

SG/E/2022/03

# Small Hydropower Projects (SERBIA)

INITIAL ASSESSMENT REPORT  
07 July 2022



# Small Hydropower Projects (Serbia) Initial Assessment Report

**Complaint confidential:** No

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Complainant

**Internal distribution**

Inspector General  
Relevant EIB services

**Disclaimer**

This report is based on the information available to the EIB Group Complaints Mechanism up to 29 June 2022 (the report's cut-off date).

## THE EIB GROUP COMPLAINTS MECHANISM

The EIB Group Complaints Mechanism is a tool enabling the resolution of disputes if any member of the public feels that the European Investment Bank (EIB) might have done something wrong, i.e. if it has committed an act of maladministration. The Complaints Mechanism is not a legal enforcement mechanism and will not substitute the judgment of competent judicial authorities.

Maladministration means poor or failed administration. It occurs when the EIB fails to act in accordance with a rule or principle that is binding upon it, including its own policies, standards and procedures. The concept of maladministration includes failure by the EIB to comply with human rights, applicable law, or the principles of good administration. Maladministration may relate to the EIB Group's decisions, actions or omissions and may include the environmental or social impact of the EIB's projects and operations.

One of the main objectives of the EIB Group Complaints Mechanism (hereinafter, "EIB-CM") is to ensure the right to be heard and the right to complain. For more information on the EIB Group Complaints Mechanism please visit: <https://www.eib.org/en/about/accountability/complaints/index.htm>.

## THE INITIAL ASSESSMENT REPORT

The initial assessment generally aims to<sup>1</sup>:

- Clarify the concerns raised by the complainant and gain a better understanding of the complainant's position as well as the views of other stakeholders (e.g. project promoter, national authorities).
- Understand the validity of the concerns raised.
- Assess whether and how the stakeholders (e.g. the complainant, the relevant EIB Group services and the project promoter) could seek resolution of the issues raised by the complainant.
- Determine if further work by the EIB-CM is necessary and/or possible (investigation, compliance review or mediation between the parties) to address the allegation or resolve the issues raised by the complainant.

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<sup>1</sup> As outlined in § 2.2.1 of the EIB Group Complaints Mechanism Procedures, available at: [EIB Group Complaints Mechanism Procedures](#).

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## GLOSSARY

A.d.	Joint stock company (in Serbian, <i>akcionarsko društvo</i> )
CA	Credit Agricole
Developer	Zlatiborske Elektrane (also Promoter)
D.o.o	Limited liability company, Ltd. (in Serbian, <i>društvo s ograničenom odgovornošću</i> )
EIA	Environmental impact assessment
EIB	European Investment Bank
EIB-CM	EIB Group Complaints Mechanism
EUR	Euro
SHPP	Small hydropower plant
SME	Small and medium-size enterprise

# EXECUTIVE SUMMARY

In January 2022, the EIB-CM registered a complaint from CEE Bankwatch Network and the Ecological Association Rzav regarding two small hydropower plants in western Serbia. The complainants sent another complaint in April 2022, providing additional information and further substantiating the original allegations. Furthermore, as some allegations of both complaints are overlapping, those related to environmental issues will be dealt with under this inquiry. The EIB-CM decided to handle those concerning issues related to transparency and access to information in a separate complaint (SG/A/2022/01).

The complaint pertains to the construction of two small hydropower plants on the Rzav river, which were financed by the EIB via intermediated loans (loans for SMEs) approved in 2012 and 2014. The EIB approved financing of respective loans under operations called Intesa SMEs and Priority Projects II and Credit Agricole Loan for SMEs and other priorities II with financial intermediaries: Banca Intesa a.d. Beograd, Intesa Leasing d.o.o. Beograd and Credit Agricole Srbija a.d. Novi Sad.

After conducting a review of available information, the EIB-CM decided to carry out a compliance review of the allegations, as detailed in the table below.

