

COMPLAINTS MECHANISM

SG/E/2022/03

SMALL HYDROPOWER PROJECTS (SERBIA)

CONCLUSIONS REPORT

21 MARCH 2023



SG/E/2022/03

Small Hydropower Projects (Serbia)

Conclusions Report

Complaint confidential: No

External distribution

Complainants
Borrowers

Internal distribution

Management Committee
Secretary General
Inspector General
Relevant EIB project team

Disclaimers

The conclusions presented in this report are based on the information available to the EIB Group Complaints Mechanism up to 18 January 2023. The conclusions are addressed solely to the EIB.

The internet links provided in the report were active on the issue date of the Conclusions Report.

THE EIB GROUP COMPLAINTS MECHANISM

The EIB Group Complaints Mechanism (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 this may include the environmental or social impact of the EIB's projects and operations.

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

Please note: Complainants that are not satisfied with the conclusions report may file a complaint of maladministration against the EIB Group with the European Ombudsman¹.

¹ Available here: <https://www.ombudsman.europa.eu/en/home>. For more information see the [EIB Group Complaints Mechanism policy dated November 2018](#), section 4.5.

CONTENTS

The EIB Group Complaints Mechanism.....	iii
Contents.....	iv
Glossary.....	v
Executive summary.....	1
1 Background.....	2
2 Regulatory framework.....	4
3 EIB’s due diligence of intermediary financing.....	9
4 Analysis and findings.....	10
5 Conclusions.....	13
6 Outcome and suggestions for improvement.....	15
Appendix — Key facts about the Beli Kamen and Komalj SHPPs.....	16

GLOSSARY

A.d.	Akcionarsko društvo (in Serbian) — joint stock company
CPC	Candidate and Potential Candidate
Developer	Elektrovat d.o.o., Belgrade
D.o.o	Društvo s ograničenom odgovornošću (in Serbian) — limited liability company, Ltd.
EIA	Environmental impact assessment
EIB	European Investment Bank
EIBG	European Investment Bank Group
EIB-CM	EIB Group Complaints Mechanism
ECS	Environmental, climate and social
ESPS	The EIB's Statement of Environmental and Social Principles and Standards (2009)
ESSF	The EIB's Environmental, Social and Sustainability Framework
EO	European Ombudsman
EU	European Union
IAR	Initial assessment report
Intermediary	Borrower, Banca Intesa a.d. Beograd, Intesa Leasing d.o.o. Beograd and Credit Agricole Srbija (CAS) a.d. Novi Sad
Promoter	Zlatiborske Elektrane D.o.o., Čačak
Serbia	The Republic of Serbia
SHPP	Small hydropower plant
SME	Small and medium-sized enterprise

EXECUTIVE SUMMARY

In January 2022, the EIB-CM registered a complaint from CEE Bankwatch Network and the Rzav Ecological Association regarding two small hydropower projects (SHPP) in western Serbia (SG/E/2022/03). In April 2022, the complainants provided additional information².

The complaint pertains to the construction of two SHPPs on the Crni Rzav river. The sub-projects were co-financed by the EIB via two intermediated loans (loans for SMEs), Intesa SMEs and Priority Projects II, and the Credit Agricole Loan for SMEs and Other Priorities II, approved in 2012 and 2014, respectively.

Among other things, the complainants ask the EIB to engage with the promoter to improve the ecological status of the Crni Rzav and Ribnica rivers, and with the intermediary in order to avoid the financing of a third dam on the same river. In its initial assessment report, the EIB-CM reminded the complainants that, as stated in its policy, it cannot replace a legal enforcement mechanism and will not substitute for the judgment of competent judicial authorities. The investigation focused on the project documentation made available and the environmental and social due diligence conducted by the Bank in relation to the allegations, as identified in the initial assessment report.

All allegations for the Beli Kamen SHPP were found to be ungrounded. Allegation 1 regarding the Komalj SHPP sub-project was found to be grounded, while allegations 2 and 3 were dismissed. The conclusions concern projects under the EIB's responsibility, therefore recommendation and suggestion for improvement are addressed to the EIB in the context of its intermediated lending. The outcome of the complaint is presented in the table below.

Allegation	Outcome	Suggestion for Improvement
1. Lack of environmental impact assessment (EIA)	Recommendation (for Komalj SHPP): The Bank should check the nature protection status, including international commitments, of the financial intermediaries' (IF) sub-projects, which are referred back to the EIB for approval (and require development consents) in the CPC countries	As part of the ongoing effort to align the existing framework for the assessment of FIs' environmental, climate and social (ECS) risk management in the context of Standard 11 for countries outside the EU, the EIB-CM suggests that the EIB: (i) Establish a structured process to collect evidence of FIs capacity to identify, assess, manage and monitor environmental and social risks and impacts of sub-projects . (ii) Where possible, offer capacity building (or Technical Assistance) for those FIs that may need support to strengthen their environmental, climate and social risk management system to be in line with the EIB's environmental and social standards (if needed in cooperation with other stakeholders/ mandators).
2. Lack of stakeholder consultations	Ungrounded	
3. Lack of due diligence of intermediated financing for the operations	Ungrounded	(iii) Strengthen communication with FIs on the EIB's ESSF and ECS risk management strategy.

Finally, the EIB-CM notes that, in February 2022, the EIB's Board of Directors approved the ESSF³, which includes Standard 11 on intermediated finance. The suggestion for improvement was formulated to contribute to the implementation of Standard 11. Its objective is to guide financial intermediaries in making the necessary adjustments and enhancements in their operations/processes, and to identify, assess and manage the impacts and risks arising from sub-projects in line with applicable requirements and the level of environmental and social risks associated with the types of sub-projects.

² The EIB-CM decided to handle issues concerning transparency and access to information in a separate complaint (SG/A/2022/01). The link to the website of the case can be accessed [here](#).

³ The EIB Group's Environmental and Social Sustainability Framework (2022) consists of the EIBG Environmental and Social [Policy](#) and Environmental and Social Standards, available [here](#).

1 BACKGROUND

1.1 Complaint

- 1.1.1 On 25 January 2022, the EIB Complaints Mechanism received a complaint from CEE Bankwatch Network and the Rzav Ecological Association (hereinafter, “the complainants”) concerning two small hydropower plants (hereinafter, “SHPPs”) on the Crni Rzav river in the Republic of Serbia (hereinafter, Serbia). The complaint includes several allegations concerning environmental and social issues, as well as allegations related to transparency and access to information. For this reason, the EIB-CM divided this complaint into two separate cases (SG/E/2022/03 and SG/A/2022/01). This report addresses the environmental and social aspects of the complaint.
- 1.1.2 The complainants alleged that the Beli Kamen and Komalij SHPP projects created severe consequences for the ecosystem of the Crni Rzav river⁴. They argue that the decision to finance the sub-projects have been taken in violation of the relevant EU legislation, causing a breach in the EIB environmental and social standards. In particular, the complainant alleged that the cumulative impacts of the two SHPPs had neither been considered in the decision, nor assessed by the EIB in its due diligence process. The allegations, as established by the EIB-CM’s initial assessment report⁵, are as follows:

Table 1 — Summary of allegations

No.	Allegation	Description of the allegation
1	Lack of environmental impact assessment	The projects were not made subject to an environmental impact assessment (EIA) during the project development phase.
2	Lack of stakeholder consultations	Lack of consultation with appropriate stakeholders, namely the Institute for Nature Conservation and the Balkan Eco Team d.o.o.
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 a failure to check the capacity of the intermediaries during the due diligence process.

