

Combined Heat and Power Plant in Sofia (I)

Complaint SG/E/2018/42

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

INITIAL ASSESSMENT REPORT

2 June 2020

Prepared by
Complaints Mechanism

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.

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 European Ombudsman, are administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities and to Project cycle-related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism is 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: <https://www.eib.org/en/about/accountability/complaints/index.htm>

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GLOSSARY OF TERMS AND LIST OF ACRONYMS

CBA	Cost-benefit analysis
CHP	Combined heat and power
Complainant	Confidential
DG ENV	Directorate-General for Environment
DG REGIO	Directorate-General for Regional and Urban Policy
EC	European Commission
EC grant application	Application format and procedure to request funding from an EU fund as per OP
EIA	Environmental Impact Assessment
EIB-CM	European Investment Bank Group Complaints Mechanism Division
ERDF	European Regional Development Fund
ESDS	Environmental and Social Data Sheet
MBT	Mechanical biological treatment
MWh	Megawatt hour
NGO	Non-governmental organisation
OP	Operational programme
Operator	District heating company Toplofikacia Sofia EAD
PM	Particulate matter
Project	CHP plant in Sofia
Promoter	Sofia Municipality
RIEW	Regional Inspectorate of Environment and Water
RDF	Refuse-derived fuel

EXECUTIVE SUMMARY

In November 2018, the EIB Group Complaints Mechanism (EIB-CM) received a complaint concerning the construction of a combined heat and power (CHP) plant in Sofia for the recovery of refuse-derived fuel (RDF), produced by a waste management centre also based in Sofia. The complaint includes allegations about:

- Environmental and social impacts of the project, namely the potential:
 - Non-compliance with the EU Circular Economy Package, specifically the updated targets in the relevant waste management directives.
 - Oversizing of the facility to three times the current RDF production in Sofia.
 - Negative impact on air quality, and specifically particulate matter.
 - Barriers to appeal procedures.
- Potential privatisation plans: The co-financing contract obliges the Sofia Municipality (the promoter) to refrain from privatising the district heating company Toplofikacia Sofia EAD (the operator), notwithstanding that the Municipal Council is seeking to attract a strategic investor for the operator to ensure its financial survival.
- Access to some project information: The cost-benefit analysis (CBA) was classified by the promoter as confidential and court proceedings regarding the disclosure of information were initiated. Although some additional information was disclosed by the promoter, as ordered by the Supreme Administrative Court of Bulgaria in October 2019, the Feasibility Study remains undisclosed, according to additional information received from the complainant in April 2020.

The complainant requests that the EIB:

- Consider the arguments in the project review (see Section 1.2 of this report);
- Reject the request for project financing.

Following the admissibility of the complaint in line with Section 4.3 of the EIB-CM Procedures, the EIB-CM carried out an Initial Assessment. The objective of the Initial Assessment is to clarify the concerns raised by the complainant, understand the complainant's position, understand the validity of the concerns raised, and determine if further work by the EIB-CM is necessary and/or possible (compliance review or mediation between the parties) to address the allegation or resolve the issues raised by the complainant.

In light of the Initial Assessment and due to the nature of the allegations made, the EIB-CM deems it appropriate to carry out a compliance review regarding the allegations identified in the Initial Assessment, namely:

- Non-compliance of the project with EU environmental legal standards and waste management targets;
- Oversized capacity of the combined heat and power plant;
- Privatisation of Toplofikacia and service concession for heating and electricity generation;
- Negative impact of the project on air quality, and specifically particulate matter;
- Access to project-related information (e.g. the cost-benefit analysis).

1. THE COMPLAINT

- 1.1 On 12 November 2018, the complainant lodged a complaint with the EIB-CM concerning the CHP plant in Sofia (the project) under project/operations-related complaint, type E: environmental and social impacts, under Section 2 of the EIB-CM Procedures¹. The complainant waived its right to confidentiality under Section 4.4 of the EIB-CM Procedures.

