

TOPLOFIKACIA Combined Heat and Power (CHP)
Plant in Sofia (I)

Complaint SG/E/2018/42

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

Conclusions Report

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Prepared by

EIB Complaints Mechanism

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THE EIB COMPLAINTS MECHANISM

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

Complainants who are not satisfied with the outcome of the procedure before the EIB-CM have the right to lodge a complaint of maladministration against the EIB with the EO.

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

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

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

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GLOSSARY OF TERMS AND LIST OF ACRONYMS

AAQD	Ambient Air Quality Directive 2008/50/EC
BAT	Best Available Techniques
CBA	Cost-benefit analysis
CHP	Combined heat and power
Complainant	Bulgarian citizens' initiative
CJEU	Court of Justice of the EU
EC	European Commission
EIA	Environmental Impact Assessment
EIB	European Investment Bank
EIB-CM	EIB Complaints Mechanism Division
EO	European Ombudsman
ESDS	Environmental and Social Data Sheet
ESPS	EIB Statement of Environmental and Social Principles and Standards
EUR	Euro
FS	Feasibility Study
IED	Industrial Emissions Directive 2010/75/EU
IPPC	Integrated Pollution Prevention and Control
JASPERS	Joint Assistance to Support Projects in European Regions
kt/a	Kilotonnes per year
MBT	Mechanical and biological treatment
MJ/Kg	Megajoule/kilogram
MWh	Megawatt hour
Nm ³	Normal cubic metre
NGO	Non-governmental organisation
NWMP	National Waste Management Plan
OP	Operational Programme
Operator	The district heating company Toplofikacia Sofia EAD
PM	Particulate matter
Project	Construction and operation of a CHP plant in Sofia incinerating RDF
Promoter	Sofia Municipality
RIEW	Regional Inspectorate for the Environment and Water
RDF	Refuse-derived fuel
TP	EIB Group Transparency Policy
TPP	Thermal power plant
WFD	Waste Framework Directive 2008/98/EC

EXECUTIVE SUMMARY

In November 2018, the European Investment Bank Complaints Mechanism Division (EIB-CM) received a complaint from a Bulgarian citizens' initiative (Complainant). The complaint concerns the construction and operation of a combined heat and power (CHP) plant in Sofia incinerating refuse-derived fuel (RDF) (project) to be operated by Toplofikacia Sofia EAD, the owner and operator of the Sofia district heating system.

The complaint consists of five allegations, namely:

1. The project's compliance with EU municipal waste recycling targets.
2. The project's capacity.
3. Privatisation of Toplofikacia and service concession for heating and electricity generation.
4. The project's impact on air quality with the focus on particulate matter (PM).
5. Access to project-related documents.

The Complainant requests the EIB to consider its arguments in the project review and to reject the request for project financing.

The reviewed evidence does not show instances of non-compliance of the project with the applicable standards in respect of the first four allegations. For example, the evidence shows that:

1. The project is feasible under both the national and EU municipal waste recycling targets.
2. The capacity of the CHP plant overall matches the capacity of the mechanical and biological treatment (MBT) plant in Sofia, as well as its current production.
3. There are no concrete privatisation or service concession plans involving the operator.
4. While the project will likely increase Sofia's 2018 PM₁₀ emissions by 0.4%, the competent authorities have put in place measures to reduce Sofia's PM₁₀ emissions by over 80%.
5. Concerning the allegation on access to project-related documents, the reviewed evidence shows that the project did not comply with the applicable standards at one point, but that since then the issue has been rectified. Initially, the promoter denied the public access to project-related documents. However, in March 2020, following a ruling of the Bulgarian Supreme Administrative Court the promoter disclosed partially the requested information.

The reviewed evidence shows that the EIB carried out its role as required with respect to all five allegations. For example, the evidence shows that:

1. The EIB reviewed compliance of the project with the national and EU municipal waste recycling targets.
2. The EIB appraised the project and concluded that the MBT and the CHP capacities match.
3. The EIB is monitoring the related developments.
4. The EIB appraised the project and concluded that it must comply with the relevant emission standards and that the competent authorities will monitor its operation and report on non-compliance with environmental law.
5. The EIB informed the promoter that it did not object to disclosure of the project-related documents and left it up to the promoter to decide on the request for disclosure based on the applicable law.

Therefore, EIB-CM concludes that the allegations are not grounded in respect of the role of the EIB (no grounds).

I. THE COMPLAINT

- 1.1. In November 2018, the European Investment Bank Complaints Mechanism Division (EIB-CM) received a complaint from a Bulgarian citizens' initiative (hereinafter: the Complainant). The complaint concerns the construction and operation of a combined heat and power (CHP) plant in Sofia incinerating refuse-derived fuel (RDF) (hereinafter: the project). On 19 December 2018, the Complainant confirmed that EIB-CM could treat the complaint as non-confidential.
- 1.2. The complaint consists of five allegations, namely:
 - The project's compliance with EU municipal waste recycling targets.
 - The project's capacity.
 - Privatisation of Toplofikacia and service concession for heating and electricity generation.
 - The project's impact on air quality with the focus on particulate matter (PM).
 - Access to project-related documents¹.
- 1.3. The Complainant requests the EIB to consider its arguments in the project review and to reject the request for project financing.²

2. BACKGROUND INFORMATION

II.1 Project's Technical Description

- 2.1 The project concerns the construction and operation of a CHP plant in Sofia with a nominal capacity to incinerate 180 kilotonnes per year (kt/a) of RDF³. The project will incinerate RDF to produce heat and power⁴. The project's energy capacity is approximately 55 megawatt hour (MWh)⁵ of heat and approximately 20 MWh⁶ of electricity. The electricity will be fed into the public grid. Figure 1 shows the schematic diagram of the project.

¹ Section 4.1 of the Initial Assessment Report, available at: https://www.eib.org/attachments/complaints/sg-e-2018-42-toplofikacia-initial-assessment-report_web-2-06-2020.pdf, accessed on 16 July 2020.

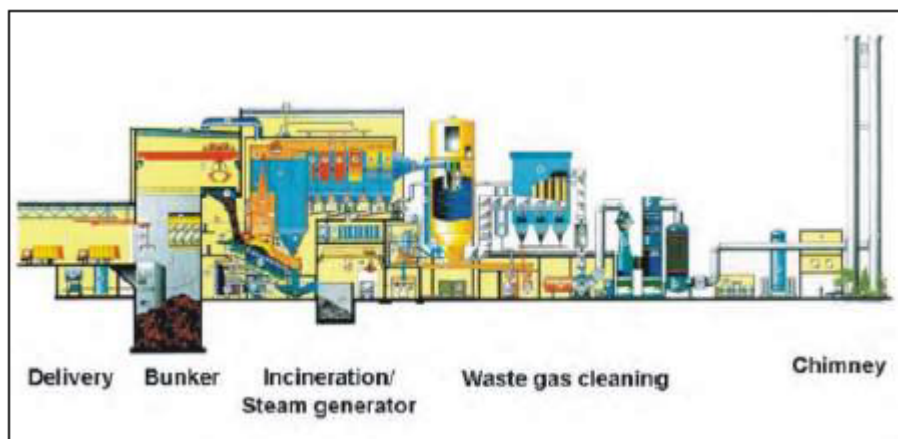
² Section 1.8 of the Initial Assessment Report, available at: https://www.eib.org/attachments/complaints/sg-e-2018-42-toplofikacia-initial-assessment-report_web-2-06-2020.pdf, accessed on 16 July 2020.

³ Environmental Impact Assessment (EIA) Decision, No. CO-03-03/2015, dated 28 August 2015; Recital 3 of the Decision of the European Commission concerning State Aid SA. 54042 (2019/N) Bulgaria-Sofia waste-to-energy project/cogeneration unit with recovery of energy from RDF, C(2019) 8528 final, issued on 25 November 2019, available at https://ec.europa.eu/competition/state_aid/cases1/202010/282528_2135956_134_2.pdf, accessed on 4 March 2020.