No.	Allegation	Description of the allegation
1	Lack of environmental impact assessment (EIA)	The projects have not been subject to environmental impact assessment (EIA) during the project development phase.
2	Lack of stakeholder consultations	Lack of consultations with appropriate stakeholders, namely the Institute for Nature Conservation and the Balkan Eco Team.
3	Lack of due diligence of intermediated financing for the operations	The projects were financed in breach of the applicable EIB environmental and social standards resulting in the failure to check the capacity of the intermediaries during the diligence.

Among other things, the complainants ask the EIB to engage with the promoter to improve the ecological status of the Rzav and Ribnica rivers, and with the intermediary in order to avoid the financing of a third dam on the same river. The EIB-CM will contact relevant stakeholders of the operations in order to carry out the compliance review. However, as stated in its policy, the EIB-CM cannot replace a legal enforcement mechanism and will not substitute for the judgment of competent judicial authorities.

The complainants asked the EIB to review its procedures and practices for carrying out due diligence/ environmental and social screening of intermediary-financed operations..

The compliance review will assess the complaint in the context of potential Bank maladministration. It will focus on project documentation and due diligence during the environmental and social screening carried out by the Bank in relation to the allegations, as identified in this initial assessment report. The outcome of the compliance review will be communicated to the complainants through the EIB-CM's conclusions report.

## 1 THE PROJECT

- 1.1 The complaint pertains to the construction of two small hydropower plants (hereinafter “SHPPs”) in the Republic of Serbia that were financed by the EIB via intermediated loans (loans for SMEs). On 20 December 2012 and 21 November 2014, the EIB Board of Directors approved the financing of Intesa SMEs and Priority Projects II<sup>2</sup> and Credit Agricole (CA) Loan for SMEs and other priorities II<sup>3</sup>, in the amount of up to €35 million and €60 million, respectively. The financial intermediaries for the above-mentioned operations are Banca Intesa a.d. Beograd, Intesa Leasing d.o.o. Beograd and Credit Agricole Srbija a.d. Novi Sad (hereinafter the “intermediaries”). These loans have financed, among other things, two small hydropower plants (SHPPs) on the Rzav river (Serbia), Beli Kamen and Komalj (hereinafter, the “projects”). The construction of both plants was developed by Zlatiborske Elektrane d.o.o., a company producing energy from renewable sources registered in Čačak, Serbia (hereinafter the “promoter”).
- 1.2 Banca Intesa a.d. Beograd financed the Beli Kamen plant, while Credit Agricole Srbija a.d. Novi Sad financed Komalj. Despite being financed under separate operations and through different intermediaries, the two SHPPs are interrelated, as Komalj does not have a separate intake, but rather collects water used by Beli Kamen directly via pipes. Both SHPPs have been built in the catchment of the Rzav river located in the Drina basin (western Serbia). The SHPPs were put into operation in 2016 (Beli Kamen) and 2018 (Komalj). According to the complainants, the promoter is planning to build a third plant, Peta, just below Komalj SHPP.
- 1.3 The EIB-CM has consulted the Bank services concerned in order to assess potential EIB financing of this project via intermediated lending. Although, at present (June 2022), the EIB has not been asked to finance the Peta SHPP project, this possibility cannot be excluded in principle. Nonetheless, should a financing request be sent to the EIB, the Bank would not allocate funding without an independent assessment of the cumulative impacts of the existing SHPPs (i.e. Beli Kamen and Komalj) and any future SHPP.
- 1.4 The Beli Kamen and Komalj SHPPs<sup>4</sup> were financed from loans for SMEs via credit lines through intermediary financial institutions. The Beli Kamen project is no longer part of the EIB’s allocated portfolio.