Allegations

- 1.2 *Non-compliance of the project with EU environmental legal standards and waste management targets:* The complainant states that “the project indicators do not comply with the requirements of the new Circular Economy Package, [...] updated targets in the Waste Framework Directive², Packaging and Packaging Waste Directive³ and Single-Use Plastics Directive⁴.” According to the complaint, “providing separate collection of biodegradable waste for all generators in Sofia will lead to a drastic reduction in the quantities of waste to be processed into RDF for incineration,” and that “as of 2025, the Sofia Municipality will have to ensure the separate collection of textile and that targets for the recycling of paper and plastic will also grow, affecting the quantities of RDF processed by mechanical biological treatment (MBT).” The complainant argues that “all disposed waste from the process [...] is equal to 25.8% and is higher than the new limit of 10%, which is ca. 2.6 times over the 2030 goal limits” and that “the project falls under the ‘incinerators without future’ category and should not receive public funding.” The CHP plant is outside the scope of the EU Circular Economy Package.
- 1.3 *Oversized capacity of the combined heat and power plant:* The complainant alleges that the capacity of the CHP plant is oversized and “exceeds the current RDF production in Sofia by three times.” According to the complainant, there is a “stable production of RDF for only 30% of the capacity of the planned incinerator.”
- 1.4 *Privatisation of Toplofikacia and service concession for heating and electricity generation:* The complainant challenges the compliance of the Sofia Municipality’s actions with the content of the finance contract between the Sofia Municipality and the EIB. The complainant states that in its 2015 decision, the Municipal Council refers to possible “service concession for heating and electricity generation services.” According to the complainant, this may be in contradiction with the 2018 finance “contract [between the Sofia Municipality and the] EIB [which] prohibits the Sofia Municipality from privatising Toplofikacia Sofia, even just a portion of its shares, before the loan is repaid (unless the creditor gives its explicit consent).”
- 1.5 *Negative impact of the project on air quality, and specifically particulate matter:* The complainant states, “It has become increasingly difficult to justify the construction of a new source of dust pollution in Sofia.” It claimed that the Sofia Municipality announced that the project would “replace another source of fine particulate matter (PM) – natural gas.” The complainant provides information that the nearest residential area is some 217 m away from the chimney of the plant. In addition, the EIA decision has been appealed against because of air emissions and the proceedings are still ongoing. The next hearing is currently scheduled for 18 May 2020.
- 1.6 *Barriers to appeal procedures:* The complainant stated that the project “is not endorsed by the people living in the neighbouring residential area.” According to the complainant, the urban plan of Sofia was changed “in order to stop residents from appealing against the project.” The complainant alleged that the public concerned was limited only to the closest neighbourhoods. The case was argued and lost in court (2019)⁵.
- 1.7 *Access to project-related information (e.g. the cost-benefit analysis):* The complainant stated

¹ The EIB Complaints Mechanism Operating procedures (2013).

² Directive 2008/98/EC as amended by Directive (EU) 2018/851.

³ Directive 94/62/EC as amended by Directive (EU) 2018/852.

⁴ Directive (EU) 2019/904.

⁵ Information received from the complainant on 9 April 2020 by email.

that the Sofia Municipality “rejected access” to “general project documents such as the up-to-date conceptual design, cost-benefit analysis, feasibility study, state aid analysis and analysis of the conformity of the project, including its appendices and annexes, with EU policies on climate change.” The complainant does not request access to any additional information from the EIB Group, but explains that the project promoter appealed the ruling of the court of first instance before the Supreme Administrative Court of Bulgaria and lost the case. Subsequently, the promoter released some information. In 2020⁶, the complainant provided information that the Sofia Municipality continues to qualify some project information as confidential, based on advice received from the EIB, meaning that access to information is still restricted.

