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THE BELGRADE SOLID WASTE PUBLIC PRIVATE PARTNERSHIP

Corporate interests vs. the circular economy

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EXECUTIVE SUMMARY

The Vinča landfill was established in 1977. For more than 40 years, solid communal waste has been disposed of without any pre-treatment or primary waste separation in the bed of the Ošljanski potok (Ošljan stream). Since it was not built to meet requirements valid for sanitary landfills and environment protection principles, today it represents a significant environmental problem, polluting the Danube River, surrounding agricultural land and air.

In September 2017, the City of Belgrade signed a contract for a 25-year public-private partnership (PPP) for the provision of municipal waste treatment and disposal services with the Suez-Itochu consortium. The PPP contract was signed without any public discussion or consideration of more climate-friendly alternatives. Although the PPP contract provides for the partial rehabilitation and remediation of the existing Vinča landfill and the construction of a new one, with leachate collection and treatment and landfill gas utilization facilities, the main feature is the construction of a 340,000 tonnes per year “energy-from-waste” incinerator. The only recycling component is a construction waste facility.

An analysis of the individual steps in the structuring and implementation of the PPP transaction shows that the whole process was designed according to the interests and wishes of the potential private partners, while consciously neglecting Belgrade’s long-term waste management needs and Belgrade’s and Serbia’s obligations towards the EU’s circular economy goals defined in Chapter 27 of Serbia’s EU accession negotiations.

The International Finance Corporation (IFC), a member of the World Bank Group, provided assistance to the City of Belgrade to prepare the municipal waste treatment and disposal services PPP, as a lead transaction adviser. The IFC’s consulting services included the assessment of investors’ interest and preparation and presentation of the recommended PPP transaction structure, presentation of the legal and regulatory, technical and financial due diligence analysis, and assistance to the City of Belgrade during the implementation of the public procurement procedure, selection of the best bidder and conclusion of the PPP Agreement.¹

The outcome of the public procurement preparation phase was the City of Belgrade’s call for requests for qualifications (RFQ) for the PPP, clearly encouraging only those bidders that have direct experience in developing and operating waste incineration facilities, as the only suitable technological solution for the City of Belgrade.² Although the RFQ invites the potential private partners to offer alternative technologies (e.g. anaerobic digestion technology), it also clearly emphasizes that such alternatives could only be considered as a possible technological step prior to incineration.

The available documentation shows that none of the 5 qualified bidders (or consortia) that took part in the competitive dialogue process, were interested in pre-treatment technologies, but showed an exclusive interest in developing an “energy-from-waste” (EfW) facility that would incinerate municipal waste without prior treatment. In addition, none of the bidders was interested in developing municipal waste separation and recycling systems as part of the PPP agreement.

The chosen waste management technology was not in line with the strategic and planning documents of the City of Belgrade, developed by the City of Belgrade’s institutions and confirmed through public consultation. More specifically, building an EfW facility for direct incineration of municipal waste was not in line with the Local Waste Management Plan of the City of Belgrade 2011 - 2020³ and Detailed Regulation Plan for the Vinča Sanitary Landfill, City Municipality of Grocka,⁴ which both foresaw the pre-treatment of waste to form refuse-derived fuel before incineration.⁵

To address this discrepancy, after the signing of the PPP Agreement, an effort was made to legalize the contracted technological solution through the drafting of Amendments to the Detailed Regulation Plan for the Vinča Landfill (DRP), which were adopted in September 2018. Considering that the proposed technological solutions were already locked in by the PPP Agreement, there was no possibility for a meaningful public consultation process about the Draft DRP Amendments and the public was essentially deprived of the lawful right to take part in the decision-making process.

Parallel analysis of the contractual obligations for the City of Belgrade to deliver 340,000

1. “Summary of Advisory Services Project Information (ASPI), Project Number 600610”, Disclosures IFC, 2014, <https://disclosures.ifc.org/#/projectDetail/AS/600610> (accessed October 6, 2019).

2. City of Belgrade, Secretariat for Environmental Protection, “Section 3.2. Project technical concept for residual MSW treatment – Energy from Waste Facility(ies)”, Request for Qualification for the PPP Project for the City of Belgrade for the Provision of Services of Treatment and Disposal of Residual MSW, August 21, 2015.

3. Local Waste Management Plan of the City of Belgrade 2011 - 2020, Official Gazette of the City of Belgrade, no. 28/11.

4. Detailed Regulation Plan for the Sanitary Landfill Vinča, City Municipality of Grocka, Official Gazette of the City of Belgrade, no. 17/15.

5. RDF incineration would not have been a satisfactory solution either, but implementing the Local Plan could have at least somewhat raised the level of recycled materials.

tonnes of municipal waste per year to the private partner and of estimates of waste quantities in Belgrade, shows that there is an undeniable danger that Belgrade will not be able to meet the municipal waste recycling targets set by EU legislation. The transposition of these targets into national regulations has been announced for the near future.

The project is to be supported by an outdated feed-in tariff model that conflicts with EU renewable energy legislation. EU legislation allows only biodegradable waste to be classified as a renewable resource, not fossil-based waste such as plastic. New feed-in tariff contracts are also no longer allowed for renewable facilities larger than 500 kW. The process for approving these subsidies on the national level has also breached Serbian legislation by failing to wait for the environmental assessment process to be completed.

It is therefore clear that the PPP Agreement has placed the private partner's interests over the interests of the Republic of Serbia in developing a sound waste management system that would be in line with the EU acquis and would support further progress in the EU negotiation process.

This paper aims to examine the project's development and, based on Belgrade's experience, provide recommendations on preventing PPPs from circumventing democratic decision-making processes about public services.

PUBLIC-PRIVATE PARTNERSHIP CONTRACT - OVERVIEW

The Belgrade Solid Waste public-private partnership (PPP) Agreement was signed on 29 September 2017 between the City of Belgrade (Secretariat for Environmental Protection), Beo Čista Energija d.o.o. (the Project's special purpose vehicle), and a consortium of SUEZ groupe S.A.S and I-Environment Investments Ltd. (an Itochu Corporation subsidiary). In November 2018, the Marguerite II fund⁶ acquired a 20% stake in Beo Čista Energija d.o.o. (Beo Clean Energy Ltd., BCE), becoming a third equity partner.⁷

The main feature of the project is the construction and operation of an energy-from-waste facility with capacity to treat 340,000 tonnes of municipal waste annually, generating heat and electricity. As was communicated by one of the private partners themselves, Itochu Corporation, the EfW facility was designed to incinerate the equivalent of around 66% of the total current municipal waste generated in Belgrade.⁸ The project scope also includes the closure and partial remediation of the existing Vinča landfill, the construction and operation of a new leachate-controlled landfill (170,000 tonnes per year) and a facility for processing 200,000 tonnes per year of construction and demolition waste.

The annual value of the PPP contract was estimated at 38,278,900.00 EUR (tax included), marking the yearly payment of the City of Belgrade to the private party.⁹ For the 25 years of the contract's duration, total payment amounts to 956,972,500.00 EUR.

Total Project costs are estimated at 345,700,000.00 EUR¹⁰ and are intended to be funded by senior debt facilities procured from international financial institutions (IFI) and commercial banks, as well as through equity injected by Suez, Itochu and the Marguerite II fund.

The latest calculation presented by the European Bank for Reconstruction and Development (EBRD), shows the following investment calculation: "The Project has a total investment size estimated at EUR 345.7 million, envisaged to be financed by equity and non-recourse debt from IFIs (EBRD, IFC and OeEB). The EBRD will provide an A loan facility of up to EUR 70 million to finance the Project and will mobilise an amount of EUR 21 million from the Green Energy Special Fund ("GESF"). Other financiers include IFC and OeEB, with loan facilities of up to EUR 70 million and EUR 35 million, respectively. The IFC will also provide concessional financing of up to EUR 20 million from its Blended Climate Finance Program ("BCFP"). Both EBRD and IFC will mobilise B-loans of up to EUR 30 million each."¹¹

The official media statements¹² described the PPP contract as the largest and most important contract ever signed in Serbia and the region, emphasizing the crucial role of the IFC as the lead advisor to the City of Belgrade throughout the two year period of preparation of the procurement documentation and procedure.

