



European Investment Bank

## CONCLUSIONS REPORT

Complaint SG/E/2009/07

Gazela Bridge Rehabilitation Project  
Belgrade, Serbia

14 July 2010

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### External Distribution

Complainants: Center for Ecology and Sustainable Development-CEKOR and CEE Bankwatch Network  
Project Promoter: Roads of Serbia  
Serbian authorities: Municipality of Belgrade, Ministry of Labour and Social Policy  
European Ombudsman

### Internal Distribution

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EIB services concerned

## CONCLUSIONS REPORT

Gazela Bridge Rehabilitation Project, Belgrade, Republic of Serbia

### 1. Complaint

**Complainant:** Mr. Zvezdan Kalmar on behalf of Center for Ecology and Sustainable Development-CEKOR and Ms Anna Roggenbuck on behalf of CEE Bankwatch Network

**Date received:** 28 September 2009

**Subject of complaint:** EIB compliance with its transparency and social standards in the Gazela Bridge Rehabilitation Project in Serbia

It must be noted that the handling and investigation of this complaint took place in parallel with (i) the EIB active monitoring after the physical resettlement of 31 August 2009, (ii) the request by the Serbian authorities of a waiver of the disbursement conditions, (iii) the related EIB decision and (iv) further discussions with, and actions by, the Serbian authorities regarding improvement of resettlement condition.

This specific context allowed for close interaction between the EIB Complaints Office and EIB management. In this sense, provisional findings and recommendations of the EIB Complaints Office have already been taken into account in the Bank's decision as well as in the process of enforcement and monitoring of resettlement conditions.

The EIB Complaints Office concentrates on the compliance with EIB Policies and procedures, which includes an analysis of the applicable regulatory framework.

1.1 On 28 September 2009, Mr. Zvezdan Kalmar on behalf of Center for Ecology and Sustainable Development – CEKOR and Anna Roggenbuck on behalf of CEE Bankwatch Network (hereinafter the complainants) lodged a complaint with the EIB by e-mail to the complaints inbox concerning the EIB's compliance with its transparency and social standards in the Gazela Bridge Rehabilitation Project in Serbia. In his letter, the complainants informed the EIB that the same complaint had been simultaneously lodged with the European Ombudsman (EO) due to the urgency and seriousness of the situation.

1.2 As regards EIB's compliance with its transparency standards, the complainants challenged the EIB competent services' refusal to disclose the social conditions of the Finance Contract and alleged that the EIB had failed to reply to their request for additional information concerning the Resettlement Action Plan (RAP).

1.3 Concerning the EIB's compliance with its social standards, the complainants argued that the EIB would have failed to comply with the loan appraisal procedures; in particular, they took the view that the EIB's appraisal of the direct social impact of the project lacked essential information and alleged that the EIB did not obtain and thus endorse the RAP before approving the loan for the project in stake nor had it given its clearance before the resettlement process took place. Finally, the complainants deemed that the EIB monitoring procedures for the resettlement process were not properly implemented. A detailed description of the complainants allegations is provided in §2.

1.4 On 12 October 2009, the EIB Secretary General acknowledged the receipt of the complaint. The complainants were informed that the EIB Complaints Office (CO) was carrying out a review of their complaint may expect an official reply from the EIB.

1.5 Meanwhile, within the framework of the inter-institutional co-ordination between the EIB and the European Ombudsman (EO), on 26 October 2009 the EO secretariat informed the CO of the fact that the

complaint against the EIB, simultaneously lodged with the EO by the complainants, had been declared inadmissible due to the failure in following proper administrative procedures in line with the provisions of article 2.4 of the EO Statute as well as of the MoU between the two institutions which stipulates that: "Before turning to the EO, complainants should have recourse to an effective internal EIB complaints procedure".

1.6 Following a preliminary analysis on the admissibility of the complaint, the CO deemed appropriate to carry out further inquiries with a view to gathering additional information in respect to the complaint. In this context, the CO reviewed the project's documentation as well as the submissions by the competent services of the EIB and conducted an inter-services consultation on the issue raised by the complainants.

1.7 Given the on-going and effective engagement/monitoring by the EIB's Environmental and Social Office (ESO), with extensive field visits and close contacts with the Serbian authorities and the co-financier (EBRD), the CO decided not to perform any independent on-site assessment at this stage. Indeed, the problems at stake have been correctly identified by EIB services. Furthermore, from the information/documentation provided, it was apparent to the EIB's technical services they were doing their best to ensure the right actions by the Serbian authorities.

1.8 On 7 December 2009, the EIB Secretary General informed the complainants that, due the complexity of the complaint, it was necessary to extend the time-frame for handling the complaint with a view to obtaining all the necessary information in order to form a reasoned opinion on the issues at stake.

## **2. The complainants' allegations**

### **2.1 Incompliance with EIB transparency standards**

2.1.1 The complainants informed the EIB that on 27 May 2009 they had requested the disclosure of certain information relating to the contested project and namely the parts of the loan agreement concerning the social, environmental and health constraints, the Appraisal Report, the proposal from the Management Committee to the Board of Directors, the Social Assessment and the opinion of the European Commission. Furthermore, the complainants asked the EIB to consider sending a delegation which would meet with the representatives of the Roma community from Gazela, interested Roma and non-Roma CSOs and also representatives of the Roma national council and to thus establish a consultative and sustainable resettlement process.

2.1.2 In their reply of 17 June 2009, the EIB's competent service informed the complainants that the establishment of a RAP endorsed by the EIB was a condition at the time of the loan approval and that as such it had been integrated in the Finance Contract as a condition for the first disbursement. Moreover, whilst clarifying that the responsibility for the establishment of the RAP as well as for the public consultation and participation on the latter lied rested the Serbian authorities. The EIB expressed its willingness to attend further meetings and consultations called by the latter should the EIB deem them as helpful for resolving outstanding resettlement issues. With regard to the disclosure of the requested information, the EIB refused to disclose the Finance Contract as it took the view that it formed part of the EIB's confidential relationship with the business partners pursuant to Article 27 of the EIB Public Disclosure Policy (PDP)<sup>1</sup>. On the contrary, the EIB provided the complainants with a copy of the Proposal from the Management Committee to the Board of Directors including the social assessment of the Project as well as with the opinion of the European Commission.

2.1.3 Following the complainants reiterated request for access to environmental and social conditions of the Finance Contract on 27 July 2009, the EIB, on 24 September 2009 granted partial disclosure of the Finance Contract inasmuch as environmental information was concerned whilst pointing to a summary of the content of the social conditions whose request for disclosure was therefore again rejected. Furthermore, the complainants allege that the EIB failed to reply to their letter of 2 September 2009 requesting additional information concerning the RAP.

2.1.4 Finally in their complaint, the complainants argue that as an EU body, the EIB is subject to Regulation 1049/2001/EC and to Regulation 1367/2006/EC and that the above legal acts oblige the EIB to disclose public and environmental information. As a result, the complainants take the view that the EIB had failed to comply with Article 21 of the EIB PDP and Article 7.1 of Regulation 1049/2001/EC insofar as the EIB had failed in providing adequate justification of the refusal to disclose the contested information.

### **2.2 Incompliance with EIB social standards**

2.2.1 In their letter, the complainants describe the resettlement of Project Affected People (PAP) in the contested project as resulting from a monitoring mission in September 2009 whereby they found that the community living under Gazela Bridge was resettled on 31 August 2009 whilst the RAP had never been agreed with PAPs nor had it been publicly disclosed. In this context, the complainants allege that PAPs did not possess any copy of the RAP nor copies of the agreements for resettlement they had signed. According to the complainants, the Belgrade City Assembly had not yet approved the RAP and the PAPs were not given the opportunity to participate in any related public consultation.

2.2.2 In addition, the complainants informed the EIB of the conditions in which the PAPs had been resettled: families of up to 10 people sharing metal shipping containers where no cooking and heating is allowed, sanitary conditions were critical and some of the settlements were encircled by chain-link fences. Moreover, the complainants argue that PAP are prevented from continuing their primary economic activities (primarily, waste collection) and were not provided with an alternative source of income as the intentions expressed by the local authorities to reintegrate in the labour market the Gazela residents never materialised; in this context, it appears that PAP are consistently dependent on social welfare. Finally, the complainants argue that the resettlement action was organised in such a way that PAP could not organise the removal of their belongings and that two families who did not agree to be resettled had been left homeless and are excluded from social assistance. The complainants also allege that the resettlement affects PAP's right to access education.

2.2.3 Based on the factual information they provide, the complainants take the view that the EIB breached the environmental and social standards laid down by the Environmental Statement (hereinafter the Statement) as well as the Environmental and Social Practices Handbook (hereinafter the Handbook) and in particular Annex 12 i.e. the Social Assessment Guidance Notes. On the basis of the information they were provided within the framework of the info-request procedure mentioned in §2.1, when challenging the EIB's implementation of its social standards, the complainants also refer to the World Bank's involuntary resettlement policy as well as to an EIB publication called "Social Assessment of Projects outside the EU: the Approach of the European Investment Bank" of 2 October 2006.

2.2.4 In reference to the above-mentioned standards, the complainants argue that the EIB failed to ensure the compliance with the project's appraisal and monitoring procedures.

2.2.5 Regarding the appraisal procedure for the contested project, the complainants argue that pursuant to Social Assessment Guidance Note 1 establishing that the appraisal process should not be limited to the identification of impacts but should also consider concrete arrangements in order to mitigate adverse/negative impacts and to guarantee minimum human rights standards, the EIB Board of Directors should have been informed by the Management Committee of such impacts and mitigation measures. The complainants challenge the allegedly poor information concerning the direct social impact of the project contained in the documents they had been provided with<sup>6</sup> and point out that, contrary to Note 1 which requires the EIB to be in possession of the RAP prior to approval of the funding of the respect, the EIB was not in possession of the RAP even at the stage of the resettlement action. On the basis of these considerations, the complainants conclude that the contested appraisal procedure did not fulfil the initial screening requirements and subsequent screening processes imposed by the EIB policy, therefore the EIB had committed an instance of maladministration.

2.2.6 In addition to the criticism expressed vis-à-vis the project's appraisal, the complainants consider that the contested project had not been monitored by the EIB in accordance with its own procedures. Their rationale behind such allegation stems from the fact that the Appraisal Report identified the establishment and initiation of a satisfactory RAP as a condition for first disbursement of funds related to the repair works. Accordingly, the complainants consider that the chronological sequence "establishment of the plan – endorsement by the EIB – initiation of the implementation of the Plan – 1<sup>st</sup> disbursement" was contaminated by the initiation of the resettlement in the absence of a plan (and consequently of the endorsement of the EIB).

2.2.7 Finally, the complainants recall the invitation made to the EIB in his letter of 27 May 2009 and the reply of the EIB of 17 June 2009 referred to in §§ 2.1.1 and 2.1.2 of this Report. In light of the provision of Note 1 according to which it is important during the early phases of implementation to review progress and make early corrections if necessary, the complainants argue that when executing its monitoring responsibilities the EIB should have not passively waited for developments but should have actively undertaken corrective actions if necessary. Therefore, the complainants conclude that the EIB failed to closely monitor the issue as stipulated in its policies because one of the main stages of the Project implementation (i.e. the resettlement) took place without the EIB's endorsement and in violation of EIB relevant standards.