⁴ Environmental and Social Data Sheet (ESDS), available at: <https://www.eib.org/attachments/registers/73267527.pdf>, accessed on 24 July 2020.

⁵ Recital 3 of the Decision of the European Commission concerning State Aid SA. 54042 (2019/N) Bulgaria-Sofia waste-to-energy project/cogeneration unit with recovery of energy from RDF, C(2019) 8528 final, issued on 25 November 2019, available at https://ec.europa.eu/competition/state_aid/cases1/202010/282528_2135956_134_2.pdf, accessed on 4 March 2020.

⁶ Section 2.1.3.7 of the August 2014 EIA Report for the Project, available at: <https://www.eib.org/attachments/registers/80322584.pdf>, accessed on 26 February 2020; EIA Decision, No. CO-03-03/2015, dated 28 August 2015; Recital 3 of the Decision of the European Commission concerning State Aid SA. 54042 (2019/N) Bulgaria-Sofia waste-to-energy project/cogeneration unit with recovery of energy from RDF, C(2019) 8528 final, issued on 25 November 2019, available at https://ec.europa.eu/competition/state_aid/cases1/202010/282528_2135956_134_2.pdf, accessed on 4 March 2020.

FIGURE 1. SCHEMATIC DIAGRAM OF THE CHP PLANT⁷

- 2.2 The RDF has been produced by the mechanical and biological treatment (MBT) plant in Sadinata, Sofia since 2015⁸. The RDF has the average calorific value of 13 megajoules/kilogram (MJ/kg). RDF is extracted from municipal waste, with the remaining waste being either recycled (e.g. metals), released into the environment after treatment (water), or landfilled (residual waste). In the period 2016-2018, one third of the RDF produced by the MBT plant was incinerated in cement kilns, while the remaining two thirds were landfilled.
- 2.3 The RDF is expected to replace 65 000 000 normal cubic metres (Nm³) of natural gas⁹ or 11% of Sofia's district heating system usage. With an envisaged increase of the current production of heat and electricity of Sofia's district heating system, the project is expected to also replace some existing depreciated heat supply facilities¹⁰ and working capacity of some of the remaining units. The project is envisaged to work all year round.

II.2 Project's Location

- 2.4 The project is located on a brownfield site of the existing Sofia Thermal Power Plant (TPP). The site is situated in the Serdika borough of Sofia, approximately 2.3 km north of Sofia's city centre¹¹ (see Figure 2 below). The closest residential areas are located around 400 metres from the chimneystacks¹².

⁷ Section 2.1.1 of the August 2014 EIA Report for the project, available at: <https://www.eib.org/attachments/registers/80322584.pdf>, accessed on 26 February 2020.

⁸ ESDS.

⁹ ESDS; EIA Decision, No. CO-03-03/2015, dated 28 August 2015.

¹⁰ Namely: TG 9 turbogenerator and one of the VK 100 hot water boilers.

¹¹ Information obtained by using Google Maps.

¹² Section 1.2 of the August 2014 EIA Report for the Project, available at: <https://www.eib.org/attachments/registers/80322584.pdf>, accessed on 26 February 2020.

FIGURE 2. PROJECT'S LOCATION (SUPERIMPOSED IN RED)



II.3 Project's Stakeholders

- 2.5 Sofia Municipality is the project promoter (hereinafter: the promoter). Toplofikacia Sofia EAD, the owner and operator of the Sofia district heating system, manages the project's construction and operation (hereinafter: the operator). The promoter owns both the operator and the MBT plant in Sadinata, providing RDF for the operation of the project.

II.4 Project's Financing and Implementation Schedule

- 2.6 The total project costs are estimated at EUR 157.5m¹³. The EIB is providing EUR 67m as a loan and the rest comes from other funds including an EU grant. The EIB approved the loan in December 2018¹⁴. In March 2020, the EU approved the grant¹⁵. The grant is provided as part of the Environment Operational Programme (OP) for the period 2014-2020¹⁶.
- 2.7 The project is scheduled to be constructed in the period 2020-2024.

¹³ Recital 28 of the Decision of the European Commission concerning State Aid SA. 54042 (2019/N) Bulgaria-Sofia waste-to-energy project/cogeneration unit with recovery of energy from RDF, C(2019) 8528 final, issued on 25 November 2019, available at https://ec.europa.eu/competition/state_aid/cases/1/202010/282528_2135956_134_2.pdf, accessed on 4 March 2020.

¹⁴ See: <https://www.eib.org/en/projects/pipelines/all/20090545>, accessed on 12 May 2020.

¹⁵ https://ec.europa.eu/info/news/cohesion-policy-commission-invests-better-waste-management-bulgaria-2020-mar-20_it, accessed on 15 April 2020.

¹⁶ ESDS.

II.5 Project's Permitting

- 2.8 The project is included in the National Waste Management Plan (NWMP) 2014-2020, adopted by the Bulgarian Council of Ministers in 2014¹⁷.
- 2.9 In August 2014, the operator prepared an Environmental Impact Assessment (EIA) Report¹⁸. In August 2015, the Sofia Regional Inspectorate for the Environment and Water (RIEW) issued the EIA Decision¹⁹. The same year, a number of individuals and non-governmental organisations (NGOs) appealed the EIA decision before the Sofia Administrative Court. The appeals concern a number of issues, including air pollution and the project's compliance with EU requirements and the 2014-2020 NWMP (e.g. recycling targets). The applicants asked the court to annul or to cancel the EIA decision. In March 2019, the Sofia Administrative Court issued its decision dismissing all appeals. The applicants challenged this decision before the Bulgarian Supreme Administrative Court²⁰. In July 2020, the Supreme Administrative Court annulled the decision of the Sofia Administrative Court and referred the case back to the latter for reconsideration²¹. The Supreme Administrative Court asked the Sofia Administrative Court to collect additional evidence concerning public consultation and emissions from the project before making its decision²². The case before the Sofia Administrative Court was still pending at the time of finalisation of this report.
- 2.10 The Department of Architecture and Urban Planning of Sofia Municipality issued the construction permit for the project in September 2018²³.
- 2.11 The integrated environmental permit (the so-called Integrated Pollution Prevention and Control (IPPC) permit) for the project is to be issued before the start of operation of the project²⁴. The permit will contain specific conditions for the project's operation (see §3.5).

3. REGULATORY FRAMEWORK

III.1 Complaints Mechanism²⁵

- 3.1 The EIB Group Complaints Policy²⁶ tasks EIB-CM with addressing complaints concerning alleged maladministration by the EIB Group²⁷. Maladministration means poor or failed administration²⁸. Examples of maladministration include: (i) failure by the EIB Group to comply with its own obligations in the appraisal and monitoring of projects²⁹; (ii) failure by the EIB Group to comply with applicable law

¹⁷ Bulgarian Council of Ministers Decision No. 831/22.12.2014; Recital 7 of the Decision of the European Commission concerning State Aid SA. 54042 (2019/N) Bulgaria-Sofia waste-to-energy project/cogeneration unit with recovery of energy from RDF, C(2019) 8528 final, issued on 25 November 2019, available at https://ec.europa.eu/competition/state_aid/cases1/202010/282528_2135956_134_2.pdf, accessed on 4 March 2020.

¹⁸ August 2014 EIA Report for the project, available at: <https://www.eib.org/attachments/registers/80322584.pdf>, accessed on 26 February 2020.

¹⁹ EIA Decision, No. CO-03-03/2015, dated 28 August 2015.

²⁰ Decision No. 1631 of 12 March 2019 of the Administrative Court in Sofia.

²¹ Decision No. 7560 of 16 June 2020 of the Supreme Administrative Court of Bulgaria.

²² Decision No. 7560 of 16 June 2020 of the Supreme Administrative Court of Bulgaria.

