

**EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT**

**PROJECT COMPLAINT MECHANISM**

**ELIGIBILITY ASSESSMENT REPORT**

**COMPLAINT: EPS KOLUBARA ENVIRONMENTAL IMPROVEMENT PROJECT**  
**REQUEST NUMBER: 2012/04**

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## EXECUTIVE SUMMARY

On 17 August 2012, the Ecological Society “Vreoci” and the Council of Mesna Zajednica Vreoci<sup>1</sup> (Complainants) submitted to EBRD’s Project Complaint Mechanism (PCM) Officer a Complaint seeking a Problem-solving Initiative and Compliance Review regarding the EBRD loan to Serbia’s state-owned electric company, Public Enterprise Elektroprivreda Srbije, for the Kolubara Environmental Improvement Project (“Project”). The Project funds equipment intended to improve the efficiency and quality of coal from EPS’s open-pit mining operation in the Kolubara Basin, which generates lignite for EPS’s power plants in Serbia.<sup>2</sup>

The Complaint alleges the Bank failed to comply with EBRD policy by defining the Project scope and area of influence too narrowly, contrary to the terms of EBRD’s Environmental and Social Policy of 2008 (ESP). Consequently, Complainants argue EBRD’s assessment of the Project’s impacts improperly excluded environmental and social impacts on the settlement of Vreoci from the Client’s mining operation, as well as what they argue was insufficient consultation by the Client with the settlement of Vreoci in recent years. The impacts, they claim, include problems in properly resettling households and the local graveyard as set forth in EBRD’s Performance Requirements, which they maintain has left the settlement of Vreoci in a state of limbo, exposed to a lack of public services and significant pollution from mining operations in the meantime.<sup>3</sup>

**The PCM Eligibility Assessors find the Complaint does not satisfy the PCM criteria for a Problem-solving Initiative as set out under the Project Complaint Mechanism (PCM) Rules of Procedure (RPs).**

**The PCM Eligibility Assessors find the Complaint does satisfy the PCM Criteria for a Compliance Review of the Project as set out under the Project Complaint Mechanism**

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<sup>1</sup> At the end of 2012 local council elections were held in Mesna Zajednica Vreoci. Mr. Dragan Popovic was elected as the new Council President, replacing Mr. Zeljko Stojkovic, who signed the Complaint as President of the Council at the time the Complaint was submitted to the PCM. Although the composition of the Council has changed since the elections, the issues raised in the Complaint are very similar to those presented to the Client by the current President of the Vreoci Council as noted in the minutes from two meetings attended by representatives from the Council, the Company and others. In a meeting held on 2 February, 2013, the President of the Council submitted a list of eleven issues for discussion to the Deputy Director of MB “Kolubara”. The issues had been extracted from the Memorandum of Meeting (MoM) of the 5<sup>th</sup> LC Vreoci meeting dated 20.01.2013. Financing the work of LC Vreoci also appeared on the Agenda. See Minutes of the Meeting Held in the Company MB “Kolubara” on 08.02.2013 at 2-3. A subsequent meeting held on 13.2.13, included representatives from the Company, Council, and local utility company as well as the Mayor of the Lazarevac Town Municipality. The meeting focused on: 1) the water supply in the Community of Vreoci, 2) maintenance of the water supply network in Vreoci, and 3) payment and water supply issues in the district “Presek” of Vreoci. Minutes of the Meeting Held in MB “Kolubara” on 13.02.2013 at 1-3.

<sup>2</sup> Non-Technical Summary, Environmental Improvement Project at Kolubara Mine Basin (“NTS”) at 1.

<sup>3</sup> Complaint by “Vreoci” Ecological Society and the Council of “Mesna Zajednica Vreoci” to the EBRD’s Project Complaint Mechanism (“Complaint”) at 4 (arguing such impacts also violate the ESP’s Performance Requirements necessitating compliance with national and international laws and norms regarding resettlement).

(PCM) Rules of Procedure (RPs). In accordance with the criteria for eligibility, the Complaint alleges shortcomings in the process of assessing and mitigating environmental and social risks of the Project and describes potential harms as a result of these alleged violations.

Consistent with PCM Rules of Procedure, a Terms of Reference for a Compliance Review has been prepared and is included in the Report. The focus of the Compliance Review is whether or not EBRD complied with its own policy provisions. The PCM does not audit EBRD's clients; consequently, the PCM will not pose judgment on the performance of EBRD's client.



## **I Factual Background**

On 17 August, 2012, Vreoci Ecological Society and the Council of Mesna Zajednica Vreoci (together “Complainants”) submitted a Complaint through the PCM process with regard to EBRD’s loan to help finance the Kolubara Environmental Improvement Project in Serbia.

- 1) The Complaint was registered with the PCM Officer pursuant to PCM Rules of Procedure (RP) 10. Notification of registration was sent to the Complainants and Relevant Parties pursuant to PCM RP 12, and the Complaint was posted on the PCM website and listed on the on-line PCM Register, in accordance with PCM RP 13. PCM Expert Susan Wildau was appointed as an Eligibility Assessor to conduct an Eligibility Assessment of the Complaint jointly with the PCM Officer, pursuant to PCM RP 17.
- 2) Public Enterprise Elektroprivreda Srbije (EPS, or Electric Power Industry of Serbia – or “Client”), a state-owned public company and the largest company in Serbia, generates almost all of Serbia’s electricity. Its operations include lignite mining, generating electricity at its thermal power plants, and distributing and supplying the electricity throughout the country. Over half of EPS’s capacity of 7,120 MW is provided by six lignite-fired power stations supplied by two basins – Kolubara and Kostolac.<sup>4</sup>
- 3) The Kolubara Basin provides around 75 percent of the lignite used for EPS’s thermal generation. The Basin covers a surface area of approximately 1,200 square km<sup>5</sup>, and is located roughly 50km south of Belgrade.<sup>6</sup> Coal mining has taken place in the Kolubara Basin for well over 100 years, with open pits used for over 50 years.<sup>7</sup> The Basin produces over 30 million tonnes per year, which is supplied to the Nikola Tesla, and Morava thermal power plants (TPPs) on EPS’s railway system. The Basin’s open-cast mines are owned and operated by MB Kolubara, one of 11 subsidiaries of EPS.<sup>8</sup>
- 4) There are currently several fields in both the eastern and western parts of the Basin, some of which are active, others formerly active, and still others designated for future exploitation.<sup>9</sup> The settlement of Vreoci is located in the eastern section, toward the centre

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<sup>4</sup> NTS at 2; Complaint at 3.

<sup>5</sup> EPS Kolubara Environmental Improvement (41923) PCM – Management Response (“Management Response”) at 2.

<sup>6</sup> NTS at 1.

<sup>7</sup> Environmental Improvement Project at Kolubara Mine Basin Stakeholder Engagement Plan (“SEP”) at 2.

<sup>8</sup> SEP at 1.

<sup>9</sup> Complaint at 9; Management Response at 2, 9.

of the mining basin, between two of the large fields, Field D and Veliki Crljeni.<sup>10</sup> It is not disputed by the Complainants or Bank that the environmental situation in Vreoci is extremely poor.<sup>11</sup>

- 5) EPS is a long standing client of EBRD and the Project should be viewed in the context of previous and future loans to EPS, as part of a broader picture of investment assistance<sup>12</sup>. According to EBRD's Project Summary Documents posted on its website, a series of loans has been approved to EPS totaling hundreds of millions of euros to rebuild, restructure, and improve energy efficiency, including loans for improvements in the mining segment and in power generation<sup>13</sup>; and a future project involving the construction of a new coal-fired power plant is also under consideration<sup>14</sup>. In correspondence received from EBRD in July 2013, the Bank clarifies that this loan is (a) not to EPS, and (b) not presently under active consideration.
- 6) EPS applied to EBRD for a €80 million loan for equipment to modernise EPS's open-cast coal mining operations at the Kolubara Basin ("Project"). A parallel loan from KfW Bank in Germany is generating another €65 million for the Project, and the German government is providing another €9 million. The total cost is €154 million.<sup>15</sup>

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<sup>10</sup> Complaint at 10. See map, Management Response at 9.

<sup>11</sup> See Management Response at 2.

<sup>12</sup> Board Information Slide Presentation dated 12 July 2011 (EBRD Internal Confidential Document).

<sup>13</sup> According to EBRD's Project Summary Documents, five investments have been approved since 2001. The first loan was for emergency (post-war) reconstruction (EUR 100 million including for transmission, Category B, [www.ebrd.com/pages/project/psd/2001/17829.shtml](http://www.ebrd.com/pages/project/psd/2001/17829.shtml)). The second loan was in 2003 for modernisation of equipment to increase lignite production and increase efficiency of the power supply in Kolubara (EUR 50 million, co-financed with KfW, Category A, [www.ebrd.com/pages/project/psd/2002/27005.shtml](http://www.ebrd.com/pages/project/psd/2002/27005.shtml)). The third loan was in 2010 for smart metering in electricity distribution to improve demand side management and reduce losses (EUR 40 million, Category B, [www.ebrd.com/pages/project/psd/2010/40379.shtml](http://www.ebrd.com/pages/project/psd/2010/40379.shtml)). The fourth loan was for environmental and efficiency improvements in the mining segment and in turn power generation (up to EUR 80 million to be provided by EBRD. Co-financed with KfW, Category A, [www.ebrd.com/pages/project/psd/2011/41923](http://www.ebrd.com/pages/project/psd/2011/41923)). A fifth loan was approved by the Board in November, 2011, to rehabilitate 15 existing small hydro power plants across Serbia, and to add electricity generation capability to another seven existing dams, which will continue to be used for other water management purposes (EUR 45 million, Category B, [www.ebrd.com/pages/project/psd/2011/42421.shtml](http://www.ebrd.com/pages/project/psd/2011/42421.shtml)). EBRD is also providing technical cooperation funds for a variety of initiatives – e.g., providing €185,000 for auditing and improving occupational health and safety management for all EPS subsidiaries (2010-2011).

<sup>14</sup> According to the Project Summary Document for Kolubara B TPP, posted on EBRD's website, EBRD is in the preliminary stages of considering a sixth loan that involves financing the construction of the new 750 MW Kolubara B lignite fired power plant at the Kolubara B site next to the Kolubara Basin that would replace a number of obsolete power generation units in Serbia. Edison has been selected to construct, finance and operate. The Project Company (Client) is to be owned by Edison Spa (Italy) and Elektroprivreda Srbije (EPS). The Project would be the first significant private sector investment in Serbia's power generation sector (Cost to be determined, Category A, [www.ebrd.com/pages/project/psd/2012/43763.shtml](http://www.ebrd.com/pages/project/psd/2012/43763.shtml)).

<sup>15</sup> NTS at 1; Project Summary Document Kolubara Environmental Improvement Project; revised according to information received through correspondence with EBRD in July 2013.

