

Curtis Biomass Power Generation Plant

Complaint SG/E/2019/04

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

INITIAL ASSESSMENT REPORT

16 July 2019

Prepared by

Complaints Mechanism

Maria Fernanda Perez Solla
Officer

Alfredo Abad
Deputy Head of Division

Sonja Derkum
Head of Division
EIB Complaints Mechanism

External Distribution

Complainants
Promoter

Internal Distribution

EIB Secretary General
Inspector General
EIB services concerned

The EIB Complaints Mechanism

The EIB Complaints Mechanism is intended to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases where the public feels that the EIB Group has done something wrong, i.e. if a member of the public considers that the EIB has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, 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 who are not satisfied with the outcome of the procedure before the EIB-CM or with the EIB Group's response have the right to lodge a complaint of maladministration against the EIB with the EO.

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 cited by the EO, 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's activities and to project cycle-related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism is intended not only to address non-compliance by the EIB with its policies and procedures but also 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: <https://www.eib.org/en/about/accountability/complaints/index.htm>

Initial Assessment Report

The report contains

- (i) an initial assessment of the concerns raised by the Complainants regarding environmental and social impacts or governance aspects of operations/projects financed by the EIB Group; and
- (ii) concrete proposals on how to proceed with a collaborative process or an investigation/compliance review.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	5
1. THE COMPLAINT	6
2. BACKGROUND INFORMATION	6
3. WORK PERFORMED BY EIB-CM	7
4. REGULATORY FRAMEWORK	8
4.1. <i>The EIB-CM mandate</i>	8
4.2. <i>EU legislation</i>	8
4.3. <i>EIB standards</i>	10
4.4. <i>Spanish national and regional law</i>	10
5. INITIAL ASSESSMENT	11
5.1. <i>Allegation of insufficient stakeholder involvement</i>	11
5.2. <i>Allegation of lack of sustainability of the Project</i>	12
6. PROPOSED WAY FORWARD	14

EXECUTIVE SUMMARY

In March 2019, the EIB Complaints Mechanism (EIB-CM) received complaints from two different associations, “Asociación ambiental y cultural Petón do Lobo” and “Asociación Amigos y Amigas de los Bosques ‘O Ouriol do Anllóns’”, concerning the sustainability of the Curtis Biomass Power Generation project (hereinafter, the “Project”), and the possible lack of adequate stakeholder involvement. In addition, the Complainants requested a review of the Bank’s financing decision.

Proposed way forward

The EIB-CM reviews the Bank’s activities with a view to determining whether the EIB has complied with the rules and principles that are binding upon it, including its own policies, standards and procedures. To this end, the EIB-CM examines whether the EIB services have provided a consistent and reasonable explanation of their position, and whether it is based on complete, accurate and reliable information as identifiable at the time. The EIB-CM reviews the facts in order to draw up an independent opinion on whether there has been a manifest error in the Bank’s position or a manifest breach of the rules that applied to the services at the time.

The EIB-CM found the decision to review the Bank’s financing decision to be inadmissible, as per §4.3.4 of the Complaints Mechanism Policy. With regard to the other two allegations, the EIB-CM proposes a compliance review to establish the facts and legal consequences, including an analysis of the regulatory framework included in project documentation, in order to verify compliance with existing policies and procedures.

INITIAL ASSESSMENT REPORT

<u>Complainants:</u>	Asociación ambiental y cultural Petón do Lobo Asociación Amigos y Amigas de los Bosques "O Ouriol do Anllóns"
<u>Date received by the EIB-CM:</u>	19 March 2019
<u>Confidentiality requested:</u>	No
<u>Main subject of complaints:</u>	Project sustainability and inadequate stakeholder involvement

1. THE COMPLAINT

- 1.1 On 19 March 2019, the EIB Complaints Mechanism (EIB-CM) received complaints from two different associations (hereinafter the “Complainants”), which were registered under the same reference SG/E/2019/04. The allegations are outlined in Table 1 below:

Table 1 – Allegations

<p>1) Project sustainability with regard to the relatively high consumption of biomass (500,000 tonnes per year). In particular, the Complainants:</p> <p>a. challenge the origin of the biomass feedstock (alleged exploitation of monocultures of exotic species);</p> <p>b. maintain there is a lack of certified forest in Galicia to satisfy the consumption, questioning the use of FSC/PEFC certifications as parameters;</p> <p>c. allege that the national and Galician regulations on forests and biomass have been misinterpreted.</p>
<p>2) Lack of adequate stakeholder involvement in the Project in Galicia.</p>
<p>3) Request for a review of the Bank’s financing decision.</p>

2. BACKGROUND INFORMATION

- 2.1 On 12 April 2018, the EIB Board of Directors approved a loan of EUR 60 million to a Special Purpose Vehicle (hereinafter, the “SPV” or “Promoter”), which was set up with the sole purpose of building, owning and operating a 50 MWe biomass plant and the associated infrastructure. The Promoter is fully owned by Greenalia Power S.L., an Independent Power Producer (IPP) that works exclusively with renewable technologies. Part of the Bank’s loan is

structured under the EFSI¹ facility. Additional funding is provided by other public and private sources.

- 2.2 The biomass plant will only produce electricity and will be constructed in Curtis, Galicia, Spain, using exclusively forestry residues in wood chip form, to be sourced locally.
- 2.3 In addition to further loans from the private sector and own funds, the Promoter has secured a EUR 23 million mezzanine loan from the special-purpose entity fund Marguerite II (the successor to the 2020 European Fund for Energy, Climate Change & Infrastructure)². The EIB is one of the fund's core sponsors.³

3. WORK PERFORMED BY EIB-CM

- 3.1 On 2 April 2019, the EIB-CM acknowledged receipt of the complaints and informed the Complainants that it was carrying out a review of the case; the EIB-CM also notified them of the date by which they could expect a formal reply.
- 3.2 Soon after receiving the complaint, and given the different issues addressed in their communications, the EIB-CM contacted the Complainants in order to clarify the scope of their complaints.
- 3.3 On 8 April 2019, the EIB-CM held a first meeting with the EIB services involved in the Project in order to obtain further information on the Project and the allegations received.
- 3.4 In addition, and after discussions with the Complainants, the EIB-CM deemed that some of the issues included in the complaint consisted of a request for information, deserving a reply in accordance with the EIB Transparency Policy.⁴ On 12 April 2019, EIB-CM transferred the request for information to the Bank's competent service and informed the Complainants of this decision on 15 April 2019. The response by the Bank's services to the information request was provided on 24 May 2019.
- 3.5 For the above reasons, the analysis conducted by the EIB-CM is limited to the allegations listed in Table 1.
- 3.6 In the course of the initial assessment, the EIB-CM conducted a desk review of project-related documentation, as well as information and documents available from the Complainants, the Bank's services and in the public domain.

¹ European Fund for Strategic Investment.

² Marguerite, *Marguerite closes a EUR 23m mezzanine loan to finance a 50 MW biomass plant in Galicia developed by Greenalia*, August 2018, <http://www.marguerite.com/2018/08/marguerite-closes-a-eur-23m-mezzanine-loan-to-finance-a-50mw-biomass-plant-in-galicia-developed-by-greenalia/> (Last visited: 19 May 2019).

³ Marguerite, *Core Sponsors* <http://www.marguerite.com/about-us/core-sponsors/> (Last visited: 19 May 2019); EIB and Europe's leading National Promotional Banks launch Marguerite II, a successor fund to the 2020 European Fund for Energy, Climate Change and Infrastructure, 30 November 2017 <https://www.eib.org/en/press/all/2017-341-eib-and-europes-leading-national-promotional-banks-launch-marguerite-ii-a-successor-fund-to-the-2020-european-fund-for-energy-climate-change-and-infrastructure> (Last visited: 19 May 2019).

⁴ EIB Group, Transparency Policy, 2015 <https://www.eib.org/en/infocentre/publications/all/eib-group-transparency-policy.htm> (Last visited: 19 May 2019).

