Subotica, 28.09.2009

The European Investment Bank
Secretary General
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Complainant:

Center for Ecology and Sustainable Development-CEKOR

On behalf of:
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Complaint about maladministration against the European Investment Bank

The complaint concerns the European Investment Bank's failure to adhere to its own transparency and social standards in the Gazela Bridge Rehabilitation project in the Republic of Serbia.

1. Facts of the complaint

This complaint was submitted simultaneously to the European Ombudsman due to the **urgency and seriousness of the situation that does not allow us to wait** until the results of the EIB internal mechanism procedures. The complainant has contacted the Bank however a complaint to European Investment Bank's Complaints Office has not been submitted yet.

1.1 The complainant's communication with the European Investment Bank

The Gazela Bridge Rehabilitation project was signed by the EIB on 16 July 2007 and was placed among "Projects financed" on the EIB website. As part of the project, an informal slum settlement consisting mostly of Roma families, was to be resettled in order for the reconstruction works on the bridge to take place. The resettlement is being supported by the European Agency for Reconstruction, the Department for

International Development (UK) and the European Bank for Reconstruction and Development.

On 27 May 2009 the complainant sent a letter to the EIB describing the situation in Belgrade city related to the reconstruction of the Gazela bridge and the resettlement of the Project Affected People and requesting disclosure of certain information including the parts of the loan agreement related to social, environmental and health constraints related to the project. Moreover the complainant asked the EIB to consider sending a delegation which would meet with the representatives of the Roma community from Gazela, interested Roma and non Roma CSOs and also representatives of the Roma national council and to thus establish a consultative and sustainable process of resettlement.

In its response of 17 June 2009, the EIB responded that Bank *"remains willing to attend further meetings and consultations called by the Serbian autorities provided it deems the meetings helpful for resolving outstanding resettlement issues"*. The Bank refused to disclose the loan agreement claiming that this kind of information forms part of the Bank's confidential relationship with its business partners, which is covered in the EIB's "Public Disclosure Policy", Article 27. The complainant would like to emphasise that it did not request the access to full agreement but only to the parts related to social, environmental and health issues.

In the letter of 27 July 2009, the complainant confirmed that it would like to receive access to the part of the document (Financial Agreement) containing the environmental and social conditions put on the borrower. On 24 September the Bank in its letter gave the complainant access to the part of the agreement containing environmental conditions, however not to the part relating to social issues, pointing only to a short summary of its contents which had been included in the 17th June response.

On 2 September 2009 the complainant sent another letter to the EIB describing the situation of the Project Affected People and project development. The complainant informed the Bank that on August 31st, the community living in the slum under the Gazela bridge was physically resettled. The complainant informed the EIB that the resettlement was not conducted according to the requirements the EIB had referred to (The World Bank's involuntary resettlement policy and international best practice). The complainant requested additional information from the Bank concerning the Resettlement Action Plan. The complainant has not received any response yet.

1.2 Situation concerning the resettlement of the Project Affected People

According to the Proposal from the Management Committee to the Board of Directors, the project development required resettlement of about 200 families, equivalent to some 1000 persons. The Proposal informed Directors that: *"the bank will work with the appropriate authorities, including the City of Belgrade, and with all the co-financers (EBRD and EAR) to ensure that that such resettlement is undertaken using international good practice"*. The document describes further that *"the Project Affected People concist of a variety of in-migrants-refugees from Kosovo, families from other parts of Serbia and other locations in Belgrade. They live in deplorable conditions in cardboard boxes, without electricity and water supply.*

The Gazela Bridge Rehabilitation project provides an opportunity to begin a wider process of social inclusion to deal with some 20 000 persons living in precarious conditions in Belgrade. Within the Gazela Bridge project the discrete activities have to ensure that the repair works can move forward in a timely manner and that the PAPs are treated as respectfully as possible in line with acceptable international practices.
The plan and methods for resettling and supporting the various components of this group of PAPs will have to be endorsed by the Bank prior to the first disbursement of funds related to the repair works of the bridge. The Bank will closely monitor the issue during project implementation in close coordination with the Commission (EAR) and the other project co-financers" (page 2, emphasis by complainant).