1.2 Sub-projects and their location

- 1.2.1 The complaint concerns two SHPPs in western Serbia — Beli Kamen and Komalj (see Appendix for parameters of the sub-projects). The two sub-projects were financed by the EIB via two intermediated loans for SMEs, mid-caps and other priorities in the field of knowledge economy, energy, environmental protection, industry, health, education and services⁶. The EIB approved *Intesa SMEs and Priority Projects II* in December 2012⁸, and the *Credit Agricole Loan for SMEs and Other*

⁴ A study performed by „Water Logist“ d.o.o. and the Institute of Biology and Ecology of the Faculty of Science of the University of Kragujevac, Serbia (2020) showed that the water temperature of the Crni Rzav river below both the Beli Kamen and Komalj SHPPs has significantly changed, disrupting local flora and fauna. The study is available [here](#).

⁵ Initial assessment report for case SG/E/2022/03 is available [here](#).

⁶ Information on the two projects, available at: [INTESA SMES AND PRIORITY PROJECTS II \(eib.org\)](#); [CREDIT AGRICOLE LOAN FOR SME&OTHER PRIORITIES II \(eib.org\)](#).

⁷ The operation relevant to the Beli Kamen SHPP with the intermediaries Banca Intesa a.d. Beograd and Intesa Leasing d.o.o. Beograd.

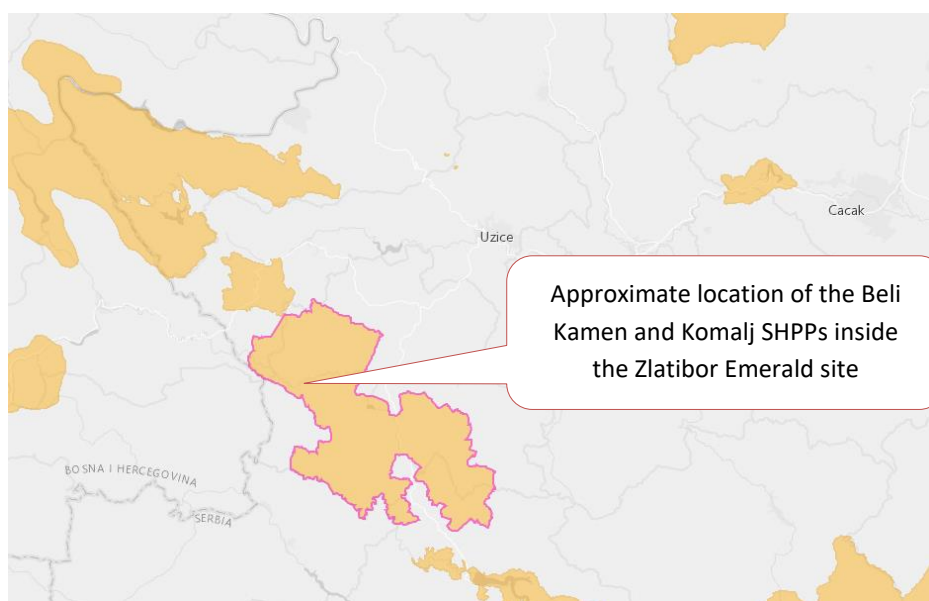
⁸ The financial intermediary concerned (Intesa) indicated that the promoter fully refinanced the loan for the Beli Kamen project in 2017. Therefore, the Beli Kamen project is no longer part of the allocated portfolio.

EIB Group Complaints Mechanism — Conclusions Report

*Priorities II*⁹ in November 2014. Zlatiborske Elektrane d.o.o. Čačak¹⁰, the investor, applied for loans for Beli Kamen SHPP and Komalj SHPP in respect of different intermediaries. The applicant for the development consents for both sub-projects was Plemen a.d., Belgrade which is partly owned by Elektrovat d.o.o. Belgrade¹¹ and is the investor in both SHPPs¹².

- 1.2.2 The operations concern intermediated financing in Serbia. At the time of the approval of intermediary financing, Serbia was a Potential Candidate Country in terms of joining the EU (for Beli Kamen SHPP, 2012) and its status changed over time to a Candidate Country (for Komalj SHPP, 2014). While its status changed, according to the EIB's standards, in both cases it fell into a category of the EU Candidate and Potential Candidate (hereinafter CPC) country.
- 1.2.3 The Beli Kamen and Komalj SHPPs are located on the right bank of the Crni Rzav river, in the Drina river basin¹³. The Beli Kamen SHPP has two intakes (two pipelines) — one on the Crni Rzav (4.3 kilometres upstream from the powerhouse) and one on the Ribnica river (2.5 kilometres upstream from their confluence).
- 1.2.4 Although Beli Kamen and Komalj are two separate plants, their operation is deeply interrelated as cascading powerhouses. Beli Kamen's output bypasses the Crni Rzav river for an additional 2.4 kilometres, going directly into Komalj's pipelines¹⁴.
- 1.2.5 The SHPP's are located in the Zlatibor Emerald site (see Figure 1)¹⁵, in accordance with the Bern Convention (see § 2.2.17)¹⁶. The site was proposed as the Emerald site in 2006 and became an Emerald Network candidate site in 2011.

Figure 1: Location of the SHPPs within the Zlatibor site (Emerald Network, Serbia)¹⁷



⁹ The operation relevant to the Komalj SHPP with the intermediary Credit Agricole Srbija a.d. Novi Sad (CAS). As of 1 April 2022, CAS is not part of Credit Agricole SA. It was acquired by Raiffeisen Banka Beograd.

¹⁰ Case study of CEE Bankwatch Network and WWF. The Beli Kamen and Komalj hydropower plants on the Crni Rzav and Ribnica rivers (2021). Available [here](#).

¹¹ Information about the company and its engagement in the construction of the SHPP is provided [here](#) and [here](#).

¹² Information can be found [here](#).

¹³ The Ribnica river is an intake of the Crni Rzav river, which enters into the Drina river. Information available [here](#).

¹⁴ Information from the case study of CEE Bankwatch Network and WWF (2021).

¹⁵ The Emerald Network is an ecological network made up of Areas of Special Conservation Interest. Its implementation was launched in 1989 by the Council of Europe as part of its work under the [Bern Convention](#). Zlatibor site (code RS0000034) was proposed as an Emerald site in 2006 and became an Emerald Network candidate site in 2011. It appears that information available on the European Commission's website ([here](#)) was unfortunately not up-to-date at the time of the appraisal and is no longer updated (the page has been archived during the latest year).

¹⁶ Council of Europe's Bern Convention on the Conservation of European Wildlife and Natural Habitats (1979) was ratified by Serbia and the European Union. More information available [here](#).

¹⁷ This map was sourced from Natura2000.eea.europa.eu/Emerald/ website.

- 1.2.6 The location of the SHPPs was incorporated within the Zlatibor Nature Park in 2017¹⁸, when it was given a nature park status by the Government of the Republic of Serbia.