1.8 The complainant calls for the EIB to cease supporting the project.

2. **BACKGROUND INFORMATION**

- 2.1 The project concerns the construction and operation of a large-scale CHP plant in Sofia with a nominal capacity of 180 000 tonnes per year of RDF⁷. The project will produce heat and power by incinerating RDF⁸.
- 2.2 The project’s energy capacity is approx. 55 MWh⁹ of heat and approx. 20 MWh¹⁰ of electricity, which is expected to be fed into the public grid.
- 2.3 RDF has been produced by the MBT plant in Sadinata, Sofia, since 2015¹¹. RDF is extracted from municipal waste, with the remaining waste being either recycled (metals), released into the environment after treatment (water) or landfilled (residual waste).
- 2.4 The project is located on a brownfield site belonging to the existing Sofia Thermal Power Plant. The site is situated in the Serdika Borough of the Sofia Municipality, approx. 2.3 km north of Sofia’s city centre¹² (see Figure 2.1 below; project location is marked by the red dot). The closest residential areas are located over 400 m from the chimneystacks (according to the EIA, 2014)¹³.
- 2.5 The Sofia Municipality is the project promoter. Toplofikacia Sofia EAD, the owner and operator of Sofia’s district heating system, manages the project’s construction and operation. The Sofia Municipality owns both Toplofikacia Sofia EAD and the MBT plant in Sadinata.
- 2.6 The total project costs are estimated at €157.5 million¹⁴. The support will be provided by the finance contract between the Sofia Municipality and the EIB and an EU structural grant. The EIB will finance the project for up to €66.7 million. As of April 2020, the EIB has not yet disbursed its funds and the project’s implementation has not yet commenced.

⁶ Information received from the complainant on 9 April 2020 by email.

⁷ EIA Decision No CO-03-03/2015 of 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.

⁸ [ESDS](#).

⁹ 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.

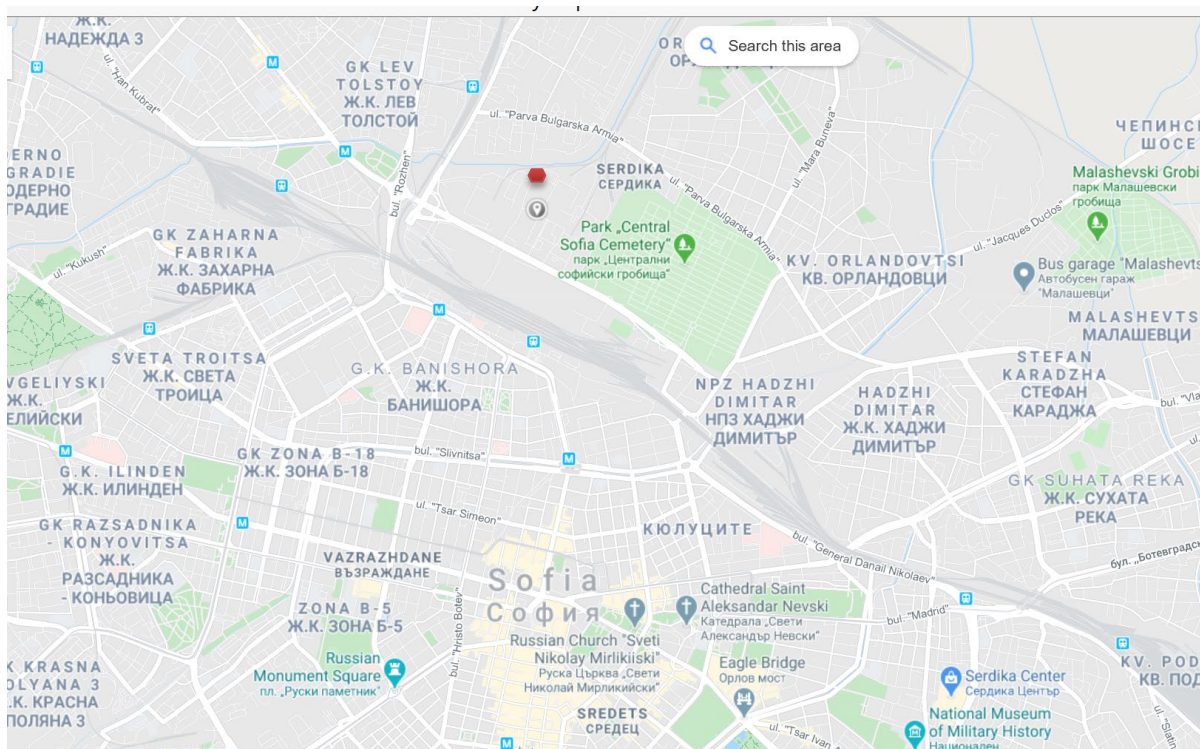
¹⁰ Section 2.1.3.7 of the August 2014 EIA Report for the project, available at <https://www.eib.org/attachments/registers/80322584.pdf>, accessed on 26 February 2020; EIA Decision No CO-03-03/2015 of 28 August 2015; Recital 3 of the Decision of the European Commission concerning State Aid SA. 54042 (2019/N) 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.

