

EPS restructuring loan

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CEE Bankwatch Network's mission is to prevent environmentally and socially harmful impacts of international development finance, and to promote alternative solutions and public participation.

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As a long-term institutional partner of Serbia's energy utility EPS, the EBRD invested roughly EUR 315 million in different projects between 2001 and 2011, including: the EPS Emergency Power Sector Reconstruction loan (2001, EUR 100 million) , EPS Power II (2003, EUR 50 million) , EPS Metering project (2010, EUR 40 million) , the Kolubara Environmental Improvement project (2011, EUR 80 million) , EPS hydropower project (2011, EUR 45 million, repaying) .

In 2015 the EBRD approved a further EUR 200 million loan for EPS Restructuring. The Board document for the project stated that "EBRD investment will be conditioned upon an agreed plan for a comprehensive program of reforms of the Company and of the sector which will have a significant impact on the development, management and operational efficiency of the power infrastructure in Serbia." Alongside the EPS Restructuring loan there were two associated grants for Corporate Environmental and Social Due Diligence and Corporate Governance of EUR 65,000 and EUR 200-300,000 respectively.

The Board Document on the EPS Restructuring project also stated: "The financing package proposed will help alleviate these issues [liquidity crisis after the May 2014 floods], freeing up resources to allow the Company to focus on and boost the implementation of its long term capital expenditure program, while also supporting the critical reform agenda. The long term nature of the Bank's operation will provide terms better matched to the underlying assets and the Company's operations."

This means that when making its investment decision the EBRD was aware that the loan, although not directed to specific EPS assets, is enabling EPS to carry out "its long term capital expenditure" plans, including those for expanding lignite mining fields like Drmno, opening new ones, such as Radljevo and Field E and building new coal power plants like the Kostolac B3.

In the absence of EPS's plans to decarbonise in the foreseeable future, the climate impact of EPS's capital expenditure programme is questionable and the EBRD has failed to assess this. According to the EBRD's Energy Strategy of 2013 the bank "is committed to supporting the low-carbon transition in its countries of operations; this entails promoting alternatives to carbon-intensive coal-fired generation", however, the EPS Restructuring project was apparently not seen as a major opportunity for a more detailed assessment of its client's strategy.

EPS' coal plans - the core of its long-term capital expenditure programme
According to the 2016 Energy Strategy of Serbia , in addition to prolonging the life of existing plants, EPS is planning several new lignite power plants: Kostolac B3, Nikola Tesla B3, Kolubara B, Kovin and Stavalj. While it is unlikely that all of these can go ahead in the future, EPS clearly prioritises Kostolac B3 in the implementation programme for the energy strategy and has not publicly announced any cancellations. In fact construction of new coal generation capacities is proposed as a GHG emission reduction measure in Serbia's Second Report to the UNFCCC!

The most advanced coal plant is the Kostolac B3 thermal power plant whose annual production is estimated at 2200 GWh and encompasses the expansion of the Drmno opencast mine, increasing lignite production from 9 to 12 million tonnes per year. The new unit is expected to generate 2 231 250 tonnes of CO2 per year, with an emissions factor of 870 gCO2/kWh of produced electric power.

The company's latest annual report quotes that "in order to secure sufficient quantities of coal, revitalization projects on existing equipment are being implemented, replacement mines are being opened and preparatory activities for

the opening of new mines are being performed.” In addition to expanding the Drmno mine’s capacity, opening of new mining fields in the Kolubara basin is actively carried out in the area of Zeoke–Medosevac villages where the new Field E is currently being opened. Equally advanced appears to be the Radljevo field, expected to start production in early 2019, for which EPS will spend EUR 100 million on equipment in 2018 alone, according to media reports. In addition, Field G at Kolubara was opened in December 2017, which, together with the Radljevo field, is considered by EPS to ensure production of coal and coal-based electricity for “the next few decades” – a timeframe which the rest of Europe is taking to decarbonise energy systems.

An EIA Study from 2008 on the Drmno mine expansion of up to 9 million tonnes/year was never disclosed to the public. The Ministry of Energy, Development and Environmental Protection issued a decision in 2013 that concluded no EIA was needed for the expansion of the Drmno mine from 9 to 12 million tonnes/year, infringing both Serbian law and the EU EIA Directive . In the absence of ESIA’s, EPS has failed to assess properly and mitigate (e.g. through resettlement) the environmental and social impacts of its mines operation, resulting in violation of the human rights of thousands of people, like the right to life, adequate housing and continuous improvement of living conditions, the right to enjoy one’s property, and the right to a clean and healthy environment, the right to know and the right to participate in decision-making.