1.3 Work performed

- 1.3.1 In an initial meeting with the EIB in March 2022, the EIB-CM provided a general overview of the complaint to the services concerned and enquired about an exchange of information between the EIB and the intermediary financial institutions involved. After a preliminary analysis of the documents, the EIB-CM contacted the services concerned requesting some follow-up information. The EIB-CM reviewed project-related documents, including:
- (i) Aforementioned correspondence between the Bank and its intermediaries.
 - (ii) Applicable national, EU and international legislation.
 - (iii) CEE Bankwatch and WWF Adria's microbiological study on the status of the Crni Rzav river¹⁹ and other relevant publicly available information.
- 1.3.2 In July 2022, the EIB-CM issued an Initial Assessment Report²⁰ (hereinafter, "IAR", see § 1.1.2). The IAR defined the allegations, provided a general overview of the complaint, and outlined the next steps of the compliance review process.
- 1.3.3 According to the complainant, as stated in the IAR (§§ 1.2-1.3), the investor intended to finance a third SHPP, Peta²¹, below the Komalij SHPP²². The EIB-CM verified this information with the Bank's services. During the preparation of the IAR, the relevant EIB services stated that the intermediary did not wish to finance the Peta SHPP at present. The construction of said SHPP is, therefore, not currently being financed by the EIB. Furthermore, in 2013 (updated in 2022), the EIB issued a list of activities (sectors) excluded from EIB financing, whereby final beneficiaries whose main activity is in the sector of "hydropower" are excluded from financing under multi-beneficiary intermediated loans and other intermediated debt products²³. If EIB financing were to be requested for the Peta SHPP, it would likely fall within said list.
- 1.3.4 On the basis of the information collected and the IAR, the EIB-CM prepared this conclusions report.

2 REGULATORY FRAMEWORK

2.1 The EIB Group Complaints Mechanism

- 2.1.1 The EIB Group Complaints Mechanism Policy²⁴ tasks the Complaints Mechanism with handling complaints concerning alleged maladministration by the EIB²⁵. Maladministration means poor or failed administration²⁶. This occurs when the EIB fails to act in accordance with the applicable legislation and/or established policies, standards and procedures²⁷. Maladministration may also relate to the environmental or social impacts of the EIB's activities²⁸.
- 2.1.2 The Policy specifies that the Complaints Mechanism shall review the EIB's activities with a view to determining whether maladministration, attributed to the EIB has taken place²⁹. The EIB-CM is not

¹⁸ Information available [here](#).

¹⁹ Available [here](#).

²⁰ Available [here](#).

²¹ Information about the third plant on the Crni Rzav is also available on Elektrovat Ltd's page [here](#).

²² Case study on the Beli Kamen and Komalij hydropower plants on the Crni Rzav and Ribnica rivers (2021) conducted by CEE Bankwatch Network and WWF. Available [here](#).

²³ EIB eligibility, excluded activities and excluded sectors list (2022), available [here](#).

²⁴ Available at: https://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf.

²⁵ § 5.1.3 of the EIB Group Complaints Mechanism Policy.

²⁶ § 3.1 of the EIB Group Complaints Mechanism Policy.

²⁷ § 3.1 of the EIB Group Complaints Mechanism Policy.

²⁸ § 3.3 of the EIB Group Complaints Mechanism Policy.

²⁹ § 5.3.3 of the EIB Group Complaints Mechanism Policy.

EIB Group Complaints Mechanism — Conclusions Report

competent to investigate complaints concerning international organisations, EU institutions and bodies and national, regional or local authorities³⁰.

2.2 Standards applicable to intermediated financing

2.2.1 All projects benefiting from EIB support via intermediated finance are designated as sub-projects, which must comply with project applicable standards. Outside the EU, in the CPC countries, **the intermediary will undertake to ensure compliance of the sub-projects** with appropriate national and/or international environmental and human rights conventions and agreements ratified by the host country as well as the EIB's environmental and social standards.

2.2.2 The sub-projects in question fall under the category of activities financed under Global Loans, that is, credit lines to intermediaries to finance projects contributing to predetermined objectives set by the Bank but not identified at the time of the Global Loan submission to the Board³¹.

2.2.3 The EIB's environmental and social standards applicable to the operations in question were as follows (i) EIB Statement of Environmental and Social Principles and Standards (2009) and (ii) Environmental and Social Practices Handbook (2010 version for the operation approved in 2012, relevant to Beli Kamen SHPP) and 2013 version for the operation approved in 2014 (relevant to Komalj SHPP). The EIB's responsibilities applicable at the time of the project, as detailed in the internal procedures and processes, are described in sub-section 2.3 below.

*EIB Statement of Environmental and Social Principles and Standards (ESPS)*³²

2.2.4 Where financing is granted indirectly by the Bank via an intermediary, the Bank may delegate the authority for the financing decision for individual sub-projects to a financial institution that **has demonstrated the capacity to apply the Bank's environmental and social requirements** subject to **appropriate reporting, monitoring and contractual requirements**. The EIB Environmental and Social Practices Handbook describes Bank practices in such cases.

2.2.5 All projects financed by the EIB are **required to undergo an appropriate Bank environmental assessment**, based on information provided by the promoter and other stakeholders. **Regardless of the need for a formal EIA, this assessment is carried out by the Bank itself, or by an intermediary according to the requirements of the Bank.**

2.2.6 In the CPC countries, **the EIB pursues EU standards**. The EIB requires all projects that it finances to comply at least with applicable national environmental law, applicable EU environmental law, notably the EU EIA Directive and the nature conservation directives **and standards of relevant international environmental conventions incorporated into EU law**.

EIB Environmental and Social Practices Handbook (2010)

2.2.7 Compliance with EU, national and international environmental legislation is made a condition for each sub-project under the Global Loan. All projects financed under the proposed loan are required, by conditions in the loan contract, to comply with **the relevant national legal framework, to be acceptable in environmental terms to the EIB and in line with EU environmental policy and law**. The borrower shall have proven track record of good environmental management, including the capacity to evaluate an EIA, where required, according to the environmental assessment principles, standards and practices applied by the EIB.

*EIB Environmental and Social Practices and Standards, Volume I (2013), Standard 1: Assessment and Management of Environmental and Social Impacts and Risks*³³

2.2.8 When lending via financial intermediaries and particularly outside the EU, the EIB assesses **the financial intermediaries and their capacity to on-lend the EIB funds in line with the EIB's environmental and social standards and particular requirements**, including those outlined in the ESPS (2009).

³⁰ § 4.3.2 of the EIB Group Complaints Mechanism Policy.

³¹ Article 21, p. 16, of the EIB Environmental and Social Practices Handbook (2010).

³² ESPS available [here](#).

³³ EIB Environmental and Social Practices Handbook (2013).

- 2.2.9 The compliance of projects financed via intermediaries with EU directives/national legislation, as applicable, and with the EIB's environmental and social standards, is subsequently addressed by the EIB as part of the due diligence regarding each financial intermediary (whereby the EIB obtains comfort that the intermediary has the capacity to conform to EIB standards, including by only presenting projects for allocation that comply with EU/national law). In addition, the finance contract signed between the intermediary and the EIB shall include contractual clauses by which the final beneficiaries must comply with all the relevant national laws and regulations, international conventions to which the host country is party to and, if applicable, the EU *acquis* (collection of common rights and obligations that constitute the body of EU law).
- 2.2.10 The EIB follows up on individual allocations and reserves the right to carry out its own, detailed due diligence for each project.