¹¹ [ESDS](#).

¹² Information obtained from Google Maps.

¹³ 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.

¹⁴ 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/cases1/202010/282528_2135956_134_2.pdf, accessed on 4 March 2020.

FIGURE 2.1. PROJECT LOCATION (red dot)

Source: Google maps.

- 2.7 The EU structural grant¹⁵ is expected to be provided under the Operational Programme Environment 2014-2020¹⁶.
- 2.8 The project is included in the National Waste Management Plan 2014-2020, adopted by the Council of Ministers with Decision No 831/22.12.2014¹⁷, which will contribute to the fulfilment of the national waste management obligations under the Waste Framework Directive and EU waste management documents under the EU Circular Economy Package.
- 2.9 The financial support from ERDF funds for the project is established in the Operational Programme Environment 2014-2020, Priority Axis 2 "Waste", adopted in 2014 and to be received via an EU grant application procedure administered by DG REGIO.

National authorisation for the project

- 2.10 The project underwent the full Environmental Impact Assessment (EIA) procedure. In August 2014, the operator prepared an EIA Report. In August 2015, the Sofia Regional Inspectorate of Environment and Water (RIEW) issued EIA Decision No CO-03-03/2015.
- 2.11 In 2015, a number of individuals and NGOs challenged the EIA decision before the Administrative Court of Sofia. The reasons included information and data on air pollution and compliance of the project with EU requirements and the National Waste Management Plan 2014-2020 (e.g. recycling targets). The Court was asked to declare the EIA decision as invalid or to cancel it. In March 2019, the Administrative Court of Sofia issued its decision dismissing the appeals against the EIA decision issued by the RIEW in 2015.

¹⁵ Recital 26 and 31 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.

¹⁶ ESDS.

¹⁷ https://www.moew.government.bg/static/media/ups/tiny/file/Waste/NACIONALEN_PLAN/NPUO_ENG_22_10_2014_06_01_2015.pdf

2.12 The 2019 decision of the Administrative Court of Sofia was challenged before the Supreme Administrative Court of Bulgaria. The court proceedings have been postponed in order to process additional information provided to the Court. The next court hearing is currently scheduled for 18 May 2020.

2.13 The EIA decision included a clause of “provisional execution of the decision”, which was appealable within three days. This is possible in certain cases under Article 60 of the Administrative Procedure Code. This clause enabled the Sofia Municipality to issue the construction permit for the project in September 2018.

3. WORK PERFORMED

3.1 Following the admissibility of the complaint in line with Section 4.3 of the EIB-CM Procedures, the EIB-CM carried out an Initial Assessment on the concerns raised by the complainant. The objective of the Initial Assessment is to clarify the concerns raised by the complainant, understand the complainant’s position, understand the validity of the concerns raised, and determine if further work by the EIB-CM is necessary and/or possible (investigation, compliance review or mediation between the parties) to address the allegation or resolve the issues raised by the complainant.

3.2 The EIB-CM reviewed additional information provided by the complainant:

- Letter of 3 January 2019 sent by the complainant to the EC Representation in Bulgaria (forwarded to the EIB-CM)
- Letter of 4 April 2019 sent by the complainant to DG REGIO and forwarded to the EIB-CM, where the complainant provided additional information on the financial viability of the operator, its business plan (2019), its preliminary financial statements, board of directors, etc.
- Letter of 9 April 2020 with additional information on a municipal urban plan appeal procedure, the EIA appeal procedure, and explanation of partial information disclosure by the Municipality to date

3.3 In line with Section 5.6 of the EIB-CM Procedures, as part of its Initial Assessment the EIB-CM also reviewed EIB Group policies, procedures and standards which may be relevant in the present case:

- Standard 1: Assessment and management of environmental and social impacts and risks
- Standard 2: Pollution prevention and abatement
- Standard 10: Stakeholder engagement

3.4 The EIB-CM also reviewed the finance contract, the Environmental and Social Data Sheet (ESDS¹⁸) summarising the EIB’s environmental and social appraisal, and the monitoring measures in place.