With regards to transboundary impact of EPS’ plans, a complaint regarding the lack of transboundary impact assessment for the planned construction of Kostolac B3 and expansion of the Drmno mine was submitted by Bankwatch Romania in June 2014 to the Espoo Convention Implementation Committee. Amid the information exchanges between the Implementation Committee, the Serbian and Romanian ministries of environment, the Committee also initiated its own investigation into the lack of transboundary strategic environmental assessment of Serbia’s Energy Strategy and Spatial Plan, which had been referred to as the basis for approval of the Kostolac B3 initial EIA study. While the investigation into the potential breach of the Espoo Convention was closed in September 2016, after Serbia restarted the Kostolac B3 EIA process and notified Romania , at the Committee’s last session of 2017 the body reported its intention to continue its deliberations concerning Serbia’s compliance with the provisions of the Protocol on Strategic Environmental Assessment (Kiev Protocol) with regards to the Serbian Energy Development Strategy and its Spatial Plan.

The main comments made by NGOs during the consultation process on the EIA of the Kostolac B3 power plant project were not addressed satisfactorily in the final version of the EIA report from September, 2017, for example:

1. Failure to ensure that the Kostolac B3 plant

complies with the 2017 EU Best Available Techniques reference document for large combustion plants (LCP BREF).

2. Drmno village people represented by an NGO called “Zdravo Drmno” appealed to the competent authority to address their problems related to exposure to cumulative pollution; need for resettlement; health problems the locals are facing due to prolonged exposure to ash pollution; and stability of the ground.

In addition, the Kostolac B3 EIA claims that: “Summarized, we may say that on the entire observed area, forecasted air quality level for the observed reference scenario of operation of thermal capacity, is within the limits of allowed, with concentrations of pollutants under the legally prescribed values.” However, this claim cannot be substantiated due to lack of publicly available monitoring results. The lack of proper monitoring of environmental conditions for communities and the lack of publicly disclosed objective and verified data prevents informed decision-making and public participation. Moreover, the lack of continuous monitoring at EPS power plants of PM10, SO2 and NOx and the failure to provide monitoring data to the competent authority would constitute a breach of Serbia’s obligations under the Energy Community (in which the Large Combustion Plants Directive entered into force in January 2018).

Last but not least, as a signatory to the Energy Community Treaty, Serbia must follow EU legislation on state aid. The Serbian Government has agreed to provide loan guarantees for commercial loans for the Kostolac B3 unit. In 2011 a contract was also signed between the Government of Serbia and the China Exim Bank, for USD 293 000 000 – 85% of the cost of the project Phase 1 – envisaged for reconstruction of units B1 and B2 of Kostolac power plant, construction of a de-SOx system, building of a landing dock on the Danube and construction of railway infrastructure. In December 2014 the Serbian state also signed a USD 608 million loan with China ExIm Bank for the new plant, B3. We are also concerned that in the feasibility study for the plant, EPS has assumed that CO2 costs would be paid by the state. In the sensitivity analysis it becomes clear that even a relatively low CO2 price would tip the plant into non-feasibility .

While state aid for Kostolac B3 does not directly constitute non-compliance with the EBRD’s ESP2014, it raises questions about the impact of the Kostolac B3 project on EPS’ finances and on the need for the EBRD to consider wider strategic issues at sectoral level. With Serbia’s integration into the European electricity market, the need for implementing EU standards in the country’s energy sector is not just an environmental or climate issue, but also a competition issue.

In conclusion, by enabling EPS to implement its coal plans without a vision of decarbonisation in this century, the EPS Restructuring loan sits uncomfortably

with the EBRD's Energy Policy phase out of coal investments and the bank's commitments to the Green Economy and low-carbon transition. It also raises questions about the applicability of the EBRD environmental and social standards in corporate level loans, especially when the bank's client demonstrates little regard to the rule of law and Serbia's Energy Community and EU accession obligations.

PCM complaint on EPS restructuring

On 25 April this year CEE Bankwatch Network and CEKOR requested the EBRD's Project Complaint Mechanism to conduct a compliance review for the EPS Restructuring project. EBRD's long term support for EPS has not resulted in the needed improvements and compliance with EBRD's Policy's Performance Requirements (PRs) as evidenced by EPS disregard of the rule of law and Serbia's obligations under the Energy Community, and by the continued harm to communities in mining basins, who live in unacceptable environmental conditions and bear significant health and safety risks.

The EBRD has failed to ensure through its investments the timely resettlement of mining-impacted communities and to assess the strategic impact of its investments on Serbia's energy sector, and how it could impact the sector's reliance on lignite, the most polluting of fossil fuels. Therefore the complaint alleges non-compliance of EPS with the PRs and non-compliance of the EBRD with its Environmental and Social Policy of 2014. It seeks clarity on the application of the bank's environmental and social standards in corporate level finance projects, which is particularly timely in view of the ongoing revision of the ESP2014.

Specifically on policy level we hope that the PCM compliance review will result in:

- clarification on project E&S categorisation;
- clarification on the EBRD's commitment to rule of law, to apply its Policy and promote EU law to all projects, particularly questionable in cases when its client circumvents the national requirements derived from those;
- development of guidance on the implementation of ESP in corporate level finance projects.