7) The Project consists of three related components:

- a. A coal management system to improve efficiency and quality of the Client's operation in the Kolubara Basin. This equipment would allow it to analyse lignite online, control and manage lignite quality as it is excavated from different fields, and blend higher and lower qualities of coal to ensure that the lignite supplied to the power plants is of a proper, uniform quality.
- b. A coal excavator, conveyor and spreader system to open up a new area (Field C) in the eastern part of the Kolubara Mining Basin, where the lignite is of a higher quality. This would allow EPS to increase its output by blending lower quality lignite in the western region with higher-caloric-value lignite in the eastern part of the Basin.<sup>16</sup>
- c. A spreader system for the existing Tamnava West Field, which would allow for the separation and handling of lignite, inter-burden (layers of earth between lignite seams) and overburden (surface material covering the lignite).

8) The overall goals of the Project are to:

- a. Allow MB Kolubara to extract coal more efficiently and cleanly. According to the Client, lignite is currently discarded because it is mixed in with overburden and inter-burden, resulting in unnecessary waste and uncontrolled fires in overburden dumps due to spontaneous combustion of the waste.
- b. Enable MB Kolubara to supply power plants with more coal of a uniform quality. According to the Client, this will allow plants to operate in accordance with design parameters and lead to more stable and efficient operations, with fewer outages, in addition to allowing plants to stop using heavy fuel oil when lignite quality is low. Client claims this will result in lower levels of CO<sub>2</sub> and other emissions, as well as a more efficient and cost-effective operations.<sup>17</sup>

9) Based upon the Board Report dated 22 June 2011 (EBRD Internal Confidential Document) the Project is an essential enabling condition for the proposed Kolubara "B" lignite-fired power plant and more generally, for the success of IPPs in the power generation sector in Serbia (according to the Project Summary Document description of

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<sup>16</sup>NTS at 2-3. "The acquisition of a new ECS system (excavator, conveyor and spreader) for Field C that will allow lignite output to increase and the blending of higher calorific value lignite with lower-quality lignite – the lignite in the eastern part of the mining basin has a higher calorific value than the lignite in the western part. "

<sup>17</sup> SEP at 2.

the transition mandate).<sup>18</sup> However, in recent correspondence received from EBRD, it clarifies the only IPPs under active consideration in Serbia are in the hydro power sector and gas fired thermal generation.

- 10) Prior to EBRD's involvement in the Project, EPS and MB Kolubara engaged environmental consultants to prepare EIAs for the development of a new Field C and the expansion of the existing Tamnava West Field, in accordance with national and EU requirements. Public consultation and most of the land acquisition and resettlement was also completed in accordance with Serbian legislative requirements.<sup>19</sup>
- 11) As part of its due diligence, EBRD's environmental specialist conducted an "Initial Environmental and Social Examination" on 15-16 September 2010. EBRD determined that the project should be categorised "A,"<sup>20</sup> based on the nature and extent of its impacts.<sup>21</sup>
- 12) EBRD hired environmental and social consultants Ove Arup & Partners ("Arup") to review the existing documents and processes and carry out a "Gap Analysis Report" to identify additional requirements needed to meet EBRD's Policy and Performance Requirements. Arup also prepared a Non-Technical Summary (NTS), Stakeholder Engagement Plan (SEP) and an Environmental and Social Action Plan (ESAP). In addition, Arup reviewed documents that cover wider aspects of MB Kolubara's mining operations, including the Strategic Environmental Impact Assessment of the Spatial Plan for the Area of Kolubara Lignite Basin (2008).

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<sup>18</sup> Project Summary of Kolubara Environmental Improvement Project posted on EBRD's website with information about the proposed Project, at 1. "Institutions and policies that support markets – new private investors in the Serbian power sector. The Serbian generation sector remains state-dominated – the proposed IPPs are critical in introducing significant new private investment and paving the way towards a more diverse sector. The Project is an essential enabling condition for the success of these IPPs."

<sup>19</sup> Management Response at 4.

<sup>20</sup> Id. at 3-4.

<sup>21</sup> In its "Purpose" Section, the ESP explains: "EBRD categorises proposed projects as A/B/C/FI based on environmental and social criteria to: (i) reflect the level of potential environmental and social impacts and issues associated with the proposed project; and (ii) determine the nature and level of environmental and social investigations, information disclosure and stakeholder engagement required for each project, taking into account the nature, location, sensitivity and scale of the project, and the nature and magnitude of its possible environmental and social impacts and issues." ESP at 5, C(19). A proposed project is categorised as 'A' "when it could result in potentially significant and diverse adverse future environmental and/or social impacts and issues which, at the time of categorisation, cannot readily be identified or assessed and which require a formalised and participatory assessment process carried out by independent third party specialists in accordance with the PRs. An indicative list of Category A projects is presented in Appendix 1 to this Policy." ESP at 6, C(20). Category 'A' projects have included "(15) Large-scale peat extraction, quarries and open-cast mining, and processing of metal ores or coal;" and "(28) Projects which may involve significant involuntary resettlement or economic displacement." ESP Appendix 1, at 13.

- 13) In 2011 the ESAP was prepared for the geographic areas of Tamnava West and Field C on either side of the Basin, focusing on mitigation and monitoring measures required by the EIAs, resettlement for that area, and a number of health, safety and human resources issues. (In 2012, following Board approval, the ESAP was amended by EBRD and the Client, without further public consultation, to reflect progress made by the Client and to extend certain timeframes in the ESAP.)<sup>22</sup>
- 14) EPS posted the EIAs, NTS, SEP and ESAP on its website in Serbian and English on 2 March 2011. EBRD disclosed the project ESIA webpage, with links to the Client's website, at the same time. They were also made available in hard copy by the Client locally and in EBRD's Belgrade office.<sup>23</sup>
- 15) The EBRD Board of Directors approved the loan on July 26, 2011.<sup>24</sup>
- 16) Following Project approval, EBRD's environmental and social specialists conducted monitoring visits in August 2011, March 2012, and September 2012. They met with EPS in December 2011 to follow up on progress being made on issues it had agreed to address.<sup>25</sup>

## **II Steps Taken in Determining Eligibility**

- 17) The Eligibility Assessors have examined the Complaint to determine whether it satisfies the applicable eligibility criteria of the PCM Rules of Procedure. They checked the availability of the documents cited in the Complaint for the purposes of PCM RP 20c. They reviewed the Responses received from Bank Management and the Client as well as various Project documents produced by the Bank. In addition, they held separate in-person conversations with the Complainants, Environmental and Sustainability Department staff, Bank Operations Lead, and the Client.

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<sup>22</sup> NTS at 7; ESAP at 11; Complaint at 5.

<sup>23</sup> Management Response e at 4.

<sup>24</sup> Complaint at 4.

<sup>25</sup> Management Response at 4.

### III Summary of the Parties' Positions

#### Complainants' Position

- 18) Complainants are Ecological Society (ES) Vreoci, a local environmental advocacy group founded in 1991, and the Council of MZ (*Mesna Zajednica*, or “local community”) Vreoci, an elected body representing the settlement of Vreoci. The complaint was signed by the Chair of the Managing Board of ES Vreoci, Gordana Kulić, and President of the Council of MZ Vreoci, Željko Stojković.<sup>26</sup>
- 19) Complainants claim the Bank failed to follow its policies by improperly defining the Kolubara Environmental Improvement Project (“Project”). The Complainants contend that the Project scope and area of influence should be defined more broadly, beyond the isolated footprint of Fields C and Tamnava West where the EBRD-financed equipment will be located. They claim this Category A Project is part of a larger set of current and future investments linked to EBRD’s “broader investment programme” in MB Kolubara and the extension of the mining and power complex. They maintain the current project and its area of influence should not be looked at in isolation but rather defined according to a wider lens that justifies delineating the area of influence more broadly.
- 20) Consequently, Complainants maintain EBRD failed to consider what they argue are the associated environmental and social impacts of the Project as it relates to the settlement of Vreoci, and that EBRD failed to require adequate consultation with Vreoci stakeholders. They claim that the Bank’s funding of this Project will enable and exacerbate environmental and social harm to the residents of Vreoci from the Client’s mining in the Kolubara Basin.<sup>27</sup> Of these allegedly associated impacts, the principle concerns of Complainants are the environmental degradation, resettlement of Vreoci, and a declining quality of life punctuated by a notable lack of public services, as people await resettlement.
- 21) According to the Complaint, the Project exacerbates the environmental degradation of Vreoci over the last two decades from the Client’s operations in the Kolubara Basin, and EBRD inadequately considered and appraised these risks in light of its significant investment in Client’s operations since 2001. Complainants link not only the impacts of this Project, but also what they consider to be closely related impacts of Client’s operations in the surrounding fields on the settlement of Vreoci, to EBRD’s “broader

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<sup>26</sup> Complaint at 1-2.

<sup>27</sup> Complaint at 4-5, 33-36.

investment programme” in MB Kolubara. They believe all of these impacts should have been assessed and addressed by EBRD under Performance Requirement 3.<sup>28</sup>

22) In terms of environmental impacts associated with the Project, Complaints principally cite the degradation of air, water and soil from the open-pit mines. According to the Complaint the most important sources are the ash and slag dumping from the mines themselves; the industrial zone at the south edge of Vreoci that houses five companies associated with MB Kolubara where the coal from the mining sites is and will be processed; contamination from the wastewater treatment plant for the industrial zone; the dust from transporting the coal from the fields; and discharge from vehicles that transport the coal, as the railway junction and principal road for transporting coal from the mines are located just west of Vreoci. Complainants believe all of these impacts should have been included in EBRD’s Project assessment.<sup>29</sup>

23) Further, Complainants argue that the groundwater and hydrologically connected surface waters have been polluted from the open-pit fields, industrial zone and wastewater treatment plant, and that groundwater levels in Vreoci have been lowered because of the extensive mining, harming the well-water supply in Vreoci. They argue the Project fails to address the increased need for fresh water to be imported from outside the affected area.<sup>30</sup> Again, they argue these impacts were inadequately assessed and addressed in EBRD’s Project assessment process.<sup>31</sup>

24) Complainants point to a number of references in the EIAs for Field C that describe potential direct and indirect harm on Vreoci and argue these environmental harms were inadequately assessed and addressed under PR 1. These include impacts to Vreoci from transportation and processing of coal from Field C<sup>32</sup> and the effects from the mine

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<sup>28</sup> Id. at 5, 34.

<sup>29</sup> Id. at 11-12, 15, 17-18, 45.

<sup>30</sup> Id. at 37 (citing EIA Chapter 2: “The ‘Vreoci’ water supply system provides water for a part of the local population and the plants of Kolubara Prerada. The source consists of several drilled wells capturing water from various depths from three different hydro geological collectors. The source capacity in the present state amounts to 60 l/s. The source of this water supply system is jeopardized by the opening of the open cast mine (**Field C**) in this area”). The actual text that appears on page 25 of the EIA for Field C does not mention Field C by name. It states, “....The source of this water supply system is jeopardized by the opening of the open cast mine in this area”.