4. **REGULATORY FRAMEWORK**

This Section indicates some of the norms that are part of the applicable regulatory framework, as per the information available in June 2019. This regulatory framework applies in addition to the obligations arising from the finance contract and the EIB's internal procedural guidelines applicable to EIB services:

4.1 *The EIB-CM mandate*

4.1.1 The EIB-CM Complaints Mechanism Policy, approved in November 2018,⁵ applies to complaints of alleged maladministration lodged against the EIB Group (Article 1.1 of the EIB Group Complaints Mechanism Policy, hereinafter, the "Policy"). Complaints may concern any alleged maladministration by the EIB Group in its decisions, actions and/or omissions (Article 4.3.1 of the Policy). The concept of maladministration includes failure by the EIB Group to comply with human rights, with applicable law, or with the principles of good administration. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities and to project cycle-related policies and other applicable policies of the EIB Group (Articles 3.2 and 3.3 of the Policy).

4.1.2 In connection with the handling of admissible complaints, and pursuant to Article 6.1.1 of the Policy, the EIB-CM gathers and reviews existing information on the subject under complaint, and endeavours to resolve the issues giving rise to complaints in cooperation with internal and external stakeholders. It also conducts appropriate inquiries with a view to assessing whether the EIB Group is complying with the applicable regulatory framework, including its own policies, procedures or standards. The EIB-CM is independent from operational activities in order to ensure that each complaint is dealt with by applying the highest standards of objectiveness whilst safeguarding the interests of all internal and external stakeholders of the EIB Group (Articles 2.2 and 5.1.4 of the Policy). The EIB-CM assists the EIB Group by advising on possible improvements to the implementation of its activities for the common purpose of good administration (Article 5.1.9 of the Policy).

4.2 *EU legislation*

4.2.1 According to the allegations received, and the documentation leading to the loan approval and signature, the relevant EU legislation on stakeholder involvement and the regulation and impact of biomass projects, including forest management, comprises the following:

-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 environment⁶ as amended by Directive 2014/52/EU;⁷

⁵ See footnote 4.

⁶ 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, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0092> (Last visited: 19 May 2019).

⁷ Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0052> (Last visited: 19 May 2019).

- Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control);⁸
- Commission Implementing Decision (EU) 2017/1442 of 31 July 2017 setting out best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for large combustion plants;⁹
- Directive (EU) 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants¹⁰
- Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources;¹¹
- the EU Forest Strategy (2013);¹²
- the EU Biodiversity Strategy (2014);¹³
- the Paris Agreement (Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement);¹⁴
- Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework;¹⁵
- Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment;¹⁶
- Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC.¹⁷

⁸ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010L0075> (Last visited: 19 May 2019).

⁹ Commission Implementing Decision (EU) 2017/1442 of 31 July 2017 establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for large combustion plants <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D1442&from=LV> (Last visited: 19 May 2019).

¹⁰ Directive (EU) 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L2193> (Last visited: 19 May 2019).

¹¹ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009L0028> (Last visited: 19 May 2019)

¹² COM (2013) 659 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of The Regions, A new EU Forest Strategy: for forests and the forest-based sector, 20 September 2013, https://ec.europa.eu/agriculture/forest/strategy/communication_en.pdf (Last visited: 19 May 2019).

¹³ COM(2011) 244, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, Our life insurance, our natural capital: an EU biodiversity strategy to 2020, 3 May 2011 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0244&from=EN> (Last visited: 19 May 2019).

¹⁴ Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016D1841> (Last visited: 19 May 2019).

¹⁵ Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.156.01.0001.01.ENG (Last visited: 19 May 2019).

¹⁶ Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003L0035> (Last visited: 19 May 2019).

¹⁷ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32003L0004> (Last visited: 19 May 2019).

4.3 *EIB standards*

4.3.1 The EIB Statement of Environmental and Social Principles and Standards (2009)¹⁸ requires that financed projects be acceptable in environmental and social terms (paragraph 1). In line with paragraph 2, *“Promoters are responsible for preparing, implementing and operating projects financed by the Bank; they are also responsible for the fulfilment of Bank requirements, especially for legal compliance. The Bank will assist the Promoter to fulfil these responsibilities.”*

4.3.2 The EIB’s Environmental and Social Handbook (Version 9.0 of 2/12/2013) (hereinafter the “Handbook”) requires all EIB-financed operations to comply with national legislation and international conventions and agreements ratified by the host Country.

4.3.3 The EIB standards relevant to this complaint include, in particular:

- Standard 1, on Assessment and Management of Environmental and Social Impact;
- Standard 3 on Biodiversity and Ecosystems;
- Standard 10 on Stakeholder Engagement.

