lays down the requirements concerning environmental and social standards relevant to the present complaint. Furthermore, the right to information and involvement of the public in environmental matters are key requirements under Serbian national law (§3.4).

5.1.2 The review of the project documentation and relevant exchanges between the Bank's services and the promoter demonstrate that the environmental impact study pertaining to the transmission lines connecting substation Beograd 20 was sent to the Bank by the promoter on 13 November 2014 after the Bank repeatedly requested the submission of the study. According to this documentation, the project was granted favourable EIA decision from the Serbian Ministry of Environment and Spatial Planning on 31 December 2010. The decision approved the Environmental Impact Assessment Study for the project overhead power line (OHL) 400 kV Beograd 8 –Pančevo 2, with its introduction in Beograd 20 on the route. The decision further stated that "...a public examination, presentation and public hearing relating to the Environmental Impact Assessment Study were provided at the premises of the City's Secretariat for Environmental Protection on 19 November 2010. Interested organs and organizations and interested public did not submit any opinion within the legal time period."

5.1.3 According to information provided by the promoter to the Bank services, the public was informed about the project and was provided with the opportunity to participate. For example, on 26 September 2008 the relevant Ministry made a public announcement through the "Politika" daily newspaper of the application filed for the need to carry out an environmental impact assessment study. Subsequently, similar announcements appeared in the same daily newspaper concerning the Ministry's decision to carry out the study, the promoter's request to define the scope and the contents of the study, the public presentation, examination and hearing of the study and the Ministry's decision to approve the EIA study.

5.1.4 Based on the documents and submissions above, it appears that the public was informed about the project by publications in the "Politika" daily newspaper. However, it is also observed that the process did not trigger the submission of any opinion, although the project corridor in issue is populated. It is also important to note that the decision of the Serbian Ombudsman calls into question the fairness of the environmental assessment procedure given the lack of any opinion by the public (see § 2.2.1 above).

5.1.5 According to the project documentation some of the main issues and risks that had to be appraised by the Bank were environmental impact, mitigation measures, public consultation and the approval process. In addition, the relevant proposal from the EIB Management Committee to the Board of Directors specifically points out that Serbian legislation requires environmental impact studies for the kind of investment that the project represents. The same document also points out that all initial substations were to be located in industrial areas or on the outskirts of towns. The environmental impact by the substations was expected to be limited and this was to be confirmed at a later stage by the relevant studies.

5.1.6 For the purpose of disbursements, the EIB established as a conditionality that the promoter submit to the Bank all outstanding environmental impact studies and approvals relevant for each particular disbursement as soon as they were available. Studies and approvals were required to also cover any new related 400 kV overhead lines.

5.1.7 The finance contract for the project requires semi-annual reporting to the Bank on a number of issues, including an update on the completion date of each of the main project's components, description of any major issue with impact on the environment, any significant issue that has occurred and any significant risk that may affect the project's operation and any legal action concerning the project that may be ongoing.

5.1.8 As outlined in § 2.1.2 above the original scope of the EIB loan did not extend to financing substation Beograd 20. This substation became part of the project with the modification of the project's finance contract in 2013. This included the amendment of the technical description to enable the use of the balance of the EIB project loan for the purchase of the control and protection systems of five substations, including the 400/110 kV Beograd 20 substation. According to project documentation which *inter alia* requested the modification of the existing technical description, on the basis of the technical and environmental documentation provided by the borrower, the new proposed components were considered by the Bank to be technically justified and acceptable in environmental terms. The environmental assessment was based on the review of the environmental documentation of the five substations including the associated EIA approvals and, where relevant, EIA screening out decisions issued by the competent Ministry of Environment and Spatial Planning. EIA approvals and screening out decisions include a summary of the public consultation undertaken. However, the environmental documentation reviewed for Beograd 20 did not include the associated connecting lines, for which a separate EIA study and process were carried out.

5.1.9 As already outlined above, the review of the project documentation and relevant exchanges between the Bank's services and the promoter demonstrates that the environmental impact study pertaining to the connecting lines of Beograd 20 substation was requested by the Bank after the latter had already disbursed funds to substation Beograd 20. Taking this into consideration it could be concluded that with regard to the aforementioned component, the Bank did not act in compliance with the conditionalities of the operation.

5.2 Alleged negative impact on health of the Beograd 20 - Belgrade 8 – Pančevo 2 connection

5.2.1 The 2010 EIA study for the connecting lines states that: "over time a large number of residential buildings and buildings for other purposes were built in the zone of the planned transmission lines on some parts of the route..." (Appendix 2, 2.4). The study further identifies the primary school in Vinča as a sensitive building and states that the nearest conductor of the 400 kV line will be located at a distance of 15.0 m from the fence of the schoolyard, or 46.0 m from the primary school building (Appendix 2, 2.4). The study also states that "[t]he influence of electromagnetic radiation is the only significant environmental impact, so zero intensity measurements of electric and magnetic fields were conducted. Measurements were taken at particular points on the route, such as roads, proximity to residential buildings, or at locations expected to have maximum values of electric and magnetic fields. The Study is supported by a complete report by the Institute Nikola Tesla related to the zero measurement." (Appendix 2, 3.4).