<sup>31</sup> Id. at 18, 37.

<sup>32</sup> Id. at 18-19; 36 (citing EIA Chapter 2: Description of the location planned for the Project implementation; and Chapter 3: Project Description).

expansion on Vreoci's water supply, particularly as Field C is located upstream of Vreoci.<sup>33</sup>

25) Complainants maintain that these repeated investments have significantly contributed to the intensification and ongoing extractive activities throughout the Kolubara Basin and the substantial extension of the mining and power complex, leading to vast environmental and social impacts on the settlement of Vreoci.

26) The Complaint claims the Bank promotes a climate-damaging approach to energy investments by enabling the expansion of coal-fired power plants in Serbia, contrary to the 2008 ESP.<sup>34</sup>

27) Complainants also believe EBRD's assessment process inadequately considered resettlement and relocation problems in Vreoci that they believe are associated with the Project, in light of EBRD's "broader investment programme" in the Client's mining operations.<sup>35</sup> There appears to be no question that Vreoci will be eventually resettled, given, as the Complaint describes, the significant amount of coal underlying the settlement and the government's support of the mine's expansion throughout the area.<sup>36</sup> However, Complainants argue EBRD has failed to address what they describe as Client's abandonment of commitments to resettle the people of Vreoci and the Vreoci graveyard under circumstances and timelines to which residents have agreed over the course of many years of discussions and negotiations with Client and various governmental entities.<sup>37</sup> The Complaint also claims inadequate compensation and benefits for displaced people under PR 5.30.

28) Specifically, Complaints point to the 2008 General Regulation Plan adopted by the City of Lazarevac and Client's *Programme Guidelines for the Relocation of the Settlement of Vreoci*<sup>38</sup>, claiming both are supported by Vreoci residents but that they have been "abandoned" by the Client, including the timeframe prescribed for collective resettlement and methodology for determining fair prices for expropriation purposes. They claim that

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<sup>33</sup> Id. at 36-37 (citing EIA, Chapter 2, describing how open-pit mining in the middle of the Basin "physically destroys the interseam aquifer, a greater part of the alluvial aquifer and disturbs the floor aquifer regime" and that "the source of this [Vreoci] water supply system is jeopardized by the opening of [Field C] in this area").

<sup>34</sup> Id. at 5-6, 34, 36 (citing PR 3).

<sup>35</sup> Id. at 33-36.

<sup>36</sup> Id. at 15.

<sup>37</sup> Id. at 25-33.

<sup>38</sup> Id. at 26.



under both plans, 688 households, or more than two-thirds of Vreoci, should have been settled by June 2012, but that fewer than 100 were resettled by that time, which they argue undermines the “collective identity” of the settlement in addition to harming those who remain. They contend that, in addition to the current property valuation process being unfair, the remaining residents are living in a state of limbo with significant mining activity and pollution surrounding the settlement, lack of public services such as sanitation and waste removal, restrictions on building, new prohibitions on burial in the local cemetery, sparse water availability, and other daily issues which they claim these documents were intended to avoid by prescribing a faster timeline for resettlement.<sup>39</sup> They argue EBRD has violated Performance Requirements 5, 10 and 1 regarding resettlement, meaningful stakeholder consultation, and adequate assessment and mitigation of environmental and social impacts associated with the Project.<sup>40</sup>

29) In addition, Complainants argue that the manner in which the cemetery was relocated is inconsistent with EBRD’s Performance Requirements and contradicts the expressed wishes of many Vreoci residents. Again, they point to the government’s General Regulation Plan, complaining the timeframe it prescribed for relocation has not been followed by the Client.<sup>41</sup> They describe the difference in methodology of counting existing graves and therefore difference in opinion about how many graves must be relocated.<sup>42</sup> They describe what they call “forced exhumations” without citizens being able to enter the cemetery and in a manner inconsistent with public health and cultural concerns. Again, they believe EBRD has violated Performance Requirement 10 related to meaningful consultation, arguing it has allowed the Client to abandon locally developed plans to exhume and relocate the cemetery (i.e., the Programme for Resettling the Settlement of Vreoci of 2007 and General Regulation Plan for Resettlement of Vreoci of 2008). They argue the exhumation and relocation has shown disrespect for the “deep concerns, values and emotions of survivors” and feelings of the deceased being “dishonored” and not “evidenced.”<sup>43</sup>

30) Complainants underscore linkages between this Project, EBRD’s broader investment programme and effects of the mine’s extension on the lives of the people of Vreoci, and the need for long-term engagement with stakeholders in Vreoci under the ESP. The

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<sup>39</sup> Id. at 32-33.

<sup>40</sup> Id at 25-36.

<sup>41</sup> Id at 32.

<sup>42</sup> Id at 31 (explaining dispute resulted in a not-yet-decided lawsuit against MB Kolubara).

<sup>43</sup> “Letter from MZ Vreoci to EBRD from July 5, 2011,” annexed to Complaint, at 1-3.

Complainants argue the Bank is required to look through a much wider lens in determining the requirements for stakeholder engagement, and argue this was insufficiently addressed in EBRD's appraisal process.<sup>44</sup> The Complaint claims that EBRD failed to require adequate consultation with Vreoci stakeholders with regard to resettlement, the relocation of the cemetery, social and environmental impacts, and the development and modification of the ESAP, among other concerns, during and subsequent to project preparation. They also claim the Project failed to include an effective community grievance mechanism.

### EBRD's Position

- 31) EBRD believes the Project was appropriately appraised and is structured to meet the requirements of the Bank's 2008 Environmental and Social Policy. EBRD argues it has not been established that the specific Project the Bank is financing will potentially cause environmental and social harm to the residents of Vreoci. It argues it is not "reasonable, practical or desirable" that the 'area of influence,' and thereby EBRD's accountability, be extended to include the Client's entire Basin-wide operations.<sup>45</sup>
- 32) EBRD claims the Project was adequately appraised under the 2008 ESP. EBRD explains the project appraisal was reviewed by Arup and found to be in line with Performance Requirement 1 and the ESP as a whole. EBRD maintains the Complaint mistakes environmental and social impacts from the Project with those from other long-terms environmental degradation due to EPS's mining and industry in the area of Vreoci, which it argues are outside the scope of this Project and not relevant to the environmental and social appraisal of this Project.<sup>46</sup>
- 33) EBRD believes it is unlikely the EBRD Project will result in significant environmental or social harm in Vreoci following disbursement of the loan. (As of November, 2012 it had not been disbursed.<sup>47</sup>) It notes the Project is located at least 8km from the community of Vreoci and will be subject to extensive environmental management and monitoring requirements. EBRD acknowledges the extensive historic environmental and social impacts from industry in Vreoci but argues these are due largely to the large open cast

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<sup>44</sup> Complaint at 6.

<sup>45</sup> Management Response at 1-2.

<sup>46</sup> Id. at 1.

<sup>47</sup> Id. at 3.

fields directly adjacent to the town, Field D and Veliki Crljeni, and to pollution from the town's industrial zone. Neither of these is being financed by EBRD.<sup>48</sup>

- 34) EBRD maintains the Project will not result in increased output from the mine but will allow EPS to blend lower quality lignite in the western region with higher-caloric-value lignite in the eastern part of the Basin.<sup>49</sup>
- 35) EBRD does not discuss how or to what extent it considered cumulative impacts from further planned development of the project or other sources of similar impacts in the geographical area.
- 36) EBRD has included EPS activities in Vreoci within its wider appraisal of EPS, including requesting EPS to commission independent audits of existing operations and review of EPS action plans, and engaging with the Client and Complainants to help assess and resolve disputes and communication gaps. Although EPS has committed to these audits, its timeline with EBRD has lapsed – the Bank is still waiting for EPS's management response to recommendations from an independent audit of the Client's eleven subsidiary companies completed in December, 2011 and presented to EBRD in March, 2012. EBRD claims these audits are broader than the scope of the Project and include all of EPS's operations across all its subsidiaries, including power distribution, thermal generation and hydropower generation. The audits are not required under the Bank's ESP.<sup>50</sup>
- 37) EBRD acknowledges that the Project will result in a number of environmental and social impacts, and maintains the ESAP addresses these issues:
- a. Arup reported that "Potential environmental impacts from the continued operation of the site include air and surface and groundwater quality, soil contamination and noise impacts. Key mitigation measures proposed include the introduction of appropriate water collection and treatment techniques, the prevention of dust generation by enclosure and wetting and the use of appropriately specified plants to reduce noise generation. There will be ongoing environmental monitoring of air and water quality, soil contamination and noise levels in the areas, and should issues arise, corrective measures will be implemented. Corrective measures would include spill response and clean up, additional damping down to prevent dust

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<sup>48</sup> Id. at 1.

<sup>49</sup> Correspondence from EBRD, July 2013.

<sup>50</sup> Id at 5-6.

generation and the provision of noise barriers should noise exceed specified levels.” and “Mitigation and monitoring measures as described in the EIAs including water and air quality, ecology and cultural heritage need to be implemented throughout the lifetime of the project. Plans to achieve this are more advanced for Tamnava West Field (for example in the Supervising Engineer’s Inception Report) and similar plans need to be developed, agreed, implemented and monitored for Field C.” The requirement for an Inception Report for Field C was included in the ESAP and it has been prepared by EPS.<sup>51</sup>

38) Regarding ambient issues, PR 3.16, EBRD reports that, according to Arup’s report:

- a. “Both EIAs described the ambient conditions (baseline) of the area on which the proposed mining activities may have an environmental impact. An assessment of the potential impact upon this baseline and measures to reduce those impacts are also described in subsequent sections.”<sup>52</sup>

39) Regarding Performance Requirement 3 related to greenhouse gases, EBRD argues one goal of the Project is to reduce CO2 emissions from its thermal power plants (TPPs), and that EBRD’s energy efficiency engineer estimated the CO2 emission reductions at the TENT A and TENT B power plants at approximately 200,000 tonnes per year.<sup>53</sup>

40) Regarding land acquisition and resettlement, EBRD believes this issue is outside the scope of the Project at issue. EBRD considers the concerns about resettlement in Vreoci and the exhumation and relocation of the local cemetery to be unrelated to this Project, as they specifically relate to MB Kolubara’s expansion of a separate field, Field D, adjacent to Vreoci. It states land acquisition and resettlement for Field C and Tamnava West was completed prior to the beginning of this loan period, though the Client plans to expand operations in Tamnava West in 2018.<sup>54</sup>

41) Although EBRD regarded these issues as outside the scope of the EBRD Project, it hired an independent Serbian social consultant organization to facilitate a discussion between the Company and the local groups and prepare a report. Following a meeting on 24 August 2011, attended by 11 local people, EBRD, its consultants, and EPS representatives, and a visit to the cemetery and to a waste water settling pond, the consultants issued a report, which was shared with the groups who attended the meeting.