3.5 The EIB-CM obtained clarifications and further details regarding the project and the EIB’s due diligence from the EIB services concerned. The EIB-CM also consulted the European Commission. In this regard, DG REGIO informed the EIB-CM that the decision to support the project with ERDF funds was granted in March 2020¹⁹.

¹⁸ Available at <https://www.eib.org/attachments/registers/73267527.pdf>, accessed on 1 April 2020.

¹⁹ https://ec.europa.eu/regional_policy/en/newsroom/news/2020/03/20-03-2020-cohesion-policy-commission-invests-in-better-waste-management-in-bulgaria

- 3.6 Finally, the EIB-CM consulted DG ENV, which confirmed that in 2019 it registered a complaint submitted by an individual concerning the project. The complaint submitted to the European Commission raised a number of issues concerning the compliance of the project with EU law (e.g. ambient air quality, circular economy) and specific characteristics of the project (e.g. capacity to treat RDF, profitability). DG ENV confirmed that it is following up on the compliance of Bulgaria with the Ambient Air Quality Directive in light of the 2017 CJEU ruling on this matter. DG ENV has not yet taken a decision concerning this complaint.

4. **WAY FORWARD**

- 4.1 As a result of its Initial Assessment, the EIB-CM identified the following allegations:

Table of allegations:

1. Non-compliance of the project with EU environmental legal standards and waste management targets
2. Oversized capacity of the combined heat and power plant
3. Privatisation of Toplofikacia and service concession for heating and electricity generation
4. Negative impact of the project on air quality, and specifically particulate matter
5. Access to project-related information (e.g. the cost-benefit analysis)

- 4.2 With regard to the alleged barriers to appeal procedures (see Section 1.6 of this report), the EIB-CM notes that the information provided in the complaint and in additional correspondence from the complainant does not sufficiently support the validity of the concern raised. Furthermore, the EIB-CM notes that the EIA decision has been challenged before the Supreme Court of Bulgaria and the appeal procedure is ongoing. Based on the above, the EIB-CM concludes that no further inquiry into this aspect of the complaint is justified at this stage.

- 4.3 In light of the Initial Assessment and due to the nature of the allegations and claims, the EIB-CM deems it appropriate to carry out a compliance review regarding the allegations identified under Section 4.1 of this report (above).

- 4.4 Accordingly, as part of its compliance review, the EIB-CM will investigate:

- Compliance of the project with the applicable regulatory framework, taking into account the ongoing court cases and proceedings at national and EU level;
- Compliance of the EIB with its rules and procedures: whether the EIB rules and procedures have provided an adequate level of protection and safeguards.

- 4.5 The EIB-CM will assess the complainant's allegations in the context of potential EIB maladministration, including whether the EIB complied with the applicable regulatory framework. Maladministration may also relate to the environmental impact of the EIB Group's activities²⁰. The review will assess the project documentation and the due diligence carried out by the EIB in the areas related to the complainant's concerns as identified in this Initial Assessment Report. The compliance review will consider whether the EIB's appraisal and monitoring of the project is in

²⁰ Section 3.3 of the EIB Group Complaints Mechanism Policy.

accordance with applicable EIB policies, procedures and standards.

4.6 The EIB-CM will follow the developments of the complaint handling procedure managed by the European Commission (see Section 3.6 of this report), the proceedings before the national courts (see Section 2.11 of this report) as well as any other developments that may be of interest for this case.

4.7 The outcome of the compliance review will be communicated to the complainants through the EIB-CM's Conclusions Report in line with Section 8 of the EIB-CM Procedures.

The EIB Complaints Mechanism
02/06/2020