2.2.8 More generally, the complainants criticise the EIB's approach to postpone its commitment to verify the operation's compliance with its own standards after Board's approval and more precisely at the stage of the verification of the fulfilment of conditions for disbursement insofar as they consider the disbursement phase as a technical stage known exclusively by EIB's staff and which does not constitute a formal Project Cycle stage as described on the EIB webpage.

### **3. Background information**

#### **3.1 Information on the Project**

3.1.1 The contested operation falls under the Pre-Accession Mandate and the Guarantee Agreement between the European Community and the EIB following Council decision 1016/2006/EC of 19 December 2006. In 2009 the European Parliament and the Council adopted decision 633 of 13 July 2009 which replaces the Community guarantee decision from 2006. The terms of the new decision specify, among other, that the EIB financing operations should, in addition to supporting the Community's external policies, specifically promote democracy, rule of law and human rights.

3.1.2 On 9 May 2007 the Board of Directors approved a EUR 33 m loan for the rehabilitation of the Gazela bridge in Belgrade. On 16 July 2007 the EIB signed a Finance Contract with "Putevi Srbije" (Roads of Serbia, hereinafter the Promoter) concerning a loan for the upgrading of the Gazela Bridge on the E70/E75 motorway (Pan-European Corridor X) crossing the Serbian capital Belgrade, including the rehabilitation and upgrading of its access roads (total length of 24.2 km) and the R251 ring road between Bubanj Potok and Zeleznički in the south of the city (total length of 17.3 km). This EUR 77 million project is co-financed by the European Bank for Reconstruction and Development, the European Agency for Reconstruction, the City of Belgrade and the Borrower. The EIB contributes with a loan of EUR 33 million.

3.1.3 It was clear from the information provided by the competent service of the EIB and co-financing institution that repair work to the bridge was crucial for the safety of the inhabitants and visitors to Belgrade. Additionally to ensure the safety of settlements under the bridge, who were regularly exposed to falling debris from the bridge due to its state of repair, the competent Serbian authorities were preparing a Resettlement Action Plan (RAP) for the settlements under the bridge

3.1.4 Therefore, a condition of the first disbursement of the loan, the Finance Contract stipulated the availability of a satisfactory RAP for the settlements under the bridge. In addition, the Finance Contract stipulated that the Borrower shall and shall cause the City of Belgrade to inform the PAPs about the plans that will affect them and to ensure that the PAP have the opportunity to participate in the resettlement programme in a manner satisfactory to the Bank. Finally, the Finance Contract imposed on the Borrower the obligation to implement and operate the Project in accordance with the principles of EU law directly applicable to the Project, so long as the Loan is outstanding.

#### **3.2 Further info-request procedures**

3.2.1 On 30 September 2009 the EIB's competent services replied to the complainants info-request of 2 September 2009. In its reply, the EIB informed the complainants that it had received a version of the RAP which had been approved by the City Council but that, pursuant to §§ 26 and 34 of the EIB's PDP, the EIB was not in a position to disclose it since it did not consider it to be the final document. Accordingly, the EIB could not base its judgement on the appropriateness of the RAP at that stage and until it had received a final version of the RAP.

3.2.2 On 7 December 2009, the complainants sent a follow-up request referring to the EIB's reply of 30 September 2009 requesting the EIB to reconsider its decision and to make the RAP public even though the EIB did not consider it as a final version. In its letter, the complainants inform the EIB that they had requested Serbian authorities to disclose the RAP, but to no avail. Moreover, the letter mentioned that during a field visit in Serbia the complainants found that municipal authorities that were implementing the resettlement and the persons living in the settlements did not possess the RAP and considered the situation to be contrary to EIB transparency standards regardless of the draft status of the RAP, given that such documents should have been disclosed to enable a public consultation. Finally, the complainants challenge the reasons provided by the EIB's competent services for rejecting the request for access to the RAP since:

- The RAP was a third party document and did not contain opinions solely for internal use only within the EIB.
- The RAP referred to the project had already been approved and the Finance Contract signed there would be no impact or influence on the internal decision-making processes of the EIB

- Regardless of the draft status of the RAP, it is in the public interest to have access to this document considering there needed to be a public consultation take place in any case.

3.2.3 Following further liaison with the corresponding Serbian authorities, on 19 January 2010, the EIB's competent services provided the communicant with a copy of the RAP adopted officially by the City Council on 27 August 2009.

### 3.3 Previous complaint lodged with the EIB Complaints Mechanism

3.3.1 Early 2009 the EIB had already received a complaint challenging the involvement of the EIB in the alleged eviction of 175 Roma families from their homes under the Gazela bridge in Belgrade. For sake of consistency with the present complaint, it suffices to clarify in this context that following the inquiry into the previous complaint, the Complaints Office had concluded that the EIB was not involved in the activities alleged by the complainant, but on the contrary (i) it had put in place all necessary contractual safeguards to exclude its funding to the project should the resettlement of PAP be non-compliant with its standards (including sufficient information and public participation of PAP) and (ii) it was currently and adequately monitoring the preparation and implementation of the resettlement plan.

## **4. Applicable regulatory framework**

### **4.1 Transparency**

4.1.1 In his letter of 28 September 2009, the complainants refer to the regulatory framework which - in their view - would have applied to the EIB when implementing the contested procedures for the handling of request for documents. In particular, it is to be noted that, besides the 2007 EIB PDP, the complainants refer to Regulation 1367/2006 on the application of the provisions of the Aarhus Convention (hereinafter Aarhus Regulation) and Regulation 1049/2001 implementing into EC secondary legislation the provision of Article 255 of the treaty establishing the European Community which grants a right of access to European Parliament, Council and Commission documents to any Union citizen and to any natural or legal person residing, or having its registered office, in a Member State.

4.1.2 As regards the Aarhus Regulation, whereas the latter only governs the right to access environmental information and insofar as the information requested in the contested procedures does not qualify as such, it appears that this piece of EC secondary law does not apply to the present complaint.

4.1.3 As regards Regulation 1049/2001, from a comparative analysis of the treaty-based provisions together with those stemming from EC secondary legislation, it appears that, at the time of the contested public disclosure procedures as well as of the submission of the present complaint<sup>vi</sup>, Regulation 1049 only governed the disclosure of information held by the three institutions mentioned in the Regulation and did not apply as such to the EIB.

4.1.4 Furthermore, it is worth emphasising that the EIB procedures for the handling of request for access to information are also subject to the principles of good administration set up by the European Code of Good Administrative Behaviour and the EIB's Code of Good Administrative Behaviour for the staff of the EIB in its relations with the public.

4.1.5 As regards the PDP, §21 of the PDP establishes that «all information held by the Bank is subject to disclosure upon request, unless there is a compelling reason for non-disclosure. As the EIB operates as a bank, there are certain constraints on information it discloses». §35 of the PDP integrates this principle by emphasising that « [i]f only parts of a requested document are covered by any of the constraints above, information from the remaining parts shall be released». It appears appropriate to read these provisions in conjunction with article 13.3 of the Code of good administrative behaviour for the staff of the European Investment Bank in its relations with the public<sup>vii</sup> and article 18 of the European Code of Good Administrative Behaviour<sup>viii</sup> which impose, respectively on the EIB staff and on all the officials of EU institutions and bodies, the duty to state the grounds of decisions.

4.1.6 §27 of the PDP stipulates that "*Information typically forming part of the Bank's confidential relationship with its business partners includes the financing request by a project promoter, loan pricing information, and the Finance Contract. The Bank does not object to project promoters, borrowers, or other competent parties making information available on their relationship and arrangements with the EIB.*"

4.1.7 In that regard, it is worth referring to the jurisprudence of the European Ombudsman in a previous case<sup>vii</sup> where the refusal to disclose the Finance Contract was challenged and whereby the EO concluded that "...in order to justify its non-disclosure of the Finance Contract to the complainant, the EIB referred to...the obligation of professional secrecy applicable in the banking sector...In this regard, the Bank...also implied that finance contracts are covered by professional secrecy as a matter of principle. The EIB further clarified that, for those reasons, its counterparts in their banking relationship with the EIB, have the legitimate right to expect that, as a bank, it will act within the established legal framework and will not divulge information protected by the obligation of banking confidentiality. The Ombudsman considers reasonable to accept that...the EIB, acting in its role as a standard banking institution, is obliged to respect banking professional secrecy and that it is the its prerogative to decide whether or not a document contains confidential information."

### **4.2 EIB Appraisal Policies and Procedures**

4.2.1 The 2004 Environmental Statement (hereinafter, the 2004 Statement) is the policy applying to the contested operation at the time of the project's appraisal and approval. The Social Assessment Guidance Notes were approved by the EIB Management Committee in June 2006 as a self-standing document.

Published on the EIB website in October 2006, they were subsequently incorporated into the 2007 Environmental and Social Practices Handbook. The latter was approved by the EIB Management Committee on July 11, 2007. This version of the Handbook replaced the 2006 version approved in July 2006 and updating the "Consolidated PJ Guidelines for the Environmental Appraisal of Projects" adopted in May 2004. As a result, given that the decision to approve the operation was taken in May 2007, the appraisal procedure for the contested operation is that stemming from the 2004 Environmental Statement, the 2006 Handbook and the Social Assessment Guidance Notes approved in 2006.

4.2.2 Although the 2004 Statement deals with social issues as a part of the EIB's action in the field of environment, the Statement establishes a number of principles, including the following:

- the EIB ensures that all projects it finances in developing countries, accord with internationally recognised social safeguard measures, including labour standards;
- in its lending activities, the EIB applies the precautionary principle;
- In regions where EU and/or national social standards do not exist or are inappropriate, the EIB uses other guidelines of good international practice. In particular, the EIB takes into account the IFC Safeguard Policies on indigenous peoples, involuntary resettlement and cultural property as well as the core labour standards that apply to members of the International Labour Organization (ILO). In such matters, the EIB coordinates its approach with the European Commission, responsible for external assistance to developing countries.

4.2.3 Insofar as the Republic of Serbia cannot be considered as a developing country and it is subject to an enforceable substantial and jurisdictional system of protection of human rights both at national and international level, it results that amongst the principles laid down by the 2004 Statement only the precautionary principle (which is however derived from and mostly applied in the environmental field) applies to the appraisal procedure at stake.

4.2.4 The precautionary principle as regards the social impact of the project is further elaborated by the 2006 Handbook stipulating (§ 112) that "*Human Rights concerns...should be addressed as early as possible in the pre-appraisal process. They should be an integral part of the ex ante EIA where a project is rated category A or B and where stakeholder consultations are required.*" The 2006 Handbook further establishes that "*social issues are always examined selectively in the assessment of projects outside the EU*" and that in these cases "...*the Bank places greater emphasis on ensuring that investments support and respect the protection of internationally agreed convention on human rights and that it is not complicit in human rights abuses*". In order to ensure that, Annex D3 of the 2006 Handbook contains a Summary Social Assessment sheet to be filled in by the EIB staff when required.