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<sup>51</sup> Management Response at 6.

<sup>52</sup> Id.

<sup>53</sup> Id.

<sup>54</sup> Id. at 3.

The consultants concluded that it was difficult to untangle genuine grievances from personal agendas, that EPS appeared to be operating in line with Serbian legal requirements, and, at the same time, that EPS could improve its communication and engagement with the local community.<sup>55</sup>

42) EBRD describes proactive ‘capacity building’ activities and other efforts it has undertaken with local groups from Vreoci and with the Client to date, to address the significant challenges and guide the Client over more than a decade. It emphasizes its belief that these are voluntary, based on ‘good will,’ and not part of its obligations under the ESP.<sup>56</sup>

43) EBRD acknowledges the overall environmental situation in Vreoci is poor; the industrial zone in the town is a major source of air pollution, particularly the coal processing plant; that the ground water levels in the Kolubara area have lowered as a result of the extensive historical and on-going mining activities across the region. EBRD does not consider these impacts to be sufficiently related to the Project scope or area of influence.<sup>57</sup>

44) While EBRD acknowledges the existing problems, including the pollution from transporting the coal through Vreoci, it points to the absence of any evidence in the Complaint regarding how the Project at issue contributes to, or increases, such pollution.<sup>58</sup>

45) EBRD believes the physical distance (8km) between Field C and Vreoci is such that any impacts on local groundwater quality are insignificant. EBRD adds that Field D lies directly between Field C and the village and is older and deeper (70m) than Field C, thus attenuating any groundwater impacts. As for drinking water, it claims the Client operates part of the water supply system in the region and has told EBRD that all local residences have access to free piped water supplies but that water supplies are at times restricted due to summer drought, and that, because drinking water is free, the Client believes it is used inefficiently. Groundwater is used by some people for gardening but is not potable.<sup>59</sup>

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<sup>55</sup> Id. at 4.

<sup>56</sup> Capacity building initiatives and due diligence with the Client include the Tekon-Dekonta audits, the occupational health and safety technical cooperation project, the Kolubara Strategic Environmental Assessment and the Green Book of the Power Industry of Serbia. Id. at 2, 4, 7.

<sup>57</sup> Id. at 2, 7.

<sup>58</sup> Id at 7.

<sup>59</sup> Id at 7.

EBRD does not acknowledge the issue that Vreoci is downstream from the alleged water contamination at Field C, though presumably it believes this is mitigated by the presence of other fields in between.

- 46) EBRD does not specifically acknowledge Complainants' arguments regarding inadequate engagement of stakeholders in Vreoci.

#### Client's Position

- 47) Regarding resettlement, the Client, like Complainants, points to the General Regulation Plan and *Vreoci Village Resettlement Guidelines*, adopted respectively by EPS, the Serbian government and the local Village, as the basis for resettlement due to the expansion of the mine. According to Client, the 2002 census describes Vreoci as having 3210 inhabitants and 1088 households. It claims that, in the period up to 2010, 200 households with roughly 1000 inhabitants were resettled, and that 845 households with roughly 2000 inhabitants still need to be resettled. It states this will be completed by 2015, which it claims is within the schedule established by the above planning documents. According to Client, residents themselves have determined if they want to be resettled collectively and individually, and, contrary to Complainants' representations, that the majority have opted for individual resettlement rather than collectively to a single location – which it claims reflects the desire of multiple-generation households to spread out according to individual needs. Client claims compensation is determined based on independent court experts and the Tax Administration and/or based on agreements signed with Client.<sup>60</sup>

- 48) Regarding relocation of the cemetery, Client disagrees with Complainants' factual assessment of the number of graves in the Vreoci cemetery needing to be relocated, which it claims Complainants calculated based on the total number of deaths from the local public register rather than those recorded at the Vreoci cemetery. According to Client, all 4,450 graves registered at the Vreoci cemetery were relocated.<sup>61</sup>

- 49) In regards to the assessment of environmental impacts on Vreoci from air, water and noise pollution, Client does not address the Bank's compliance with its own environmental policies under the 2008 ESP. However, it defends its own compliance with

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<sup>60</sup> Letter from Client to PCM Expert, 3 March 2013, entitled "Answers to the Questions of the Independent Expert Engaged by EBRD from the Meeting Held with EPS – RB Kolubara representatives on 14 February 2013 Regarding the Vreoci Local Community Complaints Submitted under the Project Grievance Mechanism" ("March 2013 Client Letter") at 1-3.

<sup>61</sup> Id. at 3.

the ESAP, SEP and other obligations to the Bank, including regular reporting.<sup>62</sup> It points to recent air quality monitoring in the ‘Prerada Subsidiary Impact Zone’ and its consistency with EU standards, though it also acknowledges certain concentrations and particulate matter exceed air quality standards.<sup>63</sup> The Client also refers to conclusions in an EIA for Field D that air quality impacts of its ash and slag landfills are “very small.” With regard to water pollution, Client does acknowledge effluent limits in the Kolubara River from the wastewater treatment plant outlet exceeded acceptable standards.<sup>64</sup> Finally, regarding noise pollution, the Client points to studies that noise from night (as opposed to daytime) operations “slightly exceeds” national standards, though it notes most of the households in this zone have been relocated and all households have been compensated.<sup>65</sup>

50) Client acknowledges land degradation is the most significant impact from the open pit mines, though it claims all of this land will be reclaimed and rehabilitated after mining operations are concluded.<sup>66</sup>

51) Regarding public consultations, the Client lists the public environmental planning documents completed prior to the loan application and states that all studies were subject to public consultation and made available to the “relevant stakeholders.”<sup>67</sup>

52) Client claims it came to agreement with the newly elected Vreoci Local Council leadership on December 2013 (presumably it meant February 2013 or December 2012) regarding resettlement and adequate living conditions in the interim.<sup>68</sup>

## **IV Determination of Eligibility**

### Determination of Eligibility for a Problem-solving Initiative

53) The PCM Eligibility Assessors find the Complaint **does not satisfy the PCM criteria for a Problem-solving Initiative (PSI)** as set out under the Project Complaint

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<sup>62</sup> Id. at 3-4.

<sup>63</sup> Id. at 4-5.

<sup>64</sup> Id. at 5-6 (claiming levels that water quality impacts would have been higher but for the use of impermeable lining in former mining pits, and because of the humidity of the material reducing the blowing of particles).

<sup>65</sup> Id. at 7.

<sup>66</sup> Id. at 8.

<sup>67</sup> Id. at 4.

<sup>68</sup> Id. at 8; *but see* note 1 (minutes of February 2013 meeting).

Mechanism (PCM) Rules of Procedure (RPs). PCM PR 21 (a) notes “Where the Complaint raises issues appropriate for a Problem-solving Initiative, the Eligibility Assessors will also consider the following factors to determine eligibility: a. whether a Problem-solving Initiative may assist in resolving the dispute, or is likely to have a positive result...”. The Assessors conclude that, under present circumstances, a Problem-solving initiative is not likely to be successful. Among other factors, there was not a consensus among the parties about the value of a problem-solving dialogue. While the Complainant indicated some interest in mediated discussions with the Company, the Client claims it is working and communicating effectively with the newly elected Council of MZ Vreoci. Consequently, there is no breakdown in communication that requires third-party assistance and the PSI is not needed. The Client is therefore disinclined to participate in a Problem-solving Initiative with the Complainants. (It should be noted that the Complaint was submitted by the former Council of Vreoci and the Ecological Society of Vreoci. The current Council is not part of the Complaint.) Without the voluntary participation of the key parties involved in the Complaint, the Eligibility Assessors conclude a Problem-solving Initiative will not assist in resolving the Complaint or have a positive result.

#### Determination of Eligibility for a Compliance Review

- 54) The Eligibility Assessors have concluded the Complaint **is eligible for a Compliance Review** under PCM Rules of Procedure (RPs) 17-29.
- 55) The Complaint was submitted by the organisations Vreoci Ecological Society and the Council of Mesna Zajednica Vreoci.<sup>69</sup> The Complainants have standing to make the Complaint according to PCM RP 2, which provides that ‘one or more individual(s) or Organisation(s) may submit a Complaint seeking a Compliance Review’.
- 56) Under PCM RP 19a, the question of whether the issues in the Complaint “relate” to the Kolubara Environmental Improvement Project that was approved for financing by EBRD in July, 2011 is central to the Complaint’s eligibility for a Compliance Review. The Eligibility Assessors have carefully weighed a variety of factors and conclude the Complaint meets the threshold requirements and intent of PCM RP 19a to the extent necessary to be eligible for a Compliance Review. While a detailed review of the defined Project scope and area of influence is clearly beyond the scope of an Eligibility Assessment, these questions are implicated by the Complaint and deserve further

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<sup>69</sup> At the end of 2012 there were elections in Vreoci for the Council of Mesna Zajednica Vreoci. Mr. Dragan Popovic was elected as the new Council President, replacing Mr. Zeljko Stojkovic, who signed the Complaint as President of the Council at the time the Complaint was submitted to the PCM. Mr. Stojkovic remains the Deputy Director of the Vreoci Ecological Society. Interview with Complainants, February 12, 2013.



attention through a Compliance Review, as described in the Terms of Reference below. The following relevant policies and documents, taken together with the circumstances of the Project and its financing, inform the Assessors' conclusion.

***Complaint Relates to a Project***

- a. In EBRD's 2008 Environmental and Social Policy, "the term 'project' refers to the *business activity* for which EBRD financing is sought by the client *regardless of the type of EBRD operation*."<sup>70</sup>
- b. The President's Recommendation and the Board Report dated 22 June 2011 (EBRD Internal Confidential Documents) reference a coal management system for the whole Kolubara mining operation and conclude the project will improve the efficiency of mining operations in the Kolubara basin as well as the quality and uniformity of the coal produced and delivered to the power stations. The Board Report confirms the coal management system will analyze the coal as it is extracted from a variety of different fields and blended into a product that will meet the required standards of the power plants for quality and uniformity. It also confirms the project is a substantial investment in the basin aimed at improving the commercial and environmental performance of EPS's mining and power generation activities as well as enabling the implementation of the Kolubara B project and possibly the Nikola Tesla IPP.
- c. The Project Summary Document notes "The EBRD is considering funding a project to finance the purchase of ... (3) a coal management system for the whole of the Kolubara mining operations. The equipment, planned to be purchased if the project gets approval from the EBRD's Board of Directors, will improve the efficiency of EPS's mining operations at the Kolubara Basin and significantly improve the quality and uniformity of the lignite it delivers to its power stations."
- d. The Stakeholder Engagement Plan and Non-Technical Summary state "The proposed investment programme is for the modernisation of RB Kolubara's coal mining operations. The principal objectives...are to improve the RB Kolubara mining operations efficiency and significantly improve the quality and uniformity of the lignite it delivers to EPS' power stations. ...The Project consists of three closely integrated and interdependent components: ...This [coal quality management system] will allow RB Kolubara to perform online analysis of lignite quality as it is excavated from various different fields in the basin..."<sup>71</sup>

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<sup>70</sup> ESP 2008 at 5, C (17) (emphasis added).