The PPP Agreement¹³ defined the possible IFIs as the EBRD, the European Investment Bank (EIB) and the IFC, "or any one of them".¹⁴ This was confirmed by various media statements¹⁵ and banks' officials.¹⁶ However, by the time the EBRD announced the approval of its loan, in October 2019, the EIB was no longer mentioned as a financier of the Belgrade Solid Waste PPP. Instead, official media statements introduced the Oesterreichische Entwicklungsbank (OeEB)¹⁷ as the third IFI to finance the Project.

In October 2019, the EIB confirmed its withdrawal from the joint financing of the Project. The decision was a result of the EIB's own due diligence "which corresponded to the strong and justified negative opinion of the services of the European Commission (EC)".¹⁸

6. "Itochu Announces the Commencement of Activities for Public-Private-Partnership Waste Management Project with City of Belgrade", Itochu, October 2, 2019, <https://www.itochu.co.jp/en/news/press/2019/191002.html> (accessed October 10, 2019).

7. "Marguerite joins Suez and Itochu in their Public-Private Partnership with the City of Belgrade (Serbia) for the construction and operation of modern waste management facilities", Marguerite, November 30, 2018, <http://www.marguerite.com/2018/11/marguerite-joins-suez-and-itochu-in-their-public-private-partnership-with-the-city-of-belgrade-serbia-for-the-construction-and-operation-of-modern-waste-management-facilities/> (accessed October 9, 2019).

8. "Itochu has signed a waste management contract with the City of Belgrade, the First Major PPP Project in the Republic of Serbia", Itochu, October 2, 2017, <https://www.itochu.co.jp/en/news/press/2017/171002.html> (accessed October 9, 2019).

9. Public Procurement Commission, Expert Evaluation Report on Public Procurement Bids (public procurement number 8/15), August 22, 2017.

10. EBRD, Belgrade Solid Waste PPP, <https://www.ebrd.com/work-with-us/projects/psd/belgrade-solid-waste-ppp.html>, (accessed October 9, 2019).

11. EBRD, Belgrade Solid Waste PPP, <https://www.ebrd.com/work-with-us/projects/psd/belgrade-solid-waste-ppp.html> (accessed October 9, 2019).

12. "Mayor Mali pointed out that the contract represents one of the most important, if not the most important, contracts in the last few decades, addressing the decades-long problem of the Vinča landfill. He also stressed that this was the largest PPP contract at the moment in this part of Europe," from the article "Potpisan ugovor za gradnju fabrike za preradu otpada u Vinči", Politika, September 29, 2017, <http://www.politika.rs/sr/clanak/389794/Potpisan-ugovor-za-gradnju-fabrike-za-preradu-otpada-u-Vinci>, (accessed October 9, 2019).

13. PPP Agreement for the provision of services for treatment and disposal of municipal waste signed on September 29, 2017.

14. PPP Agreement for the provision of services for treatment and disposal of municipal waste, Schedule 1, Definitions, Senior Financing Institutions.

15. "Vinča PPP signed to solve biggest environmental problem in Serbia, region", Balkan Green Energy News, September 30, 2017, <https://balkangreenenergynews.com/vinca-ppp-signed-to-solve-biggest-environmental-problem-in-serbia-region/> (accessed October 10, 2019).

16. "Vinča PPP signed to solve biggest environmental problem in Serbia, region", Balkan Green Energy News, September 30, 2017, <https://balkangreenenergynews.com/vinca-ppp-signed-to-solve-biggest-environmental-problem-in-serbia-region/> (accessed October 10, 2019).

17. Olga Rosca, "Belgrade to get new waste management facilities", EBRD News, October 2, 2019 <https://www.ebrd.com/news/2019/belgrade-to-get-new-waste-management-facilities.html> (accessed October 10, 2019)

18. EIB, Juan Manuel Sterlin Balenciaga / Deputy Head of Division, Kristyna Pelikanova / Civil Society Officer, Corporate Responsibility Department, General Secretariat, email correspondence, October 25, 2019;

19. EIB, Juan Manuel Sterlin Balenciaga / Deputy Head of Division, Kristyna Pelikanova / Civil Society Officer, Corporate Responsibility Department, General Secretariat, email correspondence, October 25, 2019;

20. According to the Marguerite Fund's website, Marguerite I is fully invested. Its successor fund, Marguerite II, continues the work of Marguerite I, with the capacity to invest in projects across the EU and in the pre-accession countries. The European Investment Bank has committed EUR 200 million to the Marguerite II, of which EUR 100 million are guaranteed by the European Fund for Strategic Investments (EFSI), alongside EUR 100 million each from five National Promotional Banks. (Background, Marguerite, <http://www.marguerite.com/about-us/background/> accessed October 10, 2019).

21. William Pierson, Partner at Marguerite: "The project is Marguerite's first investment in an EU accession country and we are very pleased to become a shareholder in this landmark transaction that will address an acute environmental problem in the vicinity of the City of Belgrade. We expect that it will substantially improve both waste treatment practices in the country's capital city and the living conditions of its inhabitants as well as reduce the existing landfill's environmental footprint. We are also delighted to expand our partnership with SUEZ with this new project and to develop a new relationship with such an experienced partner as Itochu," from the article "Marguerite joins Suez and Itochu in their Public-Private Partnership with the City of Belgrade (Serbia) for the construction and operation of modern waste management facilities", Marguerite, November 30, 2018, <http://www.marguerite.com/2018/11/marguerite-joins-suez-and-itochu-in-their-public-private-partnership-with-the-city-of-belgrade-serbia-for-the-construction-and-operation-of-modern-waste-management-facilities/> (accessed October 10, 2019).

22. Background, Marguerite, <http://www.marguerite.com/about-us/background/> (accessed October 10, 2019).

As communicated by the EIB's Civil Society Division, "the EC's opinion underlined in particular that according to the Project's design/rationale, it would prevent the country from achieving its objectives under Chapter 27 of the "EU Accession Agreement" insofar as recycling and circular economy is concerned".¹⁹

Nevertheless, the EIB still appears to be connected to the Project through the Marguerite II Fund, the third equity partner in the Beo Čista Energija (BCE) company. For the Marguerite Fund, largely funded by the EIB,²⁰ the Belgrade PPP was the first investment in an EU accession country.

At the time of joining Suez and Itochu in their Public-Private Partnership with the City of Belgrade, in October 2018, Marguerite's representatives were more positive in relation to the expected impacts of the Project on the waste management system in Belgrade,

declaring their expectation that the Project "will substantially improve both waste treatment practices in the country's capital city and the living conditions of its inhabitants as well as reduce the existing landfill's environmental footprint".²¹ Having in mind the official Marguerite II goals of "implementing key EU policies in the areas of climate change, energy security, digital agenda and trans-European networks",²² it is inconsistent that the EIB remained connected to the PPP through the equity fund, while refraining from directly financing the Project, quoting its adverse effects on Serbia's EU negotiation process.

SHAPING PUBLIC POLICY VS. SERVING PRIVATE INTERESTS

The first step in developing a new system for treatment and disposal of municipal waste through a public-private partnership was taken by the City of Belgrade in 2014, when it formed the Working Group for the Construction of a Waste Management System in the City of Belgrade.²³

On November 25, 2014, the City of Belgrade signed a contract with the IFC, a member of the World Bank Group, as the exclusive lead advisor to assist with the various stages of analysing, structuring and implementation of the Project. The IFC's consulting services were carried out in two consecutive phases.²⁴ The first phase included the assessment of investors' interest and preparation and presentation of a recommended PPP transaction structure, as well as presentation of a legal and regulatory, technical and financial due diligence analysis. In the second phase, the IFC provided assistance to the City of Belgrade during the implementation of the public procurement procedure, selection of the best bidder and conclusion of the PPP Agreement.