4.2.5 The Key social "safeguard" issues concerned with mitigating adverse impacts are dealt with by the Social Assessment Guidance Notes, attached to the Handbook. Guidance Note n.1 addresses the potential impacts of Population Movements including involuntary resettlement, Guidance Note 2 deals with minority rights including women, indigenous people and other vulnerable groups; finally Guidance Note n. 5 tackles the issue of public consultation and participation in project preparation. §1 of the General Background Note clarifies that there are certain social "safeguard" issues that are essential to deal with, in order to mitigate adverse impacts, minimum standards might need to be tracked and reported on and recommended procedures promote positive outcome. The General Background Note thus emphasises that, although some safeguards are essential, procedures promoting positive outcomes identified in the Note are recommended and therefore cannot be considered as the exclusive means to achieve that objective but should be tested and adjusted, depending on circumstances.

4.2.6 The General Background Note also emphasises that "the Bank recognises that it and the promoters supported through its investment programmes have different roles and responsibilities within the project's sphere of influence to ensure that adverse impacts are mitigated where possible". The Note identifies the role of the EIB as to ensure that the Promoter has adequate capacity to handle the various social issues arising from project preparation/implementation; where the EIB is unsure about a Promoter's capacity, it may wish to support the provision of Technical Assistance or – should other IFIs be involved in the operation – to share the TA provided by the latter. The role of the Promoter as described by the Note is, *inter alia*, to plan the social assessment as an integral part of project formulation, identify and prioritise the range of likely social impacts and identify, assess social safeguard issues relevant to the project and examine key stakeholders' opportunities for participation in project design and implementation. The Note also stipulates

that when the project is likely to have adverse social impacts on vulnerable and/or poor groups more formal social assessment is advisable.

4.2.7 Guidance Note n.1 (see Annexe 1) determines the content of the initial screening process. Moreover, the Note stipulates that, insofar as most IFIs have developed policies for handling resettlement and relocation issues, when the EIB is in partnership with them, it may suffice to ensure that those policies are adequate and are implemented. Finally, the Note establishes that "*prior to approval, the Bank staff should be in receipt of a satisfactory resettlement plan/framework and if this is not available, negotiations to finalise the investment will need to be interrupted until such time as one is forthcoming*" (emphasis added).

4.2.8 Guidance Note n. 2 (see Annexe 1) stipulates that "*when the presence of (...) minorities is evident, the Bank should ensure that appropriate arrangements for mitigating adverse impacts are put in place and that their customary claims are fairly addressed. (...) Where the Bank is one of a number of investment partners it may be possible to build on their existing social safeguard policy frameworks. The Bank's intention is to ensure that minorities including indigenous peoples profit from Bank's financed projects and to minimize or avoid harmful effects on their society. Local priorities will be determined in direct consultation with the representatives of minorities and the development of appropriate consultation and participation mechanisms will be one feature that Bank staff will wish to see in place*" (emphasis added). According to the Note, types of harmful impacts comprehend the exclusion from receipt of development benefits and the creation of dependent communities. On the contrary, types of benefits to enhance minority interests might include the provision of better educational and health facilities, the creation of particular employment opportunities and Community Development work to increase self-sufficiency and sustainability.

4.2.9 Finally, among the provisions contained in Guidance Note n. 5 (see Annexe 1) it is worth emphasising those establishing that "*It is the responsibility of the Bank to ensure that the Promoter gives appropriate attention to the public consultation process during the earliest stage of project preparation. (...) Where significant gaps are identified, the Bank may wish to make sure that they are filled through particular provisions attached to the agreement with the Promoter and through monitoring during implementation. (...) Bank staff shall verify that the extent and form of consultation is appropriate for the project in question. (...) The disclosure of information is integral to a successful consultation process and Bank staff will wish to satisfy themselves that the results of the consultations as well as of assessments are accessible to interested parties and the general public*" (emphasis added).

4.2.10 From the assessment of the relevant procedures set up in the Social Assessment Guidance Notes it can be argued that although some safeguards are essential, procedures promoting positive outcomes identified in the Note are recommended and therefore cannot be considered as the exclusive means to achieve that objective. Such interpretation, also stemming from the analysis of the terminology used in the Note (as the repetitive use of the conditional emphasised in the above paragraphs), appears fully in compliance with the nature of social assessment which – in order to be effective and viable – requires an ad hoc analysis of the contingent interest of the concerned community(ies), the project's impact on the latter, the legal framework which the Promoter is subject to as well as the institutional capacity of the latter to deal with social issues.

#### 4.3 EIB Monitoring Policies and Procedures:

4.3.1 As the appraisal procedure was completed in May 2007, the monitoring activities performed by the EIB competent services in the project at stake are governed by the 2004 Statement and the 2006 Handbook. However, it is worth emphasising that on 3 February 2009, the EIB Board of Directors approved the new EIB Statement of Environmental and Social Principles and Standards (the 2009 Statement). Equally, in February 2010, the EIB Management Committee adopted the 2010 Environmental and Social Practices Handbook (the 2010 Handbook). From the above considerations, it results that the assessment of the compliance of the monitoring activities performed after the entry into force of the above-mentioned policies and procedures shall be carried out whilst taking into account the modification of the applicable regulatory framework.

4.3.2 The 2009 Statement outlines the standards that the EIB requires of the projects that it finances and the responsibilities of the various parties. One of the key features of the 2009 Statement, which must be applied by the staff of the EIB in all its operations, is the expansion of the section on the social dimensions of sustainable development<sup>44</sup>. The 2009 Statement informs stakeholders as to the requirements of the EIB as well as to the responsibility of the promoter as regards the application and enforcement of the EIB's requirements, including compliance with relevant laws and other obligation placed on the promoter by the EIB and reflected in legal undertakings. Finally, it clarifies that its principles and standards are derived from

EU policy and law, thus including the fundamental rights enshrined in the EU Charter following the entry into force of the Treaty of Lisbon<sup>viii</sup>.

4.3.3 §8 of the Preamble to the 2009 Statement identifies the monitoring function as regards social matters as an activity aiming at monitoring the social performance of EIB-financed projects especially as regards the fulfilment of specific obligations described in the Finance Contract. Such activity must be flexible and adjust to the characteristics of the project, the capacity of the promoter and the country context. According to the Statement, monitoring by the EIB is based on the submissions by the promoter and may be supplemented by on-site missions by the EIB and other sources of information, including that provided by affected communities.

4.3.4 With regard to public consultation and stakeholder's engagement in case of negative social impacts, §64 of the 2009 Statement stipulates that "*Consultation and participation is essential for investment sustainability through increased local ownership and support through informed involvement. Moreover, meaningful dialogue and participation is crucial to promoting and supporting the rights of people affected by a project. This includes the rights to due process via recourse to independent appeal and arbitration procedures in the case of disputes. As such, public consultation is a general requirement of the...social safeguards of the Bank, as well as being applied to specific social issues, e.g. involuntary resettlement*".

4.3.5 With a view to collecting evidence on the fulfilment of appropriate social legislation, respect of contract conditions and undertakings related to social matters and the implementation of agreed mitigation and compensation measures, the EIB's competent services shall – pursuant to §260 of the 2010 Handbook – perform a close follow-up of social actions that are required as part of the Finance Contract (in particular those related to disbursement conditions), since it is at this stage that the EIB can exercise the highest leverage in ensuring that any outstanding social issues are thoroughly and correctly followed by the promoter, in compliance with the EIB's requirements.

## **5. The resettlement process**

### **5.1 Preparation of the Resettlement Action Plan(s)**

5.1.1 Since the start of project appraisal in 2006, EIB and EBRD have been addressing with the relevant Serbian authorities the resettlement issue and the requirement of the preparation of an acceptable RAP. A 2007 baseline census counted 220 households living in an informal settlement under and by the Gazela Bridge. The vast majority of these project affected people are a Roma minority group. This census also established the cut-off point for resettlement eligibility. A November 2008 verification census counted 175 households, 114 of which are either Belgrade residents or displaced people. The remaining families originate from the Southern parts of the country.

5.1.2 In that regard, it is to be noticed that the Promoter is not the responsible authority to deal with the social impact of the project and that since 2006 the City of Belgrade declared that it would have provided solutions only to those households holding official Belgrade residents and displaced people from Kosovo and Metohija. As such, the city only accepted responsibility for 114 and no responsibility for the remaining households.

5.1.3 In regard to the housing for the people with official Belgrade residency and the displaced, there have been several proposals for resettlement. In 2006 the City of Belgrade proposed that these persons be moved into metal containers donated by the city of Essen. This proposal was rejected by EIB and EBRD as violating the spirit of the respective resettlement policies. Subsequently in 2007-2008, the city planned construction of prefabricated single-family homes and purchased a site in the municipality of Ovča for the purpose. The first tender to start construction work in Ovča failed. In mid-December 2008, the City expected to announce a new tender before the end of 2008. By January 2009, the City had come to the conclusion that the prefabricated house solution was too costly and decided instead that apartments would be purchased. From March 11-14, 2009, there was a joint EIB/EBRD mission to discuss the apartment housing option. The cost of this option was estimated about 10 million Euros (approximately 8 million Euros for Belgrade residents and 2 million Euros for the non-Belgrade residents). By May 2009, the EIB/EBRD learned that the city, due to the financial crisis and budget shortages, deemed the apartment solution too costly and thus planned to propose another container solution.

5.1.4 For a considerable period of time no Serbian party took responsibility for the resettlement of the remaining non-Belgrade resident households. Only at the beginning of 2009 the Ministry of Labour and Social Policy agreed to be the coordinating institution for resettling the non-Belgrade-resident households in their home regions in cooperation with local municipalities.

5.1.5 As a result, the institutional set-up led to a RAP process consisting of two components: (i) Component A for the resettlement of Belgrade residents within the city of Belgrade, responsibility for which lies with the City, and (ii) Component B for the resettlement of PAPs originating from Southern parts of the country, responsibility for which was ultimately taken by the Serbian Government (represented by the Ministry of Labour and Social Policy) in early 2009.

5.1.6 The RAP for Component A led by the City of Belgrade was approved by the City Council on August 27, 2009. Without notice to the EIB/EBRD, and with some notice to the PAPs, the physical move of the population living under the bridge took place on August 31, 2009. To date, however, neither EIB nor EBRD have officially approved the RAP because it does not comply with their social policies. In this context, it is worth recalling that on 2 September 2009 the United Nations - Office of the Resident Coordinator in Serbia informed the Municipality of Belgrade that according to the feedback given by UN staff "the relocation of the families was orderly and professional and broadly in compliance with the UN's relocation and resettlement guidelines" (emphasis added). Moreover in its letter, the United Nations Office of the Resident Coordinator in Serbia emphasised that "sustained attention to these issues, in conjunction with past efforts, represents a solid basis for further work in relocating illegal Roma settlements in Belgrade in a manner consistent with international standards and conventions related to resettlement and the protection of human rights".

### **5.2 The resettlement**

5.2.1 The RAP for Component A was approved by the City Council on 27 August 2009 while the RAP for Component B was still under preparation. On 31st August 2009, the community living under the Gazela bridge was evicted without satisfactory prior consultation and public disclosure of the RAP which had not yet

received prior clearance from the co-financiers. During this timeframe RAP Component B led by the Ministry of Labour and Social Policy was still under preparation. From the information provided by the complainants, resettled people have been informed one/two days before and have signed agreements for resettlement, but were not provided with copies of such agreements. PAPs who did not accept to be resettled outside of Belgrade because of the corresponding degradation of livelihood (interruption of children education/social exclusion and loss of revenue as the new site does not enable PAPs to perform their primary economic activities) were left homeless and excluded from any social assistance. Because of the absence of and timely information and previous consultation, this resettlement appeared as a "de facto" enforced eviction as in the presence of police as well as military police, home premises were demolished and residents were given the choice to enter the buses or to stay in the street.