<sup>71</sup> SEP at 2-3; NTS at 2.

- e. Also relevant to the Assessors' determination are the circumstances of this Project – e.g., a multi-site operation; a Category A project; a mining basin footprint that covers a surface area of 1,200 km<sup>2</sup>; a long-term relationship with EBRD leading to multiple Category A and B investments over twelve years and future plans for new projects; this Project representing the largest single investment made in the lignite mines; and a history of mixed social and environmental performance by the Client.

***Project area of influence***

- f. The 2008 ESP states “Environmental and social impacts and issues will be appraised in the context of the project’s area of influence. This area of influence may include one or more of the following, as appropriate:
- (v) Areas and communities potentially impacted by: cumulative impacts from further planned development of the project or other sources of similar impacts in the geographical area, any existing project or condition, and other project-related developments that can realistically be expected at the time due diligence is undertaken.
  - (vi) Areas and communities potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location. The area of influence does not include potential impacts that would occur without the project or independently of the project.”<sup>72</sup>

Further, “Through appraisal activities such as risk assessment, auditing, or environmental and social impact assessment, the client will consider in an integrated manner the potential environmental and social issues and impacts associated with the proposed project. The information gained will inform the EBRD’s own due diligence related to the client and project and will help to identify the applicable PRs and the appropriate measures to better manage risk and develop opportunities, in accordance with the applicable PRs.”<sup>73</sup>

- g. In defining stakeholders that could be affected by the Project, the Stakeholder Engagement Plan states, “Stakeholders have been identified for the preparation and operational phases of the proposed Project. They include groups that:
- Have an interest in the project and its operations;
  - Are affected by the Project;
  - Have the ability to influence or affect the project and its operations.

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<sup>72</sup> ESP 2008, PR 1.6.

<sup>73</sup> Id., PR 1.5.

Stakeholders could be individuals and organisations that may be directly or indirectly affected by the Project either in a positive or negative way, and who may wish to express their views.”<sup>74</sup>

- h. The Environmental Impact Assessment (EIA) for Tamnava West links the Tamnava West field to mine expansion in the Basin, Vreoci resettlement and potential harmful impacts on local residents and the wider environment. These included (1) insufficient communication with stakeholders; (2) shortage of funds for land acquisition; and (3) inadequate processes and funds for relocation and resettlement, affecting quality of life – both material and emotional – for those still in the area as well as those resettling to other locations.<sup>75</sup>
- i. The EIA for Field C discusses impacts on towns in the municipality of Lazarevac, in which the impact of the mining activities is the greatest. Table 2.9.a includes Vreoci on the list of the main population centres in the municipality of Lazarevac which does not imply impacts on Vreoci according to EBRD.<sup>76</sup> On the other hand, the Complainants claim that “*Chapter 2: Description of the location planned for the Project implementation / 2.10. Data on the existing economic and residential facilities and infrastructure and suprastructure facilities* confirms that Vreoci is the “the spatial-geographic and production node for the transport and processing of coal, through and across which all the coal produced in the future open pit Field C is going to be transported and processed.”<sup>77</sup> The EIA observes, “The biggest conflict occurring in the coal exploitation zones exists because of the necessity of the open cast mines progression on one hand and the development of the settlement existence on the other. The most important manifestations of this conflict are land occupation, relocation of settlements, public, production and utility facilities from the zones of mining activities.”<sup>78</sup>

57) As outlined in the summary of Complainants’ position, the Complaint describes the following environmental and social harm that they argue could result from the alleged policy violations, pursuant to PCM RP 19(b).

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<sup>74</sup> SEP at 12, Section 5.1 (“Stakeholder Identification and Plan for Further Consultation”).

<sup>75</sup> “Environmental Impact Assessment Study of the Project: ‘Supplementary Mining Design, Tamnava West Field,’” at 84, 108-109.

<sup>76</sup> Correspondence from EBRD, July 2013.

<sup>77</sup> Complaint at 36 (citing EIA Chapter 2: Description of the location planned for the Project implementation).

<sup>78</sup> Environmental Impact Assessment Study for the Project: “Coal Exploitation in the Open Cast Mine ‘Field C,’ for the Capacity of 5 Mil. Tons Annually, with the Excavation of the East Dump Site ‘Istocna Kipa’” at 31-32.

- Shortcomings in the process of assessing and mitigating environmental and social risks, and failure to require adequate consultation with Vreoci Stakeholders, could enable and exacerbate environmental and social harm to the residents of Vreoci from the Client's mining in the Kolubara Basin. Of primary concern are environmental degradation and delayed resettlement of Vreoci, and what Complainants describe as a declining quality of life punctuated by a notable lack of public services, as people await resettlement. Complainants argue this has and will undermine the "collective identity" of the settlement; promoted an unfair property valuation process that may have resulted in reduced compensation for some residents; contributed to a state of limbo existence for those residents awaiting resettlement with significant mining activity and pollution surrounding the settlement, lack of services such as sanitation and waste removal, restrictions on building, prohibitions on burial in the local cemetery, sparse water availability, and other issues which could have been avoided by following agreed-upon documents and Bank requirements.
- Degradation of air, water and soil from the open-pit mines could be exacerbated by the ash and slag dumping from the fields themselves; the industrial zone at the south edge of Vreoci that houses five companies associated with MB Kolubara where the coal from the mining sites is being and will be processed; contamination from the wastewater treatment plant for the industrial zone; the dust from transporting the coal from the fields; and discharge from vehicles that transport the coal, as the railway junction and principal road for transporting coal from the mines are located just west of Vreoci.
- Groundwater and hydrologically connected surface waters that allegedly have been polluted from the open-pit fields, industrial zone and wastewater treatment plant could be further contaminated; groundwater levels in Vreoci, which have allegedly been lowered because of the extensive mining, could be further reduced, harming the well-water supply in Vreoci without adequately meeting the increased need for fresh water to be imported from outside affected area.
- Impacts on Vreoci from transportation and processing of coal from Field C; and, given the mine's expansion, these could potentially affect Vreoci's water supply, particularly as Field C is located upstream of Vreoci.
- Emotional and cultural harm to people of Vreoci from allegedly inadequate relocation of Vreoci graveyard under circumstances and timelines to which residents have agreed over the course of many years of discussions and negotiations with Client and various governmental entities. Complainants argue EBRD's failure to require relocation of the cemetery in a manner consistent with EBRD's performance requirements and the expressed wishes of many Vreoci residents has and will cause

emotional pain and stress. The exhumation and relocation has shown disrespect for the “deep concerns, values and emotions of survivors” and feelings of the deceased being “dishonored” and not “evidenced.”

58) Pursuant to PCM RP 20(d), the following are relevant aspects of EBRD’s 2008 Environmental and Social Policy at issue in the Complaint:

- a. **PR 1.5 Environmental and Social Appraisal and Management:** “Through appraisal activities such as risk assessment, auditing, or environmental and social impact assessment, the client will consider in an integrated manner the potential environmental and social issues and impacts associated with the proposed project. The information gained will inform the EBRD’s own due diligence related to the client and project and will help to identify the applicable PRs and the appropriate measures to better manage risk and develop opportunities, in accordance with the applicable PRs. The appraisal process will be based on recent information, including an accurate description and delineation of the client’s business or the project, and social and environmental baseline data at an appropriate level of detail. The appraisal should also identify applicable laws and regulations of the jurisdictions in which the project operates that pertain to environmental and social matters, including those laws implementing host country obligations under international law (for example commitments related to land use planning and protected area management).”
- b. **PR 1.6** “Environmental and social impacts and issues will be appraised in the context of the project’s area of influence. This area of influence may include one or more of the following, as appropriate:
  - (v) Areas and communities potentially impacted by: cumulative impacts from further planned development of the project or other sources of similar impacts in the geographical area, any existing project or condition, and other project-related developments that can realistically be expected at the time due diligence is undertaken.
  - (vi) Areas and communities potentially affected by impacts from unplanned but predictable developments caused by the project that may occur later or at a different location. The area of influence does not include potential impacts that would occur without the project or independently of the project.”
- c. **PR 3 Pollution Prevention and Abatement**, namely requirements related to:
  - **Para. 6:** *EU Standards*

- **Paras. 10-11:** *Pollution prevention, resource conservation and energy deficiency*
  - **Para. 16:** *Ambient considerations*
  - **Paras. 17,19:** *Greenhouse gas emissions*
- d. **PR 4: Community Health, Safety and Security**, namely requirements related to :
- **Para. 11:** *Infrastructure and equipment safety*
  - **Para. 14:** *Hazardous materials safety*
  - **Para. 15:** *Environmental and natural resource issues*
- e. **PR 5: Land Acquisition, Involuntary Resettlement and Economic Displacement:**
- **Para. 30:** *Compensation and benefits for displaced persons*
- f. **PR 10: Information Disclosure and Stakeholder Engagement**, requirements related to:
- **Paras. 10:** *Stakeholder identification and analysis during project preparation*
  - **Paras. 15-16:** *Meaningful consultation - engagement during project preparation*
  - **Paras. 17-18:** *Disclosure and consultation on Category A projects – e.g., modifying the ESAP in 2012 without broader stakeholder participation*
  - **Paras. 21-22:** *Engagement during project implementation and external reporting*
  - **Para. 24-25:** *Grievance mechanism*
- g. **Purpose of Policy/EBRD's Commitment/Integrating Environmental and Social Considerations into the Project Cycle/Promoting Investments with High Environmental and Social Benefits, Including Working in Partnership with Others – in regards to sustainability and transition impacts:**

**Para. A.1:** “The EBRD is committed to promoting “environmentally sound and sustainable development” in the full range of its investment and technical cooperation activities pursuant to its constituent treaty, the Agreement Establishing the EBRD. The Bank believes that sustainable development is a fundamental aspect of sound business management... Therefore, EBRD's mandate to foster transition to market-based economies and promote private

entrepreneurship, and its commitment to sustainable development are inextricably linked... In addition, the Bank recognises that financing sustainable development must rank among the highest priorities of the EBRD's activities."

**Para. A.2:** "This Policy covers the environmental and social dimensions of sustainable development...The Policy outlines how the Bank will put into practice its commitment to promote environmental and social sustainability by:

- mainstreaming of environmental and social considerations into all its activities
- establishing for clients the environmental and social performance requirements that they will be expected to meet in a time frame acceptable to the Bank
- defining the respective roles and responsibilities of both the EBRD and its clients in achieving sustainable outcomes in line with the Policy and the performance requirements
- setting a strategic goal to promote projects with high environmental and social benefits."

**Para. B.3:** "The EBRD will seek to ensure through its environmental and social appraisal and monitoring processes that the projects it finances:

- are socially and environmentally sustainable
- respect the rights of affected workers and communities
- and are designed and operated in compliance with applicable regulatory requirements and good international practice....