A few months before signing the contract with the IFC, the Secretariat of Environmental Protection released a document titled "Public Private Partnership, Waste Management, Information Memorandum (Project teaser)",²⁵ citing the EBRD as the lead advisor to the City of Belgrade in the design and implementation of the PPP. However, the document does not provide further details on the date of signing of the contract between the City of Belgrade and the EBRD nor does it elaborate on its nature.

The "Project teaser" presented the history and the current state of the Vinča landfill, gave an overview of the morphological composition of waste in individual Belgrade municipalities, and an overview of national and local regulations and urban and waste management plans relating to Belgrade and the Vinča

landfill. It also presented more details about the facilities whose construction was foreseen by the previously listed plans and regulations. According to this document, the PPP Agreement should include:

- remediation and closure of the existing landfill;
- construction of:
 - a new landfill in accordance with national and EU regulations and standards,
 - a gas collection and treatment system,
 - a leachate collection and treatment system,
 - a facility for mechanical-biological waste treatment (MBT) with the production of fuel from waste (RDF – refuse derived fuel),
 - a combined heat and power (CHP) plant (cogeneration plant) using RDF,
 - a facility for construction and demolition waste recycling,
 - recyclable waste separation lines,
 - two transfer stations, and
 - a facility for green waste composting.

The construction of these facilities was envisioned and confirmed by the provisions of the Local Waste Management Plan of the City of Belgrade 2011 - 2020²⁶ that was adopted by the City of Belgrade as "a strategic document in this field, which defines the objectives of waste management in accordance with the Waste Management Strategy of the Republic of Serbia".²⁷ The Project teaser also provides information on the ongoing preparation of the Detailed Regulation Plan for the Vinča landfill, which precedes the expropriation procedures.

The Detailed Regulation Plan for the Vinča Sanitary Landfill, City Municipality of Grocka, (hereafter: DRP for the Vinča landfill)

23. Temporary body of the Belgrade City Assembly, Decision no. 020-2513/14-C-20, April 11, 2014;

24. City of Belgrade, Secretariat for Environmental Protection, PPP for the provision of services for treatment and disposal of municipal waste, PPP Project Proposal, June 24, 2015;

25. City of Belgrade, Public private partnership, Waste management, Information Memorandum, July 11, 2014;

26. Local Waste Management Plan of the City of Belgrade 2011 - 2020, Official Gazette of the City of Belgrade, no. 28/11;

27. City of Belgrade, Public private partnership, Waste management, Information Memorandum, July 11, 2014;

28. Detailed Regulation Plan for the Vinča Sanitary Landfill, City Municipality of Grocka, Official Gazette of the City of Belgrade, no. 17/15;

29. The provisions of the DRP for the Vinča landfill, and thus the choice of waste treatment technology, were confirmed by higher-order urban plans adopted after 2015, namely the General Urban Plan of Belgrade ("Official Gazette of the City of Belgrade", no. 20/16, 97/16, 69/17 and 97 / 177) and the General Regulation Plan for the building area of the local self-government unit – the City of Belgrade, units I-XIX ("Official Gazette of the City of Belgrade, no. 20/16, 97/16, 69/17 and 97 / 177) and the General Regulation Plan for the building area of the local self-government unit – the City of Belgrade – unit XX, municipalities of Grocka, Palilula, Zvezdara and Voždovac – settlements KaludERICA, Leštane, Boleč, Vinča and Ritopek ("Official Gazette of the City of Belgrade", no. 66/17), which also explicitly state that the Local Waste Management Plan of the City of Belgrade 2011 - 2020 is the key document for further procedures of designing and construction of waste collection, storage and treatment facilities.

30. City of Belgrade, Secretariat for Environmental Protection, Request for Qualification for the PPP Project for the City of Belgrade for the Provision of Services of Treatment and Disposal of Residual MSW, August 21, 2015;

31. "Section 3.2. Project technical concept for residual MSW treatment – Energy from Waste Facility(ies)," Request for Qualification for the PPP Project for the City of Belgrade for the Provision of Services of Treatment and Disposal of Residual MSW, August 21, 2015;

32. City of Belgrade, Secretariat for Environmental Protection, PPP for the provision of services for treatment and disposal of municipal waste, PPP Project Proposal, June 24, 2015.

33. City of Belgrade, Secretariat for Environmental Protection, "Section 3.6 The City's strategic objectives to be achieved through the Project", PPP for the provision of services for treatment and disposal of municipal waste, PPP Project Proposal, June 24, 2015.

34. City of Belgrade, Secretariat for Environmental Protection, "Section 4.2 Technical solutions for the treatment of the municipal waste", PPP for the provision of services for treatment and disposal of municipal waste, PPP Project Proposal, June 24, 2015.

35. It is not clearly explained in the document why there would still be a need to send some of the RDF to other companies if an EfW facility is built under option 3.

36. Law on Waste Management, Official Gazette of RS, no. 36/09, 88/10, 14/16 and 95/18.

37. The following bidders qualified: 1. Joint application: Wte Wassertechnik, GMBH, Ruhrallee 185 45136 ESSEN, Germany, Kommunal-und Industrieentsorgung Jessen GMBH, Grosskorggaer Landstr. 4 06917 Stadt Jessen/Schweinitz Germany; 2. Suez environnement, Tour CB 21-16 Plazede l'iris 92040, Paris la defense; 3. Urbaser, S.A. N.I.F: A-79524054, Caminode Hormiguerras 28031, Madrid; 4. Joint application: Veolia Central and Eastern Europe Eneris Surowce S.A., 36 Avenue, Hleder 75016, Paris, France; 5. Beootpad doo Beograd, Mokroluska Nova 5, 11050, Belgrade 22, Serbia, as stated in the Decision on recognition of qualification, City of Belgrade, Secretariat for Environmental Protection, Decision V-06 no. 404-12-3/15, 9. November 9, 2015.

was adopted in April 2015,²⁸ offering more details about the individual facilities of the waste management system foreseen by the Local Waste Management Plan of the City of Belgrade 2011 - 2020 (hereafter: Local Waste Management Plan), with whose provisions it was fully aligned.²⁹

However, in August 2015, the City of Belgrade took a completely different stand. The content of the document *Request for Qualification for the PPP Project for the City of Belgrade for the Provision of Services of Treatment and Disposal of Residual MSW*,³⁰ contains an explicit announcement that the provisions of the DRP for the Vinča landfill are not binding for potential bidders and that the City of Belgrade will begin to amend the documents within its jurisdiction in order to adjust them to the technical proposal of the selected bidder chosen through a competitive dialogue.

Regarding the technological solution, the participants were given the following clarification: "Bidders are free to choose whether to (i) pre-treat the residual MSW through an MBT facility to produce SRF or RDF ("solid recovered fuel" or "refuse derived fuel") to then be incinerated, or (ii) incinerate un-treated residual MSW".³¹ In addition, a completely new site, the New Cerak Site, was introduced as a possible alternative site for the construction of the EfW facility. Bidders were also offered the opportunity to propose other alternative sites.

Behind the scenes developments that led to the City of Belgrade changing its course regarding its sense of obligation towards implementing the provisions of its urban planning documents and strategic plans in the PPP Agreement, were somewhat explained inside a document named *The proposal of the City of Belgrade for the Provision of Municipal Waste Treatment and Disposal Services*,³² dated June 2015. This Proposal clearly emphasizes that the Local Waste Management Plan is the basic strategic document in the waste management field, that it was prepared in full accordance with all adopted plans and strategies of the City of Belgrade and the Law on Waste Management, and that it was prepared in cooperation with stakeholders and that it was subject to public debate.³³ However, it also examines solutions that contravene the Local Waste Management

Plan.