4.4 *Spanish national and regional law*

4.4.1 Based on the information available in the due diligence documents, and the complaints received, the relevant domestic legislation for the complaints under review includes:

- Law 21/2013 of 9 December on environmental evaluation;¹⁹
- Law 34/2007 on air quality and protection of the atmosphere;²⁰
- Law 43/2003 on forests;²¹
- Law 27/2006, on the right of access to information, public participation and access to justice on environmental matters;²²
- Royal Decree 413/2014 regulating the production of electricity with renewable energy, cogeneration and residues;²³
- Royal Decree 815/2013 approving the rules on industrial emissions;²⁴

¹⁸EIB, The EIB Statement of Environmental and Social Principles and Standards, 2009, http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf

¹⁹ Ley 21/2013, de 9 de diciembre, de evaluación ambiental, <https://www.boe.es/buscar/act.php?id=BOE-A-2013-12913> (Last visited: 19 May 2019).

²⁰ Ley 34/2007, de 15 de noviembre, de calidad del aire y protección de la atmósfera, <https://www.boe.es/buscar/act.php?id=BOE-A-2007-19744> (Last visited: 19 May 2019).

²¹ Ley 43/2003, de 21 de noviembre, de Montes, <https://www.boe.es/buscar/act.php?id=BOE-A-2003-21339> (Last visited: 19 May 2019).

²² Ley 27/2006, de 18 de julio, por la que se regulan los derechos de acceso a la información, de participación pública y de acceso a la justicia en materia de medio ambiente (incorpora las Directivas 2003/4/CE y 2003/35/CE), <https://www.boe.es/buscar/act.php?id=BOE-A-2006-13010> (Last visited: 19 May 2019).

²³ Real Decreto 413/2014, de 6 de junio, por el que se regula la actividad de producción de energía eléctrica a partir de fuentes de energía renovables, cogeneración y residuos, <https://www.boe.es/buscar/doc.php?id=BOE-A-2014-6123> (Last visited: 19 May 2019).

²⁴ Real Decreto 815/2013, de 18 de octubre, por el que se aprueba el Reglamento de emisiones industriales y de desarrollo de la Ley 16/2002, de 1 de julio, de prevención y control integrados de la contaminación. <https://www.boe.es/buscar/doc.php?id=BOE-A-2013-10949> (Last visited: 19 May 2019).

-Royal Decree 1/2016 approving the merged legislation on integral prevention and control of pollution;²⁵

-Forest Law of Galicia 7/2012;²⁶

-Galician Decree 52/2014 on general instructions for forest management.²⁷

5. **INITIAL ASSESSMENT**

As part of the complaint (request number 3), the Complainants asked the EIB-CM to review the Bank's financing decision. The EIB-CM informed the Complainants that this request was not admissible pursuant to §4.3.4 of the EIB Group Complaints Mechanism Policy which states that "Complaints concerning the investment mandate of the EIB Group, its financing or investment decisions per se, its credit policy, or other related, purely commercial or banking discretionary decisions are not handled by the EIB-CM."²⁸

Therefore, the EIB-CM considers that the allegations made by the Complainants that are admissible under the EIB-CM policy fall into two main groups: (i) alleged insufficient stakeholder involvement; and (ii) alleged lack of sustainability of the Project, particularly in environmental terms. These are addressed below.

5.1 *Allegation of insufficient stakeholder involvement*

Complainants' allegation

5.1.1 According to the Complainants, no information is available apart from that published on the EIB website,²⁹ the operation has little transparency, and information on the Project is scarce, at least in Galicia where the Project is located.

EIB's response

5.1.2 According to the information provided by the EIB services, the Project's environmental impact assessment was submitted by the promoter for public consultation – prior to the approval of the environmental permit – and, during this consultation process, the promoter responded to various queries from stakeholders in line with the legal requirements governing the process.

EIB-CM proposed way forward

5.1.3 Given the divergent points of view, the EIB-CM will review the stakeholder engagement process in further detail to determine whether stakeholders have been involved in accordance with the applicable regulatory framework (See Section 4).

²⁵ Real Decreto Legislativo 1/2016, de 16 de diciembre, por el que se aprueba el texto refundido de la Ley de prevención y control integrados de la contaminación, https://www.boe.es/diario_boe/txt.php?id=BOE-A-2016-12601 (Last visited: 19 May 2019).