According to the "Environmental and Social Information" from the Appraisal Report of the Bank: *"the project will require the relocation of Project Affected Persons (PAPs) living illegally in temporary and informal settlements underneath and in the direct vicinity of both ends of the bridge (...). The PAPs (...) are of immediate concerns to this project given the urgency associated with the needed repair works on Gazela Bridge. The concerned persons face a variety of obstacles associated with their inclusion into normal social life such as missing administrative papers, citizenship identity documents, access to social security, education and health facilities. <u>These affect different families in different ways and will require close attention if resettlement is to be managed effectively</u>".*
A first attempt in 2005 to relocate some of the affected persons in 87 containers, donated by the town of Essen in Germany, failed. A citizen group stopped the construction in Staro Sajmiste (new Belgrade), claiming that the container settlement was contrary to normal urban development procedures. Concerns were also raised over possible PAP resistance to being relocated to sites away from the city's downtown district. Most, if not all PAPs, are from the Roma community and some of those families who have lived in and around the centre of Belgrade for many years make a living from collecting and recycling waste materials. The effects on livelihoods of moving such families will need to be borne in mind when considering the appropriate resettlement plan" (page 1 and 2, emphasis by complainant).

A recent monitoring mission conducted by the complainant on 14-17th September 2009 found that on 31 August 2009 the community living in the slum under the Gazela bridge had been resettled. The Resettlement Action Plan (RAP) has never been agreed with the Project Affected People, nor been publicly disclosed. The Project Affected People do not possess any copy of the RAP. The authorities have not given the opportunity for the affected population or host communities to discuss and participate in the preparation of the RAP, and the plan has still not been approved by Belgrade City Assembly. The resettled people signed agreements for resettlement however were not provided with copies of these agreements. Affected people agreed to be resettled and new when the resettlement would take place.

The PAP have been resettled in four different locations outside of Belgrade city. They are now living in a metal shipping containers of 18 meters square (one container for a families up to 10 people). The settlements are encircled by chain-link fences. Collecting waste is prohibited in the newly established settlements, and would anyway be difficult so far from the city. They have been prevented from continuing their primary economic activities without any alternative that would allow basic

income for the families. Intentions expressed by the City authorities of creating a recycling company with the Gazela residents or employing at least some of them in the municipal companies or providing trainings have never materialised. The resettled families are now fully dependent on state welfare. Some of the families try to continue to live on waste collection in Belgrade however it requires the members of the families to find temporary accommodation in other slums in Belgrade due to the high cost of travel to and from the new settlements (3-6 Eur).
The resettlement action was organised in a way that the affected people could not take all their belongings with them such as stoves, fridges or televisions. They were told that they should not bring any of these appliances with them as they would get new ones at the new settlements. However, the containers provided for the people were not fitted with any domestic appliances such as basic heating and cooking appliances and are not adjusted for such installations. Cooking and heating is not allowed in the containers. The food is provided once a day by the social services. Each settlement has shared sanitary containers, however their number is highly insufficient.
Two families, which did not agree to the resettlement to these remote locations, have been left homeless and are excluded from any social assistance. Mr Branko Kalanjos and Mrs Maja Ferizovic's families had been living in the Gazela settlement since its establishment. They did not accept the offer of a shipping container outside of Belgrade because their children go to school in Novi Belgrade and they would not be able to continute waste collection as their basic aconomic activity. These two families are among the most integrated into the society of Belgrade in terms of schooling of children but they have been left significantly worse off by the resettlement. Mr Branko Kalanjos was also one of the representatives of the community in negotiations with the city authorities regarding the resettlement. They are now staying with friends and relatives in another slum in Novi Belgrade.

2. Legal backgrounds

2.1 Access to information

The EIB as an EC body is subject to Regulation 1049/2001/EC. Indeed, indent 12 of Regulation 1367/2006's preamble provides that "Regulation (EC) No 1049/2001 applies to the European Parliament, the Council and the Commission, as well as to agencies and similar bodies set up by a Community legal act. It is necessary to extend the application of regulation (EC) No 1049/2001 to all other Community institutions and bodies." The EIB is therefore subject to Regulation 1049/2001/EC.

The EIB is also subject to Regulation No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.

The above legal acts oblige the Bank to disclose public and environmental information to any person who requests it unless the defined exceptions from the disclosure principle apply.

The Bank has also its own Public Disclosure Policy.
Article 21 of the PDP provides that *"... All information held by the Bank is subject to disclosure upon request, unless there is a compelling reason for non-disclosure. As*

the EIB operates as a bank, there are certain constraints on information it discloses (...)"

2.2 Environmental and social standards in the Bank's financial operations

According to the Environmental Statement 2004 of the Bank (Statement), valid at the time of the project approval, *"the EIB ensures that all projects it finances (...) - in developing countries, accord with internationally recognised social safeguard measures, including labour standards"* (page 1/7).