5.2.2 According to the complainants, the resettlement action was organised in a way that PAPs could not take all their belongings, including essential tools as stoves and fridges, but, on the contrary PAPs were told not to bring any of these appliances as they would get new ones at the new settlements. However, from the information provided by the complainants, the containers were not equipped with any domestic appliances or basic heating and cooking apparatus and consequently cooking and heating was not allowed in the containers whilst food was provided once a day by the social services. The complainants also stressed that each settlement had an insufficient number of shared sanitary containers and that no adequate solution was created for at least 2 severely disabled people. Finally, in the complainants' view, the social structure and particular cultural aspects of the Roma had been ignored in the resettlement process.

5.2.3 PAPs who were resident in Belgrade (so called Component A) and who have accepted the resettlement were located in temporary metal shipping containers (one container for family up to 10 people).. Component B PAPs were instead relocated to some villages in Southern Serbia whereby from the information gathered by the EIB's competent services, it appeared that their condition in terms of accommodation, adequate infrastructure and water supply as well as employment opportunities was far from being satisfactory to the EIB. Moreover, from the information provided by the EIB's operational services, Component B PAPs have also suffered a degradation of their livelihood in terms of access to education. In these circumstances, PAPs still remain fully dependent on state welfare.

5.2.4 The CO acknowledges that the information provided by the complainants in §§ 5.2.1 and 5.2.2 has not been reviewed by the Serbian authorities.

### 5.3 Further developments

5.3.1 Since the resettlement of the PAPs households, EIB and EBRD have further intensified the monitoring of the resettlement status and progress. Fact finding missions took place in October 2009 and February 2010. Additionally, the City and the Ministry submitted progress reports in late December 2009.

5.3.2 In the course of its inquiry, the Complaints Office relied on the documentation provided by the complainants as well as by the EIB's competent services, with a specific focus on the field work (social assessment and monitoring) of the EIB Environmental and Social Office (ESO) in the on-site missions carried out in co-operation with the EBRD's competent services throughout the period of the inquiry.

5.3.3 In particular, results from the October 2009 fact-finding mission were extensively discussed with the services and contacts with the Promoter and Serbian authorities have been closely followed-up. Given the severe concerns on the methodology and the output of the resettlement carried out by the Serbian authorities in August 2009, the EIB services continued monitoring the implementation of the resettlement process and co-ordinated with the EBRD with a view to carrying out a fact-finding mission in early 2010.

### 5.4 EIB fact finding mission in February 2010

5.4.1 The EIB fact finding mission in February 2010 showed limited progress in improving living conditions and addressing long term solutions. The following paragraphs (5.4.2. to 5.4.5) are excerpts from the internal back to office reports.

5.4.2 Under both RAP components, good progress has been made on provision of documentation, access to health and education services, and access to social welfare. For Belgrade residents (Component A), the temporary accommodation in general is satisfactory. In one settlement (Rakovica) follow-up work is needed as the latest monitoring revealed two families of 10 to 12 members with children (including two severely disabled) living in one 12 m<sup>2</sup> container. All families have access to electricity and sanitary facilities.

5.4.3 In the Southern municipalities (Component B), the current basic housing conditions are still below the minimal standard for a considerable proportion of families. This is especially the case in Vranje and Bojnik, where roofs and windows are often lacking. A significant number of households still lack basic infrastructure. Water needs to be provided as does proper electricity supply and access roads. In Bojnik, 75 % of the resettled have returned to Belgrade for income generation from scrap collection. These shortcomings in implementing the RAP Component B can be attributed to: a) the ministry was given relatively short notice leading to insufficient planning process, b) this is the poorest region in Serbia, and c) the respective initial status of each family was not sufficiently taken into consideration in the allocation of support. As a result some families remain in very deprived circumstances.

5.4.4 Sustainable housing has been discussed with Serbian authorities and still remains to be properly addressed:

- Component A: The City of Belgrade considers that it is not in the position to guarantee social housing specifically for the PAPs due to legal and political considerations. Thus, the City only commits to providing to the project PAPs the access to social housing similarly to other vulnerable people. The chances for PAPs households to receive social housing would be improved if the City provided further information and assistance in applying for social housing. The outlook may also improve should the City implement the plans for increased number of social housing.
- Component B: The Ministry of Labour and Social Policy along with the municipalities is ready to help to improve the basic housing condition and assist in legalising the illegal property where needed. For the families without a property or in an irreparable condition, the municipalities have identified four houses purchased or to be purchased by the Ministry. Following up on the housing conditions is crucial as with very limited job opportunities and without basic housing conditions, the PAPs have little reason to remain in the Southern municipalities.

5.4.5 Livelihood restoration has also been discussed with Serbian authorities and still remains to be properly addressed:

- While living under the Gazela Bridge, several members of each household were involved in income generation from scrap collection. While PAPs now have access to social welfare, this does not compensate for the loss of typically more than one stream of income which is difficult to rectify in the current economic environment.
- Component A: The City of Belgrade is planning an initiative for a recycling centre. Should this initiative be implemented, there will be job opportunities for the PAP. Currently, however, income earning opportunities are very limited.
- Component B: South of Serbia has the highest unemployment rate and is one of the poorest regions not offering enough jobs for the population. The Ministry of Infrastructure, however, has committed to including the PAPs in infrastructure projects.

## 5.5 Report of complainants visit to Project Affected People

5.5.1 On 11 February 2010 the complainants visited three new Roma settlements in Belgrade and namely Makis in Cukarica municipality, Kijevo in Rakovica municipality and Varos in Mladenovac municipality. The report, which is summarised below, highlighted 5 main areas of concerns:

- Leaking of containers
- Electricity
- Sinking of containers in Mladenovac
- Health care and ID documents
- Employment

5.5.2 The report referred to leaking containers in Makis and Rakovica but almost none in Mladenovac. Although the problem with leaking had been reported to the local authorities before the visit of the complainants, it was alleged that on 19 February (time of the drafting of the report) the problem had not been

yet addressed. The report also pointed out the danger which might have been caused by the water leaking on the electrical trip switch panel in some containers, as proven by a case in a container in Rakovica. The foundations of some the containers placed in Mladenovac had sunk into the ground by 15-20 cm; although the containers were still above ground level, some of them were distorted. Eight to ten entitled families still had not received double containers, including a family from Rakovica in which 13 inhabitants (11 children, three of whom were ill and one was severely disabled) shared a single container.

5.5.3 Serious problems of electricity shortage were registered in Barajevo whereby the allegedly too weak electricity supply caused long black outs and hindered the PAPs from using more than one appliance per container at a time. The complainants pointed out at the fact that, as the heating runs on electricity, the sporadic availability of electricity for only a few hours daily constituted a severe burden during winter. In addition to that, a significant number of settlers still experienced problems with regard to their legal status and personal documents, resulting in a lack of health care documents.

5.5.4 Concerning employment, although some adults in the settlements had been offered work in City communal public enterprises, those who had all the necessary preconditions for employment were unwilling to accept official employment and preferred to remain informally employed and receive social assistance in order to preserve the status of *socially vulnerable*, which would facilitate the forthcoming allocation of social flats. From these considerations, the complainants drew the conclusion that long-term housing was still a predominant concern for the settlers and that such predominance should have been taken into account when considering that the expected number of apartments in the forthcoming allocation of social housing did not match the number of families from the Gazela settlement seeking long-term accommodation and that there was no guarantee about how many flats will be allocated to former Gazela residents.

5.5.5 Besides the problems experienced by the settlers of Barajevo and Mladenovac as regards the cost of public transport, the report emphasised that in many of the resettlements, with the exception of Mladenovac, the work of the representatives was perceived by many of the affected residents as not representing the interests of the inhabitants. Many PAPs expressed fear of being expelled if they had expressed any dissatisfaction with the City of Belgrade. Some city employees were reported to have directly attempted to prevent people from speaking to visiting complainants and to have warned settlers that visitors needed permission.

## **6. New emerging facts**

### **6.1 Disbursement request by Serbian authorities**

6.1.1 On 29 January 2010 it was reported that further cracks developed in the bridge structure, raising concerns about its stability. The traffic of heavy goods vehicles and buses was restricted as well as one lane closed. The Municipality of Belgrade urged the Government to set a deadline by which EIB and EBRD loans would become effective.

6.1.2 Given the invoked emergency linked to the rising cost of the rehabilitation - as the bridge would further deteriorate - and the socio-economic cost of delay due to lane closures of a bridge of a strategic importance for the City of Belgrade, the EIB deemed it appropriate to accept a derogation from the EIB Social Policy Guidelines especially in regard to resettlement with a view to allowing the first disbursement. The EIB took the view that there had been achievements in the management of the resettlement of PAPs but that considering the significant outstanding issues remaining (e.g. the provision of sustainable housing solutions and restoration of livelihoods)–it was necessary to grant a partial waiver of the concerned condition for disbursement. The competent services also pointed out at the fact that EBRD had received an exception from its Board of Directors under its social policy guidelines on 23 February 2010. Meanwhile, in order to secure the improvements made and to resolve the outstanding issues, a list of actions to be fulfilled within a timetable were suggested by the EIB and EBRD and agreed by the relevant Serbian authorities.

6.1.3 These new developments-confronted the EIB and the other co-financiers with the following dilemma:

- If the EIB would grant a waiver to its loan conditions, it would depart from its own rules and procedures, and might be thought to condone the inadequate resettlement process.
- If the EIB would not grant the waiver, the restoration of the bridge could not start, which means significant economic disruption in Belgrade and possible risks to the safety of Belgrade citizens.

### **6.2 Complaints Office investigation**

6.2.1 The Complaints Office has received documentary evidence that seems to support some allegations of the complainants.

6.2.2 However, should the EIB consider an initial disbursement on the basis of the invoked emergency situation and with the sole objective of enabling commencement of urgently needed repair works, then in order to effectively address legitimate concerns of the project Affected People as well as to reduce reputational risks:

- An appropriate and detailed Action Plan properly addressing the improvement housing and related conditions and livelihood restoration, should be established, discussed with the Project Affected People and approved by the EIB, fully in line with its standards and guidelines.
- The implementation of the most urgent actions required to bring current temporary housing and related conditions (including access to education) to a standard accepted by the EIB should be implemented as soon as possible;

### **6.3 EIB decision**

6.3.1 Given the emergency situation linked to the bridge's structure and in order to enable commencement of the urgently needed repair works, on 11 March 2010 the EIB Board of Directors decided to:

- waive the condition precedent to a first disbursement of up to EUR 10 m under the EIB finance contract;
- authorize subsequent disbursements provided that the outstanding resettlement requirements of the EIB have been implemented (in line with actions and timetable agreed);
- include as an undertaking in the EIB finance contract the implementation of the specific actions enabling EIB to ask for prepayment if actions have not been taken by end-2010

#### 6.4 Audit of present conditions of Project Affected people

6.4.1 As referred to in §§ 7.3 and 7.4, as a condition to the EIB's agreement to grant a derogation to the EIB policies and standards for the contested project and a to allow the 1<sup>st</sup> disbursement of the loan, both the City of Belgrade and the Ministry of Labour and Social policy agreed to a framework Action Plan to achieve improvements. One element of this was that an audit be carried out for both Component A and Component B.