²³ Construction permit No 233/19.09.2018.

²⁴ The project will have its own IPPC permit. The preparation of the permit will commence once the Contractor of Design & Build contract is available and will take detailed technical data from the Detailed Design. Once issued, the permit will be available in a public register available under the following link: <http://registers.moew.government.bg/kr/>.

²⁵ In this case, EIB-CM applied the EIB Group Complaints Mechanism Policy and Procedures, which were applicable when the complaint was registered. The Policy and the Procedures are available under the following links: <https://www.eib.org/en/publications/complaints-mechanism-policy.htm> and <https://www.eib.org/en/publications/complaints-mechanism-procedures.htm>, accessed on 12 May 2020.

²⁶ Available at: https://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf, accessed on 14 May 2020.

²⁷ Section 5.1.3 and 5.3.2 of the EIB Group Complaints Mechanism [Policy](#).

²⁸ Section 3.1 of the EIB Group Complaints Mechanism [Policy](#).

²⁹ Section 3.1 of the EIB Group Complaints Mechanism [Policy](#).

or the principles of good administration³⁰; (iii) environmental and social impacts of the EIB Group's activities³¹.

3.2 The EIB Group Complaints Mechanism Policy and Procedures³² regulate the work of EIB-CM. The EIB-CM compliance review includes an investigation of compliance with existing policies, procedures and standards³³.

III.2 Project Applicable Regulatory Framework and Standards

3.3 Project applicable standards include:

- Relevant international conventions (e.g. Aarhus Convention³⁴)³⁵.
- EU and Bulgarian environmental law (e.g. waste management; air emissions and quality)³⁶.
- Relevant EIB standards, e.g. EIB Statement of Environmental and Social Principles and Standards (ESPS) and the Environmental and Social Practices Handbook³⁷, further implementing the ESPS³⁸.

3.4 The project must comply with the requirements concerning public access to environmental information, stemming from the Aarhus Convention. These requirements are transposed in the EU Directive on public access to environmental information³⁹. The Directive is transposed in Bulgaria in the Environmental Protection Act and the Act on Access to Public Information⁴⁰.

3.5 The project must comply with applicable EU law as well as the national law transposing EU law, notably:

- The project must comply with the European Union's **circular economy targets**. The 2015 circular economy package obliges the national authorities to set targets for separate collection of municipal waste to encourage investment in recycling capacity and avoid infrastructural overcapacity for processing municipal waste (e.g. incineration)⁶³. The 2018 EU circular economy package does not deal with municipal waste. The **Waste Framework Directive (WFD)**⁴¹ sets the EU municipal waste recycling targets for 2025 (55%), 2030 (60%) and 2035 (65%)⁴². Under the WFD, incineration may be considered a recovery operation. The WFD is transposed into the national legislation in a number of acts including the Waste Management Act, which sets the legal framework for waste management planning and waste handling in Bulgaria. The 2014-2020 NWMP⁴³ contains waste management targets for the year 2020 (50%) and provides for the construction of a municipal waste incinerator in Sofia incinerating RDF produced by the MBT plant⁴⁴. The NWMP does not, however, (i) fix the capacity of the CHP plant; or (ii) corroborate on how the project will enable compliance with the 2015 circular economy package.

³⁰ Section 3.2 of the EIB Group Complaints Mechanism [Policy](#).

³¹ Section 3.3 of the EIB Group Complaints Mechanism [Policy](#).

³² Available at: https://www.eib.org/attachments/strategies/complaints_mechanism_procedures_en.pdf, accessed on 14 May 2020.

³³ Section 5.3.3 of the EIB Group Complaints Mechanism [Policy](#).

³⁴ The United Nations Economic Commission for Europe's Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. The Aarhus Convention emphasises "the citizens' rights [...] to enjoy access to information on projects and plans and programmes that will have environmental and social impacts on them, their assets and their lives".

³⁵ Section 36 of the Statement section of the ESPS; Section 7 of Standard 1 of Volume I of the 2013 version (v.) of the Handbook.

³⁶ Section 36 of the Statement section of the ESPS; Section 7 of Standard 1 Of Volume I of the 2013 v. of the Handbook.

³⁷ E.g. EIB's 2013 v. of the Environmental and Social Practices Handbook.

³⁸ Section 12 of the Background section of the [ESPS](#).

³⁹ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0004&from=EN>, accessed on 29 December 2020.

⁴⁰ <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32003L0004>, accessed on 29 December 2020.

⁴¹ WFD – Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives.

⁴² Article 11 of the WFD, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1600867167132&uri=CELEX:02008L0098-20180705>, accessed on 22 September 2020.

⁴³ https://www.moew.government.bg/static/media/ups/tiny/file/Waste/NACIONALEN_PLAN/NPUO_ENG_22_10_2014_06_01_2015.pdf

⁴⁴ Page 90 of the 2014-2020 NWMP.

- The project must comply with the **Industrial Emissions Directive (IED)**⁴⁵, which addresses air emissions from waste incineration plants. The IED is transposed into the national legislation in a number of acts including the Environmental Protection Act and Regulation No 4 on the conditions and requirements for the construction and operation of waste incineration and co-incineration plants⁴⁶. The IED requires the competent authorities to issue the so-called IPPC permit for the project to operate⁴⁷ and to regularly inspect the project⁴⁸. The permit sets the following:
 - Specific operating conditions based on the Best Available Techniques (BAT) conclusions^{49,50}, such as the BAT conclusions for waste incineration of November 2019⁵¹.
 - Emission limit values for polluting substances⁵² (e.g. emission limit values for fine particulate matter (PM)₁₀ between 2–5 mg/Nm⁵³ or stricter⁵⁴, where air quality standards require so⁵⁵).
 - Monitoring arrangement⁵⁶.
- The ambient air standards are set in the **Ambient Air Quality Directive (AAQD)**⁵⁷, which addresses air quality in the EU⁵⁸. The AAQD is transposed into the national legislation in a number of acts, including the Ordinance No.12 of 15 July 2010 on the limit values of sulphur dioxide, nitrogen dioxide, fine dust particles, lead, petrol, carbon oxide and ozone content in the ambient air⁵⁹. For example, the AAQD sets limit values for PM₁₀ at 40 µm³ annually and 50 µm³ daily⁶⁰. In case the set limit values are not attained, the AAQD requires Bulgaria to introduce air quality plans to attain the set values⁶¹.

3.6 The project must comply with relevant EIB standards. These standards prioritise waste recycling and call for limiting energy recovery to non-recyclable materials⁶². The standards also require the project to:

- Contribute to meeting ambient air standards⁶³ (e.g. the project will include additional solutions and measures in case it is likely to constitute a significant source of emissions in an already polluted environment, and ambient air standards require stricter conditions than those achievable by the use of BAT⁶⁴).

⁴⁵ IED – Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1599643370232&uri=CELEX:02010L0075-20110106>, accessed on 9 September 2020.

⁴⁶ <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32010L0075&qid=1599643370232>, accessed on 9 September 2020.

⁴⁷ Article 4 of the IED.

⁴⁸ Article 23 of the IED.

⁴⁹ Article 14(3) of the IED.

⁵⁰ 'BAT conclusions' means a document containing the parts of a BAT reference document laying down the conclusions on best available techniques, their description, information to assess their applicability, the emission levels associated with the best available techniques, associated monitoring, associated consumption levels and, where appropriate, relevant site remediation measures – Article 3(12) of the IED.

⁵¹ Commission Implementing Decision (EU) 2019/2010 of 12 November 2019 establishing the best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for waste incineration, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1595598165476&uri=CELEX:32019D2010>, accessed on 24 July 2020.

⁵² Articles 14(1)(a), 45(1)(c) and 49 of the IED.

⁵³ Annex II, section "Air", item 6 and Annex VI, Parts 3, 4 and 8 of the IED and Tables 3 and 4 of the Commission Implementing Decision (EU) 2019/2010 of 12 November 2019 establishing the best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for waste incineration.