## 2 COMPLAINT

- 2.1 On 25 January 2022, the EIB-CM received a complaint from CEE Bankwatch Network and the Ecological Association Rzav (hereinafter the “complainants”) regarding the Beli Kamen and Komalj small hydropower plants (hereinafter “SHPPs” and the “projects”) in western Serbia. The complainants sent a second complaint to the EIB-CM on 26 April 2022, which substantiates the allegations included in the first complaint, providing additional information and requests to the EIB. In line with the EIB-CM Procedures<sup>5</sup>, the EIB-CM decided to examine the new information in the same complaint-handling process. Furthermore, as some allegations of the two complaints are concerning issues related to transparency and access to information, the EIB-CM decided to handle such claims in a separate complaint ([SG/A/2022/01](#))<sup>6</sup>.
- 2.2 The complainants allege that the construction of the Beli Kamen and Komalj SHPPs is in breach of the EIB’s Environmental and Social Standards, as well as national, EU and international law. In particular, the projects lack an environmental impact assessment (EIA), allegedly violating the EIA Directive<sup>7</sup>. Furthermore, according to the complainants, the small hydropower plants are built in a nature park according to national law,<sup>8</sup> and a protected area (Emerald site), thus breaching the Bern Convention<sup>9</sup>. The complainants also highlight an alleged lack of stakeholder

<sup>2</sup> The EIB webpage for Intesa SMEs and Priority Projects II is available [here](#).

<sup>3</sup> Webpage available at: [Credit Agricole Loan for SMEs and other priorities II](#).

<sup>4</sup> The building permits for the Beli Kamen and Komalj SHPP were issued by the municipality of Čajetina, respectively, on 14 October 2011 and 20 September 2012.

<sup>5</sup> Sections 1.1.4. and 1.1.5. of the EIB-CM Procedures, available [here](#).

<sup>6</sup> § 1.1.4. of the EIB Group Complaints Mechanism Procedures and § 4.2. of the EIB Group Complaints Mechanism Policy available [here](#).

<sup>7</sup> Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, available [here](#).

<sup>8</sup> [Regulation of 10 October 2017 on the proclamation of the Zlatibor Nature Park n.91 \(in Serbian\)](#).

<sup>9</sup> Convention on the Conservation of European Wildlife and Natural Habitats [available here](#).

consultation in the project development phase. The Balkan Eco Team— which manages the fishing area of the Rzav river in line with the Law of protection and sustainable use of fish stock<sup>10</sup> — was allegedly not consulted in the project design and implementation phase. Additionally, according to the complainants, the municipality of Čajetina should have instructed the promoter to consult with the Institute of Nature Conservation in order to ask for nature protection requirements to satisfy, in line with the Serbian Law on Nature Protection<sup>11</sup>. The complainants claim the projects breach the EIB's sustainability commitments in the 2010 Environmental and Social Handbook, adding that it is not clear whether the EIB checked the capacity of the intermediaries to conduct the appropriate environmental appraisals.

- 2.3 The complainants ask the EIB to: (i) engage with stakeholders to further investigate on the status of the river allegedly impacted by the Beli Kamen and Komalj SHPPs; (ii) engage with the promoter to improve the ecological status of the Rzav and Ribnica rivers, in cooperation with the Institute of Nature Protection of Serbia; (iii) investigate the intermediaries' environmental due diligence; (iv) engage with the intermediary in order to avoid financing Peta, should the promoter still be interested in financing this SHPP; (v) review the application of the Bank's environmental standards during due diligence of intermediated loans in hydropower financing; and (vi) publish a list of all hydropower projects financed through intermediated loans.
- 2.4 The EIB-CM takes note of the requests listed in the complaint. However, the EIB-CM will address in the context of its inquiry the allegations identified in the complaint in accordance with its mandate as well as its policy and procedures. On this matter, EIB-CM wishes to clarify some aspects related to the issues raised by the complainants', as below.
- 2.5 The EIB-CM understands that these requests are made within the context of the projects mentioned in this complaint. With reference to the requests (i) to (v), the EIB-CM would like to note that engagement with appropriate stakeholders will be performed as part of the compliance review of the case in question. The EIB-CM, if deemed appropriate, may engage with relevant stakeholders in order to resolve issues, however, the EIB-CM is not a legal enforcement mechanism and will not substitute for the judgment of competent judicial authorities. Issue (vi) noted in paragraph 2.3 will be handled by the EIB-CM in the Complaint SG/A/2022/01 (see paragraph 2.1).