6.4.2 The audit for Component A was carried out in February. On 1<sup>st</sup> of March 2010, the audit consultant confirmed the developments referred to in § 5.5. From the information provided to the EIB, it appeared that – contrary to the provisions of the RAP which foresee a maximum of 5 people per container – in Rakovica the required additional containers had not been provided with the resulting overcrowding of families with up to 12 people living in 12 m<sup>2</sup> containers. The audit consultant also confirmed that the vast majority (80%) of the units were leaking and that, besides the evident problem of public health, the leaking constituted a safety hazard due to the electric wiring used in the containers. Finally, the EBRD pointed out at persisting problems with the documentation provided to PAPs which affected their access to social assistance, some emergency cases were identified (e.g. a disabled man who could not access the restroom) and in general PAPs were very dissatisfied and considered their situation worse than under Gazela (mostly due to overcrowding and lack of livelihood opportunities).

6.4.3 In March 2010, a second audit for the resettlement was carried out in Southern Serbia (Component B). The team was accompanied by representatives of the Ministry of Labour and Social Policy, tasked with coordinating the implementation of Component B. The three municipalities with the largest number of PAPs (Vranje, Bojnik and Leskovac) were visited and a member of each household was interviewed, if present, with a standard set of questions, related to services, civic status, access to services and living conditions. The physical condition of their properties was also assessed. The findings form the basis of the action plan to be submitted and agreed with the Ministry. Initial feedback was given to the Ministry of Labour and Social Policy and the Minister of Infrastructure. Meanwhile, discussions were held with the City of Belgrade both to obtain an update on the action plan to implement the RAP and to discuss possible technical co-operation with a view to achieving and maintaining the commitments of their resettlement action plans. Technical co-operation was also discussed with the Ministry of Labour and Social Policy.

6.4.4 The audit reports have been reviewed by the Complaints Office, which considered full acceptance by the Serbian authorities a key issue.

6.4.5 Indeed, on 15 March 2010, the Mayor of Belgrade sent a letter to the EIB whereby he expressed his strong disappointment with the above-mentioned decision of the EIB. In his message, the Mayor described the actions already taken or to be taken by the Municipality of Belgrade in the nearest future and contested the decision to approve only a partial disbursement of the loan on the basis of the assumption that it would deny all that had been done by the Municipality of Belgrade in the last 12 months for the members of the Roma population.

6.4.6 Moreover, in that context and on the basis of the findings of the Audit Reports, the EIB and EBRD responded to the need of technical assistance by providing two short-term consultancies whose purpose is to make sure the implementation on the urgent resettlement matters will continue and to enable the co-financiers to monitor the progress of these short-term urgent activities. One consultancy – supporting the City of Belgrade – covers short-term implementation and monitoring work in the five settlements of Surcin, Rakovica, Mladenovac, Barajevo, and Makis on the territory of the Belgrade municipality. The second one – supporting the Ministry of Labour and Social Policy - covers respective work in the three Southern municipalities of Vranje, Leskovac and Bojnik. In addition to advising the respective Serbian authorities on implementation of the action plans, the consultancy includes the provision of monthly information notes to the co-financiers on the progress of the implementation of the short-term Action Plan, of a mid-term monitoring report as well as of a detailed RAP status report and a monitoring report due by 30 September 2010.

#### 6.5 Further engagement with the Serbian authorities

6.5.1 On 19 May 2010 the EIB received official letters from the Serbian authorities involved in the project – City of Belgrade, Ministry of Labour and Social Policy and Ministry for Infrastructure – making strong and specific commitments regarding the Resettlement process, including the approval of the detailed action plans proposed following the co-financiers' audits on the living conditions of PAPs.

6.5.2 As regards Component A, the City of Belgrade emphasised the results of the Gazela RAP and the benefits to the affected population; in its letter, the City of Belgrade provided a list of achievements in the implementation of the RAP as far as enhancement of livelihood and socialisation of PAPs are concerned:

- social and medical care, treatment and hospitalisation for all PAPs;
- daily meals from the national kitchen;
- enrolment of all PAPs' children in local schools as well as provision of school bus transfer, books, clothes and food on regular basis;
- establishment of Community centres (social info points in PAP settlements where PAPs are provided with information on how to improve daily life, on rights and opportunities including the social housing programme) and close monitoring of the centres by the City's Operational Team;
- Further strengthening of the institutional capacity of the City through the forthcoming establishment of a new department with the main task to support the PAPs in enhancing their skills portfolio and thus to facilitate full social integration;
- Financing – by the City and its Investment Agency - of the construction of 80 social housing units to be built and assigned to applicants, including PAPs, by the end of 2010;
- Finalisation of technical documentation for the construction of additional 399 apartments (expected by the end of May 2010);

6.5.3 The City of Belgrade assured it had taken all possible measure to ensure that each PAP had been given the opportunity to apply for social housing, bearing in mind that the current resources of the City do not enable the latter to provide all socially vulnerable families with social housing units; to this extent, the City of Belgrade welcomed the EIB's proposal to seek funding for support in the form of consultancy/project management to support the implementation of the RAP and invited the EIB to further assist in the preparation of the recycling centre in Belgrade through Technical Assistance as well as in gathering the necessary funds to invest in these centres once the studies are completed. Finally, the city highlighted its ongoing commitment to continue working with the EIB on the remaining resettlement issues and summarised in the detailed action plan the actions that the City has already taken and those planned to be taken in the nearest future.

6.5.4 As regards Component B, the Ministry of Labour and Social Policy stressed its serious engagement in addressing the resettlement of PAPs and in complying with the EIB's policies on Involuntary Resettlement and confirmed the acceptance to undertake actions for improving the resettlement related activities of Gazela PAPs in the South of Serbia such as improving accommodation in the municipalities of Vranje, Bojnik and Leskovac, ensuring provision of adequate infrastructure including road infrastructure and water supplies, identifying employment opportunities and monitoring progress together with the Ministry of Infrastructure. The latter also contacted the EIB by fax whereby he drew the Bank's attention to the serious concerns about the safety of the bridge and to the necessity to start emergency repair work as soon as possible. In his message, the Minister restated his intention to provide sustainable and long-term solutions for the PAPs resettled to the South of Serbia as well as his personal commitment to provide job opportunities to one interested member of every household on a construction project in the South of Serbia.

## **7. Findings and Conclusions**

### **7.1 Compliance with EIB transparency policies and procedures**

7.1.1 As regards the disclosure of the social conditions for disbursement contained in the Finance Contract and mentioned in § 3.1.4 of this Report, From the very text of the applicable policy as well as on the basis of the precedents set by the EO, it appears that no irregularity was committed by the EIB's competent services. Moreover, the CO takes note of the fact that the above-mentioned social conditions were referred to in the EIB's letter to the complainants of 24 September 2009 as well as in the present Report. The CO thus closes the file with no recommendation to the concerned services.

7.1.2 As regards the refusal of disclosure of the RAP, the CO takes note of the fact that after the initial rejection of the application on the basis of the invoked protection of the internal decision-making, the complainants were provided with the requested document. In this regards, the efforts made by the EIB's competent services in liaison and negotiation with the Serbian authorities regarding the disclosure have lead to the settlement of the issue raised by the complainants. Therefore, the CO acknowledges that the concerned services have replied to the complainants and provided them with a copy of the requested documents and files this allegation.

### **7.2 Compliance with EIB Policies and Procedures concerning social matters**

7.2.1 Based on the considerations made in §4.2 of the present Report and bearing in mind that the responsibility to carry out a detailed assessment of the social impact of the Project lies with the national authorities, it appears that the severe social impact of the project should have led the EIB's competent services to exercise a-cautious and targeted social assessment with a view to pro-actively identifying (and therefore promptly addressing) the major social concerns during the appraisal of the project.

7.2.2 The CO takes note that, although the appropriate condition (establishment of a RAP to be endorsed by the EIB as condition for first disbursement and undertaking of public consultation) was identified in the Appraisal Report of 27 March 2007 and in the proposal of the Management Committee to the Board of Directors, none of these documents contains any documental evidence of an appropriate identification of the social issues at stake, which would have supported appropriate solution throughout the project cycle

7.2.3 The CO considers that a more thorough social assessment of the project would have provided added value when discussing the content of the RAP with the Serbian authorities and would have facilitated the work of the Promoter to attain a satisfactory RAP.

7.2.4 As regards the compliance with Guidance note 1, the non-availability of an approved RAP at the time of the approval by the Board of Directors does not constitute an instance of maladministration insofar as such approval did not constitute derogation but simply postponed the evaluation of the RAP to a subsequent step of the project cycle i.e. the request for disbursement. As the Borrower's failure to honour such undertaking constituted a condition for cancellation or suspension of the loan, the prior assessment of the RAP before any financial assistance had been provided by the EIB was still ensured. This practice of postponing specific environmental or social requirements to the disbursement phase has been traditionally followed by most international financial institutions (including the EIB) and is accordingly reflected in § 204 of the 2007 Handbook.

7.2.5 In that regard, it is worth clarifying that the disbursement phase is not out of the project cycle as declared by the complainants but on the contrary constitutes an important and sometimes crucial step of the project cycle. The importance of the disbursement phase within the project cycle is clearer when facing complex issues requiring a considerable amount of time for their implementation (e.g. an Environmental Impact Assessment or a Resettlement Action Plan). In these cases the EIB, whilst securing the lending operation in question puts conditions, which must be respected prior to actual disbursement<sup>ix</sup>.

7.2.6 The CO also wishes to emphasise that the relevant EIB services closely engaged with the relevant stakeholders during the fact-finding missions in October 2009 and February 2010 as well as, indirectly, through the consultants on-site. In this context, and also taking into account all the efforts described in § 7.3 the EIB services have been compliant with the applicable Monitoring Policies and Procedures (§ 4.5).

7.2.7 However, as regards the implementation of the EIB monitoring policies and procedures, the CO takes the view that, in line with the provisions of the applicable regulatory framework referred to in §4, it would have been appropriate for the EIB to accept the invitation made by the complainant and referred to in § 2.1.1 of this Report, even though the complainants' proposal did not include Serbian authorities as relevant the stakeholders, directly responsible for the resettlement.

7.2.8 Opinion of the EIB services in charge of the appraisal: the services take the view that the work undertaken was fully in line with the Bank's procedures of the day. Regarding the project cycle, they also consider that the full project is still in its early days and social work is ongoing and continues to be monitored. In this context, Annex II summarises the programme of actions taken by the Bank at the various stages of the project and provides in chronological order the main monitoring actions (missions, review of documentation and formal communication with the relevant authorities). During the monitoring phase (after approval), the Bank cooperated closely with the EBRD and the relevant Technical Assistance consultants, whose permanent presence in Serbia was of great help (and continues to be so). It is therefore the opinion of the services in charge of appraisal that that a substantial effort was made to support a correct relocation of the Project Affected People by the relevant authorities.

### 7.3 EIB efforts to bring the resettlement conditions to compliance

7.3.1 Regarding the general problem of Roma communities, which are the majority of the Project Affected People, the EIB has been confronted by a difficult environment. On one side, and according to a 2008 report by Council of Europe Commissioner for Human Rights, "the situation of the Roma population in Serbia is very precarious. They are subjected to prejudice, systematic discrimination, marginalisation and exclusion. Negative stereotyping by the majority of the population [...] perpetuates a cycle of discrimination." On the other side, the Serbian government has indicated that it recognises the significance of the problems associated with the Roma population and has taken significant and serious commitments and measures to address the problems.