⁵⁴ Article 14(4) of the IED.

⁵⁵ Article 18 of the IED.

⁵⁶ Article 14(1)(c) of the IED.

⁵⁷ AAQD – Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1599645456502&uri=CELEX:02008L0050-20150918>, accessed on 9 September 2020.

⁵⁸ AAQD is supplemented by Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air. The AAQD is transposed into national legislation by the Ordinance No. 11 of 14 May 2007 on the limit values of arsenic, cadmium, nickel and polycyclic aromatic hydrocarbons in ambient air.

⁵⁹ <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32008L0050&qid=1599645456502>, accessed on 9 September 2020.

⁶⁰ With 35 permissible exceedances of daily limit values annually.

⁶¹ Article 23 of the AAQD.

⁶² Section 21 of Standard 2 of Volume I of the 2013 v. of the Handbook.

⁶³ Section 34 of the Statement section of the [ESPS](#).

⁶⁴ Section 19 of Standard 2 of Volume I of the 2013 v. of the Handbook.

- Cultivate a systematic approach to stakeholder engagement by building and maintaining a constructive relationship with relevant stakeholders, and timely disclosure and dissemination of/access to information. The promoter is required to plan and carry out stakeholder engagement without discrimination⁶⁵, providing stakeholders with relevant project information enabling them to understand the project's risks, impacts and opportunities⁶⁶.

III.3 Role of the EIB

- 3.7 In line with the ESPS, the responsibility for compliance with the project applicable standards lies with the promoter and the national authorities⁶⁷. However, the EIB will assist the promoter to fulfil these responsibilities⁶⁸ and will not finance projects that do not meet the project applicable standards⁶⁹. The EIB is required to satisfy itself that the project complies with the EU environmental law and EIB environmental standards⁷⁰. The role of the EIB is to appraise the project to see if it meets the applicable standards and to monitor and verify that the project is implemented in accordance with the standards⁷¹.
- 3.8 The appraisal takes place prior to signature of the finance contract⁷² and it aims at, inter alia, assessing: (i) whether the project complies with the project applicable standards⁷³; and (ii) the project's impact⁷⁴. The assessment procedure is detailed in the Handbook⁷⁵. During appraisal, the EIB identifies the main environmental legal and regulatory framework relating to the project and any legal issues⁷⁶. The EIB needs to take into account residual impacts, i.e. those adverse environmental impacts caused by the operation that will remain after mitigation and impact management measures have been applied (e.g. air emissions)⁷⁷. This information is taken into account when judging the overall acceptability of the project⁷⁸.
- 3.9 Sometimes, the appraisal results in conditions for disbursement. The conditions are included in the finance contract⁷⁹ and the promoter must complete the conditions to the satisfaction of the EIB prior to the disbursement of the EIB financing⁸⁰.
- 3.10 The ESPS states that the EIB monitors the environmental and social performance of the projects it finances, especially the fulfilment of any specific obligations described in the finance contract⁸¹. The monitoring aims to ensure that the project complies with the EIB's approval conditions⁸². The extent of physical monitoring depends on the characteristics of the project, the capacity of the promoter and the country context. The physical monitoring aims at verifying the actual implementation and initial operation of the project itself⁸³. The EIB monitors projects on the basis of reports provided by the promoter, as well as EIB visits, information provided by the local community, etc.⁸⁴. Close follow-up of environmental and social actions that are required as part of the finance contract (in particular those related to disbursement conditions) is essential⁸⁵.

⁶⁵ Section 16 of Standard 10 of Volume I of the 2013 v. of the Handbook.

⁶⁶ Section 32 of Standard 10 of Volume I of the 2013 v. of the Handbook.

⁶⁷ Sections 1 and 2 of the Statement and Section 12 of the Background section of the [ESPS](#).

⁶⁸ Section 2 of the Statement section of the [ESPS](#).

⁶⁹ Section 6 of the [ESPS Statement](#).

⁷⁰ Section 27 of Volume II of the 2013 v. of the Handbook.

⁷¹ Sections 8 and 255 of Volume II of the 2013 v. of the Handbook.

⁷² <https://www.eib.org/en/projects/cycle/index.htm>, accessed on 11 November 2019.

⁷³ Section 90, indent 2 of Volume II of the 2013 v. of the Handbook.

⁷⁴ Section 90, indent 2 of Volume II of the 2013 v. of the Handbook.

⁷⁵ Section 12 of the Background section and Section 17 of the Statement section of the [ESPS](#).

⁷⁶ Section 90, indent 2 of Volume II of the 2013 v. of the Handbook.

⁷⁷ Sections 221 and 222 of Volume II of the 2013 v. of the Handbook.

⁷⁸ Sections 223 and 232 of Volume II of the 2013 v. of the Handbook.

⁷⁹ Section 7 of the ESPS Statement.

⁸⁰ Sections 255 and 256, indent 2 of Volume II of the 2013 v. of the Handbook.

⁸¹ Section 8 of the Statement section of the ESPS.

⁸² Section 270 of Volume II of the 2013 v. of the Handbook.

⁸³ Section 270 of Volume II of the 2013 v. of the Handbook.

⁸⁴ Section 8 of the ESPS Statement.

⁸⁵ Section 272 of Volume II of the 2013 v. of the Handbook.

- 3.11 In terms of the access to information, the EIB verifies if any project-related stakeholder engagement meets the standards expected by the EIB⁸⁶. The EIB does not object to project promoters making information/documents available on their relationship and arrangements with the EIB⁸⁷. The EIB actively promotes transparency and good governance in the projects it finances and generally with its counterparts⁸⁸. The EIB encourages the project promoters to follow the transparency principles detailed in the EIB Group Transparency Policy (TP)⁸⁹ in the context of the financed projects⁹⁰. The TP states that all information and documents held by the EIB are subject to disclosure upon request unless there is a compelling reason for non-disclosure (i.e. see exceptions). Some of the reasons include: (i) protection of privacy and the integrity of the individuals concerned; and (ii) protection of commercial interests of a natural or legal person.

4. WORK PERFORMED BY THE EIB-CM

- 4.1 Following the admissibility of the complaint, in line with Section 2.2 of the EIB-CM Procedures, EIB-CM carried out an initial assessment of the allegations raised by the Complainant. This included: (i) meeting with the EIB's operational services; (ii) correspondence with the European Commission (EC); (iii) correspondence with the Complainant; and (iv) analysis of relevant documents. The initial assessment culminated with the Initial Assessment Report, issued in June 2020⁹¹. The report presents the allegations made, evidence analysed, and states that EIB-CM will carry out a compliance review.
- 4.2 EIB-CM analysed the available evidence and the relevant regulatory framework. EIB-CM analysed additional clarifications provided by the EIB's operational services. Based on this, EIB-CM prepared the conclusions report.

5. FINDINGS

V.1 The project's compliance with EU municipal waste recycling targets

V.1.1 Allegation

- 5.1.1 The complaint states that the project does not comply with EU environmental legal standards and municipal waste recycling targets⁹².

V.1.2 Findings on the project's compliance with the applicable standards

- 5.1.2 The 2017 Feasibility Study for the project (FS) assesses whether there will be enough RDF produced for the CHP plant once the municipal waste recycling targets have been met. The FS is a tool to assess the viability of the project during its lifetime. The FS addressed the future waste streams in Sofia Municipality. The forecasts have to be interpreted taking into account the uncertainty of future waste streams from the MBT and the quality of forecasts after 2030. The FS analysed two scenarios, namely:
- Scenario 1 taking into account the national municipal waste recycling targets set in the 2014-2020 NWMP; and

⁸⁶ Section 6 of Volume II of the 2013 v. of the Handbook

⁸⁷ Article 5.11 of the TP.

⁸⁸ Article 8.1 of the TP.