²⁶ Ley 7/2012, de 28 de junio, de montes de Galicia, <https://www.boe.es/buscar/doc.php?id=BOE-A-2012-11414> (Last visited: 19 May 2019).

²⁷ DECRETO 52/2014, de 16 de abril, por el que se regulan las instrucciones generales de ordenación y de gestión de montes de Galicia, https://www.xunta.gal/dog/Publicados/2014/20140508/AnuncioG0165-250414-0003_es.html (Last visited: 19 May 2019).

²⁸ EIB, Complaints Mechanism Policy, 2018 https://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf (Last visited: 19 May 2019)

²⁹ EIB, Curtis Biomass Power Generation Plant, 13 December 2017, <https://www.eib.org/en/projects/pipelines/all/20170647> (Last visited: 19 May 2019).

5.2 *Allegation of lack of sustainability of the Project*

Complainants' allegations

- 5.2.1 In the Complainants' view, it is difficult to understand from where Greenalia will obtain 500 000 tonnes of biomass per year. There is a concern that the biomass might be sourced from eucalyptus plantations rather than from residues. A further question of the Complainants is whether intensive forest exploitation is encouraged, aiming at the production of wood of little added value.
- 5.2.2 From the Complainants' point of view, the Bank's description of the Project contains several inconsistencies.³⁰ First, they consider that certified forest surface area is minimal in Galicia.
- 5.2.3 The Complainants are concerned about the EIB's interpretation of the Galician legal framework, particularly with regard to the alleged obligations to adopt forest management instruments and certifications. The Complainants consider that the Galician Decree 52/2014 does not bind all forest owners and administrators. This decree regulates instruments of forest management. They indicate that the decree should be read together with Law 7/2012 of 28 June on Galician forests (Article 77) that sets out a series of forest management possibilities. The Complainants indicate that the minimum surface area normally required for the forest manager to implement good forest management practices is 25 ha. In their understanding, forest certifications – such as those of the Forest Stewardship Council (FSC) and the Programme for the Endorsement of Forest Certification (PEFC) – are not compulsory according to Galician legislation. The Complainants indicate that in Galicia most forest parcels are less than 2 ha and their owners are therefore not obliged to apply such good practice models. In this scenario, the certified forest surface area in Galicia would only represent 7.2% of the Galician total forest area.
- 5.2.4 Furthermore, the Complainants are concerned about the rationale of forest certification in general, indicating that is not desirable for environmental and social reasons. In their view, the certification will in practice be given to industrial plantations of exotic and damaging species such as eucalyptus, and not to forests. This would cause serious ecological damage to the environment (e.g. to biodiversity, to soil, to water, fires, climate) and to society.
- 5.2.5 The Complainants indicate that large feedstock suppliers such as ENCE/Norforest would count thousands of ha of industrial plantations of eucalyptus under the FSC seal, where significant amounts of herbicides – such as glyphosate – and insecticides are employed to combat pests in eucalyptus. This would, in reality, eliminate all insects, thereby damaging the ecosystem.
- 5.2.6 In addition to industrial plantations, the Complainants add that businesses also certify the forest exploitation of natural or semi-natural forests, but this certified surface area in Galicia is insignificant. In their view, it is questionable whether the certification of the industrial exploitation of natural forests should be promoted. While the EIB requires that biomass feedstock be ensured from certified sources under FSC and/or PEFC schemes, PEFC is, according to them, a form of greenwashing created by the forest industry, without credibility.

³⁰ EIB, Environmental and Social Data Sheet, Curtis Biomass Power Generation Plant, 12 April 2018 <https://www.eib.org/attachments/registers/82180853.pdf> (Last visited: 19 May 2019).

5.2.7 With regard to biomass in Galicia, the Complainants indicate that there is no obligation to manage forest biomass – except for preventing fires in primary, secondary and tertiary strips, which represent a minimum surface area. The available residual biomass would therefore not be sufficient to supply biomass to a project of this nature. Furthermore, the Complainants allege that there is no infrastructure or centralised collection of biomass. Most biomass is crushed on site alongside the paths; some is burnt on site as well, with the smoke causing adverse effects on the climate due to the release of carbon, and the danger of forest fires. Part of the biomass is left to decompose on the soil, which, in the Complainants' view, is the best method, as a large share of organic matter and nutrients is preserved. Another part is used by owners for their own consumption.