7.3.2 Therefore, in light of the general principles of reasonableness and proportionality, the CO recognises that the resettlement of the Project Affected People is the first such resettlement undertaken in Serbia whereby an attempt was made to apply international standards and solve the complex issues related to citizenship and associated legal issues. It is also recognised that these actions may have in some cases led to an improved access to basic infrastructure, accommodation and social services, including access to education. In this context, the involvement of the EIB and other International Finance Institutions has been of paramount importance.

7.3.3 Since 31 August 2009, the EIB together with EBRD have done their best to thoroughly assess the resettlement conditions and to bring the RAP into compliance with the EIB's policies. However, the impact on the living conditions of the PAP has been limited so far.

7.3.4 The CO acknowledges that the operational services of the EIB highlighted the risk of non-compliance of the resettlement with the EIB's Social Guidelines.

7.3.5 In the course of the present investigation, the CO sustained the view that an initial disbursement on the basis of the invoked emergency situation and with the sole objective of enabling commencement of urgently needed repair works requires strong conditionality and provides detailed recommendations below.

7.3.6 In some cases, such non-compliance cannot be fully remedied and that should be addressed in the most pragmatic manner insofar as the mere withdrawal of the EIB from the operation would not resolve the social impact of the project as the resettlement action has been already performed. In this context and in the exclusive interest of PAPs, rather than limiting itself to declaring the non-compliance of the EIB with its policies and procedures, it is even more important to ensure that Action Plans agreed by the EIB, the Serbian authorities and PAPs are implemented to the satisfaction of the EIB. The CO is confident that a positive involvement by the EIB can improve the conditions under which the resettlement was originally implemented.

7.3.7 The recent commitments (in § 6.5), by the Serbian authorities involved in the project – City of Belgrade, Ministry of Labour and Social Policy and Ministry for Infrastructure – give evidence of very good progress regarding the Resettlement process. These commitments, which include the approval of the detailed action plans proposed following the co-financiers' audits on the living conditions of PAPs, also demonstrate effectiveness of the EIB action in implementing its decision.

#### 7.4 Way forward

7.4.1 The EIB decision provides a very strong framework to bring the resettlement conditions of PAPs into compliance with the EIB policies. Also, the audits of Components A and B undertaken by the financiers provide a fairly detailed assessment of the present situation. The resulting action plans provided a sound basis for discussion with the Serbian authorities and the provision of technical assistance will certainly overcome current lack of resources and capacity.

### **8. Recommendations**

In line with the EIB decision:

8.1 An appropriate and detailed Action Plan properly addressing the improvement in housing and related conditions and livelihood restoration should be:

- Established on the basis of detailed and on-site audit assessments<sup>x</sup>
- Agreed-with the Serbian authorities<sup>xi</sup>
- Discussed with the Project Affected People;
- Approved by the EIB, in line with its standards and guidelines.

8.2 The implementation of the most urgent actions, required to bring current temporary housing and related conditions (including access to education) to a standard acceptable by the EIB, should be implemented as soon as possible, in any case before next winter.

8.3 The next disbursement should take place only after fulfilment of such conditions is confirmed by an audit in a manner acceptable to the Bank.

8.4-Contractual clauses should be put in place to allow the EIB to fully recall the loan in case of failure to comply with these conditions before end of 2010.

Moreover:

8.5 In line with its remit and in order to independently ensure implementation, the EIB Complaints Office will participate together with the relevant EIB services in the monitoring audit to assess compliance before next disbursement.

8.6 More generally, the EIB Complaints Office in collaboration with the relevant EIB services will ensure follow-up on further developments and implementation of above recommendations regarding the subject under complaint no later than 12 and 24 months after the date of this Conclusions Report.



F. Alcarpe  
Principal of the EIB Complaints Mechanism  
14/07/2010



R. Rando  
Complaints Officer  
14/07/2010

Notes:

- i On 2 February 2010 the EIB Board approved the EIB Transparency Policy which merges the previous versions of the Transparency and Disclosure policies.
- ii In particular, the complainant took the view that the Appraisal Report should have contained information about the cut-off time and baseline data for resettlement, the consultation process developed, the Promoter's capacity to deal fairly with the issues, the type and cost of Technical Assistance, the assessment of the capacity of local authorities and alternative designs to minimise displacement, the assessment of feasibility of proposed measures for restoring livelihood, the availability of resources for resettlement, the alternative employment strategies and opportunities for employment and the arrangements for monitoring and evaluation.
- iii Following the review of EC primary legislation by the Treaty of Lisbon, the new Article 15 of the Treaty on the Functioning of the European Union replacing Article 255 of the EC Treaty, requires all of the 'institutions, bodies, offices and agencies' of the EU to 'conduct their work as openly as possible', 'in order to promote good governance and ensure the participation of civil society'. Therefore, following the entry into force of the Treaty of Lisbon, Reg. 1049/2001 also applies to the EIB when exercising its administrative tasks.
- iv « All replies to requests and complaints must be reasoned in such way that the person concerned is precisely informed of the grounds and arguments on which they are based »
- v « Every decision of the Institution which may adversely affect the rights or interests of a private person shall state the grounds on which it is based by indicating clearly the relevant facts and the legal basis of the decision. The official shall avoid making decisions which are based on brief or vague grounds or which do not contain individual reasoning »
- vi case 948/2006/BU
- vii The expansion of the social dimension of EIB-financed project is further elaborated by §6 of the 2009 Statement which stipulates that "the EIB will not finance projects that do not meet its...social requirements as described in the Statement. This includes projects that do not comply with appropriate national and EU ... social legislation in force at the time... The Bank will not finance projects which results in a violation of human rights". The Rights-based approach when considering the social aspects of a project is reflected in the reference to the principles of the EU Charter and the UN Universal Declaration of Human Rights made in §30 of the Statement. Furthermore, attention should be drawn to the paragraphs specifically addressing the social standards to be applied to EIB-projects as §46 stipulating that the EIB restricts its financing to projects that respect human rights and comply with EIB social standards, based on the principles of the EU Charter and international good practices.
- viii §15 of the Background – 2009 Statement
- ix In this context, it is worth recalling that § 32 of the 2007 Handbook which stated that in the framework of the check performed by the Bank's services regarding compliance of a EIB-financed project located in the EU with the Bank's environmental requirements, "(...) the EIB should:
  - Either confirm at the time of the Note to the Commission, on the basis of the Bank's prior environmental assessment, that the project complies with the EU policy and legislation in the field of the environment.
  - Or indicate that such a confirmation will be given at the time the project is submitted to the EIB Board of Directors.
  - Or exceptionally, indicate that such a confirmation will be given at a later date, but before disbursements for project components concerned. This would be the case when the EIB financing may include preparation of an environmental/social impact assessment"
- x Already done (see § 6.4)
- xi Already done (see § 6.5)



European Investment Bank

Annex I

**GUIDANCE NOTE 1  
DEALING WITH POPULATION MOVEMENTS AND RESETLEMENT**

**GUIDANCE NOTE 2  
DEALING WITH MINORITY RIGHTS INCLUDING WOMEN, INDIGENOUS PEOPLE AND OTHER VULNERABLE GROUPS**

**GUIDANCE NOTE 5  
PUBLIC CONSULTATION AND PARTICIPATION IN PROJECT PREPARATION**

## GUIDANCE NOTE 1

### DEALING WITH POPULATION MOVEMENTS AND RESETTLEMENT

***Objectives of this Guidance Note are to ensure that EIB investments:***

- Avoid or minimize development-induced displacement of people;
- Mitigate negative social impacts of those losing assets, through the provision of appropriate compensation and/or employment opportunities regardless of the legality of existing land tenure arrangements;
- Provide adequate information to and opportunities for informed participation by those affected;
- Assist displaced persons to improve their former living standards and income earning capacity.

#### Introduction

Many investment projects involve the acquisition of land. In many cases this land may be public, and subject to established and public procedures associated with changes in its use. Where there is an active land market, based on private ownership of land and property, acquisition is not usually problematic. The local land and property market will normally determine purchase prices.

Problems can arise when ownership rights are unclear, when squatters and encroachers invade land and dwellings, and/or when there are disputes over changes in use<sup>110</sup>. The planning process itself may result in disputes over values and compensation levels. Most governments retain the right to acquire land for public purposes and there are clear procedures associated with such acquisition. All governments have legislation covering land acquisition but not all governments choose to, or are in a position to, enforce existing laws.

Additionally, conflicting claims over land, the results of historical changes in attitudes towards its use, bring opposing interest groups into conflict (e.g. conservationists versus indigenous residents in nature reserves and national parks). Changes in land use patterns may also affect the livelihoods of marginal groups (seasonal pastoralists and herders for example). Perceptions of what is or is not in the public interest influence the ways that risk is assessed. Because of the general weakness of institutions to deal formally and fairly with disputes in some countries outside the EU, governments both local and national may not give the same attention to the rights of those adversely affected by changes in land use.

While the Bank is not in a position to deal specifically with issues of unplanned in-migration induced by new industrial and urban developments, Bank staff should be aware that land invasions might be a consequence of development investments. These may enhance local insecurity and exacerbate social problems unless promoters and local Authorities can cooperate to minimize or remedy them. They may also exacerbate perceived inequalities through the evolution of prosperous enclaves surrounded by widespread poverty.

<sup>110</sup> The NIMBY effect (Not In My Back Yard) may promote considerable public opposition to changing land use. In the US a recent Supreme Court Ruling appeared to give government greater rights to override private property claims if redevelopment is perceived to be 'in the public interest'.

(see: [http://www.ll.org/private\\_property/connecticut/](http://www.ll.org/private_property/connecticut/)). A similar case is being dealt with in the Czech Republic (see <http://www.praquepost.com/P03/2005/Art/1020/bus12.php>)

There is no over-arching European legislation on land acquisition. The EU relies on national law to ensure that the process is just and fair. National law has been strengthened in some cases to make the process more transparent.<sup>111</sup> In the EU, the Aarhus Convention places increased emphasis on citizens' rights to be consulted on projects and programmes that will have environmental impacts. In this context land acquisition and involuntary resettlement are increasingly perceived as one element in an evolving and more holistic strategic impact assessment. In its work outside the EU, the Bank endeavours where possible, to promote the agreed policies of the Union.

Recent examples of changes in land use, as a result of new public/private partnerships, have sometimes called into question the fairness with which such changes are implemented and highlighted the difficulties associated with changing land use.<sup>112</sup> This issue is likely to be of concern in projects that involve urban renewal/expansion, linear construction projects such as roads, the development of social housing, water and sanitation projects, and those involving extractive industries.

### **Initial screening**

Where the Bank is the leading international investment partner the team should screen the project for any land acquisition, involuntary movement of people, and likely restrictions on access resulting from the proposed investment. This screening process should:

- Identify the nature and magnitude of likely displacement and establish with the Promoter a cut-off time and baseline data;
- Review previous resettlement prior to Bank involvement;
- Assess willingness of population to move/consultation processes developed;
- Assess the Promoter's capacity to deal fairly with the issues;
- Determine type and cost of any TA that may be required;
- Assess the strength of local public Authorities to support the processes involved (e.g. approaches to issues of land acquisition and compulsory purchase; procedures for handling disputes, land registration, and the provision of social safety nets);
- Explore with the Promoter alternative designs that might minimize displacement.