The Statement says also that: *"In regions where EU and/or national social standards do not exist or are inappropriate, the EIB uses other guidelines of good international practice. In particular, the Bank takes into account the IFC Safeguard Policies on indigenous peoples, involuntary resettlement and cultural property as well as the core labour standards that apply to members of the International Labour Organization (ILO). In such matters, the Bank coordinates its approach with the European Commission, responsible for external assistance to developing countries"* (page 5/7).

According to the Bank's letter to complainant dated 17 June 2009, regarding social standards the Bank has applied the World Bank's involuntary resettlement policy and best international practice at the time of the loan approval. The Bank also informed the complainant that according to the Finance Contract it would have to endorse the resettlement plan prior to the first disbursement.

According to the "Social Assessment of Projects outside the European Union: the Approach of the European Investment Bank" dated 2 October 2006 *"current attention focuses on the potential impacts of investment projects on population movements and resettlement, and on vulnerable groups of various kinds. Attention is given to establishing acceptable labour standards, ensuring the health and safety of the workforce and of the surrounding communities. Emphasis is also placed on securing acceptable levels of consultation and participation with affected shareholders and stakeholders. The general approach of the EIB has now evolved from mitigation of adverse impacts to wider considerations of the social opportunities that its projects might bring to the local communities and wider societies in which they are embedded. This includes such things as income generation and improved access to social and economic services for the poor"* (page 3/4).

The Social Assessment procedure is described in the Environmental and Social Practices Handbook that was published by the EIB in September 2007. The Handbook includes in Annex 12, Social Assessment Guidance Notes, dated July 2006. The document states (page 98, footnote 96) that these notes have been prepared in consultation with ENVAG and other parts of the EIB, as a guide to the social assessment of projects that are being considered for financing by the Bank. Guidance Note 1 deals with Population Movements and Resettlement.
The Introduction to the Notes, it states that: *"While social concerns have always figured in the assessment of projects by the EIB, especially outside the EU, they are only now being systematically codified"* (page 100). Further on the same page (emphasis by complainant): *"The following Guidance Notes provide information and resources to Bank staff in their pursuit of sustainable project development. They provide advice on key social issues in order that adverse social impacts might be*

mitigated, minimum standards might be attained, and positive social outcomes can be promoted.(...) The particular European concerns associated with the achievement of the Social Agenda provide the context in which they are rooted".
On page 101 the document summarises: *"A due diligence exercise should ensure that adequate arrangements are in place to mitigate adverse/negative impacts, and to guarantee minimum human rights standards. Where realistic the Bank should also seek to promote good governance and sound social standards in the organizations that it supports".*
Further on page 102 the document says: *"In its operations outside the Union the Bank endeavours to ensure that:*
• due diligence is carried out as part of the appraisal process;
• adequate capacity is being developed by the Promoter;
• a supportive development climate is fostered;
• adequate resources are devoted to monitor compliance;
• attention is paid to the achievement of development outcomes (including the MDGs)."

The objectives of the Guidance Note 1 "Dealing with population movements and resettlement" are to *"Ensure that EIB investments:*
Avoid or minimize development-induced displacement of people;
Mitigate negative social impacts of those losing assets, through the provision of appropriate compensation and/or employment opportunities regardless of the legality of existing land tenure arrangements;
Provide adequate information to and opportunities for informed participation by those affected;
Assist displaced persons to improve their former living standards and income earning capacity (page 113)

According to the document (page 115, emphasis by complainant): ***"Prior to approval Bank staff should be in receipt of a satisfactory resettlement plan/framework. If this is not available then negotiations to finalize the investment will need to be interrupted until such time as one is forthcoming."***

3. The complainant's allegations and their justification

3.1 Access to information

The bank has failed to provide access to public information such as the part of the Fiancial Contract containing provisions related to social issues (like the Resettlement Action Plan, conditions put on the Borrower, resettlement procedures and standards). In the letter dated 17 June the Bank only informed the complainant that the according to the Financial Contract the Borrower is obliged to provide to the Bank with satisfactory Resettlement Action Plan. However such information does not satisfy the complainant's request expressed in the letters dated 27 May and 27 July to obtain access to the part of the actual Financial Contract. The Bank did not provide the complainant with any concrete information nor did it inform it when or if the borrower had already or was going to provide the Bank with a RAP and whether the Bank considered the Plan as satisfactory and if the Bank was going to provide the

complainant access with the plan when the borrower will have provided it to the Bank.