EIB's response

5.2.8 The EIB services shared their opinions on the questions raised by the Complainants; they affirmed that the biomass feedstock areas are in Galicia region, which produces more than 40% of the Spain's national timber supply. The standing stock of Galician forests is about 193 million m³ (137 m³/ha). The Annual Allowable Cut (AAC) is about 11-12 million m³, while the annual removals for industry is well below that, at 8.3 million m³.

5.2.9 The EIB understands that the Curtis biomass plant will only use harvesting residues from tree felling in Galicia, consisting of firewood with a small diameter (lower than 7 cm), bark and other biomass waste that cannot be used in the industry. In the case of coniferous trees and eucalyptus trees, the harvesting residues can represent 15-30 % of the total aerial biomass.

5.2.10 The EIB understands that the annual biomass feedstock (harvesting residues) is expected to be provided by the Promoter's exclusive suppliers and other contracted suppliers with whom it has signed biomass supply agreements. The biomass feedstock would be delivered from sourcing areas located within a range of 50 km to 200 km from the plant.

5.2.11 With regard to the interpretation of Galician legislation, the EIB services consider that Law 7/2012 on Galician forests requires the collection of harvesting residues from the forest with a view to reducing the use of fossil fuels and avoiding forest fires. As this is a cost for the forest owners and there is no market for this kind of biomass, no collection has been performed in the past. However, according to the law, the owners may face penalties of between EUR 100 and EUR 1 000 if they do not remove the harvesting residues. The purpose of the Project in this context is to use these forest residues for electricity production.

5.2.12 Concerning certificates, the EIB understands that the Promoter holds PEFC group certification and that it has implemented a Due Diligence System to guarantee that wood and products made from wood have a legal provenance in accordance with the EU Timber Regulation. Consequently, the feedstock would be supplied from certified sources under FSC and/or PEFC schemes i.e. as a mixture of either 100 % FSC, 100 % PEFC, FSC Mixed, FSC Controlled Wood or PEFC Controlled Sources.

5.2.13 Finally, the EIB considers that, according to the Galician Decree 52/2014 for regulating forest management in Galicia, all forest owners or forest managers shall be part of a forest certifications scheme (e.g. FSC/PEFC) as from 2020. For the EIB, in accordance with the current legislation that regulates forest management in Galicia (Law 7/2012 and Decree 52/2014),

from the year 2020, all forest owners and / or administrators have the obligation to have established a technical management document forest (or equivalent), which is a necessary requirement to obtain forest certification.

EIB-CM proposed way forward

- 5.2.14 The EIB-CM takes note of the different opinions gathered by the EIB-CM as part of the initial assessment on issues, such as: regional availability of sufficient biomass, reach of certification systems, and lack of clarity concerning the obligations arising from the applicable norms. The EIB-CM will then conduct a compliance review aiming at evaluating and reporting on the EIB's compliance with the relevant EIB regulatory framework, in the context of the appraisal and monitoring of this Project.

6. PROPOSED WAY FORWARD

General overview

- 6.1 The initial assessment identified some areas that require clarification, given the differing opinions of the EIB services and the Complainants. These relate specifically to:
- (i) whether the pertinent stakeholders were duly involved in accordance with the applicable regulations, and
 - (ii) the sustainability of biomass as a resource in the light of existing legislation, with particular emphasis on its origin, the use of exotic species, the use of voluntary certifications, the rationale behind its use, the interpretation of Galician legislation on forests and biomass, as well as the compatibility of the approaches taken with the applicable legislation, and impacts on the ecosystem.
- 6.2 The EIB-CM will conduct a compliance review with a view to clarifying these points and confirming the EIB's compliance with its standards.
- 6.3 The EIB-CM will continue to liaise with the EIB services and the Complainants to obtain relevant information and documents that are deemed useful for this investigation. If necessary, independent experts could be engaged and an on-site visit could take place.

S. Derkum
Head of Division
Complaints Mechanism
16 July 2019

A. Abad
Deputy Head of Division
Complaints Mechanism
16 July 2019