The Bank's role is:... (iii) to help identify opportunities for additional environmental or social benefits; and (iv) to monitor the projects' compliance with its environmental and social covenants as long as the Bank maintains a financial interest in the project."

**Para. B.4:** "The Bank will enhance the assessment of transition impact of proposed projects to more explicitly reflect the systemic sustainable development dimension of transition and the benefits of a strategic approach in this area. Any EBRD-financed projects in pursuit of sustainable development objectives will be fully consistent with the Bank's transition mandate."

**Para. B.5:** "...The EBRD will build partnerships with clients to assist them in adding value to their activities, improve long-term sustainability and strengthen their environmental and social management capacity."

**Para. C.14:** "All EBRD-financed projects undergo environmental and social appraisal both to help the EBRD decide if an activity should be financed and, if

so, the way in which environmental and social issues should be addressed in planning, financing, and implementation. The EBRD's social and environmental appraisal is integrated into the EBRD's overall project appraisal, including the assessment of financial and reputational risks and identification of potential environmental or social opportunities. This appraisal will be appropriate to the nature and scale of the project, and commensurate with the level of environmental and social risks and impacts. The appraisal will ascertain whether activities to be supported by EBRD finance are capable of being implemented in accordance with this Policy and its Performance Requirements (PRs)...."

**Para. C.15:** "EBRD's environmental and social appraisal includes consideration of three key elements: (i) the environmental and social impacts and issues associated with the proposed project; (ii) the capacity and commitment of the client to address these impacts and issues in accordance with this Policy; and (iii) the role of third parties in achieving compliance with this Policy."

**Para. C.20** discusses the need for a participatory assessment process for projects classified as Category A. "A proposed project is classified as Category A when it could result in potentially significant and diverse adverse future environmental and/or social impacts and issues which, at the time of categorisation, cannot readily be identified or assessed and which require a formalised and participatory assessment process carried out by independent third party specialists in accordance with the PRs."

**Para C.28:** "The EBRD will require clients to structure projects so that they meet all applicable PRs. Central to this is a consistent approach to seek to avoid adverse impacts on workers, communities, and the environment, or if avoidance is not possible, to reduce, mitigate, or compensate for the impacts, as appropriate. The PRs also provide a solid base from which clients may improve the sustainability of their business operations."

**Para. E.45:** The EBRD will aim to develop a systematic approach to identifying opportunities for environmental and social improvements through its environmental and social due diligence and project appraisal, including environmental and social assessments or audits where appropriate. The identification of these opportunities will enable clients to incorporate measures to improve the projects' environmental, social, operational and economic performance as well as helping them to meet the EBRD's sound banking and transition impact criteria."



59) In the case of a Compliance Review, PCM RP 23 (a) requires the Eligibility Assessors to consider, among other matters, whether the Complaint relates to **actions or inactions that are the responsibility of the Bank**. The Complaint identifies a number of issues of alleged non-compliance with EBRD policy, as follows:

- A failure to properly define the Kolubara Environmental Improvement Project, i.e., defining it in an artificially narrow and isolated manner, contrary to the terms and intent of EBRD's 2008 ESP;
- A subsequent failure to adequately assess and address the Project's impacts, improperly excluding the environmental and social impacts of the Project on the settlement of Vreoci, and by implication, insufficiently defining the ESAP and SEP in a way that achieves compliance with the ESP;
- A related failure, for the same reason, to require adequate consultation with Vreoci stakeholders under the ESP.

60) Pursuant to PCM RP 23 (b), the Eligibility Assessors have concluded the alleged violations of EBRD's policies in the Complaint are more than technical. As discussed above, they relate to alleged failures to assess and mitigate potentially significant environmental and/or social impacts and to properly engage with key stakeholders. Such concerns cannot be considered only technical particularly in light of this being a Category A project.<sup>79</sup>

61) Although the Complaint is concerned about a lack of disclosure and consultation regarding aspects of the assessment, it does not allege a failure by the Bank to monitor Client commitments pursuant to Bank policy. Thus, PCM RP 23 (c) appears not to be relevant.

62) The allegations are specific to the Project, rather than concerning EBRD policies in general, thereby satisfying the mandate of PCM RP 24(e) that a Complaint cannot relate to 'the adequacy or suitability of EBRD policies'.

63) The Complaint seeks a Problem-solving Initiative and a Compliance Review. PCM RP 20 (a). Specifically, it requests the following outcomes pursuant to PCM RP 20 (b), which states a Complaint 'should also include, if possible ... an indication of the outcome(s) sought as a result of use of the PCM process.' As an outcome the Complainants are seeking:

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<sup>79</sup> ESP 2008, PR 10(17).

- a. Expansion of EBRD's definition of Project and area of influence to include environmental and social impacts on the settlement of Vreoci as part of EBRD's Project assessment process.
  - b. Suspension by EBRD of "all activities related to the Project loan until the process of resettlement/relocation of Vreoci is completely physically carried out."<sup>80</sup>
- 64) The Complaint includes correspondence to the Bank, starting in 2011. The Complainants have provided 'copies of correspondence, notes or other materials related to communications with the Bank or other Relevant Parties', thereby conforming with PCM RP 20(c).
- 65) Pursuant to PCM RP 22, the Eligibility Assessors have established that Complainants have made good faith efforts to address the issues raised in the Complaint by, in particular raising the issue with the Management of the Bank and with the Company. The Eligibility Assessors have considered the status of the dispute resolution procedures currently underway and have concluded that these recourses do not have any implications for the PCM proceedings.
- 66) The Complaint does not fall under any of the exclusion categories provisioned in PCM RP 24(a)-(d) and 24(f).
- 67) As required by PCM RP 25, the Assessors have considered the Complaint, the Bank's Response, the Client's Response, key documents such as the Project EIAs, the non-technical summary of the EIAs, the ESAP, the SEP, Board-related documents, meeting minutes between the current Council of Vreoci and the Client, the audit of the Kolubara mine that focused on environmental protection and occupational health and safety conducted by TEKON, correspondence between the Complainant and Bank and Client representatives, and relevant EBRD policies, [etc]. The PCM Assessors have also consulted with the Complainant, the Bank and the Client in the process of determining whether the Complaint satisfies the criteria for a Compliance Review under the PCM RPs.
- 68) Consequently, based on an evaluation of the eligibility criteria set out in the PCM RPs 18-24, and on the analysis of the relevant documents including the Complaint, Bank Response, Response by the Client and other relevant documentation submitted or referenced by the Bank, the Client or the Complainant, the Eligibility Assessors declare the Complaint **eligible for a Compliance Review**.

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<sup>80</sup> Complaint at 5.

## V Conclusion

69) The Complaint raises overarching policy questions, including the responsibility of EBRD for the accumulated impacts from projects funded by EBRD through multiple loans to a particular recipient. They include questions such as: ‘what is a project’; ‘what is the scope of a project’; ‘what is a project’s area of influence’; and ‘did the way in which the project was structured unreasonably reduce the obligations of the Bank with regard to appraising and addressing social and environmental impacts’? The answers to these questions carry significant implications for EBRD’s approach to appraisal and mitigation activities, meaningful stakeholder engagement, and the structure of the due diligence process itself (e.g., as a linear and sequential, versus iterative process.)

70) These questions should be examined in light of the particular circumstances associated with this Project:

- A long-term relationship with the Client of more than twelve years, resulting in multiple and connected investments. (Since 2001, 5 investments - both Category A and B projects, plus preliminary consideration of a 6<sup>th</sup>)<sup>81</sup>;
- A Project loan that represents the most significant investment in the lignite mines and an important part of EPS’s overall investment plan for its thermal power generation units;<sup>82</sup>
- EBRD requirements that have been applied on a project-by-project basis over its 12-year investment relationship with the Client, though EBRD has during this time undertaken “capacity building” efforts with EPS in what it considers to be proactive ways, rather than as mitigation requirements<sup>83</sup>;
- Environmental and social performance of the Client that has been characterised as ‘mixed’ by the Bank;
- EBRD’s characterization of the purpose of the funds to improve operations in the Basin-wide mining and power complex (e.g., ‘...to purchase and install a coal management system for the whole Kolubara mining operations);

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<sup>81</sup> The PSD for Kolubara B TPP listed on EBRD’s website notes that EBRD is at the preliminary stage of considering financing for a new lignite fired power plant in Serbia and describes the Client as “Project Company to be owned by Edison Spa (Italy) and Elektroprivreda Srbije (EPS).” In correspondence from July 2013, EBRD clarifies that there is no loan currently under ‘preliminary consideration’ with EPS.

<sup>82</sup> Board Report dated 22 June 2011 (EBRD Internal Confidential Document).

<sup>83</sup> See Management Response at 2.

- The geographic and industrial role of Vreoci and its industrial complex and its importance to many of the activities connected to the vast Kolubara mining operation and power complex, whose footprint covers an area of approximately 1,200 km<sup>2</sup>;
- The potential contribution of EBRD's on-going investments and investment in this case to the expansion of Client's mining and power complex, beyond the footprints of Field C and Tamnava West, and related intensification of extractive activities affecting the people of Vreoci;

71) The Compliance Review should assess whether and – if so, which – EBRD policy or policies may have been violated and if harm has been or may be caused due to action or inaction on the part of the Bank. In line with PCM RP 28(b), the Terms of Reference for a Compliance Review are set forth in the following section.

**COMPLAINT: EPS KOLUBARA ENVIRONMENTAL IMPROVEMENT  
PROJECT**

**Request Number: 2012/04**

**Terms of Reference (TOR) for the Compliance Review**

**Compliance Review Expert**

1. In accordance with PCM, RP 50, the PCM Officer recommends the appointment of Mr Glen Armstrong as an *ad hoc* Compliance Review Expert for this Compliance Review.
2. The Compliance Review Expert shall conduct the Compliance Review in a neutral, independent and impartial manner and will be guided by principles of objectivity and fairness giving consideration to, *inter alia*, the rights and obligations of the Relevant Parties, the general circumstances surrounding the Complaint and due respect for EBRD staff.

**Scope**

3. These Terms of Reference apply to any inquiry, action or review process undertaken as part of the Compliance Review, with a view to determining, as per PCM RP 36 if (and if so, how and why) any EBRD action, or failure to act, in respect of the Project has resulted in non-compliance with a relevant EBRD Policy – in this case Environmental and Social Policy 2008 – and, if in the affirmative, to recommend remedial changes in accordance with PCM RP 40.
4. These Terms of Reference are limited to reviewing actions or inactions by the EBRD in relation to the relevant EBRD policy, and do not cover any actions or inactions by the Client, Public Enterprise Elektroprivreda Srbije.
5. In conducting the Compliance Review, the Compliance Review Expert will examine any relevant documents and consult with the Relevant Parties. The Compliance Review Expert may also carry out a site visit, and employ such other methods as the Expert may deem appropriate, as per PCM RP 37.
6. Upon completion of the Compliance Review, the Compliance Review Expert will prepare a Compliance Review Report setting out his or her findings. The Compliance Review Report will include a summary of the facts and allegations in the Complaint, and the steps taken to conduct the Compliance Review, as per PCM RP 38.
7. Such processes shall be conducted in accordance with these Terms of Reference subject to modifications which the Compliance Review Expert and the PCM Officer may, at any time, expressly agree upon, except modification that may prejudice the interests of any Relevant Party or is inconsistent with accepted review practice.