## 3 WORK PERFORMED

- 3.1 The objective of the initial assessment is to clarify the concerns raised by the complainants, understand the complainants' position and the validity of the concerns raised as well as to determine if further work by the EIB-CM is necessary and/or possible in order to address the allegation or resolve the issues raised by the complainant<sup>12</sup>. The further work may include a compliance review or collaborative resolutions process (e.g. mediation). This report contains the results of the EIB-CM's initial assessment.
- 3.2 As per the EIB-CM Procedures<sup>13, 14</sup>, during the initial assessment the EIB-CM: (i) had an initial meeting with the EIB services; (ii) reviewed EIB documents; (iii) reviewed external documents and studies, such as the CEE Bankwatch and WWF Adria microbiological study on the status of the Rzav river<sup>15</sup>, as well as related external articles in the press; (iv) reviewed internal correspondence between the EIB services and intermediaries, as well as between EIB services;

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<sup>10</sup> Available at: [Law of protection and sustainable use of fish stock](#).

<sup>11</sup> Available at: [Law of nature protection](#).

<sup>12</sup> § 2.2.1 of the EIB Group Complaints Mechanism Procedures.

<sup>13</sup> This complaint concerns two intermediary financed operations, which are complex, because they require liaising between the EIB Group and the third parties (see § 4.3, of the EIB Group Complaints Mechanism Procedures). As noted in § 2.1.2 of the Procedures, complaints related to environmental impacts of financed projects also usually raise complex issues. For this reason, and because of the sensitivity of the relations involving the project promoter, the intermediary, national authorities, and civil society organisations, particular attention needs to be paid to the specific processes regarding these types of complaints. In line with § 2.1.2 of the Procedures, the normal process is formally structured in two phases: an initial assessment phase and a compliance review or collaborative resolution process phase.

<sup>14</sup> § 2.2.2 of the EIB Group Complaints Mechanism Procedures.

<sup>15</sup> Available at: [https://bankwatch.org/wp-content/uploads/2021/05/2021-04-22\\_Beli-Kamen-and-Komalj-HPP-Serbia\\_final-2.pdf](https://bankwatch.org/wp-content/uploads/2021/05/2021-04-22_Beli-Kamen-and-Komalj-HPP-Serbia_final-2.pdf)



and (v) held a meeting with the complainants to discuss several specific aspects related to the complaints and the documents shared with the EIB-CM.

3.3 The EIB-CM Procedures<sup>16</sup> set out key questions to be addressed during the initial assessment, namely:

- Understand how the relevant EIB services have verified compliance with the applicable regulatory framework, including EIB standards.
- Assess potential indications that EIB standards have failed to provide an adequate level of protection and safeguards.
- Identify, if any, reasonable indications of non-compliance with the applicable regulatory framework.

3.4 The regulatory framework includes:

- The EIB's policies, procedures and standards, such as the EIB Statement of Environmental and Social Principles and Standards<sup>17</sup> and the EIB Environmental and Social Handbook<sup>18</sup>.
- International Conventions, such as the Bern Convention on the Conservation of European Wildlife and Natural Habitats<sup>19</sup>, with particular reference to Recommendation n.157<sup>20</sup> (par.1 and 2).
- Any applicable instrument of EU law, such as the EIA Directive<sup>21</sup>; Water Framework Directive<sup>22</sup>; Habitats Directive<sup>23,24</sup>.
- National law, such as the Law on Nature Protection<sup>25</sup> (Articles 5.2; 5.5<sup>26</sup>; 5.8; 8; 10<sup>27</sup>; 34; 57); the Regulation on the proclamation of the Zlatibor nature park<sup>28</sup> (Article 5) and the Law on protection and sustainable use of fish stock.