⁸⁹ The EIB Group Transparency Policy is available at: https://www.eib.org/attachments/strategies/eib_group_transparency_policy_en.pdf, accessed on 29 December 2020.

⁹⁰ Article 8.3 of the TP.

⁹¹ The Initial Assessment Report is available at: https://www.eib.org/attachments/complaints/sg-e-2018-42-toplofikacia-initial-assessment-report_web-2-06-2020.pdf, accessed on 16 July 2020.

⁹² Sections 1.2 and 4.1 of the Initial Assessment Report.

- Scenario 2 taking into account the EU municipal waste recycling targets set in the 2015 circular economy package and the WFD⁹³.
- 5.1.3 The FS used projections for total waste as well as for waste processed in the RDF plant, which would be the core source of fuel for the CHP between 2020 and 2045. For Scenario 1, a stable rate of recycling at source (46.7%) was used. This resulted in large quantities of RDF (between 144.5 kt/a in 2020 and 265 kt/a in 2045). For Scenario 2, increasing rates of recycling at source (from 46.7% in 2020 to 66% in 2030 and beyond) were used. This resulted in lower quantities of RDF (between 144.5 kt/a in 2020 and 169 kt/a in 2045).
- 5.1.4 The promoter submitted the FS, the CBA and other relevant documents to the European Commission (EC) in order to obtain the funding for the project. The EC approved the funding for the project in March 2020⁹⁴.
- 5.1.5 Meanwhile, it is worth noting that the latest data from the MBT (annual reports of the Sofia Waste Treatment plant to the Bulgarian Environmental Executive Agency) shows that the amounts of RDF produced in Sofia were 157 kt in 2016, 169 kt in 2017 and 164 kt in 2018⁹⁵.

V.1.4 Findings on the role of the EIB

- 5.1.6 The EIB checked the project's compliance with the national municipal waste recycling targets set in the 2014-2020 NWMP. The EIB requested that the FS also take into account the EU municipal waste recycling targets set in the 2015 circular economy package and the WFD.
- 5.1.7 The EIB also carried out its own analysis of the two scenarios, namely:
- Scenario 1 taking into account the national municipal waste recycling targets – RDF volumes start at 160 kt/a (forecasted data for the year 2020 in the FS) and increase to around 180 kt/a in 2035, with the RDF average calorific value of 13.3 MJ/kg.
 - Scenario 2 taking into account the EU municipal waste recycling targets – RDF volumes start at 160 kt/a (forecasted data for the year 2020 in the FS) and increase to around 173 kt/a in 2035, with the RDF average calorific value between 12-13 MJ/kg.
- 5.1.8 The EIB established that even under the assumption that the EU municipal waste recycling targets are met, the amounts of RDF will not fall below 160 kt/a and that the project remains economically justified. An additional input stream (ca. 10% of total feedstock) is RDF from bulky waste collection centres in Sofia.
- 5.1.9 Independently, JASPERS⁹⁶, a technical assistance partnership, appraised the project and provided its opinion to its stakeholders on the project's technical parameters and environmental impacts, including the project's justification from the circular economy point of view. Based on the latest available data from the MBT (see § 5.1.5), the MBT produced more RDF in 2018 than assumed in the FS for 2020 (see § 5.1.3). The EIB made disbursement of the first tranche conditional on approval of the EU funding⁹⁷.

⁹³ Waste resulting from incineration is not counted as municipal waste as it has been already treated, even if the input was classified as municipal waste. The residual waste after incineration does not contribute to the 10% target of 2030 for landfilled municipal waste, as incineration is considered one way of the treatment and therefore not municipal waste any longer. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/554208/EPRS_BRI\(2015\)554208_FR.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/554208/EPRS_BRI(2015)554208_FR.pdf)

⁹⁴ https://ec.europa.eu/info/news/cohesion-policy-commission-invests-better-waste-management-bulgaria-2020-mar-20_it, accessed on 15 April 2020.

⁹⁵ Amounts reported on <http://eea.government.bg/bg/r-r-r-kpkz/godishni-dokladi-14/index> for years 2016, 2017 and 2018.

⁹⁶ JASPERS is a technical assistance partnership between the EIB and the European Commission and an important instrument in EU Cohesion Policy. The JASPERS website can be found here: <https://jaspers.eib.org/follow-the-action/index.htm>

V.1.5 Conclusions

- 5.1.10 The reviewed evidence does not show instances of non-compliance of the project with the applicable standards. The FS shows that the project is feasible under both the national and EU municipal waste recycling targets, as also demonstrated by the latest amounts of RDF produced in Sofia. The EC took into account the FS when it approved the funding for the project, but also examined the latest information made available by the national authorities.
- 5.1.11 The reviewed evidence shows that the EIB has carried out its role as required. The EIB reviewed the project's compliance with the national and EU municipal waste recycling targets. The EIB and JASPERS requested that the FS take into account the EU targets. The EIB concluded that the project is feasible. The EIB made the disbursements conditional on approval of the EU grant.

V.2 The project's capacity

V.2.1 Allegation

- 5.2.1 The Complainant alleges that the capacity of the CHP plant is oversized and that it "exceeds the current RDF production in Sofia by three times"⁹⁸.

V.2.2 Findings on the project's compliance with the applicable standards

- 5.2.2 The EIA Report⁹⁹ and the EIA Decision¹⁰⁰ place the project's capacity at 180 kt/a of RDF. The EC noted the same¹⁰¹.
- 5.2.3 The EC noted that RDF for the project will come from Sofia¹⁰². In 2018, the promoter and the operator signed an agreement under which the promoter is expected to provide the operator with between 160-180 kt/a of RDF until 2050¹⁰³. This agreement was replaced by another agreement in November 2020¹⁰⁴ with the same obligation¹⁰⁵.
- 5.2.4 The promoter will deliver the RDF produced by its MBT plant. The MBT plant's expected output is identical to the project's capacity. Recent RDF output of the MBT plant has been: 164 kt in 2018¹⁰⁶ and 196 kt in the period March 2019-2020. In fact, the MBT plant produced more RDF than estimated by the project's FS during 2018-2020.

⁹⁸ Section 1.3 and 4.1 of the Initial Assessment Report, available at: https://www.eib.org/attachments/complaints/sg-e-2018-42-toplofikacia-initial-assessment-report_web-2-06-2020.pdf, accessed on 16 July 2020.

⁹⁹ Section 2.1.3.7 of the August 2014 EIA Report for the project, available at: <https://www.eib.org/attachments/registers/80322584.pdf>, accessed on 26 February 2020.

¹⁰⁰ EIA Decision, No. CO-03-03/2015, dated 28 August 2015.

¹⁰¹ Recital 3 of the Decision of the European Commission concerning State Aid SA. 54042 (2019/N) Bulgaria-Sofia waste-to-energy project/cogeneration unit with recovery of energy RDF, C(2019) 8528 final, issued on 25 November 2019, available at https://ec.europa.eu/competition/state_aid/cases1/202010/282528_2135956_134_2.pdf, accessed on 4 March 2020.

¹⁰² Recital 24 of the Decision of the European Commission concerning State Aid SA. 54042 (2019/N) Bulgaria-Sofia waste-to-energy project/cogeneration unit with recovery of energy RDF, C(2019) 8528 final, issued on 25 November 2019, available at https://ec.europa.eu/competition/state_aid/cases1/202010/282528_2135956_134_2.pdf, accessed on 4 March 2020.

¹⁰³ Sections 1.2, 2.2 and 2.3 of the 2018 Entrustment Act for the assignment of a service of general economic interest in the field of waste management, signed by the Sofia Municipality and Toplofikacia assuming that the CHP will become operational in 2024 (see § 2.7).

¹⁰⁴ Cooperation agreement for the recovery of RDF, resulting from the treatment of household waste collected on the territory of Sofia Municipality, available in [Bulgarian](#) and [English](#).