EU environmental law, applicable national law and other relevant instruments

- 2.2.11 The **Directive on the assessment of the effects of certain public and private projects on the environment** (EIA Directive), which has changed over the years, is applicable to this case. Regardless of the version of the EIA Directive, the sub-projects in question fall under Annex II, point 3(h) — Installations for hydroelectric energy production — and require a screening determination procedure irrespective of capacity, as no thresholds are provided under the EIA Directive.
- 2.2.12 The **EIA Directive** establishes the need to assess the impact of the submitted projects in “cumulation with other existing and/or approved projects”³⁴.
- 2.2.13 Court of Justice of the EU's (CJEU) case-law³⁵ established that it may be necessary to **take account of the cumulative effect of projects**, when determination is carried out as required by Article 4(3) of the EIA Directive, in order to avoid a circumvention of the objective of EU legislation by splitting projects which, taken together, are likely to have significant effects on the environment.
- 2.2.14 The EIA Directive³⁶ specifies selection criteria for screening determinations. In terms of the project's location, particular attention should be paid to the areas classified or protected pursuant to the Birds Directive³⁷ and the Habitats Directive³⁸. Natura 2000 sites are therefore considered by the Council of Europe as the contribution of the EU Member States to the Emerald Network. Its management is based on the Habitats Directive and the Birds Directive and is binding for all EU Member States³⁹.
- 2.2.15 **The state of compliance** of the CPC countries within the Energy Community⁴⁰ **is monitored by an appropriate EU entity**⁴¹.
- 2.2.16 National law:
- Law on Nature Protection (“Official Gazette of the Republic of Serbia”, No. 135/2004, as amended)⁴², Regulation on determining the List of projects for which an impact assessment is mandatory and the List of projects for which an environmental impact assessment can be

³⁴ Point 1(b) and Point 3(c) of Annex III to the EIA Directive (2011/92/EU, as amended), in conjunction with its Article 4(3).

³⁵ Case C-392/96 *Commission v Ireland* [1999], paragraph 76; Case C-2/07 *Paul Abraham and Others v Région wallonne and Others*, paragraph 28; Case C-244/12 *Salzburger Flughafen GmbH v Umweltssenat*, paragraph 37. See also Case C-275/09 *Brussels Hoofdstedelijk Gewest and Others v Vlaamse Gewest*, paragraph 36; and the case-law cited.

³⁶ Annex III to the EIA Directive, Point 2(e).

³⁷ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds.

³⁸ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

³⁹ Information available [here](#).

⁴⁰ The Energy Community is an international organisation which brings together the European Union and its neighbours to create an integrated pan-European energy market. [Energy Community Homepage \(energy-community.org\)](#).

⁴¹ Link [here](#). “Adequate administrative capacities and financial support must be created (on national and local level) to properly assess the impact of planned HPP projects early in the decision-making process”.

⁴² Articles 5.2, 5.5, 5.8, 8, 10, 34, and 57 of the Law can be found [here](#). The principle of “user pays” could also be a principle to bear in mind on this complaint. The Ministry can still assess whether there is a prevailing public interest in accordance with Article 10 of this law”.

EIB Group Complaints Mechanism — Conclusions Report

requested⁴³ and the Rulebook on the contents of EIA studies (Environmental Impact Statements)⁴⁴. Law on environmental impact assessment⁴⁵.

- Law on the spatial plan of the Republic of Serbia from 2010 to 2020⁴⁶, which integrated the works related to the establishment and protection of Emerald sites (including Zlatibor).
- Law on protection and sustainable use of fish stock⁴⁷.
- Regulation on the proclamation of the Zlatibor Nature Park⁴⁸.

2.2.17 **International standards:** Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention)⁴⁹. The officially nominated candidate Emerald sites are listed on the website of the Council of Europe⁵⁰.

2.3 Responsibilities of the EIB

2.3.1 In line with the ESPS (2009), **the responsibility for compliance with the project applicable standards lies with the promoter and local authorities. However, the EIB will not finance projects that do not meet project applicable standards.** Whether the projects meet the project applicable standards is established as part of the EIB's project appraisal and monitoring procedures⁵¹.

2.3.2 Where financing is performed via an intermediary, the Bank may delegate the authority for the financing decision to a financial institution that **has demonstrated the capacity to apply the Bank's environmental and social requirements subject to appropriate reporting, monitoring and contractual requirements**⁵².

*EIB Environmental and Social Practices and Procedures, Volume II (Handbook, 2013)*⁵³

2.3.3 As is the case for global loans, the intermediary **financing institution assumes responsibility for assessing risk on individual sub-loans to SMEs.**

2.3.4 A project that requires an environmental and social impact assessment (ESIA) will require a biodiversity assessment. However, an activity not requiring an ESIA but involving construction works or an operation in the natural environment may **still require a separate biodiversity assessment.** The requirements detailed in the General Principles Section apply to all types of investments, including framework and global loans.

2.3.5 Examples of the parameters to be considered in estimating the environmental and social capacity of and actions to be taken by the intermediary are presented in the EIB Environmental and Social Practices Handbook (2013).

2.3.6 Generally, the sub-projects to be financed under global loans are not known at the time of submission to the Board. The Bank appraises and approves global loans on the basis of, *inter alia*, the

⁴³ Official Gazette of the Republic of Serbia, No. 114/2008 of 16 December, 2008, available [here](#) (in Serbian). Annex II, point 3(2) Hydro energy production (threshold of power over 2 MW) and point 15. Projects **listed in List I and List II that are implemented in protected natural assets** and protected surroundings of immovable cultural assets, as well as in other areas of special purpose (unofficial translation).

⁴⁴ Official Gazette of the Republic of Serbia, No 69/2005, available [here](#) (in Serbian).

⁴⁵ Official Gazette of the Republic of Serbia, No 135/2004 as amended by 36/2009, available [here](#) (in Serbian).

⁴⁶ Official Gazette of the Republic of Serbia, No 88/2010, available [here](#) (in Serbian).

⁴⁷ Law on the protection and sustainable use of the fish fund ("Official Gazette of RS", No 128/2014 and 95/2018 — other laws) available [here](#).

⁴⁸ Article 5 of the Regulation available [here](#).

⁴⁹ The Bern Convention of 19 September 1979, available [here](#). The Emerald Network is an ecological network made up of Areas of Special Conservation Interest. Its implementation was launched by the Council of Europe as part of its work under the Bern Convention, with the adoption of Recommendation No 16 (1989) of the Standing Committee to the Bern Convention.

⁵⁰ Available [here](#).

⁵¹ the ESPS available [here](#).

⁵² Article 16, p. 8 of the ESPS (2009).

⁵³ If any provisions of the EIB Environmental and Social Practices Handbook (2010) are deemed relevant, references shall be cited directly in the paragraphs concerned. The EIB Environmental and Social Practices Handbook (2013) is available [here](#).

creditworthiness and integrity of the financial intermediaries, their capacity to implement EIB financing in line with EIB's standards and requirements, the objectives sought (financing of SMEs, infrastructure, environment, etc.) and the sub-project selection criteria (for example, regions concerned, excluded sectors, etc.), which are then reflected in the contract(s) signed.