8. The Compliance Review shall confine itself to the Compliance Review issues raised in the present Complaint.<sup>84</sup> It shall not go beyond the parameters of the Complaint to address other issues.

### **Time Frame**

9. The Compliance Review will commence when the Eligibility Assessment Report containing these Terms of Reference is publicly released and posted on the PCM website.
10. Every effort shall be made to ensure that the Compliance Review is conducted as expeditiously as circumstances permit and it is intended that it shall be concluded within sixty (60) Business Days of its commencement, within which period a draft Compliance Review Report will be prepared and sent to the Bank's Management, pursuant to PCM RP 41. However, the PCM Officer may extend this time period for as long as is strictly necessary to ensure full and proper implementation of the Compliance Review. Any such extension shall be promptly notified to all Relevant Parties.

### **Procedure: Identification of Core Compliance Issues**

11. As an initial step, the Compliance Review Expert will determine the precise requirements, in the specific context of the present Project, of each of the relevant provisions of the ESP and of the Performance Requirements contained therein, in respect of which non-compliance is alleged or implied in the Complaint. Relevant provisions of the ESP include ESP PR 1 (5-6), PR 3(6, 10-11, 16, 17, 19), PR 4 (11, 14, 15), PR 5.3, PR 10 (10, 15-16-18, 21-22, 25) A.1-2 (*Purpose*), B.3 - 5 (*EBRD's Commitment*), C (14-15,17, 20) (*Project appraisal process*), C.28 (*Performance Requirements*), E.45 (*Promoting investments with high environmental and social benefits*).
12. The Compliance Review process will examine the core questions of compliance raised in the Complaint, including (but without limitation):
  - a. Whether the Project, including its scope and area of influence, was adequately defined, according to the terms and intent of EBRD's Environmental and Social Policy of 2008, taking into account the exceptional circumstances noted in the EAR.<sup>85</sup>
    - i. Whether there are extenuating circumstances that would support taking a broader view of Project scope and its area of influence?
    - ii. Did EBRD properly define the Kolubara Environmental Improvement Project as an individual project with a discrete footprint in light of ESP requirements; or alternatively, whether the ESP Kolubara Environmental Improvement

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<sup>84</sup> Request No. 2013/02, EPS Kolubara Environmental Improvement Project.

<sup>85</sup> See Para. 68 in EAR above.

Project should, in practice, be assessed as part of a broader investment programme, linked to prior investments and possible future financing of a new TPP?<sup>86</sup>

- iii. Was the Project structured (e.g., in definition, scope, area of influence) in a way that unreasonably reduced the obligations of the Bank and Client with regard to appraising and addressing social and environmental impacts of the Project, contrary to EU EIA law and EBRD policy? This approach is sometimes referred to as ‘salami slicing’ whereby long-term projects are considered in a piecemeal fashion or structured in such a way that, whether unintentionally or otherwise, circumvents relevant environmental and social assessment standards. The Assessors make no judgment about whether this practice has occurred in this case, but suggest it is an appropriate issue for the Compliance Review as the issue is related to appraisal, mitigation and stakeholder engagement requirements noted in the Complaint.
- iv. Was the project definition adequately guided by the environmental objectives that EBRD’s Social and Environmental Policy seeks to serve?
- v. Whether EBRD’s rationale for defining the Community of Vreoci as not associated with and outside the area of influence of, the Bank’s investments, was reasonable and consistent with EBRD’s policies.
- vi. Whether EBRD exercised appropriate due diligence in its assessment and mitigation of social and environmental impacts on the Community of Vreoci.
- vii. Whether the Bank properly consulted Vreoci on the EPS Kolubara Environmental Improvement Project according to its relevant policies.
- viii. Was the Project assessment in this case consistent with EBRD’s transition mandate? Were other experiences of achieving sustainable development outcomes with the Client adequately considered by EBRD during its review process under the requirements of the ESP?
- ix. Whether the Bank properly considered the implications on greenhouse gases in its assessment (e.g., ESP paras. B.6, PR 1.7, PR 3.3, 3.17, 3.19)?

13. The scope of the Compliance Review also includes developing an understanding of the immediate and underlying causes for any non-compliance identified by the PCM.

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<sup>86</sup> According to EBRD internal documents reviewed by the Eligibility Assessors, this Project is an essential enabling condition for the proposed Kolubara “B” lignite-fired power plant that is to be constructed with Edison and is contemplated in the EIAs. EBRD is at the preliminary stage of considering financing for this power plant.

14. Any elements identified that are beyond the scope of the Compliance Review will be excluded.

**Procedure: Conduct of the Review**

15. The Compliance Review Expert may conduct the Compliance Review process in such a manner as she or he considers appropriate, taking into account the Rules of Procedure of the PCM, the concerns expressed by the Complainant as set out in the Complaint, and the general circumstances of the Complaint. Specifically, the Compliance Review Expert may:
- i. review the Complaint to identify the compliance issues to be included in the Compliance Review, specifically whether EBRD complied with its Environment and Social Policy 2008;
  - ii. review all documentation, including internal memos and e-mail exchanges relevant to the Complaint;
  - iii. consult extensively with EBRD staff involved in the Project, including personnel from the Bank's Environment and Sustainability Department, the Project Team Group, and the relevant EBRD Resident Office;
  - iv. solicit additional oral or written information from, or hold meetings with, the Complainant and any Relevant Party;
  - v. conduct a visit to the Project site to ascertain disputed facts accompanied by such officials of the Bank, the Complainant or his representatives, or the Client, or other persons, as he may consider necessary and appropriate;
  - vi. request the PCM Officer to retain additional expertise if needed;
  - vii. identify any appropriate remedial changes in accordance with PCM, RP 40, subject to consideration of any restrictions or arrangements already committed to by the Bank or any other Relevant Party in existing Project-related agreements;
  - viii. take any other action as may be required to complete the Compliance Review within the required time-frame.

**Procedure: General**

16. The Compliance Review Expert shall enjoy, subject to the provision of reasonable notice, full and unrestricted access to relevant Bank staff and files, and Bank Staff shall be required to cooperate fully with the Compliance Review Expert in carrying out the Compliance Review.



17. Access to, and use and disclosure of, any information gathered by the Compliance Review Expert during the Compliance Review process shall be subject to the Bank's Public Information Policy and any other applicable requirements to maintain sensitive commercial information confidential. The Compliance Review Expert may not release a document, or information based thereon, which has been provided on a confidential basis without the express written consent of the party who has provided such document.
18. The Compliance Review Expert shall take care to minimise the disruption to the daily operations of all involved parties, including relevant Bank staff.
19. Generally, all Relevant Parties shall cooperate in good faith with the Compliance Review Expert to advance the Compliance Review as expeditiously as possible and, in particular, shall endeavour to comply with requests from the Compliance Review Expert obtaining access to sites, submission of written materials, provision of information and attendance at meetings.

### **Compliance Review Report**

20. In accordance with PCM RP 38, the Compliance Review Report shall include a summary of the facts and allegations in the Complaint, and the steps taken to conduct the Compliance Review.
21. The recommendations and findings of the Compliance Review Report shall be based only on the facts relevant to the present Complaint and shall be strictly impartial.
22. If considered necessary following the Compliance Review, arrangements for monitoring and implementation of any recommended changes pursuant to PCM RP 40b shall be included in the Compliance Review recommendations.
23. Prior to submitting the Compliance Review Report to the Relevant Parties and to the Board in accordance with PCM RP 39, or sending the draft Compliance Review Report to the Bank's Management, in accordance with PCM RP 41, the Compliance Review Expert shall ensure that all factual information relating to the Relevant Parties is verified with them.

### **Exclusion of Liability**

24. Without prejudice to the privileges and immunities enjoyed by PCM Experts, the Compliance Review Expert shall not be liable to any party for any act or omission in connection with any Compliance Review activities undertaken pursuant to these Terms of Reference.

## Annex 1: Complaint

### ***Submission Via Electronic Mail***

17. August 2012  
Project Complaint Mechanism  
Attn: PCM Officer  
European Bank for Reconstruction and Development – EBRD  
One Exchange Square  
London EC2A 2JN, United Kingdom  
Email: [pcm@ebrd.com](mailto:pcm@ebrd.com)

### **COMPLAINT BY "VREOCI" ECOLOGICAL SOCIETY AND THE COUNCIL OF "MESNA ZAJEDNICA VREOCI" TO THE EBRD'S PROJECT COMPLAINT MECHANISM**

#### **PARTIES**

##### ***1. The Complainants***

**There are two organizations submitting this Complaint.**

**ES "Vreoci"** – Ecological Society "Vreoci" is an association founded in 1991. The main goals of ES "Vreoci" are: the improvement of environmental protection, education of citizens, especially young people, about the importance of preserving and protecting the environment, organizing activities supporting the rehabilitation of affected areas, as well as advocating for the acceptance of good practices regarding the use and preservation of natural resources and the proper treatment of waste material. The bodies of the association are the general assembly, the managing board and supervisory board. The office of ES "Vreoci" is in the Cultural Hall in Vreoci. [2]

Anybody who accepts the society's aims and statute can be a member. ES "Vreoci" finances its activities through membership fees, donations, gifts and other sources, and can obtain funds from sale of recyclable materials collected in environmental clean-up actions or from the products of educational workshops. The association has about 600 voting members. The managing board has 11 members, and the Chair of the board represents the association. The Chair of the board is Gordana Kulić. [2]

The largest actions of ES "Vreoci" so far were: the blockade of the railway line Vreoci–Obrenovac in 2003, demanding immediate improvement of environmental conditions in Vreoci, in which MZ Vreoci and almost all the inhabitants of the Vreoci (see below) participated; protests joined by MZ Vreoci and a large number of citizens (see below) to mark the beginning of the forced exhumation of the local cemetery, and other protest actions. These actions were recorded by the local and national printed and broadcasting media. [2]

**The Council of MZ Vreoci** is the only legal representative of the settlement of Vreoci and is part of the Lazarevac municipality, itself part of the City of Belgrade. The Mesna zajednica (MZ – Local Community) is prescribed by the Law on local administration as an obligatory element of the local administration. The purpose of MZs is "to satisfy the needs and interests of the local population in villages" (Article 72). The territory of Serbia is divided into units of local self-governments, each of these units has established a number of MZs in accordance with the size of its territory and number of inhabitants\*\* . [1], [2], [3]