An explanation can be found in *Section 4. Business Plan, Subtitle 4.2. Technical solutions for waste treatment*, which explains that the City of Belgrade and the lead advisers, the IFC, had carried out a "critical review" of the Local Waste Management Plan, resulting in them instructing the potential bidders that there was no need to adhere to the provisions of the valid strategic and planning documents. As explained in this document, the City of Belgrade and its technical advisers "conducted an analysis of a series of technology scenarios related to recycling, diversion of biodegradable waste from landfills, indicative costs and cost recovery through the sale of electricity and other secondary products".³⁴ It was concluded that "several technical solutions would enable the City to meet its needs", listing the following technological options: 1. Construction of an EfW facility for incineration of pre-treated waste (MBT); 2. Construction of an EfW facility for incineration of non pre-treated waste; 3. Construction of an EfW facility for incineration of pre-treated waste (MBT), with the use of RDF in cement kilns and other facilities.³⁵ All of these options are based on incineration as the base waste treatment technology. Only the options that include the incineration of RDF are in accordance with the Local Waste Management Plan.

By carrying out a "critical review" without opening the mandatory consultation procedures for experts and the general public, the City of Belgrade and IFC contravened Article 13 of the Law on Waste Management.³⁶

In November 2015, 11 applications were submitted in response to the City of Belgrade's call for qualifications for a public-private partnership for the provision of municipal waste treatment and disposal services. The right to participate in the competitive dialogue process was granted to 5 bidders and consortia.³⁷

Information on the competitive dialogue that took place during 2016 shows that participants were offered a choice between the following municipal waste treatment alternatives:

“Option 1: Construct a Mechanical-Biological Treatment (MBT) plant at the new Vinča site, which would produce Refuse-Derived Fuel (RDF); Transport of the RDF to the new Cerak site, close to a residential area located ca. 15 km west of the Vinča site; Construct a new Combined Heat and Power (CHP) plant in the new Cerak site, near its existing District Heating Plant (DHP). Transport the treatment residues to the new Vinča site, where new landfills would be built.

Option 2: Transport of the untreated residual mixed (RMW) to the new Cerak site; Burn the RMW in a new Incineration Plant to be built besides the new Cerak site’s existing DHP; Transport the treatment residues to the new Vinča site, where new landfills would be built.

Option 3: Incinerate the untreated residual mixed RMW at the new Vinča site in a new Incineration Plant constructed there; Landfill the treatment residues on new landfills built on new Vinča site.”³⁸

The estimated capacity of the waste incinerator (in Vinča or Cerak) and MTB plant in Vinča, was 500,000 tonnes per year (t/year), “targeting to treat 100% of RMW from Belgrade”.³⁹ Additionally, in all options the contractor was allowed the possibility to integrate equipment to remove recyclable or organic materials (sorting, composting, digestion) for further reduction of the RMW quantity that would finally be incinerated in the treatment facilities.

The result of the competitive dialogue process was such that none of the participating bidders was interested in building any type of facility at the new Cerak site, excluding options 1 and 2 from further consideration.

The reason for this was the perception that the small distance from a densely populated residential area (ca. 120m to the first building) would increase the significance of potential noise, odours, air emissions and visual pollution, would cause higher visual impact and would imply a higher risk of public opposition.⁴⁰ It is unclear why the Cerak site was included as an option at all, considering that the General Regulation Plan of Belgrade stipulates that large polluting (category G) complexes need to be a minimum of 1000 m from residential units. Apart from implying a higher risk of public objections, building an incinerator at the Cerak

site would also be an obstacle from the legal point of view.

A scoping report for the environmental and social impact assessment carried out by Fichtner GmbH⁴¹ shows that the “pre-treatment and generation of recyclable products was of little interest for most of the Bidders” compared to the direct incineration of RMW, which also narrowed the choice down to option 3. In parallel, “financing and cost issues”⁴² resulted in a decision by the City to downsize the Project, reducing the capacity of the planned incinerator to 65% (from the incineration of about 500,000 t/year to about 350,000 t/year) which then opened the need for the incorporation of a municipal waste landfill for the partial flow of RMW remaining untreated.

It can be concluded that the City entered the procedure of selecting a private partner for the provision of treatment and disposal services for municipal waste with the idea that incineration was the only suitable technological solution for the City of Belgrade.⁴³ Although it is true that the Local Waste Management Plan as well as DPR for the Vinča landfill are based on incineration of municipal waste, it is obvious that these documents’ provisions were violated during the preparation and implementation of the procurement procedure. Both of these documents only foresaw the incineration of the RDF produced in the MBT facility, and both foresaw at least some recycling on Vinča site.

By violating the provisions of the Local Waste Management Plan, the City of Belgrade also violated the provisions of the DRP for the Vinča landfill, which was adopted on the basis of this strategic document in April 2015. The City of Belgrade was therefore forced to open a procedure to amend the DRP, following the signing of the PPP Agreement. The official explanation for this procedure was that the technological solution chosen during the competitive dialogue did not comply with the one foreseen by the DRP for the Vinča landfill.⁴⁴ The DRP Amendments were adopted in September 2018,⁴⁵ one year after the PPP Agreement was signed.⁴⁶

Considering that the proposed technological solutions were already locked by the PPP Agreement, there

38. Fichtner GmbH, Environmental and Social Scoping Study for the Belgrade EFW Project in Serbia, Amendment to the E&S Scoping Report, Final Report, April 2017;

39. Fichtner GmbH, Final Report, April 2017;

40. *ibid*

41. The environmental and social impact assessment was performed by Fichtner GmbH as a technical consultant to the City of Belgrade.

42. Fichtner GmbH, Final Report, April 2017;

43. “Bio-digestion (anaerobic digestion) will not be accepted as a single solution, however it will be considered as a possible process technology within a pre-treatment concept” as in stated in: “Section 3.2. Technical concept of the PPP for the municipal waste treatment facility - Energy from Waste Plant(s), Request for Qualification for the PPP Project for the City of Belgrade for the Provision of Services of Treatment and Disposal of Residual MSW, City of Belgrade, Secretariat for Environmental Protection, August 21, 2015.

44. Secretariat for Environmental Protection, Program for the Amendments to the PDR for the “Vinča” landfill, found in: Study for the Early Public Consultations, Urban Planning Institute of Belgrade, January 2018.

45. Amendments to the Detailed Regulation Plan for the Sanitary Landfill “Vinča”, City Municipality of Grocka, Official Gazette of the City of Belgrade, no. 86/18.

46. No changes were made to the General urban plan of Belgrade, General Regulation Plan of Belgrade - units I-XIX and General Regulation Plan of Belgrade - unit XX, although these urban plans are higher in the hierarchy and represent the planning basis for the Amendments to the Detailed Regulation Plan for the Sanitary Landfill “Vinča”. As stated before, these urban plans also explicitly suggest that the Local Waste Management Plan of the City of Belgrade 2011 - 2020 is a key document for further procedures of designing and construction of waste collection, storage and treatment facilities.

47. The contract was awarded in October 2019. The completion of the Draft Local Waste Management Plan for the City of Belgrade 2021 - 2030 is defined as 365 days from the date of signing the contract with the consultant.

48. City of Belgrade, Secretariat for Environmental Protection, "Tendering documentation", Public Procurement Procedure for the Development of the Local Waste Management Plan of the City of Belgrade 2021-2030 (public procurement no. 14/19), August 2019.

was no possibility for a meaningful public consultation process about the Draft DRP Amendments and the public was essentially deprived of the lawful right to take part in the decision-making process.