- 2.3.7 All projects financed via financial intermediaries shall comply with the appropriate environmental and social legislation and standards; that means, this includes for those outside the EU — national legislation with reference where appropriate, to their alignment with EU legislation and the EIB's environmental and social standards.
- 2.3.8 Prior to appraisal, the Bank **will assess the approach and capacity** of the intermediary and the context in which it operates.⁵⁴
- 2.3.9 When evaluating the environmental and social risks associated with a global loan, the Bank will consider a number of characteristics of the intermediary, the Bank's experience with the financial intermediary, the type of sub-projects and other aspects⁵⁵.
- 2.3.10 In the CPC countries, compliance with EU, national and international environmental and human rights legislation **as well as EIB environmental and social standards are made a condition for each subproject under the global loan**. The borrower must have a **proven track record of good environmental and social management, including the capacity to evaluate an E(S)IA, where required, according to the environmental and social assessment principles, standards and practices applied by the EIB**.
- 2.3.11 For intermediated financing, the EIB shall confirm the use of contractual obligations concerning the intermediaries to verify compliance by the final beneficiaries with the relevant environmental and social standards (EU or national standards, with EU standards as the benchmark).
- 2.3.12 For global loans, **the intermediary undertakes to promote compliance of the sub-projects with relevant national and EU law**. Compliance with EU, national and international environmental legislation is made a condition for each sub-project under the global loan. All projects financed under the proposed loan shall, **under conditions in the loan contract, be required to comply with the relevant national legal framework, be acceptable in environmental terms to the EIB and in line with EU environmental policy and law**. The borrower shall have a **proven track record of good environmental management, including the capacity to evaluate an EIA**, where required, according to the environmental assessment principles, standards and practices applied by the EIB.
- 2.3.13 The **environmental and social capacity of the intermediary shall be reviewed to determine whether the intermediary has the capacity and capability to manage the environmental aspects**, including impacts and risks, arising from its investment activities within the policy and legal context in which it operates. This shall be carried out for intermediaries in all regions and shall particularly apply in cases where the EIB may not assess each individual investment, such as in relation to global loans.
- 2.3.14 Project promoters are fully responsible for implementing sub-projects financed by the Bank, including all environmental and social aspects, such as studies, the EIA process, the implementation of mitigation and/or compensation measures and monitoring of the success/effectiveness of these measures after implementation. At the appraisal stage, the Bank must therefore determine, and recommend to its management, to what extent environmental and social matters should be monitored and how this should be overseen.

⁵⁴ The 2013 Handbook differentiated “the definition and criteria of EIB environmental and social standards and requirements and the relevant EU Directives”. It also makes it possible for the project team to discuss potential issues with the Environmental Assessment Group (ENVAG) and other environmental teams at the bank.

⁵⁵ Articles 311 and 312 of the 2013 EIB Environmental and Social Practices Handbook (Volume II).

3 EIB'S DUE DILIGENCE OF INTERMEDIARY FINANCING

3.1 Project appraisal and approval

Intesa Loan

- 3.1.1 During 2011 and 2012 the EIB carried out appraisal of the intermediated lending operation with Banca Intesa a.d. Beograd and Intesa Leasing d.o.o. Beograd. The EIB approved the operation in October 2012. Under the finance contract signed between the financial intermediary and the EIB, the intermediary committed to inform the final beneficiaries about the Bank's financing and its impact on the terms and conditions offered. In addition, the financial intermediary to pursue the application of EU standards in Serbia for this intermediated loan.

Credit Agricole Loan

- 3.1.2 In 2014, the EIB carried out the appraisal of the intermediated lending operation with Crédit Agricole Banka Srbija a.d. Novi Sad. In September 2014, the EIB approved the financing for the operation. The approval noted that in the CPC countries, the EIB would pursue the application of EU standards and that the intermediary would ensure that the final beneficiaries undertake to implement and operate the relevant investments in conformity with the applicable environmental legislation and the requirements of the EIB Loan for SMEs in the CPC countries.

3.2 Finance contract and appraisal of the sub-project

Intesa Loan

- 3.2.1 The finance contract with the intermediary takes note of the applicability of EU law (save for any general derogation made by the EU).
- 3.2.2 The intermediary declared that its policy on its loans in the sectors covered by the contract is to require that the final beneficiaries: (a) comply with environmental law in respect of investment projects financed by the intermediary; and (b) supply such information, upon the intermediary's specific request as will enable the intermediary to ensure that the final beneficiaries so comply and undertake to maintain their effectiveness and compliance with those undertakings for the duration of the loan and, upon the Bank's request, provide evidence of such.
- 3.2.3 The side letter, in line with the finance contract, refers to the need to comply with the relevant national legislation, any applicable EU legislation and the **ESPS**.

Credit Agricole Loan

- 3.2.4 **The conditions stipulated in the finance contract** required the borrower, under the relevant agreements with each final beneficiary (i) to implement and operate the **project in conformity with environmental law**; (ii) obtain and maintain the requisite environmental approvals for the project; (iii) comply with any such approvals; (iv) undertake to seek such evidence at the request of the Bank and to transmit to the Bank any material information received in response to such request; and (v) to execute and operate the project in accordance with the relevant national laws and the relevant standards of EU law (save for any general derogation made by the European Union).
- 3.2.5 The borrower affirmed that it would inform the Bank if an EIA was required on a particular project, if particular environmental risks existed **or if the project was located in a nature conservation area**. The EIB reserved the right to require further information and to determine whether or not the particular sub-project was eligible for EIB financing.

4 ANALYSIS AND FINDINGS

4.1 Environmental impact assessment

4.1.1 The complainants allege the lack of environmental impact assessment (EIA) procedures during the projects' development phase. The stakeholder consultations, as required by the EIA directive, are addressed in this sub-section; the national requirements to consult specific stakeholders are, however, presented in sub-section 4.2.

Lack of EIA for Beli Kamen SHPP

4.1.2 The operation relevant to the sub-project in question was appraised in 2012 as a global loan operation (see § 1.2.1). The relevant standards applicable to the operation at the time were the ESPS (2009) and the EIB Environmental and Social Practices Handbook (2010) (see §§ 2.2.4-2.2.7).

4.1.3 The Beli Kamen SHPP project, fall under Annex II to the EIA Directive, therefore it should have been subject to at least a screening determination regarding the need for an EIA (see §§ 2.2.11, 2.2.16, footnote 43). As stated by the EIB's policy, compliance with project-applicable standards lies with the promoter while the intermediary is responsible for safeguarding compliance (see §§ 2.2.1 and 2.2.7).

4.1.4 Based on the evidence provided, the EIB-CM established that the Beli Kamen SHPP project was subject to a screening determination and, as a result of decision making, it was screened out. The procedure, as required by the EIA Directive, included consultations with stakeholders, some of which were mentioned in the screening decision. The decision mentions the Eco-Fund (Fund for Ecology) of the Municipality of Čajetina and the Technical Screening Commission⁵⁶.