¹⁰⁵ Sections 2.2(b) (assuming that the CHP will become operational in 2024 (see § 2.7), 8.2, 8.3 and 9.1 of the Cooperation agreement for the recovery of RDF, resulting from the treatment of household waste collected on the territory of Sofia Municipality, available in [Bulgarian](#) and [English](#).

¹⁰⁶ Amounts reported on <http://eea.government.bg/bg/r-r/r-kpkz/godishni-dokladi-14/index> for 2016, 2017 and 2018.

5.2.5 The FS and the EIA Report leave open the possibility that additional quantities of RDF may come from other sources¹⁰⁷. For example, the RDF may come from treatment of bulky waste in Sofia by a third party (15-17 kt/a of RDF)¹⁰⁸. This should resolve a potential impact of increased recycling levels on RDF production in Sofia after 2030. The FS stated that the smaller capacity plant will not be able to treat available RDF in Sofia, specifically produced by the MBT plant.

V.2.3 Findings on the role of the EIB

5.2.6 The EIB noted that the CHP plant's capacity is 180 kt/a of RDF.

5.2.7 In 2017 the EIB concluded that RDF would predominately come from the MBT plant, which will produce 160-180 kt/a of RDF. The EIB: (i) analysed the production of RDF in Sofia Municipality and its energy content; and (ii) provided the promoter with technical assistance for the MBT plant to reach the expected RDF output. The EIB required the promoter to supply the CHP plant with RDF at the set quantity, quality and time. In line with this, the promoter and operator signed the relevant agreements (see § 5.2.3).

5.2.8 The EIB noted that an additional input stream (ca. 10% of total feedstock) of RDF may come from bulky waste collection centres in Sofia¹⁰⁹. Lastly, the EIB was informed that in case of a lack of RDF from Sofia Municipality the CHP plant will be able to accept alternative fuels, such as low grade RDF, low grade/fresh biomass and sludge.

5.2.9 The EIB required the promoter to provide it with a semi-annual project progress report, which will include a description of any major issue having an impact on the environment and an update on the RDF produced by the MBT plant. The EIB analyses the information received on the RDF produced (see § 5.2.4).

V.2.4 Conclusions

5.2.10 The reviewed evidence does not show instances of non-compliance of the project with the applicable standards. The capacity of the CHP plant overall matches the capacity of the MBT plant in Sofia, as well as its current production. This is not expected to change significantly in the future. In case of lower RDF production, additional waste streams have been identified (e.g. treatment of bulky waste in Sofia).

5.2.11 The reviewed evidence shows that the EIB has carried out its role as required. The EIB appraised the project and concluded that the MBT and the CHP capacities match. The EIB identified additional RDF streams from Sofia Municipality. The EIB also provided technical assistance to the MBT plant and required the promoter and operator to sign the relevant agreements for the delivery of sufficient quantities of RDF. The EIB requires the promoter to report on any major environmental issues and RDF produced by the MBT plant.

¹⁰⁷ Section 1.6.1 of the August 2014 EIA Report for the project, available at: <https://www.eib.org/attachments/registers/80322584.pdf>, accessed on 26 February 2020.

¹⁰⁸ Vrazhdebna landfill operated by Sofinvest EOOD.

¹⁰⁹ 15 000-17 000 tonnes/year of RDF from Vrazhdebna landfill operated by a third party, Sofinvest EOOD. In March 2019, the Municipality of Sofia and Sofinvest signed an Action Plan which confirms the intention of Sofinvest: (i) to implement the necessary technical improvements for producing RDF in its bulky waste treatment plant by the end of 2022; and (ii) to finance the investment from its own funds.

V.3 Privatisation of Toplofikacia and service concession for heating and electricity generation

V.3.1 Allegation

5.3.1 The Complainant challenges the compliance of the promoter's actions concerning privatisation and service concession for heating and electricity generation with the finance contract¹¹⁰.

V.3.2 Findings on the project's compliance with the applicable standards

5.3.2 In 2007, the Bulgarian government transferred the ownership of the operator from the promoter to Bulgarian Energy Holding, only to return it in 2011. By this time, the operator was burdened by a low heating tariffs-driven debt.

5.3.3 In 2015, the promoter issued Decision No 33, which "instructs the Mayor of Sofia Municipality to inform Bulgarian Energy Holding on the stage of preparation of a procedure for service concession for heating and electricity generation services, currently provided by Toplofikacia Sofia"¹¹¹. Moreover, public statements by members of the Municipal Council suggested that such a capital investment is vital for the financial survival of the operator.

5.3.4 In December 2018, the EIB and the promoter signed the finance contract for the project. The finance contract requires the promoter to refrain from disposing of its shareholding in the operator or having its shareholding in the operator diluted in any way for as long as any amounts are outstanding under the finance contract, unless the EIB gives its permission. The finance contract also requires the promoter to ensure that the operator retains a title to and possession of assets comprising the project and not to dispose (any act effecting sale, transfer, lease or other disposal) of any part of its assets, with some exceptions. There are no currently recorded relevant privatisation or service concession activities.

V.3.3 Findings on the role of the EIB

5.3.5 Prior to signing the finance contract, the EIB was aware of the promoter's considerations concerning privatisation and concession. In 2017, the EIB prepared a document stating that the future of the operator had yet to be decided with both the full privatisation and service concession scenarios remaining possible, as they had been under discussion in the past. According to the document, both remain largely dependent on the agreements between the government, the energy regulator, the promoter and a private partner with respect to the prices of natural gas and heating and handling of accumulated debts.

5.3.6 The EIB services consider that, as of June 2020, there is no possibility for privatisation of the operator or service concession due to the lack of the promoter's decision. The EIB services consider that the promoter may privatise the operator in line with the finance contract (see § 5.3.4), Regulation (EU) 1303/2013¹¹² and after 29 years. The EIB services consider that the same conditions apply in the case of a service concession.

¹¹⁰ Section 1.4 and 4.1 of the Initial Assessment Report, available at: https://www.eib.org/attachments/complaints/sg-e-2018-42-toplofikacia-initial-assessment-report_web-2-06-2020.pdf, accessed on 16 July 2020.

¹¹¹ Point 5 of Decision No. 33 (2015)

¹¹² Article 71(1) of Regulation (EU) 1303/2013, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1599577723728&uri=CELEX:02013R1303-20200718>, accessed on 8 September 2020.

V.3.4 Conclusions

- 5.3.7 The reviewed evidence does not show instances of non-compliance of the project with the applicable standards. There are no concrete privatisation or service concession plans involving the operator. Therefore, a breach of the finance contract has not been identified at the time of drafting this report.
- 5.3.8 The reviewed evidence shows that the EIB has carried out its role as required. The EIB put in place relevant provisions in the finance contract to ensure that the operator carries out its work. Also, the EIB is monitoring the related developments.

V.4 The project's impact on air quality with the focus on particulate matter

V.4.1 Allegation

- 5.4.1 The Complainant alleges that the project will have a negative impact on the local air quality, and specifically PM¹¹³.

V.4.2 Findings on the project's compliance with the applicable standards

- 5.4.2 The project is expected to emit pollutants. For example, the project will likely emit approximately 12 t/y of PM₁₀¹¹⁴. PM₁₀ refers to mass concentration of fine PM with a diameter of less than 10 µm¹¹⁵. PM is a widespread air pollutant, consisting of a mixture of solids and liquid particles suspended in the air¹¹⁶. The health effects of PM include respiratory and cardiovascular morbidity (e.g. aggravation of asthma) and mortality from cardiovascular and respiratory diseases and from lung cancer¹¹⁷.
- 5.4.3 Sofia is experiencing challenges with meeting the ambient air standards for PM₁₀. In 2017, the Court of Justice of the European Union had ruled that Sofia exceeded annual and daily limit values for PM₁₀ continuously in the period 2007-2014, therefore breaching the AAQD¹¹⁸. Sofia continued to exceed the annual limit values in 2017 and 2018¹¹⁹. In 2020, Sofia exceeded the daily limit values 54¹²⁰ out of 35 permitted times. Exceedances predominantly take place during wintertime¹²¹ due to a temperature inversion in Sofia, therefore making dispersion of locally generated air pollution more difficult during winter¹²².