Apart from the "critical review" carried out by the City of Belgrade and the IFC advisers, no formal procedure for the revision of the Local Waste Management Plan has been opened. It was only in 2019 that the procurement procedure for the development of the Local Waste Management Plan for the period 2021 - 2030 was opened.⁴⁷ The new Local Waste Management Plan 2021 - 2030 is supposed to include the provisions set by the PPP Agreement, as an inherited condition.⁴⁸

In other words, instead of having a strategic plan defining the projects needed to meet the waste management goals, one project, the Vinča PPP, has de facto set in stone how the overall strategic plan for the City of Belgrade will look.

THE (HIDDEN) QUESTION OF THE WASTE QUANTITIES BASELINE DATA

Although it could reasonably be argued that information such as the municipal waste quantities produced in Belgrade over a one year period, the projected waste quantities over the duration of the PPP Agreement (until 2046), the composition of the municipal waste, the existence or efficiency of a waste separation and recycling system in Belgrade, and projections of Belgrade's capabilities to reach the recycling targets defined by domestic and EU legislation should be key inputs for the design of the PPP, this information remained unknown to the public even after the signing of the PPP Agreement.

Following the signing of the PPP Agreement, it was reported that the capacity of the planned EfW facility would be 340,000 tonnes of municipal waste, "equivalent to around 66% of the total municipal waste generated in Belgrade",⁴⁹ suggesting that the total amount of municipal waste produced in Belgrade annually equals 510,000 tonnes.

There were several difficulties with fact checking this statement. On one hand, the PPP Agreement does not cover the entire territory of Belgrade, but 13 out of its 17 municipalities.⁵⁰ On the other hand, no exact data on the quantities of municipal waste produced or collected in Belgrade were presented to the public.

Baseline data and municipal waste projections were not even presented in the Environmental and Social Impact Assessment⁵¹ study (ESIA) submitted for public consultation prior to approval of the EBRD's loan to Beo Čista Energija d.o.o., in October 2018. Nor were they presented in the Environmental Impact Assessment⁵² studies (EIA) published in June 2019 for the purpose of obtaining the approval from the Ministry of Environmental Protection of the Republic of Serbia for the operation of the planned facilities in Vinča. The ESIA

was amended⁵³ only after interventions from civil society organizations, with a footnote containing the following information:

"National Waste Management Strategy 2010–2019 (2010) and Proposal for the Waste Management Strategy 2015–2030 (planned for 2016) establish the framework for final waste reduction and sustainable waste management. The Proposal for the Waste Management Strategy 2015–2030 suggest the following goals:

- *reduction of biodegradable waste disposal to landfills by 25% by 2022, 50% by 2026 and by 65% by 2030;*
- *achieving at least 60% of reuse and recycling at least 55% of packaging waste by 2025;*
- *achieving at least 50% recycling of municipal waste by 2030;*
- *improvement of the system of management of specific waste streams (waste tires, used batteries and accumulators, waste oils, waste vehicles, WEEE) in order to achieve 4 kg per capita of separately collected WEEE by the end of 2019 and at least 45% of batteries and accumulators by the end of 2016.*

However, since Serbia is EU accession candidate, in near future, further adjustments of national regulations are expected in order to meet the requirements from the Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste.

The Energy from Waste (EfW) processing plant is intentionally planned for 340,000 t/a, covering only 67% of projected residual waste or compared

49. "Itochu has signed a waste management contract with the City of Belgrade, the First Major PPP Project in the Republic of Serbia", Itochu, October 2, 2017, <https://www.itochu.co.jp/en/news/press/2017/171002.html> (accessed October 9, 2019)

50. Vinča PPP includes waste collected in 13 out of 17 Belgrade City's municipalities: Voždovac, Vračar, Zvezdara, Zemun, Mladenovac, Novi Beograd, Palilula, Rakovica, Savski venac, Sopot, Stari grad, Surčin, Čukarica. The other 4 municipalities (Barajevo, Lazarevac, Obrenovac and Grocka) will not be part of the PPP and have developed separate waste management plans.

51. Egis, Vinča Energy-from-Waste facility, construction of the new landfill and remediation of the existing landfill, Environmental and Social Impact Assessment, version 04, October 2018;

52. The facilities covered by the PPP contract have been addressed by two separate environmental impact assessment studies. This decision has been the subject of complaints from the civil society organizations and individuals, since the "salami slicing" even of the same technological processes cannot lead to the adequate environmental impact assessment.

53. Egis, Vinča Energy-from-Waste facility, construction of the new landfill and remediation of the existing landfill, Environmental and Social Impact Assessment, version 03, September 2019;

to a projected total MSW quantity of 750,000 t/a, including waste to be recycled and composted, it processes only 45% of the projected waste in the 13 municipalities forming part of the project for Belgrade. As there is no plan for other waste to energy plants in Serbia at this moment, this planned project would not hinder the capability for Serbia to achieve the 50% target, mentioned above. More importantly, achieving this target highly depends on the system for separate collection which is outside the Project scope. Achieving the collection rates will be subject to establishing an adequate collection system by the Municipality which goes beyond the scope of this project and this ESIA.

It is worth noting, that under the PPP contract, there is no concept of minimum guaranteed tonnage to be delivered by City.”

This information is problematic for several reasons.

First of all, contrary to the claim made in the ESIA, the PPP contract stipulates financial compensation for the private partner in case the City of Belgrade fails to deliver a minimum guaranteed tonnage of 340,000 t of municipal waste per year. Payment of the compensation payment is regulated by the PPP Agreement, article 26.2 Exclusivity⁵⁴ and Part F, Appendix 5, Contract waste tonnages, Residual municipal waste.⁵⁵ In addition, the PPP Agreement, explicitly defines a breach by the City of its obligations to deliver Contract Waste as one of the Compensation Events.⁵⁶

The existence of a contractual mechanism to allow for the restoration of the financial equilibrium for the investor, should the City of Belgrade fail to deliver 340,000 tonnes of municipal waste per year, was confirmed by the EBRD itself in a letter dated 16 October, 2018.⁵⁷ It is therefore unclear why this incorrect information about the contractual obligations related to the waste tonnages have remained inside the approved ESIA.⁵⁸

The ESIA quotes the waste management goals allegedly set by a document named Proposal for

the Waste Management Strategy 2015 - 2030, although such a document was never adopted, nor there is evidence that it has ever undergone a public consultation procedure. On the other hand, announcements for the preparation of the Waste Management Strategy for the period 2019 - 2024⁵⁹ have been made public during 2019. When and if adopted, this Strategy will have to comply with Directive 2018/851 of the European Parliament and the Council of 30 May 2018, amending Directive 2008/98/EC on waste, which sets stricter targets than those set by the quoted document. Namely, the new Directive sets the goals for reuse and recycling of a minimum 55% of the municipal waste produced by 2025, 60% by 2030 and 65% by 2035, and ensuring the separate collection and recycling of biodegradable waste fraction, by 31 December 2023.

Given the Republic of Serbia's obligations to implement EU waste management standards, it seems extremely irresponsible to base the PPP's impact assessment on outdated goals, especially considering the 25-years duration of the PPP Agreement and bearing in mind that a circular resource management system has proven benefits for the environment and the general population's health.

Additional confusion surrounds the claim regarding the share of the waste intended for incineration in the Vinča EfW facility in the total amount of municipal waste produced or collected in Belgrade.

Unfortunately, the ESIA does not provide the source for the quoted estimates of municipal waste quantities, or the year for which the estimates were made, nor does it provide any additional information about the expected impact of these numbers on the waste management system in Belgrade.