4.1.5 The no need for a full EIA was explained in the negative screening decision by the **threshold of 2 megawatts**, which stems from the EIA Act⁵⁷. The decision was issued in **May 2009** by the Municipal Administrative Office, Department for Development Land, Roads, Investments, Urban Planning and Property Rights of the Municipality of Čajetina with the possibility to appeal it to the Directorate for Environmental Protection of the Ministry of Science and Environmental Protection (see Appendix for more details on the decision making). It must be pointed out that the EIA Directive has no thresholds for hydropower development, therefore the EIB CM considers the screening decision relevant.

4.1.6 The negative screening decision does not refer to the protection status of the location, such as the Zlatibor Emerald site, the location of the SHPP. The site was proposed for inclusion into the Emerald network, and at the time of the decision making it was proposed, but was not yet a candidate Emerald site (see § 1.2.5). It shall be noted that the Zlatibor national park was also not yet established at the time of screening determination for the sub-project in question (see § 1.2.6).

4.1.7 The negative EIA screening decision for the Beli Kamen SHPP therefore is in line with EIB's environmental and social standards.

Lack of EIA for Komalj SHPP

4.1.8 The operation relevant to the sub-project in question was appraised in 2014 as a global loan operation (see § 1.2.1). In 2017, the Komalj SHPP was proposed for EIB financing as a second phase of small hydro power development in the same river basin. The Komalj SHPP was described as a diversion hydroelectric power plant, including a water intake with a sedimentation pool on the right bank and a buried pipeline to the powerhouse. The development consent for the sub-project was issued in 2012 (see Appendix).

4.1.9 The sub-project falls under Annex II to the EU EIA Directive, therefore requiring a screening determination by an appropriate environmental authority (see §§ 2.2.11, 2.2.16, footnote 43). List II of the national law for EIAs has a threshold for the projects in list II aimed at establishing a screening determination for hydropower development, however the sub-project, in conjunction with the requirements of EU law, should also have been subject to a screening determination (see §§ 2.2.11-2.2.14 and 2.2.16). The EIB-CM would like to point out that the EIA Directive has no thresholds for hydropower development. Therefore, in line with EU law, a screening determination should have

⁵⁶ The composition of which is not provided in the decision. The latter provided the reference to the decision by which the Commission was formed in 2005 by the Čajetina Municipal Administrative Office.

⁵⁷ National law does not require screening for hydropower plants below 2MW power, List of projects II, 3(2). See footnote 43.

EIB Group Complaints Mechanism — Conclusions Report

taken place, also bearing in mind the cumulative impacts stemming from the interrelation between this SHPP and the Beli Kamen SHPP located in the same river basin (see §§ 2.2.12- 2.2.14).

- 4.1.10 An additional element which should have necessitated an environmental decision is the fact that the location of the Komalj SHPP is in the Emerald site of Zlatibor, which at the time was already a candidate Emerald site (the application for development consent was submitted in 2012, while the site had been enlisted as a candidate site since 2011 (see Appendix and § 1.2.5)). The location of the site within the Emerald Network called for a decision to be made in line with the Habitats Directive (see § 2.2.14), i.e. the assessment of the likelihood of significant negative environmental impacts on the site's conservation objectives.
- 4.1.11 During the project assessment in 2017, the EIB received several documents about the Komalj SHPP sub-project. The intermediary stated that an EIA is not required according to the applicable law and so, no documents pertaining to an EIA procedure were received. Based on this, the EIB-CM concluded that the promoter had not requested/obtained and the intermediary had not received any decision which would evidence at least a screening determination in compliance with the requirements of the EU EIA Directive and the Habitats Directive. The EIB-CM found no evidence that the Bank had verified the nature conservation status of the site of the sub-project in question (see §§ 1.2.5 and 1.2.6).
- 4.1.12 **The lack of evidence of at least a screening determination for the Komalj SHPP sub-project, is in breach of the EIB's environmental and social standards.**

4.2 Stakeholder consultations

- 4.2.1 The complainant alleged the lack of consultation with appropriate stakeholders, namely the Institute for Nature Conservation and the Balkan Eco Team. The Institute for Nature Conservation of Serbia appears to be a public institution; therefore it would have fallen into the category of interested organisations⁵⁸. The Balkan Eco Team was found to be a limited liability company (D.o.o.)⁵⁹ and therefore would have fallen into the interested public category.
- 4.2.2 National EIA law in general terms describes, but does not list the interested authorities and organizations (*заинтересовани органи и организације*) as well as the interested public category that (*заинтересована јавност*) are invited to express their opinions and are consulted during the EIA procedure⁶⁰. When the screening determination is carried out (*одлучивање о потреби процене утицаја*), the competent authority informs interested authorities and organizations and the public about the submitted request on the need for an impact assessment within ten days from the day of receipt of the request⁶¹. National EIA law does not require the technical commission, mentioned in the EIA law, to take part in the EIA screening procedure⁶².
- 4.2.3 **At the time of the decision-making process for the Beli Kamen SHPP**, the interested authorities and organisations were consulted during this process. This is evidenced by the reference to the opinion of the Fund for Ecology of the Municipality of Čajetina (see § 4.1.5). Information should also have been provided to the public and it should have been possible for the users of fishing areas, such as the Balkan Eco Team, to appeal the decision. The EIB was not informed about any appeals, however, the Complaints Mechanism did not investigate when and how the decision was made available to the public at the time of decision-making process.
- 4.2.4 During the decision-making process for development consent for the Komalj SHPP sub-project, based on information provided to the EIB-CM, it appears that no application for screening determination was made. Therefore, in the absence of a screening determination process, no consultations with interested environmental authorities and organisations for the second sub-project took place. Given the nature of the parties concerned and the lack of a screening determination procedure for the Komalj SHPP sub-project, the lack of consultations with the parties concerned appears to be in line with the national EIA law. The allegation of the lack of an EIA procedure for the Komalj SHPP sub-project is examined in sub-section 4.1.

⁵⁸ Institute for Nature Conservation of Serbia, more information [here](#).

⁵⁹ Balkan Eco Team D.o.o. Prijepolje, more information [here](#).

⁶⁰ EIA law, Part I, Article 2(7) and 2(8). Law in Serbian can be found [here](#).

⁶¹ EIA law, Part II(1), Article 10.

⁶² EIA law (2009), Part ii(3), Article 22.

4.3 The Bank's due diligence of intermediated financing

4.3.1 At the approval stage of intermediated financing, the EIB is not aware of the sub-projects to be financed via loans to SMEs (see § 2.3.6). At this initial stage, the EIB sets general objectives and outlines the requirements for the credit lines offered to the intermediaries. Based on the EIB's environmental and social standards, final beneficiaries of the loans provided via intermediated financing, are required to comply with the applicable relevant national and EU legislation (see §§ 2.2.2 and 2.3.10).

4.3.2 As allegation 1 for the sub-project of the Beli Kamen SHPP was found to be ungrounded, the EIB-CM considers that the Bank carried out its due diligence as required for the sub-project in question. **The focus of the analysis for this allegation was the EIB's due diligence of the intermediated financing for the Komalj SHPP** (see section 1.2). The Bank's environmental and social standards applicable at the time are relevant in the analysis of the due diligence for this sub-project.