Most IFIs have developed policies for handling resettlement and relocation issues and when the Bank is in partnership with them it may only be necessary to ensure that those policies are adequate and are being implemented. Links to the most relevant policies can be found at the end of this note.

### **As part of this screening process, the Bank Team should determine:**

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

On the basis of that initial screening the Bank will determine in consultation with the Promoter, the approach to be adopted (the production of a resettlement plan, a framework under which resettlement

<sup>111</sup> In the UK, for example, the new planning system introduced under the Planning & Compulsory Purchase Act 2004 replaces local plans with a Local Development Framework (LDF). The LDF places greater emphasis on meaningful community involvement at all stages in the planning process.

<sup>112</sup> In Europe this is of particular concern in planning airport expansions.

will be dealt with, or an approved course of action for small numbers of people), and arrangements for mitigation.

**Prior to approval** Bank staff should be in receipt of a satisfactory resettlement plan/framework. If this is not available then negotiations to finalize the investment will need to be interrupted until such time as one is forthcoming.

Arrangements for implementation of the plan/framework should be agreed with the Bank and incorporated into the project agreement. Progress on resettlement issues should be reported in the Project Progress Report and evaluated in the Project Completion Report. It is important during the early phases of implementation to review progress and make early corrections if necessary.

## GUIDANCE NOTE 2

### DEALING WITH MINORITY RIGHTS INCLUDING WOMEN, INDIGENOUS PEOPLE AND OTHER VULNERABLE GROUPS

#### *Objectives of this Guidance Note are:*

- To identify and outline the EU policies on social inclusion and non-discrimination and support to indigenous peoples and minorities;
- To outline the EIB's position with respect to support of these policies in projects outside the EU;
- To provide guidance to Bank staff on dealing with these issues in project preparation.

Minority rights and non-discrimination in the EU. Minority protection and participation are inherent in the EU's founding principles and in the principles of subsidiarity. The evolution of human rights protection has strengthened anti-discrimination legislation particularly with respect to women and to employment. Similar protection remains to be developed for ethno-cultural diversity. Protection of minorities and indigenous peoples is limited to dealings with external partners.

The assertion of the universal principle of non-discrimination might mean that support for minority rights is perceived as an impediment to greater equality. This potential dichotomy is perhaps most evident in the sensitive area of education in minority languages, where schooling in other than the official state language is tolerated rather than promoted. The shift from a focus on non-discrimination to one that encourages 'multi-culturalism' is evident in minority rights declarations recently adopted by the UN, the OSCE and the Council of Europe and in the 2000 'Race Directive'.<sup>113</sup> Legislation to specifically safeguard minority identity, languages and education, however remains to be enacted. Some states deny the existence of national minorities on the basis of the constitutional principle of equality of all citizens and the prohibition of discrimination.

Non-discrimination and the recognition of minority rights are complementary; the one aims to secure equality, the other aims to preserve the right to diversity.<sup>114</sup> According to the Council of Europe Assembly "the price to be paid for failing to respond positively to the needs of national minorities may be an escalation in social tension, an increase in the number of asylum seekers, reluctance to reinforce unity between the member states...and a climate of insecurity."<sup>115</sup> The Nice Charter of Fundamental Rights (December 2000), while containing a brief provision to respect cultural, religious and linguistic diversity, has no explicit mention of 'minorities'.<sup>116</sup>

In terms of the EU's external policy agenda, including its policy towards Acceding and Candidate Countries, there has been greater concern to include protection of minority rights. In Europe this has focused on such groups as the Roma but with enlargement and enhanced migration, minority rights

<sup>113</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Online at: [europa.eu.int/infonet/library/m/200043ce/en.htm](http://europa.eu.int/infonet/library/m/200043ce/en.htm)

<sup>114</sup> The International Convention on the Elimination of All Forms of Discrimination states: "the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." [http://www.unhchr.ch/html/menu3/b/d\\_icerd.htm](http://www.unhchr.ch/html/menu3/b/d_icerd.htm)

<sup>115</sup> Parliamentary Assembly of the Council of Europe, Recommendation 1492 (2000). The Rights of National Minorities, adopted 23 January 2001, paras 5-6. Online at: <http://stars.coe.fr/la/TA01/EREC1492.htm>

<sup>116</sup> Online at: [http://ec.europa.eu/external\\_relations/human\\_rights/doc/charter\\_364\\_01en.pdf](http://ec.europa.eu/external_relations/human_rights/doc/charter_364_01en.pdf)

will command greater attention. Outside Europe the ILO's Convention (No. 169) on Indigenous & Tribal Peoples,<sup>117</sup> provides the framework, together with the policies developed by the multilateral development banks. The Extractive Industries Review provides further information on dealing with indigenous rights.<sup>118</sup>

There is no universally accepted definition of 'indigenous peoples'. The term is used in a generic sense to refer to those who are vulnerable because their livelihoods primarily depend on the customary use of unique land or natural resources in the project area. They have the following characteristics: close ties to the land of their forefathers and natural means of existence; identification with a particular cultural group and recognition by others as belonging to it; an indigenous language, often differing from the national language; primarily self-sufficient production; and the presence of social and political institutions determined by custom. They are one particular example of several vulnerable groups who may be negatively impacted by investment projects. Other vulnerable groups include women, children, old people, and dalits or untouchables in the South Asian caste system.

EIB investments contribute to the EU's mission of poverty reduction and sustainable development. In countries outside the EU, the Bank places greater emphasis, where appropriate, on ensuring that investments support and respect the rights of ethnic, linguistic and religious minorities living in the project's sphere of influence. This is particularly relevant in situations where the aim and/or the ability of public institutions to ensure minority rights is weak, in potential conflict zones and in areas where tourist development focuses on distinct local cultural features. It is likely to be of particular importance where projects involve extractive industries and dam construction, in remote and isolated areas.

The responsibility of the EIB in projects outside the EU. For projects supported by the EIB, dealing with such minorities requires particular attention to be given to their cultural rights to maintain control over ancestral territory and to secure access to culturally appropriate sustainable livelihoods. A focus on, for instance, indigenous groups, like the focus on women, is a particular instance of the wider EU policies supporting social inclusion, non-discrimination and the rights of indigenous peoples expressed in the UN Human Rights Conventions.<sup>119</sup>

Where the presence of such minorities is evident, the Bank should ensure that appropriate arrangements for mitigating adverse impacts are put in place and that their customary claims are fairly addressed. This is a particularly difficult area often complicated by the approach of the State in the pursuit of either assimilation and integration policies, or the recognition of the rights of minority groups. Where the Bank is one of a number of investment partners it may be possible to build on their existing social safeguard policy frameworks.

The Bank's intention is to ensure that minorities including indigenous peoples profit from Bank-financed projects and to minimize or avoid harmful effects on their society. Local priorities will be determined in direct consultation with the representatives of minorities and the development of appropriate consultation and participation mechanisms will be one feature that Bank staff will wish to see in place.

## Types of harmful impacts

- Land invasions by external groups;
- Adverse health impacts of in-migration;
- Exclusion from receipt of development benefits;
- Increased divisions within minority groups;
- Unequal receipt of royalties in favour of particular groups;
- Creation of dependent communities.

<sup>117</sup> The ILO Convention can be found at: <http://www.ilo.org/public/english/standards/norm/eqalite/iipp/convention/02.pdf>

<sup>118</sup> See: <http://www.eireview.org/>.

<sup>119</sup> For information on the UN Permanent Forum on Indigenous Issues see: <http://www.un.org/esa/socdev/unpfii/index.html>.

### **Types of benefits to enhance minority interests**

- Provision of better educational and health facilities;
- Creation of particular employment opportunities;
- Development of indigenous technical knowledge and cultural programmes;
- Community Development work to increase self-sufficiency and sustainability (provision of micro-finance, development of indigenous crafts).

## GUIDANCE NOTE 5

### PUBLIC CONSULTATION AND PARTICIPATION IN PROJECT PREPARATION

#### **Summary**

In its Environmental Assessment of projects outside the EU the Bank aims to promote public consultation and participation, according to EU standards, through appropriate discussions with the Promoter and other parties. **Consultation** is defined as a tool for managing culturally appropriate two-way communications between project sponsors and the public. Its goal is to improve decision-making and build understanding, by actively involving individuals, groups, and organizations with a stake in the project. This involvement increases a project's long-term viability and enhances its benefits to locally affected people and other stakeholders.

EIB policy towards EIA is summarised in its Environmental Statement 2004. The Bank applies the principles and practices of the EU EIA Directive (85/337, amended by 97/11 and by 2003/35/EC to incorporate the provisions of the Aarhus Convention, and since its introduction in July 2004, the SEA Directive (2001/42) - to all its regions of operation. The EIA Directive includes screening criteria, for purposes of determining the need for an EIA.

Bank staff should determine the need for an EIA according to the screening criteria of the Directive. They check that all stages of the EIA, where required, have been carried out in a satisfactory way. They also ascertain the results of the Environmental Impact Studies (EIS), in terms of likely project impacts and the proposed mitigation and compensation measures, and validate arrangements for their implementation.

According to the EU EIA Directive, it is the responsibility of the host country and its Competent Authorities to ensure that the "public concerned" are informed and consulted on the proposed project (Articles 6 and 9). Bank staff as part of their environmental assessment check that these requirements have been fulfilled. Their findings are contained in the PJ Appraisal Report (Environmental Assessment D1) submitted to the CD.

#### **1. Introduction - why consult ?**

There is a growing demand in the international community for more informed public participation and transparent and accountable institutions and processes. The pursuit of sustainable development often hinges on generating local ownership through informed involvement. Without meaningful stakeholder consultations there is a risk that projects will meet public resistance and be subject to delays.

Critics argue that public consultation is often needed throughout project preparation, implementation and operation, in order to improve the quality of the impact assessment process as well as decisions deriving from it. Consultation processes can identify different perceptions of risk, explore possible alternatives, and provide information on appropriate mitigation and compensation measures.

Critics also argue that measures to consult with local people and/or affected stakeholders are often inadequate and perfunctory. Promoters often do not conduct meaningful consultations with those who are likely to be directly affected by the proposed investment or with other concerned members of the public, such as Civil Society Organizations (CSOs).

Additionally, emerging international and EU standards (such as the Aarhus Convention and its application in EU EIA law) and initiatives (such as the OECD Guidelines on Multinational Enterprises and the Global Reporting Initiative) require promoters to have more and better engagement with the public. These requirements arise not only from pressure from CSOs, including campaigning NGOs,

but also from investors requiring more responsible and ethical investment decisions made on their behalves.

Promoters are increasingly adopting more formalised channels of communication and more creative approaches that have become more open and inclusive. They are making greater efforts to explain their decision-making processes and are becoming more proactive in seeking out those representatives of civil society who can make a real contribution to ensuring more sustainable investments.

Consultation is a means to an end, not an end in itself, and should be treated as an opportunity to build longer-term relations with civil society. Dialogue should be ongoing and regularised and focus on building trust while, at the same time, being effective. The governing principles for dialogue must be the same for all parties to the dialogue: openness, good faith and responsiveness (explanations for decisions taken and not taken).