On the project level, as specific outcomes we expect closer monitoring and the following remedial measures that the EBRD should agree with EPS:

- EPS decarbonisation plan by 2050;
- a revision of the EIAs (ESIAs) for all the new or expanding mining fields, such as the Radljevo field and E field in the Kolubara basin, and auxiliary mining operations, for example traffic routes or river diversions etc.;
- ESIA and cumulative impact assessment for the Drmno mine expansion, including on living conditions in the Drmno mine area and the need for resettlement;
- stakeholder engagement on the Drmno mine

expansion, consultations on resettlement, RAP development in a participatory manner;

- revision of the EIA for Kostolac B3: alternative solutions other than coal, 2017 LCP BREF standards including emissions to air, water, and soil; social impact assessment, health impact assessment;
- quarterly environmental monitoring in all areas of operation, with regards to air, water and soil factors and proactive public disclosure of monitoring results, for example on a dedicated section of EPS's website.

Notes

1. PSD: <http://www.ebrd.com/work-with-us/projects/psd/eps-emergency-power-sector-reconstruction-loan.html>
2. PSD says status is 'signed', while the board documents for the EPS Restructuring project says it is repaying: <http://www.ebrd.com/work-with-us/projects/psd/eps-power-ii.html>
3. PSD: <http://www.ebrd.com/work-with-us/projects/psd/eps-metering.html>
4. PSD: <http://www.ebrd.com/work-with-us/projects/psd/eps-kolubara-environmental-improvement.html>
5. PSD: <http://www.ebrd.com/work-with-us/projects/psd/eps-hydropower-plants.html>
6. PSD: <http://www.ebrd.com/work-with-us/projects/psd/eps-restructuring.html>
7. EBRD Board Document on the EPS Restructuring project, disclosed in redacted form by the EBRD upon Bankwatch request on 29.02.2016
8. Ibid.
9. EBRD Board Document for the EPS Restructuring loan.
10. Energy sector development strategy of the Republic of Serbia for the period by 2025 with projections by 2030, Page 41, Table 5.1. Potential projects for the new production capacities in electric energy sector: <http://www.mre.gov.rs/doc/efikasnost-izvori/23.06.02016%20ENERGY%20SECTOR%20DEVELOPMENT%20STRATEGY%20OF%20THE%20REPUBLIC%20OF%20SERBIA.pdf>
11. Media on Kovin, 2017 https://www.ekapija.com/news/1975323/kovin-ipak-dobija-podvodni-rudnik-uglja-i-termoelektranu-kinezi-i-dalje-zainteresovani&sa=D&ust=1524466938440000&usg=AFQjCNG2fzZFX8hH3XMRJwziko_NVh8A
12. <http://www.mre.gov.rs/doc/efikasnost-izvori/PROGRAM%20FOR%20THE%20IMPLEMENTATION%20ENERGY%20STRATEGY%20for%20the%20period%20from%202017%20until%202023.pdf>
13. Serbia's Second Report to the UNFCCC, page 15 with detailed list what they consider as climate mitigation measures: http://www.klimatskepromene.rs/wp-content/uploads/2017/12/Drugi-izvestaj-o-promeni-klime-SNC_Srbija.pdf
14. http://mmediu.ro/app/webroot/uploads/files/2017-02-22_EIA_Study_Project%20TPP%20Kostolac_New_Unit_B3.pdf, page 185
15. <http://eps.rs/En/Documents/yearreports/Godisnji%20izvestaj%202015%20english%20final.pdf>, page 39
16. <http://www.poslovnih.hr/svijet-i-regija/srbija-ulaze-stotine-milijuna-eura-u-rudnik-ugljena-i-novu-te-336016>
17. <http://www.rbkolubara.rs/>
18. https://www.unece.org/fileadmin/DAM/env/documents/2016/EIA/WG/ece_cp_teia_2016-9_report_of_36th_session_of_IC_e.pdf, page 10
19. https://www.unece.org/fileadmin/DAM/env/eia/documents/ImplementationCommittee/2017/IC_40/ece.mp.eia.ic.2017.6_advance_copy.pdf, page 11
20. http://www.ekologija.gov.rs/wp-content/uploads/procena_uticaja/Decision%20-%20Environmental%20Impact%20Assesment%20Study%20for%20the%20project%20for%20construction%20of%20a%20new%20block%20B3%20at%20the%20site%20of%20TPP%20Kostolac-vazece.pdf?lang=lat, page 3
21. Page 262 of EIA study available for download here: http://www.ekologija.gov.rs/wp-content/uploads/procena_uticaja/EIA_Study_Project_TPP_Kostolac_New_Unit_B3.rar?lang=lat
22. http://www.cekor.org/documents/pages/649_2.pdf