4.3.3 The sub-project was analysed from these positions: (i) checking the capacity of the intermediary to apply the Bank's environmental and social standards (see §§ 2.2.5 and 2.3.7); (ii) the assessment process of sub-project in sensitive sector to assure compliance (see §§ 2.2.6 and 2.3.8); and (iii) guidance to intermediaries on the relevant Bank standards.

Capacity of the intermediary

4.3.4 The project applicable standards require the intermediary to have a **proven track record** of good environmental management, including sufficient **capacity to evaluate an EIA**, where required, according to the environmental assessment principles, standards and practices applied by the EIB (see §§ 2.2.7 and 2.3.10).

4.3.5 At the appraisal stage, the EIB stated that it considered the intermediary **to have a proven capacity** to effectively implement the operation.

4.3.6 During appraisal of the intermediated loan concerned (in 2017) and after having the possibility to request additional documents, the EIB-CM found no records held by the EIB to substantiate the environmental and social values and capacity of the intermediary. The "proven capacity" of the concerned intermediary was noted, but no qualification was provided as regards any of the guiding questions as per the EIB's applicable standards.

4.3.7 The EIB-CM noted a lack of Bank's process behind the intermediary's capacity tracking and evidencing of the intermediary's environmental and social performance at the time of the appraisal of the operation. A structured approach in checking the capacity of the intermediary could have facilitated the due diligence.

4.3.8 According to internal procedures, the EIB conducts approvals of individual sub-projects (see § 2.2.5). As the sub-projects were screened by the EIB's staff, the EIB-CM concluded that the lack of process of the environmental and social tracking of intermediaries, at the time of the appraisal of the loan, was not significant in terms of exposure to the risk of non-compliance.

4.3.9 At the sub-project appraisal stage, one of the key lending risks in the CPC region is the gap between EU and national law. In order to ensure compliance with the project-applicable standards and the compliance commitment with EU environmental law, the intermediaries are required to check the compliance of final beneficiaries. However, as the operation in question included sensitive sectors, the EIB carried out an internal assessment of the compliance of the sub-project.

4.3.10 During the EIB's assessment, the Komalj SHPP sub-project was not made subject to an EIA screening determination, which the intermediary reported to the Bank. The Bank noted the intermediary's explanation that (i) "the competent authority would not require an EIA based on the national EIA legislation, in line with the earlier decision made for the Beli Kamen project" and that (ii) "under Serbian law the building permit could not be delivered without EIA requirements being met" and accepted the sub-project on exceptional basis. **The EIB-CM takes note that the Bank approved the project knowing that there is a divergence between Serbian law and EU law and did not ask the intermediary for additional evidence of the compliance with EU environmental law** (see §§ 4.1.9&4.1.10).

EIB Group Complaints Mechanism — Conclusions Report

Due diligence (assessment of the case of the Komalj SHPP sub-project)

- 4.3.11 **At the appraisal stage**, the Bank **committed to require the intermediary to ensure** that the final beneficiaries had undertaken to implement and operate the relevant investments **in conformity with national and applicable EU environmental law**, including the relevant international environmental agreements.
- 4.3.12 **When the allocation** for the sub-project in question was applied for, the Bank requested the appropriate documents from the intermediary. Because the sub-project fell under the category of a sensitive project⁶³, even if the sub-project fell into the category of smaller projects (< € 25 million), the EIB conducted an assessment of the sub-project in question, as per the EIB's environmental and social standards (see § 2.2.5).
- 4.3.13 For the Komalj SHPP, the assessment was carried out in 2017 — four years after the issue of development consent for the sub-project. In line with the EIB procedures at the time, the Bank's technical services were consulted on the sub-project; and commented on the documentation for the sub-project provided by the intermediary (see Appendix).
- 4.3.14 The Bank received documents pertaining to the decision-making process for the SHPPs in question and requested clarifications as regards the need for the EIA. The intermediary provided information to the Bank about the interrelation between the SHPPs of Beli Kamen and Komalj, the explanation for the lack of any environmental decision making and indicated that the sub-project is not located in a protected site. The gap between the national and EU standards and appropriate application of national law was established by the EIB; however, **the nature protection status of the location of the sub-project was not verified** (see § 4.1.11). **The EIB did not enquire further about the environmental requirements for this intermediated sub-project, such as adherence to standards of relevant international environmental conventions incorporated into EU law** (see §§ 2.2.6, 2.3.1 and 2.3.12. See also sub-section 4.1).

EIB tools to enable the intermediaries to ensure compliance (in the case of the Komalj SHPP sub-project)

- 4.3.15 The EIB CM wishes to observe an evolving environmental and social legal framework in the CPC region; however, up-to-date information on environmental commitments from international and global conventions, such as the Bern Convention relevant to this case, is not readily available. The Bank made a decision based on its previous experience with the intermediary. The EIB CM found no evidence that the Bank verified the changed protection status of the sub-project's location (§ 4.1.10)..
- 4.3.16 **It is the EIB-CM opinion that, in the case of the Komalj SHPP, the processes behind the Bank's assessment of the sub-project and the overall contractual obligations were not sufficient for the sub-project to comply with the EIB's stipulated requirements and standards.**

5 CONCLUSIONS

5.1 Conclusions for the sub-project of the Beli Kamen SHPP

- 5.1.1 Taking into account the information made available to the EIB-CM regarding the Beli Kamen SHPP, the availability of the negative EIA screening decision, the project under the intermediary's financing was found in line with the EIB standards at the time of the decision making. The EIB CM considers that, the negative screening determination (no need for the full EIA) for the Beli Kamen SHPP is in line with the Community environmental acquis (see §§ 4.1.5 and 4.1.7).
- 5.1.2 The EIB-CM considers that the lack of consultation with both stakeholders, namely with the Institute for Nature Conservation and the Balkan Eco Team, appears to be in line with the national EIA law. The development consent procedure for the Beli Kamen SHPP, as evidenced by documents provided to the EIB, included stakeholder consultations for the type of environmental procedure applied.

⁶³ EIB's NACE code list is available [here](#).

5.2 Conclusions for the sub-project of Komalj SHPP

- 5.2.1 The information received regarding the Komalj SHPP provides no evidence that a screening determination was carried out for the project in question. The EIA screening procedure should have been carried out, as required by the EU EIA Directive and also as required by national law, in order to assess the likelihood of significant negative impacts on the Emerald site in question and the cumulation of environmental impacts together with the first SHPP (Beli Kamen) on the river Crni Rzav. The absence of at least a screening determination for the Komalj SHPP, is a breach of the EIB environmental and social standards (see §§ 4.1.10 — 4.1.12).
- 5.2.2 For the Komalj SHPP, since no screening determination took place, there was no consultation process with interested authorities and organisations and no information was provided to the public. Therefore, the allegation with regard to the lack of consultations with interested authorities and organisations was dismissed. However, the outcome of the allegation on the lack of an EIA procedure for the second sub-project is relevant, as provided for in sub-section 4.1.