Therefore the Bank has failed to comply with the Article 21 of the Public Disclosure Policy of the Bank and with Article 7.1 of the Regulation 1049/2001/EC stating that *"An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within 15 working days from registration of the application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period* ***or, in a written reply, state the reasons for the total or partial refusal and*** *inform the applicant of his or her right to make a confirmatory application in accordance with paragraph 2 of this Article."*

In addition, the Bank did not provide any justification to refuse providing access to the requested information. It did not refer to the relevant provisions of either article 4 of Regulation 1049/2001 or to its own Public Disclosure Policy to demonstrate that the request fell under one of the exceptions provided by these texts. There is therefore a complete lack of justification from the Bank.

3.2 Compliance of the EIB decision to finance the Gazela Bridge Rehabilitation with the EIB's own policies and procedures

According to the complainant, when approving and signing the loan for the Gazela Bridge Rehabilitation, the European Investment Bank committed an instance of maladministration. The Bank has failed to ensure the project's compliance with its own procedures and policies outlined in section 2.2 of this complaint as well as with the World Bank policy it referred to. The complainant would like to emphasise that the Bank is responsible for the proper appraisal procedure which takes place before the loan is approved by the Board of Directors of the Bank and is responsible for ensuring that the project is conducted in an appropriate manner (in line with the Bank's obligation) after the Bank enters into the Finance Contract through the monitoring activities of the Bank. Monitoring starts as soon as the Bank enters into the Finance Contract: *"The EIB monitors the project from the signature of the loan contract through the project implementation and operation phase until the loan is paid back"* (information on the EIB web page "Project Cycle", "Monitoring" http://www.eib.org/projects/cycle/monitoring/index.htm). The project consists of the rehabilitation of the bridge however the resettlement of the population living underneath this bridge is also an integral part of the project: *"to enable the implementation of the repair works, the project will require the relocation of Project Affected Persons (...)"* ("Proposal from the Management Committee to the Board of Directors, page 2). Relocation of PAP's is a direct social impact of the repair work and constitutes an integral part of the EIB's project. Therefore the complainant does not agree with the Bank's approach to accept its responsibility for the project to be managed in a way that satisfies Bank's requirements only after the Bank disburses the money to the Borrower. The monitoring requirements apply to each project as soon as the Bank enters into the Finance Contract. Moreover disbursement of the funds is a technical stage known only to the Bank's staff and does not constitute a formal Project Cycle stage as described on the EIB webpage http://www.eib.org/projects/cycle/index.htm.

3.2.1. EIB's incompliance with the loan appraisal procedures

The Bank has in place a developed instrument that helps to assess proposed projects in a way that satisfies the Bank's requirements.

In the Environmental and Social Practices Handbook, Annex 12, the Introduction to the Notes (page 100), the Bank has committed itself to ensure that the adverse social impacts are mitigated, minimum standards are attained, and positive social outcomes can be promoted when financing projects outside the EU. In order to fulfill this commitment, the EIB introduced Social Assessment Guidance Notes. Note 1 deals with involuntary resettlement issues. According to the documents, as quoted in part 2.2 of this complaint, when financing projects outside the EU, the EIB ensures that due diligence is carried out as part of the appraisal process. On page 101 the document (Handbook...) summarises: *"A due diligence exercise should ensure that adequate arrangements are in place to mitigate adverse/negative impacts, and to guarantee minimum human rights standards. Where realistic the Bank should also seek to promote good governance and sound social standards in the organizations that it supports".*

Therefore the appraisal process should not be limited only to identification and descriptions of potential problems and impacts but should already consider concrete arrangements in order to mitigate adverse/negative impacts and to guarantee minimum human rights standards. The Board of Directors should be informed by the Management Committee about the impacts and the measures that are proposed to mitigate impacts.

Unfortunately, the result of the EIB's appraisal of direct social impact of the project is limited to a half page text about the situtation with Roma community living next to the bridge. This assessment does not contain an in-depth assessment and analysis of the living conditions of the PAPs, and their social, economic and legal situation which would be necessary to understand the complexity of the problem and to propose adequate solutions and mitigation measures. The resettlement action plan may not be considered as a mitigation measure as such especially when the content is unknown, but is only a tool used to mitigate certain impacts. According to the Social Assessment Guidance Notes (page 104 of the Handbook): *"at the appraisal stage, it should be relatively clear what Bank staff may need to focus on in terms of social issues. At the least, they will wish to ensure that arrangements for mitigating identified negative social impacts and for monitoring progress, are in place. These arrangements should be written into the project agreement and identified as key issues to be addressed in the Project Progress Reports and in the Project Completion Report. They will consist of mitigation plans as well as procedures to ensure compliance with minimum standards."*

According to Note 1, page 114, the process of initial screening of the project should:
"Identify the nature and magnitude of likely displacement and establish with the Promoter a cut-off time and baseline data;
- Review previous resettlement prior to Bank involvement;
- Assess willingness of population to move/consultation processes developed;
- Assess the Promoter's capacity to deal fairly with the issues;
- Determine type and cost of any TA that may be required;

- Assess the strength of local public Authorities to support the processes involved (e.g. approaches to issues of land acquisition and compulsory purchase; procedures for handling disputes, land registration, and the provision of social safety nets);
- Explore with the Promoter alternative designs that might minimize displacement.