However, the document Request for Qualification for the PPP Project for the City of Belgrade for the Provision of Services of Treatment and Disposal of Residual MSW⁶⁰ from August 2015, shows that the 13 municipalities would produce 750,000 t of municipal waste (including commercial waste and recyclable waste) only in 2046, that is

54. "From the Interim Services Commencement Date and subject to Clause 26.2(b), the City shall procure that all Contract Waste is delivered exclusively to the Contractor at the Designated Delivery Point in accordance with the requirements of this Contract and the Waste Delivery Protocol, and the Contractor shall be entitled to receive such Waste", Article 26.2 Exclusivity (a), PPP Contract, September 29, 2017; 55. Part F, Appendix 5, "Contract waste tonnages, RMW During Services Period (in tonnes per year), 340 000", PPP Contract, September 29, 2017; 56. Schedule 1, Definitions, "Compensation Event means: (...) (b) in respect of the period from the Services Commencement Date: (i) a breach by the City of its obligations to: (1) deliver Contract Waste to the Contractor pursuant to Clause 26.2 (Exclusivity) and/or paragraph 3.1 (Authorization of Delivering Vehicles) and/or paragraph 4.7 (Quarantining Procedure for Prohibited Waste) of Schedule 25 (Waste Delivery Protocol);" PPP Contract, September 29, 2017; 57. "Should the City deliver less than 340,000t of waste to the landfill, there is a compensation mechanism stipulated by PPP Agreement which would restore the economic equilibrium for the investor", as stated in: EBRD, e-mail correspondence, Luisa Balbi, Civil Society Engagement Unit, October 16, 2018; 58. EBRD made a positive decision on allowing the loan to the PPP private partner company, Beo Čista Energija d.o.o. (Beo Clean Energy), in September 2019; 59. By the time this report was drafted, in October 2019, the Waste Management Strategy for the period 2019 - 2024 had not been made available for the public consultations. 60. City of Belgrade, Secretariat for Environmental Protection, Request for Qualification for the PPP Project for the City of Belgrade for the Provision of Services of Treatment and Disposal of Residual MSW, August 21, 2015;

during the last year of the PPP Agreement's duration. The same document states that the 13 municipalities that are taking part in this PPP produce 88% of the total amount of municipal waste collected in Belgrade as a whole. This means that in 2046, the incinerator in Vinča would burn 45% of the municipal waste produced in the 13 municipalities (40% of the total municipal waste produced in Belgrade as a whole,⁶¹ if the municipalities' share is still 88%).

Before 2046, when the obligations under the PPP Agreement expire and the waste treatment and disposal facilities are meant to be transferred to the City of Belgrade, Serbia will be obliged to comply with the latest standards established by EU legislation. Their transposition into domestic regulations was announced as one of the main goals of the adoption of the new Waste Management Strategy 2019 - 2024.⁶²

The EU Directive 2018/851 sets an obligation to reuse and recycle of 65% of the mass of municipal waste produced, by 2035. As already indicated, in 2046 the Vinča incinerator would burn 45% of the total municipal waste produced in the 13 municipalities of Belgrade participating in the project, leaving only 55% of municipal waste available for other types of treatment that would ensure compliance with the EU recycling targets.

In earlier years, the incinerator would burn an even larger percentage of the waste, because the overall amount of waste generated would be smaller.

It looks highly likely that, if the Vinča incinerator is to be built, Belgrade will not have the ability to fulfill its obligations,

long after the target year, 2035, even if the production of municipal waste keeps increasing. Bearing in mind that Belgrade is the capital and the largest city in Serbia, and therefore has more resources to invest in an advanced waste prevention and management system than smaller cities, it is very likely that the construction of a 340,000 tonnes EfW plant in Vinča, will also prevent Serbia from meeting the EU and national legislation waste management goals.

Even if Serbia is able to postpone its EU targets for five or even ten years, the conclusion stays the same. The percentage of waste left for potential recycling is less than the recycling target in all years. For example, in 2030, 50% of waste would be incinerated, leaving 50% to potentially be recycled. But even if Serbia delays implementation of the 2020 target of 50% by ten years, it would need a recycling system with an efficiency of 100% in order to reach it.

The other possibility is to transport waste from other parts of Serbia or from abroad; however, there are three issues with this:

1. It would violate the proximity principle enshrined in Article 191 of the Treaty on the Functioning of the EU: "2. *Union policy on the environment (...) shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.*"
2. It would add to the project's overall greenhouse gas impacts.
3. This would still most likely not resolve

	2020	2025	2030	2035	2040	2045	2046
Total generated municipal waste quantities – 13 municipalities	632,769	654,981	677,127	699,241	723,216	748,085	753,169
Incinerator capacity	N/A	340	340	340	340	340	340
Incinerator capacity percentage of total waste generation – 13 municipalities	N/A	52	50	49	47	45	45
Percentage of waste left for potential recycling – 13 municipalities	N/A	48	50	51	53	55	55
EU recycling target (per cent)	50	55	60	65	65	65	65

61. The document Request for Qualification for the PPP Project for the City of Belgrade for the Provision of Services of Treatment and Disposal of Residual MSW, (City of Belgrade, Secretariat for Environmental Protection, August 21, 2015) presents the information that the amount of municipal waste collected on the territory of 13 municipalities that are included in the PPP equals 88% of the total amount of municipal waste collected in Belgrade. The document Vinča Energy-from-Waste facility, construction of the new landfill and remediation of the existing landfill, Environmental and Social Impact Assessment, version 04 (Egis, October 2018), defines this amount as 90%;

62. "Serbia to change waste management model under new strategy", Balkan Green Energy News, August 8, 2019 <https://balkangreenenergynews.com/serbia-to-change-waste-management-model-under-new-strategy/> (accessed October 15, 2019);

the crowding out effect of the incinerator on waste prevention and recycling in Belgrade. Spending funds and human resources on the PPP's operation is still likely to dampen the Belgrade city authorities' interest and capacity to develop a circular economy.

In addition, it should be noted that all of the previous calculations were based on projected quantities of municipal waste, and not the actual amounts of waste being produced by the Belgrade's households. Therefore, these data should be treated with caution, as quantities of municipal waste are expected to decrease with the development of waste prevention and recycling systems (banning single use plastics, etc.).

As the European Commission has pointed out in its Communication on the role of waste-to-energy in the circular economy: "Public funding should also avoid creating overcapacity for non-recyclable waste treatment such as incinerators. In this respect it should be borne in mind that mixed waste as a feedstock for waste-to-energy processes is expected to fall as a result of separate collection obligations and more ambitious EU recycling targets. For these reasons, Member States are advised to gradually phase-out public support for the recovery of energy from mixed waste."⁶³

In assessing the possibility for Belgrade (and Serbia) to develop a 100% efficiency system for waste separation and recycling, it is important to take into account the current situation in this sector. Let's see how the development of this system is described in the ESIA document:

"The City has initiated the introduction of a two-bin waste collection system, to be implemented in the three most central municipalities in 2015, with planned expansion into other areas of the City in 2016 and 2017. At the ESIA time of redaction, there is no available report whether the system has been implemented".⁶⁴

The amount and type of information presented in the ESIA document indicates that the private partner, Beo Čista Energija d.o.o. did not consider it important to seriously assess the impact of a 340,000 t incinerator on the waste management system in Belgrade. The same applies to the EBRD, which approved the Project without ensuring that the Client provided the public with updated information about the existence and efficiency of the waste separation and recycling system in

Belgrade, or with reliable information on its further development.

Omitting this analysis led to the neglect of another important aspect of the PPP Agreement - the potential impact on the Roma population, thanks to whose efforts Belgrade can currently boast of any (although little) waste recycling.

According to the publication *Inclusion of Informal Collectors into the Evolving Waste Management System in Serbia - A Roadmap for Integration*,⁶⁵ published by the German International Cooperation Organization (GIZ), around 2,350 families (over 12,000 persons) are engaged in collecting secondary raw materials in Belgrade alone, and the vast majority of these people belong to the already vulnerable Roma population. For these families, secondary raw material collection is the only source of income.