5.2.2 The EIA finds that "all along the route, the calculated values of the electric and magnetic field lines are below the reference threshold level defined by the Rulebook on ionizing radiation exposure thresholds⁸, which for a frequency of 50 Hz, in areas of increased sensitivity, amounts to $E= 2\text{ kV/m}$, $B= 40\ \mu\text{T}$."

5.2.3 The report by the Institute Nikola Tesla, which forms part of the EIA, identifies residential areas and schools as zones of increased sensitivity. The report states that the measured frequency of the field at all measuring points was 50 Hz. The report further notes that with respect to the measured values of intensity of time-varying electric fields at all measuring points the value was below 2 kV/m and that "it can be estimated that at the observed locations and with the current configuration of overhead lines, the values of the electric field cannot exceed the threshold, taking into account possible variations in voltage of the existing overhead lines".

5.2.4 The report further reads that "[t]he measured values of magnetic induction at all measuring points are below 40 μT ... [a]t all measuring points in the proximity of residential and other buildings, the measured values of magnetic induction are below 4 μT , except in the case of residential buildings in the proximity of overhead line 400 kV... However, with the construction of 2x400 kV overhead line and the introduction of the future substation Belgrade 20, part of the route of the existing 400 kV overhead line no. DV 451 (which is the

⁸ Rulebook on ionizing radiation exposure thresholds, Official Gazette of the RS, no. 104/09 of 16 December 2009.

dominant source of the magnetic field at the location of residential buildings) would be cancelled, and the situation in terms of exposure of residential buildings to magnetic induction at this location would be much more favourable.”

5.2.5 Under the EIA it is necessary to conduct measurements of EMF at all locations identified in the EIA immediately upon commissioning the facility and then every four years.

5.2.6 During the on-site visit of July 2015 the EIB operational services visited the 400/110 kV substation Beograd 20 (which was then nearly completed) and the 400 kV OHLs connecting Beograd 20 to the 400 kV line Belgrade 8 – Pančevo 2. The main observations of the EIB operational services from the visit were that the construction of the two connecting OHLs is well advanced and that there was a considerable distance between the school and the lines.

5.2.7 Against this background the EIB-CM does not take a view whether the EIA study submitted on 13 November 2014 is compliant and consistent from a scientific point of view. However, the EIB-CM has already concluded above that contrary to the loan conditionality the Bank disbursed funding to the component in issue before receiving in form and substance satisfactory to it the environmental impact studies for the lines connecting to Beograd 20. In this way, the Bank did not act in compliance with its own rules with regard to the aforementioned component.

6. CONCLUSIONS AND RECOMMENDATIONS

6.1 The assessment of the complainant’s allegations taking into consideration the applicable regulatory framework and the project documentation lead to the conclusion that there have been inconsistencies in the Bank’s processes concerning the component of the project in issue. These in particular concern the inclusion in the project as a component of substation Beograd 20 and the subsequent disbursement of financing towards this component without having duly received in satisfactory form and substance all the requisite environmental impact studies.

6.2. The EIB-CM takes note of the fact that the World Health Organisation has at present endorsed the view that evidence for cancer in adults and children, as well as concerning chronic conditions from low frequency exposure is inconclusive and inconsistent (§3.5 with further references). However, the EIB-CM also notes that there is a general understanding that studying the link between exposure to electromagnetic fields and human health is a dynamic field, which is regularly reviewed in the light of new scientific knowledge (§3.3.5 and §3.5.2). Taking this into consideration, the EIB-CM is of the opinion that the submissions in the complaint concerning negative health effects cannot be substantiated, but that at the same time such considerations cannot be entirely excluded.

6.3. Based on the above and in view of the seriousness of the interests at stake, and in particular with regard to any adverse impacts that the connecting lines to substation Beograd 20 may albeit potentially have on the health of the complainant and other affected people, the EIB-CM recommends that as a precautionary measure in the particular circumstances of the present complaint the relevant EIB services obtain from the promoter as part of the monitoring of the project the relevant measurements of EMF (see §5.2.5 above) and monitor the results in the light of the standards referred to in §§ 3.3.5, 3.4 and 3.5 of this Report.

6.4. Furthermore, the EIB-CM recommends that the EIB services concerned monitor the outcome of case no. 14901/15 before the European Court of Human Rights and, take note of any subsequent result.

6.5. The EIB-CM will monitor the implementation of its recommendations within 12 months from the issuance of this Report.

S. Derkum
Head of Division
Complaints Mechanism
25. 06. 2018

R. Rando
Senior Complaints Officer
25. 06. 2018

ANNEX

Timeline of project-related events mentioned in the report

7 May 2008	Project approval by EIB Board of Directors
12 June 2009	Signature of the finance contract for the project
31 December 2010	Project receives favourable EIA decision from the Serbian authorities
17 July 2013	Finance contract amendment, including change in the Technical Description of the project
21 September 2014	Complaint lodged with the EIB-CM
13 November 2014	Promoter sends to EIB the EIA study relevant to the complaint
5 July 2017	Progress report submitted to the EIB by the promoter