¹¹³ Sections 1.5 and 4.1 of the Initial Assessment Report, available at: https://www.eib.org/attachments/complaints/sg-e-2018-42-toplofikacia-initial-assessment-report_web-2-06-2020.pdf, accessed on 16 July 2020.

¹¹⁴ Section 2.4.1.2.2.1 of the August 2014 EIA Report for the project, available at: <https://www.eib.org/attachments/registers/80322584.pdf>, accessed on 26 February 2020.

¹¹⁵ World Health Organisation, Regional Office for Europe, Health Effects of Particulate Matter, available at: http://www.euro.who.int/_data/assets/pdf_file/0006/189051/Health-effects-of-particulate-matter-final-Eng.pdf, accessed on 17 March 2020.

¹¹⁶ World Health Organisation, Regional Office for Europe, Health Effects of Particulate Matter, available at: http://www.euro.who.int/_data/assets/pdf_file/0006/189051/Health-effects-of-particulate-matter-final-Eng.pdf, accessed on 17 March 2020.

¹¹⁷ World Health Organisation, Regional Office for Europe, Health Effects of Particulate Matter, available at: http://www.euro.who.int/_data/assets/pdf_file/0006/189051/Health-effects-of-particulate-matter-final-Eng.pdf, accessed on 17 March 2020.

¹¹⁸ Judgment of the CJEU in the case C-488/15, available at <http://curia.europa.eu/juris/document/document.jsf?jsessionid=E1EEF8D70A18CA76018CE92987E255F3?text=&docid=189624&pageIn dex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1125924>, accessed on 9 March 2020.

¹¹⁹ Information for monitoring station Nadežda. The available information from the other monitoring stations in Sofia shows similar results – Real-time Atmospheric Air Quality Public Information System, available at: <http://www.eea.government.bg/kav/reports/air/qReport/03/01#param-data>, accessed on 14 January 2021. Monitoring station Nadežda is a representative for the area of Sofia TPP – Section 4.1.4.1 of the August 2014 EIA Report for the project, available at: <https://www.eib.org/attachments/registers/80322584.pdf>, accessed on 26 February 2020.

¹²⁰ Monitoring station Nadežda in Sofia – Real-time Atmospheric Air Quality Public Information System, available at: <http://www.eea.government.bg/kav/reports/air/qReport/03/01#param-data>, accessed on 14 January 2021.

¹²¹ Section 2.1 of the National Programme to Improve Air Quality (2018-2024).

¹²² <https://www.euractiv.com/section/central-europe/news/quests-to-the-bulgarian-presidency-inauguration-advised-to-wear-breathing-masks/>, accessed on 9 March 2020.

- 5.4.4 To address exceedance of ambient air quality, Bulgaria approved a National Programme to Improve Air Quality (2018-2024) in 2019. For example, according to the Programme, in order to comply with PM₁₀ standards, Sofia needs to reduce its PM₁₀ emissions by 42%¹²³. In 2018, the city of Sofia emitted approximately 2 770 t/y of PM₁₀. Some 83% came from domestic heating; 13% from transport and 3% from industrial sources, including energy-producing installations. The Programme considers that the domestic heating and transport sectors can attain the biggest reductions¹²⁴. The Programme estimates that the full implementation of the proposed measures would reduce PM₁₀ emissions in Sofia by between 82% and 87%¹²⁵.
- 5.4.5 The 2015 EIA Decision requires the project to comply with the air emission limit values set in Regulation No. 4¹²⁶, transposing the IED¹²⁷. The Sofia Administrative Court is currently examining the validity of the EIA decision and will collect additional evidence on the projected emissions from the project (see § 2.9). The so-called IPPC permit for the project, once issued, will set: (i) specific operating conditions based on November 2019 BAT conclusions for waste incineration; (ii) emission limit values for pollutants; and (iii) monitoring arrangements.
- 5.4.6 Compliance with the emission limit values is ensured through monitoring, reporting and inspection. The EIA Decision states that the project should have a publicly accessible electronic information board to display emission values identified by the project's continuous measurement system¹²⁸. The RIEW Sofia will carry out inspections, alongside current regular inspections of air emissions from the existing Sofia TPP¹²⁹.
- 5.4.7 Compliance of Bulgaria with the AAQD, especially in light of the 2017 ruling of the Court of Justice of the European Union (CJEU), is monitored by the EC. Due to its failure to ensure compliance with the ruling, the EC referred Bulgaria to the CJEU¹³⁰. According to the Commission, Bulgaria systematically and continuously failed to comply with the limit values for particulate matter (PM₁₀) and to adopt appropriate measures to keep the period of exceedance as short as possible¹³¹.
- 5.4.8 In 2019, the EC registered a complaint submitted by an individual concerning the project that also encompasses compliance of the project with the AAQD. As with any other complaint that is of relevance to EU co-funded projects, this one was duly considered before a decision for approval was taken by the EC (see § 2.6).

V.4.3 Findings on the role of the EIB

- 5.4.9 The EIB carried out its appraisal of the project. The EIB noted that the project will emit air pollutants¹³² and identified their inhalation as one of the project's main impacts. The EIB enquired and received information that there are no direct observations and specific data on diseases of the population caused by the project.

¹²³ Section 7.2 of the National Programme to Improve Air Quality (2018-2024).

¹²⁴ E.g. Sections 4.2.1 and 5.1 of the National Programme to Improve Air Quality (2018-2024).

¹²⁵ This reduction applies to the information for 2016. Section 7.2 of the National Programme to Improve Air Quality (2018-2024).

¹²⁶ EIA Decision, No. CO-03-03/2015, dated 28 August 2015.

¹²⁷ Section on conditions, part I on design stage, sub-sections 2 and 2.7 and part II on operation and decommissioning stages, sub-section 4 of the EIA Decision, No. CO-03-03/2015, dated 28 August 2015.

¹²⁸ Section on conditions, part I on design stage, sub-section 7 of the EIA Decision, No. CO-03-03/2015, dated 28 August 2015.

¹²⁹ Section 2.4.1.2.2.1 of the August 2014 EIA Report for the project, available at: <https://www.eib.org/attachments/registers/80322584.pdf>, accessed on 26 February 2020.

¹³⁰ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2150, accessed on 14 January 2021.

¹³¹ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2150, accessed on 14 January 2021.

¹³² [ESDS](#).

- 5.4.10 The EIB concluded that the project will comply with the emission limit values for PM set in the IED¹³³ as well as with the conditions of the November 2019 BAT conclusions for waste incineration. The EIB noted that the competent authorities will monitor the project's air emissions and will inspect the plant¹³⁴. The EIB concluded that the project is expected to have minor residual environmental impacts and that it is acceptable in environmental and social terms for EIB financing¹³⁵.
- 5.4.11 The EIB made disbursement of the first tranche conditional on approval of the EU grant and the issuance and validity of the relevant permits. The EIB also made the disbursement of in total more than EUR 10m conditional on evidence that the EIA permit for the project has been confirmed by final court decisions (see § 2.9).
- 5.4.12 The promoter is required to provide the EIB with a semi-annual project progress report which will include a description of any major issue having an impact on the environment and any legal action concerning the project that may be ongoing. The promoter is also required to promptly inform the EIB of any non-compliance by it with any applicable environmental law, which it has done so far.