Belgrade has already announced the purchase of above-ground containers with a locking mechanism.⁶⁶ It has also pledged to increase the number of, and control over, the existing underground containers whose compartments will be replaced by separate waste collection chambers.⁶⁷ Considering that the secondary raw material collectors most often use the above-ground containers as their source of materials, it is clear that the announced activities will mean less or no possibility of securing the only monthly income for the 12,000 secondary material collectors in the territory of Belgrade.

The GIZ publication states that the secondary raw material collectors collect 90% of the total quantities of PET packaging, paper and cardboard collected for recycling,⁶⁸ and that this percentage is comparable with the percentages in another 10 countries of Southern and Eastern Europe.⁶⁹ This makes it difficult to believe that participants in the design of the PPP for the provision of treatment and disposal services for municipal waste (i.e. the City of Belgrade, IFC and their technical consultants) had no knowledge of the likely adverse effects of the Vinča PPP Agreement on this already disadvantaged community.

In addition, this same concern was repeatedly highlighted among many objections made by civil society organizations during public consultations regarding the publication of environmental impact assessment studies (both ESIA consultations for EBRD loans and consultations on EIAs for the consent of the RS Ministry of Environmental Protection). In spite of this, neither the EBRD nor the Ministry requested analysis of this issue to be added to the documents.

63. Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions, The role of waste-to-energy in the circular economy, Brussels, COM(2017) 34 final, January 26, 2017; <https://ec.europa.eu/environment/waste/waste-to-energy.pdf> (accessed October 15, 2019);

64. Egis, "The Current Waste Management in Belgrade, Separation and recycling", Vinča Energy-from-Waste facility, construction of the new landfill and remediation of the existing landfill, Environmental and Social Impact Assessment, version 04, September 2019;

65. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, Inclusion of Informal Collectors into the Evolving Waste Management System in Serbia - A Roadmap for Integration, 2018;

66. The Belgrade authorities stated that the move is intended to stop cafes and restaurants tipping their waste into residential bins, and have not indicated that these plans are linked to the incinerator project, but such activities will certainly help to ensure the waste flows needed to keep the incinerator going, especially of calorific waste such as paper and cardboard. (INICIJATIVA: Ključ od kontejnera za svaku zgradu?", Novosti, January 14, 2019, <http://www.novosti.rs/vesti/beograd.74.html:771484-INICIJATIVA-Kljuc-od-kontejnera-za-svaku-zgradu> (accessed October 15, 2019)

67. "Zatvaraju podzemne kontejnere", Novosti, November 26, 2018, <http://www.novosti.rs/vesti/beograd.74.html:762625-Zatvaraju-podzemne-kontejnere> (accessed October 15, 2019);

68. PUC Gradska Čistoća Final Report for 2018 states that in 2018 this public utility company collected only 7,254 t of secondary raw materials.

69. According to a report by EXPRA (Extended Producer Responsibility Alliance), Scheinberg et al 2016, found in *Inclusion of Informal Collectors into the Evolving Waste Management System in Serbia - A Roadmap for Integration*, GIZ, 2018;

FEED-IN-TARIFFS FOR THE INCINERATOR AND LANDFILL GAS FACILITIES - GUARANTEED INCOME FOR THE INVESTOR

The 2015 PPP documentation stipulated that *“electricity generated from this Project can be sold to the public supplier under the terms and conditions of the national Law on Energy which provides for a 12-year power purchase agreement (from commissioning) at a feed-in-tariff of 8.57 c€/kWh for energy from waste and 6.91 c€/kWh for energy from landfill gas”*.

Indeed, in September 2019, the Ministry of Mining and Energy approved temporary privileged producer status for Beo Čista Energija d.o.o. for the incinerator and landfill gas facilities,⁷⁰ entitling them to receive feed-in tariffs once the facilities are built, over a guaranteed period of 12 years.⁷¹

According to the public register,⁷² these are the first subsidies approved by the Ministry of Mines and Energy for landfill gas and waste.

This system of subsidizing the production of electricity from high-efficiency heat and power cogeneration was supposed to last until December 31, 2018. However, just one month before this deadline, the *Decree on Incentives for the Production of Electricity from Renewable Energy Sources and High-Efficiency Heat and Power Cogeneration* was extended until December 31, 2019.⁷³ Since all the quotas for wind and solar plants until 2020 are already filled (and new ones have not been offered), the prolongation opened up room for the continuation of feed-in subsidy practices for sources of energy which have the least sustainable potential, such as hydropower, biomass, biogas and waste incinerators.⁷⁴ With the extension of this deadline, Beo Čista

Energija d.o.o. was given the opportunity to file for approval of temporary privileged producer status for the incinerator and landfill gas facilities in Vinča.

This comes in contrast to the EU's longstanding efforts to establish new rules on renewable energy incentives that replace feed-in tariffs with a more cost-efficient model based on auctions and premiums. In addition, the EU's 2009 Directive on renewable energy sources, to which Serbia has committed under the Energy Community Treaty,⁷⁵ allows for the incentivisation of energy produced from biodegradable waste only, not fossil-fuel-based or other waste. The EU has already recognized the danger of waste incineration crowding out waste prevention and recycling. The new Renewable Energy Directive II⁷⁶ which entered force in 2018, prohibits states from granting support for renewable energy produced from the incineration even of biodegradable waste if the EU's increasingly strict separate waste collection obligations have not been complied with.

The approval of the temporary privileged producer status is additionally controversial because it was carried out before the Ministry of Environmental Protection approved the Environmental Impact Assessment (EIA) for these projects, contrary to the provisions of the laws that define the relevant procedures.

Article 71 of the Law on Energy and Article 6 of the Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary Privileged Electricity

70. Ministry of Mining and Energy, Decision on approval of the temporary privileged energy producer status to the Beo Čista Energija d.o.o. for the waste incinerator facility “EiW Vinča”, installed power 30,24 MW, no. 312-01-00818/2019-06 and Decision on approval of the temporary privileged energy producer status to the Beo Čista Energija d.o.o. for the landfill gas facility “LGP”, installed power 3,09 MW, no. 312-01-00817/2019-06, both from September 27, 2019;

71. At the time of the approval of the temporary privileged producer status, the Decree on Incentive Measures for Production of Electricity from Renewable Energy Sources and from High-efficiency Combined Production of Electricity and Heat (“Official Gazette of RS”, no. 56/16, 60/17, 91/18), defined the feed-in tariffs as 8,44 c€/kWh for the energy produced from landfill gas, and 8,57 c€/kWh for the energy from waste;

72. Public registry of the privileged producers, temporary privileged producers and producers from renewable energy sources, Ministry of Mining and Energy, September 2019, <https://mre.gov.rs/doc/registar-071019.html#null> (accessed: October 15, 2019);

73. Decree Amending the Decree on Incentive Measures for Production of Electricity from Renewable Energy Sources and from High-efficiency Combined Production of Electricity and Heat, Official Gazette of RS no. 91/18 from November 23, 2018;

74. “Extending feed-in tariffs risks turning public opinion against renewable energy”, Balkan Green Energy News, December 11, 2018, <https://balkangreenenergynews.com/extending-feed-in-tariffs-risks-turning-public-opinion-against-renewable-energy/> (accessed October 15, 2018);

75. According to the Decision D/2012/04/MC-EnC “Decision on the implementation of Directive 2009/28/EC and amending Article 20 of the Energy Community Treaty”, Republic of Serbia was bound to implement the Directive 2009/28/EC, which defines, inter alia, the concept of renewable energy sources (OIE) and sets out the conditions for the promotion of electricity and heat production from OIE, by 01.01.2014;

76. Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018;

*Producer and Electricity Producer from Renewable Energy Sources*⁷⁷ stipulate that the status of temporary preferential producer can be approved for an energy company or physical person who “*may commence construction of a power plant from Article 70, paragraphs 1 and 2 of this Law, in line with the Law which regulates construction of buildings*”.