Further screening should moreover determine:
- The Promoter's commitment to and capacity for implementation
- The feasibility and appropriateness of proposed measures for restoring and preferably improving livelihoods
- The availability of adequate resources to fund resettlement
- The impoverishment risks (e.g. those resulting from changes from land based livelihood strategies to wage-based strategies, the security of alternative employment strategies, opportunities for employment in the company)
- Arrangements for internal and/or independent monitoring and evaluation.

The EIB's appraisal procedure does not fulfill these requirements for the initial screening and screening process. The Appraisal Report lacks most of the information it should contain, for example: cut-off time and baseline data for displacement, consultation process developed, the Promoter capacity's to deal fairly with the issues, the type and cost of TA, assessment of the capacity of local authorities and alternative designs to minimaze displacement, assessment of feasibility of proposed measures for restoring livelihood, availability of resources for resettlement, alternative emloyment strategies, opportunities for employment, arrangments for monitoring and evaluation.

The Bank has failed to ensure that its own appraisal process was in line with the procedures that the Bank is obliged to be in compliance with. Therefore the Bank committed an instance of maladministration.

Finally, prior to approval of the funding of the project the Bank should be in possession of the resettlement action plan. This is a requirement of Note 1, Annex 12, page 115 of the EIB Handbook. The Bank was not in a possession of a satisfactory action plan for resettlement before the loan approval. The Bank was not in possession of such a plan even at the time when the resettlement took place. The Bank has failed to comply with this requirement and has therefore committed an instance of maladministration.

3.2.2 The EIB's incompliance with the monitoring procedures and requirements

The Bank has failed to ensure that the project is monitored in a way that satisfies the Bank's own procedure.

According to the Appraisal Report *"The plan and methods for resettling and supporting the various components of this group of PAPs will have to be endorsed by the Bank and initiated prior to the first disbursement of funds related to the repair works of the bridge. The Bank will closely monitor the issue during Project implementation"* (page 1).
This report establishes the process as follows: plan and methods for resettling – endorsement by the Bank – initiation of the plan – disbursement – repair works.
In fact the resettlement was initiated without the endorsment of the Resettlement Action Plan by the Bank. Moreover, this Plan is not available to the Project Affected

People. During the time of project implementation, which is after the signing of the Finance Contract, the complainant informed the Bank about the irregularities regarding the preparation of the RAP (letter to the EIB dated 27 May 2009). The complainant asked the Bank to undertake some actions (monitoring mission) that would lead to the improvement of the project implementation. In the response, dated 17 June the Bank wrote that it "remains willing to attend further meetings and consultations called by the Serbian autorities provided it deems the meetings helpful for resolving outstanding resettlement issues." Yet, according to Note 1 (Annex 12 to the Handbook, emphasis by complainant) *"Progress on resettlement issues should be reported in the Project Progress Report and evaluated in the Project Completion Report. It is important during the early phases of implementation to review progress and make early corrections if necessary".* When executing its monitoring responsibilities, the Bank may not therefore passively wait for some developments but should actively undertake corrective actions if necessary.

The Bank should ensure that the process of resettling of the PAPs will not start before the Bank endorses the action plan as stated in the Appraisal Report and in Note 1, Annex 12 to the Handbook. The Bank should also closely monitor the implementation and make corrections.

The Bank has therefore failed to closely monitor the issue as it committed to because one of the main stages of the Project implementation (resettlement) took place without the Bank's endorsment and with violation of the standards of resettlements the Bank refered to. Therefore, in the complainant's opinion, the Bank has committed an instance of maladministration.

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The list of appendixes:

1. Complainant's letter to EIB, dated 27.05.2009
2. European Investment Bank's response, dated 17 June 2009
3. Complainant's letter to EIB dated 27 July 2009
4. Complainant's letter to EIB dated 02 September 2009
5. European Investment Bank's response dated 24 September 2009