V.4.4 Conclusions

- 5.4.13 The reviewed evidence does not show instances of non-compliance of the project with the applicable standards. For example, while the project will likely increase Sofia's 2018 PM₁₀ emissions by 0.4%, the competent authorities have put in place measures to attain over 80% reduction of Sofia's PM₁₀ emissions. The competent authorities will monitor the project's compliance with the national and EU emission standards while the European Commission checks whether the ambient standards for PM₁₀ in Sofia comply with EU law. The emission standards for the project may be even stricter should ambient air standards so require.
- 5.4.14 The reviewed evidence shows that the EIB has carried out its role as required. The EIB appraised the project and concluded that it must comply with the relevant emission standards and that the competent authorities will monitor its operation. The EIB made disbursements conditional on: (i) approval of the EU grant; (ii) issuance and validity of the relevant permits; and (iii) confirmation of the EIA permit by a final court decision. The EIB requires the promoter to report on any major environmental issues and non-compliance with environmental law.

V.5 Access to project-related documents

V.5.1 Allegation

- 5.5.1 The Complainant claims that the promoter denied the public access to project-related documents (e.g. cost-benefit analysis (CBA))¹³⁶.

V.5.2 Findings on the project's compliance with the applicable standards

- 5.5.2 In 2017, an environmental NGO requested from the promoter access to a number of project-related documents including the FS and CBA. The documents were prepared with the EIB's financial assistance to support the promoter when applying for the EU grant. In March 2017, the promoter declined access to these documents, explaining that it did not have access to the final versions of the

¹³³ [ESDS](#).

¹³⁴ [ESDS](#).

¹³⁵ [ESDS](#).

¹³⁶ Sections 1.7 and 4.1 of the Initial Assessment Report, available at: https://www.eib.org/attachments/complaints/sg-e-2018-42-toplofikacia-initial-assessment-report_web-2-06-2020.pdf, accessed on 16 July 2020.

documents¹³⁷.

- 5.5.3 In April 2017, the NGO challenged the decision of the promoter before the Sofia Administrative Court. In February 2018, the Sofia Administrative Court ruled that the promoter's decision was unlawful, annulled the decision, and required the promoter to re-examine the decision¹³⁸. The Court's reasoning was that the requested documents contain environmental information and that the request should have been reviewed pursuant to the special rules of the Environmental Protection Act. The promoter challenged the decision of the Sofia Administrative Court. In October 2019, the Supreme Administrative Court upheld the decision of the Sofia Administrative Court¹³⁹.
- 5.5.4 In March 2020, the promoter shared with the NGO a redacted version of the FS and some other requested documents¹⁴⁰. The promoter did not share (a redacted version of) the CBA on the grounds of protection of commercial interests. In its accompanying decision, the promoter provided its detailed reasoning for partial disclosure of the FS and non-disclosure of the CBA in line with environmental law. Therein, the promoter also stated that it had consulted the EIB on the disclosure of these documents. The promoter stated that the EIB had provided its opinion on which parts of the FS and CBA were not subject to disclosure in accordance with EIB rules. In April 2020, the Complainant informed EIB-CM that the promoter had stated that the "EIB advised [the promoter] not to disclose detailed technical, economical and financial information". According to the EIB services, there are no longer any outstanding legal proceedings concerning the request for disclosure of the project-related documents.

V.5.3 Findings on the role of the EIB

- 5.5.5 In January 2020, the promoter asked for the EIB's position about the potential disclosure of the CBA and FS. The promoter also asked the EIB to provide it with a redacted version of the CBA and FS if the EIB considered that certain parts of those two documents should not be disclosed.
- 5.5.6 In February 2020, the EIB responded to the promoter. In its response, the EIB noted that if it had received the request, it would have carried out an analysis of whether specific exceptions set in the TP apply, namely: (i) protection of commercial interests considering the imminent project tendering process; (ii) protection of personal data. The EIB also provided the promoter with its preliminary view on parts of the FS and CBA that may contain environmental information and as such could be disclosed. Based on the above, the EIB noted that none of the information contained in the FS and CBA would, if disclosed, affect the EIB's interest and informed the promoter that it did not object to the disclosure. The EIB left it up to the promoter to decide on the request for disclosure based on the applicable law.

V.5.4 Conclusions

- 5.5.7 The reviewed evidence shows that the project did not comply with the applicable standards at one point, but that since then the issue had been rectified. Initially, the promoter denied the public access to project-related documents (e.g. FS, CBA). However, in March 2020, following the ruling of the Bulgarian Supreme Administrative Court the promoter partially disclosed the requested documents. From the information provided by the EIB services, there are no longer any outstanding legal proceedings concerning the request for disclosure of the project-related documents.
- 5.5.8 The reviewed evidence shows that the EIB has carried out its role as required. The EIB informed the promoter that it did not object to disclosure of the FS and CBA. Because the request was submitted to

¹³⁷ Decision of Sofia Municipality of 27 March 2017.

¹³⁸ Decision No. 612 of 2 February 2018. The Decision.

¹³⁹ Decision No. 14006 of 21 October 2019.

¹⁴⁰ Decision of Sofia Municipality of 4 March 2020.

the promoter, the EIB left it up to the promoter to decide on the request for disclosure based on the applicable law. The EIB promoted transparency and encouraged the promoter to follow the transparency principles detailed in the TP. In that sense, the EIB provided the promoter with its preliminary view on parts of the FS and CBA that may contain environmental information and as such could be disclosed.

6 SUMMARY OF CONCLUSIONS AND OUTCOMES

Allegation	Project applicable standards	Role of the EIB	Outcome
Project compliance with EU municipal waste recycling targets	The FS shows that the project is feasible under both the national and EU municipal waste recycling targets. The EC took into account the FS when it approved the funding for the project.	The EIB: (i) reviewed compliance of the project with the national and EU municipal waste recycling targets; (ii) concluded that the project is feasible; (iii) made disbursements conditional on approval of the EU grant.	No grounds
Project's capacity	The project's capacity matches the capacity and the current production of the MBT plant in Sofia. No significant change in the future is expected. In case of lower RDF production, additional waste streams have been identified.	The EIB: (i) concluded that the MBT and the CHP capacities match; (ii) identified additional RDF streams; (iii) provided technical assistance to the MBT plant; (iv) required the promoter and operator to sign the relevant agreements for the delivery of sufficient quantities of RDF; (v) requires the promoter to report on any major environmental issues and RDF produced by the MBT plant.	No grounds
Privatisation of Toplofikacia and service concession for heating and electricity generation	There are no concrete privatisation or service concession plans involving the operator.	The EIB: (i) put in place relevant provisions in the finance contract to ensure that the operator carries out its work; (ii) is monitoring the related developments.	No grounds
Project's impact on air quality with the focus on PM	The project will likely increase Sofia's 2018 PM ₁₀ emissions by 0.4%. However, the competent authorities have put in place measures to attain over 80% reduction of Sofia's PM ₁₀ emissions. The competent authorities will monitor the project's compliance with the national and EU emission standards while the EC checks whether the ambient standards for PM ₁₀ in Sofia comply with the EU law. The emission standards for the project may be even stricter should ambient air standards so require.	The EIB: (i) concluded that the project must comply with the relevant emission standards and that the competent authorities will monitor its operation; (ii) made disbursements conditional on: (a) approval of the EU grant; (b) issuance and validity of the relevant permits; and (c) confirmation of the EIA permit by a final court decision; (iii) requires the promoter to report on any major environmental issues and non-compliance with the environmental law.	No grounds
Access to project-related documents	Initially, the promoter denied the public access to project-related documents (e.g. FS, CBA). However, in March 2020, the promoter complied with the ruling of the Bulgarian Supreme Administrative Court and partially disclosed the requested documents. From the information provided by the EIB services, there are no longer any outstanding legal proceedings concerning the request for disclosure of the project-related documents.	The EIB: (i) informed the promoter that it did not object to disclosure of the FS and CBA; (ii) because the request was submitted to the promoter, left it up to the promoter to decide on the request for disclosure based on the applicable law; (iii) provided the promoter with its preliminary view on parts of the FS and CBA that may contain environmental information and as such could be disclosed.	No grounds