The construction of buildings is regulated by the provisions of the Law on Planning and Construction,⁷⁸ and the conditions for commencing construction of a building are defined in Article 138a, which stipulates that “*construction may be commenced on the basis of a legally valid Decision on the Construction Permit and the Notification on the Start of Works from Article 148 of this Law*”, where Article 148 defines the conditions and procedures for issuing a Confirmation on the Start of Works.

More details on the process for issuing the confirmation on the notification of works are stipulated in Article 30 of the *Regulation on the Process for Applying Unified Procedures by Electronic Means*,⁷⁹ which states that, along with the notification of works, it is obligatory to deliver, among other things, a Decision approving the environmental impact assessment, if an EIA is necessary for that project.⁸⁰

Considering that the planned plant is subject to an EIA, the Spatial Conditions for the project issued on 25.04.2019, stipulated that obtaining agreement on the EIA study from the Ministry for Environmental Protection was obligatory, and that it must be done “before submitting a request for the notification of works”.⁸¹

However, the Decisions on approval of temporary privileged producer status show that the Confirmation on the notification of the start of work, that would prove that the Ministry of Environmental Protection approved the EIA study, were not submitted with the request to attain preliminary preferential producer status for the incinerator and landfill gas plant. Looking at the chronology of these procedures, it is obvious that on the day of approval of the temporary privileged producer status, September 27, 2019, it was impossible for the Ministry of Construction, Transportation and Infrastructure to have issued the Confirmation

on the notification of the start of work for the incinerator and the landfill gas plant in Vinča, because, by that date, no decision on the EIA study had yet been taken by the Ministry of Environmental Protection.⁸²

This means that, on the day of the approval of the temporary privileged producer status for the incinerator and the landfill gas plant in Vinča, the conditions allowing the works to begin had not been fulfilled and therefore nor had those from Article 71 of the Law on Energy on the conditions for issuing an approval for temporary preferential producer status.

By misapplying the EU’s 2009 Renewable Energy Directive, and failing to take account of the new Renewable Energy Directive II, the Republic of Serbia made it possible for the private partner, Beo Čista Energija d.o.o., to receive subsidies for waste incineration over a guaranteed period of 12 years.

Moreover, even the current national legislation did not get in the way of the Ministry’s decision to recognize the temporary privileged producer status. The private partner’s privileged status was guaranteed to such an extent that the official approval came even before the legal requirements had been fulfilled.

77. The Decree on Requirements and Procedure for Acquiring the Status of Privileged Electricity Producer, Preliminary Privileged Electricity Producer and Electricity Producer from Renewable Energy Sources, Official Gazette of RS No. 56/16, 60/17 i 54/19;
78. Law on Planning and Construction, Sl. glasnik RS, no. 72/09, 81/09 - correction, 64/10-US, 24/11, 121/12, 42/2013-US, 50/13-US, 98/13-US, 132/14, 145/14, 83/18, 31/19 and 37/2019;
79. Regulation on the Process for Applying Unified Procedures by Electronic Means, Sl. glasnik RS, no. 68/19;
80. Article 5 of the Law on Environmental Impact Assessment (Sl. glasnik RS, no. 135/04 and 36/09) also stipulates that “the promoter of projects for which an environmental impact assessment is obligatory and projects for which the need for an environmental impact assessment is confirmed, may not commence the realisation, ie. construction and carrying out of the project, without a Decision of the competent organ on the environmental impact assessment study;
81. Section XI, Location conditions no. ROP-MSGI-3997-LOCH-2/2019, April 25 2019;
82. The Ministry of Environmental Protection issued a Decision on approval of the Environmental Impact Assessment for the construction of a facility for energy utilization of municipal waste and landfill gas “Vinča”, on September 30, 2019, which was published on October 4, 2019.

CONCLUSIONS AND RECOMMENDATIONS

The public-private partnership for the provision of municipal waste treatment and disposal services will clearly have negative long-term effects on Belgrade's ability to develop a sound waste management system that is in line with the circular economy goals.

It is a known fact that the waste management situation in Belgrade requires immediate steps towards its improvement. However, it is also highly likely that the construction of the municipal waste incinerator will prevent Belgrade from developing a waste management system based on prevention, reuse, recycling and composting. By establishing a 25-year long commitment to deliver and incinerate 340,000 tonnes of municipal waste per year, countered by the threat of having to provide financial compensation to the concessionaire, Belgrade is being stripped of financial and material resources that could be used for developing more environmentally and financially viable alternatives.

As well as these all-too-frequent problems with incineration projects, the Belgrade case shows how large PPP projects have the potential to divert public policy towards the needs and interests of the private sector and to overrule strategic documents which have at least in some minimum formal way been developed by the legally established procedures.

The IFIs which have supported this project so far regard private sector involvement in public services as a win-win strategy - a claim that has repeatedly been questioned based on the mixed results on the ground. But what is notable in this case is that in a situation where there is a clash between private sector interests and environmental goals, they have been willing to side with the private sector, even where this means bypassing relevant strategic documents and national and EU legislation. The international donor community should do

the exact opposite: assist Serbia to apply the rule of law, develop and adhere to realistic and future-proof sectoral strategies, and meet EU environmental standards.

The incompatibility of this project with the EU's waste legislation was fortunately understood by the EC and the EIB, resulting in the EIB deciding not to finance the project. But the fact that the EBRD, IFC and OeEB decided to continue shows a stark failure of donor coordination and highlights a long-term issue regarding the European Commission and other EU shareholders' ability to ensure that the EBRD and IFC act in line with EU legislation and the EU's circular economy policy objectives.

Recommendations

- The IFC, EBRD and OeEB need to withdraw from this project while they still can.
- If IFIs are to make a positive contribution to countries' development, public participation and the rule of law, they need to support the development of forward-looking, environmentally and socially sustainable, and publicly-consulted sectoral strategies and legislation before financing major projects from these sectors, not after.
- IFIs must respect the waste hierarchy and avoid financing for less favourable policy options, in order to avoid crowding out prevention and recycling. The exception may be a basic network of sanitary landfills, which will be needed for the foreseeable future and differ from incinerators in that they do not require minimum volumes of waste.
- Large PPPs must be avoided in sectors where there is a threat of a decline in service or environmental damage due to cost cutting, and projects where the legislative situation is dynamic and there is a high chance that the project in question

83. This recommendation also appeared in the Bankwatch report *Never Mind the Balance Sheet - The dangers posed by public-private partnerships in central and eastern Europe*, published in 2008. Nevertheless it remains highly relevant today.

may become irrelevant or a liability within the next 2-3 decades.

- When a decision is due to be taken on whether to undertake a PPP, this must be done on a level playing field, with other options open. Governments, IFIs and consultancy companies must not imply or dictate that PPP is the only possibility for a certain project. Where public funding for the project would not be an option, it is not likely that PPP would be affordable either, and authorities should prioritise the most important projects, or scale down projects to a more affordable size.⁸⁵
- The IFIs need to ensure that public consultations are held before signing major concession contracts. The environmental impact assessment process in this case came at a stage when the concession had already been signed and all options were not open, as required by the Aarhus Convention. Draft PPP contracts must be published in order to allow suggestions before the contract is signed.
- The EBRD and IFC need to improve their due diligence regarding EU legislation on environment and State aid and regarding the social impacts of their projects.
- The EBRD and IFC need to live up to their commitment to ensuring meaningful public participation by ensuring that concrete facts and figures about proposed projects are available. No meaningful dialogue can take place in a situation of massive information asymmetry between the banks and the public.

“ An analysis of the structuring and implementation of the PPP for the provision of municipal waste treatment and disposal services shows that the whole process was designed according to the interests and wishes of the potential private partners, while consciously neglecting Belgrade’s long-term waste management needs and Belgrade’s and Serbia’s obligations towards the EU’s circular economy goals. “