## 2. Policy and legal framework

The Aarhus Convention<sup>131</sup> provides the principles that inform negotiations with promoters about conducting public consultations and about the wider participation of the public in decisions that have environmental consequences.

Access to information, public participation and access to justice in environmental matters are fundamental elements of good governance at all levels and are essential for sustainability.<sup>132</sup>

Providing access and strengthening procedures that enable access generally improve the quality of decision-making. Meaningful and equitable access is assured through open processes that nurture transparency, minimize inequality, avoid undue economic and/or political influence, and facilitate the participation of groups that may not have the means to participate.

Access should be provided without discrimination on the basis of citizenship, nationality or place of residence. Capacity building to facilitate access may be required. Resources to ensure access may need to be factored into processes of participation.

The European Commission ratified the Aarhus Convention on 17 February 2005<sup>133</sup>. In order to achieve the objectives of the Convention, there is a need to ensure that:

- There is public access to adequate and appropriate information;
- The public is able to express comments & opinions before critical decisions are made;
- The Promoter takes due regard of those comments and opinions;
- The Promoter informs the public of the rationale for the decision;
- Sufficient time is allowed for each of the different stages.

The Convention has been translated into EU law through a number of specific Directives and in turn as an amendment to the EIA Directive.<sup>134</sup> Where an EIA is required public consultation is essential. This consultation can range in intensity from limited discussions with a small number of concerned

<sup>131</sup> See <http://www.unece.org/env/po/> for details and updates of that Convention.

<sup>132</sup> See the Bank's recently finalized Access to and Disclosure of Information policy at [The EIB's External Communication Strategy](#).

<sup>133</sup> For further information on EU legislation on the Aarhus convention visit: [Aarhus Convention](#).

<sup>134</sup> The main instrument to align Community legislation with the provisions of the Arhus Convention on public access to environmental information is : Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC. The main instrument to align Community legislation with the provisions of the Arhus Convention on public participation is: Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC. In addition, provisions in public participation in environmental decision-making are to be found in a number of other environmental directives, such as Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of certain plans and programmes on the environment (JO L 197, 21.7.2001, p.30) and Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (JO L 327, 22.12.2000, p.1).

stakeholders, to structured processes that make provision for the formal involvement of concerned stakeholders in significant decisions about the project.

Public consultation is also a feature of the EU's Sustainable Development Policy<sup>135</sup> and the achievement of the Millennium Development goals (MDGs)<sup>136</sup>.

### 3. The Bank's responsibilities

It is the responsibility of the Bank to ensure that the Promoter gives appropriate attention to the public consultation process during the earliest stages of project preparation. Ensuring early involvement means that expectations can be more easily managed and potential conflicts can be identified and addressed.

In line with its own pursuit of greater transparency and accountability, the EIB seeks to encourage a culture of disclosure, reporting, and communication amongst the promoters it supports. The Bank recognizes that 'heightened managerial care' may be necessary in areas where there are weak governance structures.

The Bank recognizes the importance of understanding the various non-financial risks associated with investment decisions. These include the risks that arise from potential adverse environmental and social impacts. They also include reputational risks associated with investments in weak and conflict prone regions, risks associated with investments in controversial sectors, as well as risks associated with a lack of transparency and accountability.

The EIB will endeavour to be involved as early as possible in the decision-making processes associated with the planning of an investment project. In many instances however, the invitation to the Bank to participate comes when critical decisions about the particular investment may already have been made. In such circumstances, a judgment will have to be made about the robustness of the assessment methodology and the associated consultation process adopted by the Promoter and other co-investors. The Bank may wish to draw attention to any gaps that might need to be addressed to ensure appropriate standards. This will be of particular concern where the Bank is the lead investor. As a policy driven Bank it wishes to promote the standards expected within the EU. Where significant gaps are identified, the Bank may wish to make sure that they are filled through particular provisions attached to the agreement with the Promoter and through monitoring during implementation.

### 4. Ensuring the adequacy of arrangements

The adequacy of the consultation process, both in terms of the dissemination of information as well as the receipt of informed views is one of the criteria used to determine likely social impact.

Bank staff shall verify that the extent and form of consultation is appropriate for the project in question.

There are a variety of ways in which consultations can take place as well as different levels of intensity that might be pursued. Each level of intensity differs in the degree to which it affords participants an opportunity to interact with the process and influence the outcome. Three levels might be identified.

1. **Information feedback** – the provision of information with a request for feedback to supplement knowledge and gain a better understanding of issues (e.g. surveys, staffed exhibits and displays, staffed telephone lines, public information centres);
2. **Involvement and consultation** – formal or informal dialogue to identify issues of concern (e.g. workshops, focus groups, participatory assessments);

<sup>135</sup> For more information on the EU's Sustainable development Strategy see: <http://europa.eu.int/comm/environment/eussd/>.

<sup>136</sup> For an outline of the MDGs see: <http://www.un.org/millenniumgoals/>.

3. **Extended involvement** – participants are able to contribute to the formation of a plan or proposal and to influence a decision through group discussions or activities (e.g. stakeholder groups, fora, user groups and associations).

The level of intensity adopted will depend on the:

- Nature of the proposed investment;
- Social and political context in which that investment is planned;
- Promoter's commitment to transparency and accountability; and,
- Local legislative environment.

Where promoters have decided to pursue a policy of responsible governance, public consultations and informed involvement will become regular features of their relations with concerned stakeholders and the wider public. These will normally appear in a periodic 'Transparency' or 'Sustainability' report.

In order to judge the acceptability of the actual or proposed consultation, it will be necessary to ascertain the following from the Promoter:

- What form of **stakeholder analysis** is proposed or has been undertaken?
- Whether stakeholders have been **identified** in a fair and equitable manner.
- Who is likely to be impacted negatively?
- How **compensation** levels (if any) have been set?
- How **rehabilitation** measures (if any) have been addressed?
- Whether attention has been paid to particularly **vulnerable groups**.
- How information about the project is to be **disseminated**?
- How **inputs from stakeholders** are to be solicited?
- How proposals to reach **consensus** on outstanding issues will be achieved?
- Whether adequate **time and resources** have been committed.
- To what extent the findings are built into project design?

The disclosure of information is integral to a successful consultation process and Bank staff will wish to satisfy themselves that the results of consultations as well as of assessments are accessible to interested parties and the general public.

The assumption made by Bank staff is that promoters will be pro-active in their dissemination and public engagement efforts and that all reports will be in the public domain unless explicitly identified as confidential. Where appropriate, the Bank team will wish to satisfy itself that arrangements for monitoring by stakeholders during implementation are adequate.



European Investment Bank

## Annex II

(Opinion of the EIB services responsible for the appraisal)

### **Gazela Bridge Rehabilitation Project: Project Processes in respect to Due Diligence on Social Issues**

Throughout the project cycle there have been extensive communications, meetings, and site visits with the partners and institutions involved so as to assure acceptable project outcomes and jointly solve the many complications involved. Below is exemplified the main actions involved in regard to due diligence on social issues.

During appraisal the due diligence process properly identified the following issues:

- the resettlement as the main negative social issue;
- additional specific issues (e.g. the informal nature of settlement, presence of vulnerable groups, not an isolated case in Belgrade);
- the need for a detailed social assessment followed by an acceptable Resettlement Action Plan (RAP), as well as the specific requirements for the RAP;
- set the receipt of an acceptable RAP as a condition for disbursement;
- the institutional weakness of the promoter;
- the need of Technical Assistance (TA);
- the financial needs for both TA and resettlement process as well as sources of funds and included them in the project cost;
- the specific monitoring requirements as well as the cooperation mechanisms of the IFIs involved (EBRD, DFID and EAR).

After CA approval:

- in cooperation with EBRD/DFID, the consultant (identified under the need for TA during the appraisal) was mobilised;
- continuous and regular contact with the promoter and the relevant authorities (initially only with the City of Belgrade but later also with the Ministry of Labour and Social Policy), either directly or jointly with/via the local office of EBRD and/or the consultants (during 2008 the contacts were less frequent due to the political crisis in Serbia);
- analysed jointly with EBRD different proposed solutions and provided comments to the authorities;
- reviewed different versions of the RAPs, and provided comments.

After resettlement took place:

- immediate visits to and reporting from the Belgrade resettlement sites by the consultants, EBRD, UNDP;
- prompt site visits to and reporting by the consultants from the resettlement sites in Southern Serbia (under Component B);
- identified the shortcomings of the resettlement process and agreed with the authorities on specific action plans to remedy these shortcomings, wherever possible;
- subsequently continued monitoring of the implementation of the action plans;
- EIB/EBRD mobilization of additional technical assistance funding for supporting the implementation of the action plans.

### Chronologic presentation of the main monitoring actions

Date (approximate)	Action	Participants
9 Nov 2006	Mobilisation of the TA consultants	
18 Nov 2006	Mission to Belgrade, meetings with the authorities	EBRD & Consultants
26 Feb 2007	Mission to Belgrade, meeting the promoter and City of Belgrade	EIB, EBRD, EAR, consultant
9 Mar 2007	Mission to Belgrade, meetings with the authorities	EBRD & Consultants
28 Mar 2007	Mission to Belgrade, meetings with the authorities	EBRD & Consultants
10 Sep 2007	Mission to Belgrade, meeting the promoter and City of Belgrade	PJ, OPS, consultant
20 Dec 2007	Mission to Belgrade, meetings with the authorities	EBRD & Consultants
28 Apr 2008	Mission to Belgrade, meetings with the promoter	EIB
16 Dec 2008	Mission to Belgrade, meetings with the authorities	EIB/EBRD & Consultants
9 Mar 2009	Meeting of the Ministry of Social Affairs with municipalities	consultants
13 Mar 2009	Mission to Belgrade, meetings with the authorities	EIB/EBRD & Consultants
16 Mar 2009	Mission to Belgrade, meetings with the promoter	EIB
1 Apr 2009	Comments on Component B RAP	EIB/EBRD
10 Jun 2009	Meeting Deputy mayor of Belgrade	EIB, EBRD, consultants
30 Jun 2009	Comments on draft RAP	EIB/EBRD
30 Jun 2009	Project added to PJ watch list	
30 Aug 2009	Local media reports that resettlement will start on 31.08.2009	
31 Aug 2009	Observing the resettlement process	EBRD
31 Aug 2009	Received approved (by City Assembly) component A RAP	
7 Sep 2009	Inspection of the Belgrade container settlements	consultants
11 Sep 2009	Letter to Mayor of Belgrade with shortcomings of the A RAP and process	EIB, EBRD
28 Sep 2009	Visit to the South Serbia	consultants
5 Oct 2009	Meeting Deputy Minister of Social affairs	consultants
5 Oct 2009	Letters to Mayor of Belgrade and Ministry of Social affairs on shortcomings of the process	EBRD
8 Oct 2009	Meeting Bankwatch	EBRD
23 Oct 2009	Mission to Belgrade, meetings with the authorities	EIB/EBRD & Consultants
12 Feb 2010	Mission to Belgrade & Southern municipalities, meetings with the authorities	EIB/EBRD & Consultants
11 Jun 2010	Mission to Belgrade & Southern Municipalities, meetings with the authorities	EIB/EBRD & Consultants
20 Jun 2010	Dialog with Belgrade Secretary for Social Welfare, updated report on A RAP implementation	consultants