3.5 The EIB-CM carried out an initial review of the EIB's appraisal and monitoring. It has decided to proceed to the compliance review. In that context, the EIB-CM would assess the EIB services' compliance with the EIB Environmental and Social Standards on intermediated operations. For this purpose, the EIB-CM will examine the potential responsibilities of the EIB, separating them, when possible, from the alleged responsibilities of intermediaries, the promoter and/or other stakeholders. In order to do so, the EIB-CM will examine in depth the EIB services' correspondence with the intermediaries.

3.6 In light of the findings arising from the correspondence analysed, the EIB-CM prepared a number of follow-up questions and requests for clarification for the services concerned, and is planning to organise a follow-up meeting with the services.

<sup>16</sup> § 2.2.4 of the EIB Group Complaints Mechanism Procedures.

<sup>17</sup> Available at: [The proposed Environment and Social Principles and Standards Statement builds on past and recent experience on environment and \(eib.org\)](https://www.eib.org/~/media/press/2019/04/20190409-statement-principles-standards)

<sup>18</sup> Available at: [eib-environmental-and-social-handbook.pdf](https://www.eib.org/~/media/press/2019/04/20190409-statement-principles-standards)

<sup>19</sup> Mentioned under footnote 9.

<sup>20</sup> Available at: [Recommendation No. 157 \(2011\) of the Standing Committee, adopted on 2 December 2011 and revised on 6 December 2019, on the status of candidate Emerald sites and guidelines on the criteria for their nomination](https://www.eib.org/~/media/press/2019/04/20190409-statement-principles-standards)

<sup>21</sup> EIA Directive, having particular regard to Rec. 22, Article 5 and following and Annex II.

<sup>22</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, as amended, available [here](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000L0060).

<sup>23</sup> Council Directive 92 /43 /EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended, available [here](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31992L0043); having particular regard to Article 6.

<sup>24</sup> *Austropotamobius torrentium* is not listed in Annex 4 of the Habitats Directive. National authorities can add species of national importance, e.g. included in the national Red books, as appropriate.

<sup>25</sup> The link to the law is available under footnote 11.

<sup>26</sup> The principle of "user pays" could also be a principle to bear in mind for this complaint.

<sup>27</sup> The Ministry can still assess whether there is a prevailing public interest in accordance with art. 10 of this law".

<sup>28</sup> Text of the Regulation on the proclamation of the Zlatibor Nature Park available [here](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0001).

## 4 WAY FORWARD

4.1 As a result of its initial assessment, the EIB-CM identified the following allegations:

**Table 1 — Identified allegations of the complaint**

No	Allegation headline	Description of the allegation
1	Lack of environmental impact assessment	The projects have not been subject to environmental impact assessment (EIA) during the project development phase.
2	Lack of stakeholder consultations	Lack of consultations with appropriate stakeholders, namely the Institute for Nature Conservation and the Balkan Eco Team.
3	Lack of due diligence of intermediated financing for the operations	The projects were financed in breach of the applicable EIB environmental and social standards resulting in the failure to check the capacity of the intermediaries during the due diligence.

4.2 The complainants requested clarification on the EIB’s procedures and practices in relation to intermediary lending. In this respect, it is important to note that the EIB Board of Directors approved a new Environmental and Social Sustainability Framework in February 2022. The Framework also contains a new EIB Environmental and Social Policy, which is not applicable to this inquiry.

4.3 The compliance review will assess the complainants’ allegations in the context of potential Bank maladministration. It will also focus on project documentation and the due diligence during environmental and social screening carried out by the Bank in relation to the complainants’ concerns as identified in this initial assessment report. The compliance review will include follow-up meetings with relevant stakeholders and a possible fact-finding mission.

4.4 The outcome of the compliance review will be communicated to the complainants through the EIB-CM’s conclusions report.