5.3 The EIB's due diligence of intermediated financing

- 5.3.1 The EIB CM established that the Bank carried out due diligence of the compliance of the operations with applicable environmental and social standards. However, it established that the Bank failed to comply with its standards in approving the financing of the SHPP Komalj. The EIB CM notes that the sector of hydropower is included in the list of excluded sectors (see § 1.3.3). Therefore, the EIB CM suggests that the Bank could benefit from a **structured approach** to address four elements of a successful due diligence procedure:
- i. Systematize the assessment of the intermediary's capacity to implement effective environmental risk management standards (see §§ 4.3.7).
 - ii. Further develop and continue training EIB staff on the Bank's internal tools that provides an overview of how Member States, Candidate and Potential Candidate Countries and selected Neighbourhood Countries are implementing the key EU Environmental Directives (see §§ 4.3.8, 4.3.12).
 - iii. Raise awareness of the available tools to identify the areas with protection status, such as the Integrated Biodiversity Assessment Tool (IBAT) in use at EIB since 2018, and
 - iv. Provide all relevant information and guidance to the financial intermediary on the Bank's environmental and social standards (see § 4.3.12).
- 5.3.2 The EIB-CM acknowledges that the EIB has recently undertaken the following steps to strengthen the standards and procedures for intermediated financing, namely:
- i. It approved a **new standard governing intermediated lending** in 2022 within the new Environmental and Social Sustainability Framework (ESSF)⁶⁴.
 - ii. Depending on the type of intermediated operation and the risk associated to the sub-projects, **the EIB systematically reviews the environmental and social performance of financial intermediaries in line with the EIB's risk-based approach.**
 - iii. Sectors which systematically raise concerns in terms of environmental impact **are excluded from EIB financing under intermediated operations** such as hydropower projects for multiple beneficiary intermediated loans (MBIL) (see § 1.3.3).
 - iv. **Risk mitigation measures** (such as capacity building or additional sector exclusions) are provided for, if the EIB's environmental and social due diligence finds that a financial intermediary does not have sufficient capacity to ensure compliance with the EIB requirements. Sub-projects with high environmental and social risks are referred to the EIB for its review and approval.

The actions mentioned above can strengthen the due diligence of the EIB's intermediary financing. Therefore, on the basis of its inquiry, the EIB-CM issues its recommendations and suggestions for improvement, as provided for in the following section.

⁶⁴ The EIB Group's Environmental and Social Sustainability Framework (2022) consists of the EIBG's Environmental and Social [Policy](#) and Environmental and Social Standards, available [here](#).

6 OUTCOME AND SUGGESTIONS FOR IMPROVEMENT

- 6.1.1 The recommendation was formulated for the allegation 1 for the Komalj SHPP, which was found to be grounded. The allegations 1 and 2 for the Beli Kamen SHPP were dismissed as well as the allegation 2 for the Komalj SHPP. The suggestion for improvement was formulated to contribute to the implementation of the objective of the Bank's new Standard 11 (ECS risk management framework, see § 5.3.2(i)) for operations outside the EU, specifically to identify and assess, in line with applicable environmental and social standards and types of sub-projects, the impacts and risks arising from those sub-projects.

Table 2 — Outcome

Allegation	Outcome	Conclusion
1. Lack of environmental impact assessment (EIA)	<p>Recommendation (for Komalj SHPP):</p> <p>The Bank should check the nature protection status, including international commitments, of the financial intermediaries' (FI) sub-projects that require development consents, which are referred back to the EIB for approval in the CPC countries</p>	<p>As part of the ongoing effort to align the existing framework for the assessment of FIs' ECS risk management in the context of its Standard 11 for countries outside the EU, the EIB-CM suggests that the EIB:</p> <p>(i) Establish a structured process to collect evidence of FIs' capacity to identify, assess, manage and monitor environmental and social risks and impacts of sub-projects.</p> <p>(ii) Where possible, offer capacity building (or Technical Assistance) for those FIs that may need support to strengthen their environmental, climate and social risk management system to be in line with the EIB's environmental and social standards (if needed in cooperation with other stakeholders/ mandators).</p> <p>(iii) Strengthen communication with FIs on the EIB's ESSF and ECS risk management strategy.</p> <p><i>All components of the suggestions for improvement are to be implemented by the fourth quarter of 2023</i></p>
2. Lack of stakeholder consultations	Ungrounded	
3. Lack of due diligence of intermediated financing for the operations	Ungrounded	

APPENDIX — KEY FACTS ABOUT THE BELI KAMEN AND KOMALJ SHPPS ⁶⁵

	Beli Kamen SHPP	Komalj SHPP
Location	Crni Rzav river	Crni Rzav river
Intakes	Crni Rzav and Ribnica rivers	Crni Rzav river (below Beli Kamen)
Capacity	1.68MW	0.67MW
Overall cost	€5.2 million	€2.357 million
Operation	Intesa SMEs and priority projects II ⁶⁶	Credit Agricole Loan for SMEs and other priorities II ⁶⁷ .
Intermediaries	Banca Intesa a.d. Beograd and Intesa Leasing d.o.o. Beograd	Credit Agricole Srbija a.d. Novi Sad
Permit holder	Plemen A.d., Belgrade	Plemen A.d., Belgrade
EIA	Screening decision* of 26 May 2009 (negative — no need for a full EIA) issued by the Municipal Administrative Office, Department for Development Land, Roads, Investments, Urban Planning and Property Rights of the Municipality of Čajetina	<i>n/a</i>
Water permit	Decision* on Water Resource Management Conditions No 325-05-738/2009-07 of 26 May 2009 issued by the Water Resource Directorate of the Ministry of Agriculture, Forestry and Water Resource Management	<i>n/a</i>
<i>Water permits⁶⁸ according to the complainants</i>	<i>4 October 2011 from the Ministry of Agriculture, Forestry and Water Management</i>	<i>24 September 2012 from the Ministry of Agriculture, Forestry and Water Management</i>
Location permit	Permit No 353-100/10-03 of 16 June 2011 issued by the Department for Urban and Spatial Planning of the Municipality of Čajetina (<i>not available to the EIB</i>)	Permit No 353-00099/10 of 26 April 2012 issued by the Department of Urban and Spatial Planning of the Municipality of Čajetina amended by decision No 353-99/2010-03 of 4 December 2013
Construction permit/development consent	Decision* No 351-204/11-03 of 14 October 2011 issued by the Department for Development Land, Roads, Investments, Urban Planning and Property Rights of the Municipality of Čajetina	Decision* No 351-285/2012-03 of 20 September 2012 (amended on 3 December 2013) by the Department of Urban and Spatial Planning of the Municipality of Čajetina
EIB financing decision	2012	2014
EIB assessment of sub-projects	2013	2017
Sub-project put into operation	2016	2018

Note: * Decisions made available to the EIB from the intermediary during the EIB's assessment.

⁶⁵ Information from the developer's website [here](#) and case study of CEE Bankwatch Network and WWF (2021).

⁶⁶ Webpage available at: [INTESA SMES AND PRIORITY PROJECTS II \(eib.org\)](https://www.eib.org/en/projects/Intesa-SMEs-and-priority-projects-II).

⁶⁷ Webpage available at: [Credit Agricole Loan for SMEs and other priorities II](https://www.eib.org/en/projects/Credit-Agricole-Loan-for-SMEs-and-other-priorities-II).

⁶⁸ Information on water and construction permits from the 2021 April study of CEE Bankwatch Network and WWF.