The current Council of MZ Vreoci was elected in free elections held in December 2008 in accordance with the rules prescribed for local elections. The Council of MZ Vreoci has 15 members: two from the Socialist party of Serbia (SPS), two from the Democratic party (DS), two from the Serbian Progressive party (SNS), one from the Democratic party of Serbia (DSS), one from the Serbian Radical party (SRS), five from the Ecological Movement of Vreoci and two are independent. The mandate of the Council of MZ Vreoci is four years. The elected members of the Council of MZ Vreoci perform their tasks *pro bona*. The work of the Council of MZ Vreoci is financed from mandatory allocations from the budget of Lazarevac city municipality and from payments from RB Kolubara, which the company is obliged due to its activities on the territory of the MZ. The President of the Council of MZ Vreoci is Željko Stojković. [2], [3], [10]

## **2. Contact Information of the Complainants**

Ecological Society "Vreoci"  
Tel : (381-11) 814-5616  
Fax: (381-11) 814-4000  
Address: Diše Đurđevića 91  
Vreoci- Lazarevac 11550, Serbia

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\* The territory of the Republic of Serbia for political and administrative purposes is divided to (based on the size of the area):

- Autonomous Provinces (two – Vojvodina and Kosovo) [16];
- Development Regions (five – Vojvodina, Šumadija and West Serbia, South and Eastern Serbia, Kosovo and City of Belgrade) [17];
- Administrative districts (29 districts including, and 24 excluding Kosovo) [18];
- City of Belgrade [16];
- Cities (23 including, and 22 excluding Kosovo) and Municipalities (150 including, and 122 excluding Kosovo), as units of local self-government [16];
  - City municipality: just Cities have the right to form these for their internal purposes (at the present time they are formed only in two Cities: Belgrade and Niš) [18];
  - Local Office: any of the City/Municipality can establish offices for the provision of basic services, i.e. keeping registers, in appropriate local offices in settlements other than the central settlement of the City/Municipality (it includes one or more settlements out of the central settlement of the City/Municipality) [3];
  - Mesna zajednica (Local Community): any City/Municipality establishes an appropriate number of Local Communities in accord with the size of its territory, number of settlements on the territory and number of inhabitants (within the limits of construction land of the settlement which is headquarter of the City/Municipality it includes city quarters, for other settlements on territory of the City/Municipality it includes one or more cadastre municipalities; as a rule their area is smaller than area of Local Office) [3];
- cadastre municipality: basic unit of land division for the purpose of management of the real estate cadastre [16].

Council of MZ Vreoci (COUNCIL OF THE LOCAL COMMUNITY OF VREOCI)  
Address: Diše Đurđevića no. 91  
11550 Vreoci, Serbia  
e-mail: mzvreoci@neobee.net  
www.mzvreoci.org.rs  
TEL/FAX: +381 11 8144 000

**3. There is no representative making this Complaint on behalf of the Complainants.**

***4. Defendant – the Client of the Bank - Company sponsoring the Project***

**EPS** – Public Enterprise Electric Power Industry of Serbia (hereafter EPS) was formed by a Decision of the Government of Serbia on July 1, 2005. The basic task of the company is meeting all the electric power requirements of the economy and inhabitants of the Republic of Serbia. PE EPS is a vertically integrated company that has founded 12 subsidiaries, and 3 public enterprises in Kosovo. The Headquarters of EPS is in Belgrade. [4]

EPS's activities are: electric power generation, electric power distribution and distribution system management, electric power trade, coal production, processing and transport, steam and hot water production in combined heating processes, water power utilization and services in river and lake traffic, wholesale trade in fuel and similar products. EPS operations also include research and development, design, construction and maintenance of energy and mining plants, design, construction and operation of telecommunication facilities and engineering. [4] EPS is 100% owned by the Republic of Serbia. In 2011, EPS employed 33 851 people, as the largest company in Serbia. [4]

**MB Kolubara** – Mining Basin Kolubara Ltd (hereafter MB Kolubara) is a company formed by EPS on November 25, 2005. The basic task of the company is to supply power plants in Serbia with lignite for the production of electric power. The Headquarters of MB Kolubara is in Lazarevac. [5]

MB Kolubara's activities are: excavation of lignite, surface mining of lignite, processing of lignite (washing, drying and crushing), lithotomy for construction, extraction of limestone, raw gypsum, and chalk, extraction of gravel and sand, clay, quartz sand and extraction of other ores and stone. MB Kolubara is 100% owned by the Republic of Serbia. In 2011, MB Kolubara employed about 9 900 people. [5]

## **THE PROJECT – THE SUBJECT OF THE COMPLAINT**

On July 26, 2011 EBRD approved a project to provide up to € 80 million in a sovereign guaranteed loan to EPS for the **EPS KOLUBARA ENVIRONMENTAL IMPROVEMENT PROJECT at Kolubara lignite basin**. KfW Bank from Germany agreed to provide a parallel loan of € 60 million for the same Project. The estimated value of the Project is € 165.2 million. [11]

The Project consists of three closely interwoven and interdependent components:

- 1) An introduction of a coal quality management system on open cast mines in the western part of MB Kolubara. This equipment will allow MB Kolubara to perform online analysis, control and management of lignite quality as it is excavated from various different fields in the basin and blend higher and lower qualities to ensure that the lignite supplied to the power plants is of a uniform quality and within the required parameters;
- 2) Procurement and erection of a spreader in the open cast mine Tamnava West Field. This will allow for the selective mining of lignite, inter-burden and overburden;
- 3) The acquisition of a new ECS system (excavator, conveyor and spreader) for open cast mine Field C that will allow lignite output to increase and the blending of higher calorific value lignite with lower-quality lignite – the lignite in the eastern part of the mining basin has a higher calorific value than the lignite in the western part. [11]

## **CONTENT OF THE COMPLAINT**

ES "Vreoci" and the Council of MZ Vreoci hereby submit a complaint for both a Problem Solving Initiative and Compliance Review to the European Bank for Reconstruction and Development (hereafter: EBRD or Bank) Project Complaint Mechanism (PCM) in order to resolve the problems underlying the complaint and the policy violations by the Bank (EBRD) and by the Client (hereafter: EPS and MB Kolubara, both referred to as the Client) concerning long term mala fide, irresponsible project definition, non-compliance with relevant national and international policies and regulation regarding the resettlement of Vreoci, participation of stakeholders as well as the failures during project assessment to identify the legal risks of the Client's operations in relation to the EPS KOLUBARA ENVIRONMENTAL IMPROVEMENT PROJECT (hereafter: Project) in the Republic of Serbia.

The Environmental improvement project at Kolubara lignite basin belongs to Category A Projects pursuant to Items 14 and 28 from Appendix 1 of EBRD's Environmental and Social Policy (2008).

**The Complainants are requesting that the Bank suspends all activities related to the Project loan until the process of resettlement/relocation of Vreoci is completely physically carried out. This is the result of this Complaint, we hope to achieve.**

### **The Bank's failures**

**This project is part of a larger investment programme by the Client intended to expand mining activities - e.g. open pits, while the improvement of the environmental performance of the Kolubara mines is secondary. As such,** the very existence of the Project provides additional benefits to the Client by strengthening its internal power to achieve lower costs in negotiations with individual households for land acquisition. [28]

**In the Project Summary Document it is stated that: "Land acquisition and resettlement was substantially completed in 2008 in line with EBRD policy and Serbian legal requirements. "**

Within the EBRD's due diligence process the Bank has failed to identify the legal risks of the Client's operations, especially those related to land acquisition and resettlement. Moreover, the Bank requested the Client to produce documents that will enable it to meet the Bank's environmental and social requirements. These documents should have been developed in a consultative process with all stakeholders, and far before the project approval by the Board, however this was not so in reality. Some of the documents have been changed, like the Environmental and Social Action Plan issued on 25<sup>th</sup> February 2011 and revised by the EBRD and EPS RB Kolubara on 5<sup>th</sup> March 2012, while the relevant local stakeholders haven't participated in the process.

- 1.** The EBRD Project appraisal of the Project submitted by the Client fail to comply with the Performance Requirements 1: Environmental and Social Appraisal and Management, namely: they fail to comply with the requirements defined in *Environmental and social appraisal*, para. 5, which is explained and discussed below in the section "5. Policy of MB Kolubara and EPS regarding Vreoci: Expansion of open pit mines as the only objective of the EBRD-financed Project ", in the Explanation of this complaint.
- 2.** The EBRD Project appraisal of the Project submitted by the Client fail to comply with the Performance Requirements 3: Pollution Prevention and Abatement, namely:
  - it fails to comply with the requirements defined in General, paragraph 6;
  - it fails to comply with the requirements defined in Pollution prevention, resource conservation and energy efficiency, paragraphs 10 and 11;

- it fails to comply with the requirements defined in Ambient considerations, paragraph 16;
- it fails to comply with the requirements defined in Greenhouse gas emissions, paras. 17 and 19, which is explained and discussed below in the section "5. Policy of MB Kolubara and EPS regarding Vreoci: Expansion of open pit mines as the only objective of the EBRD-financed Project ", in the Explanation of this complaint.

### **The Client's failures**

**The long-term practice and the current practice of the Client is failing to comply with the following Performance Requirements of the EBRD's Environmental and Social Policy:**

1. The Client's operational practice contradicts Performance Requirement 4: Community Health, Safety and Security, namely:
  - it fails to comply with requirements concerning community health and safety defined in the Section *Infrastructure and equipment safety*, paragraph 11, in the Section *Hazardous materials safety*, paragraph 14, and in the Section *Environmental and natural resource issues*, paragraph 15, which is explained and discussed below in section "2. Environmental pollution in Vreoci", in the Explanation of this complaint.
2. The Client's operational practice contradicts Performance Requirement 10: Information Disclosure and Stakeholder Engagement, namely:
  - it fails to comply with the requirements concerning Engagement during project preparation defined in Section *Meaningful consultation*, paragraphs 15 and 16, and in the Section *Disclosure and consultation on Category A projects*, paragraphs 17 and 18;
  - it fails to comply with requirements defined in *Engagement during project implementation and external reporting*, paragraphs 21 and 22;
  - it fails to comply with requirements defined in *Grievance mechanism*, paragraph 25, which is explained and discussed below in the sections "2. Environmental pollution in Vreoci", and "4. Policy of MB Kolubara and the EPS regarding the settlement of Vreoci: Threats to the settlement of Vreoci from the expansion of open pit mines", in the Explanation of this complaint.

3. The Client's current practice contradicts Performance Requirement 5: Land Acquisition, Involuntary Resettlement and Economic Displacement, namely:

- it fails to comply with and is contrary to the requirements defined in *Compensation and benefits for displaced persons*, paragraph 30, which is explained and discussed below in the section "4. Policy of MB Kolubara and the EPS regarding Vreoci: Threats to the settlement of Vreoci from the expansion of open pit mines", in the Explanation of this complaint.

## E X P L A N A T I O N

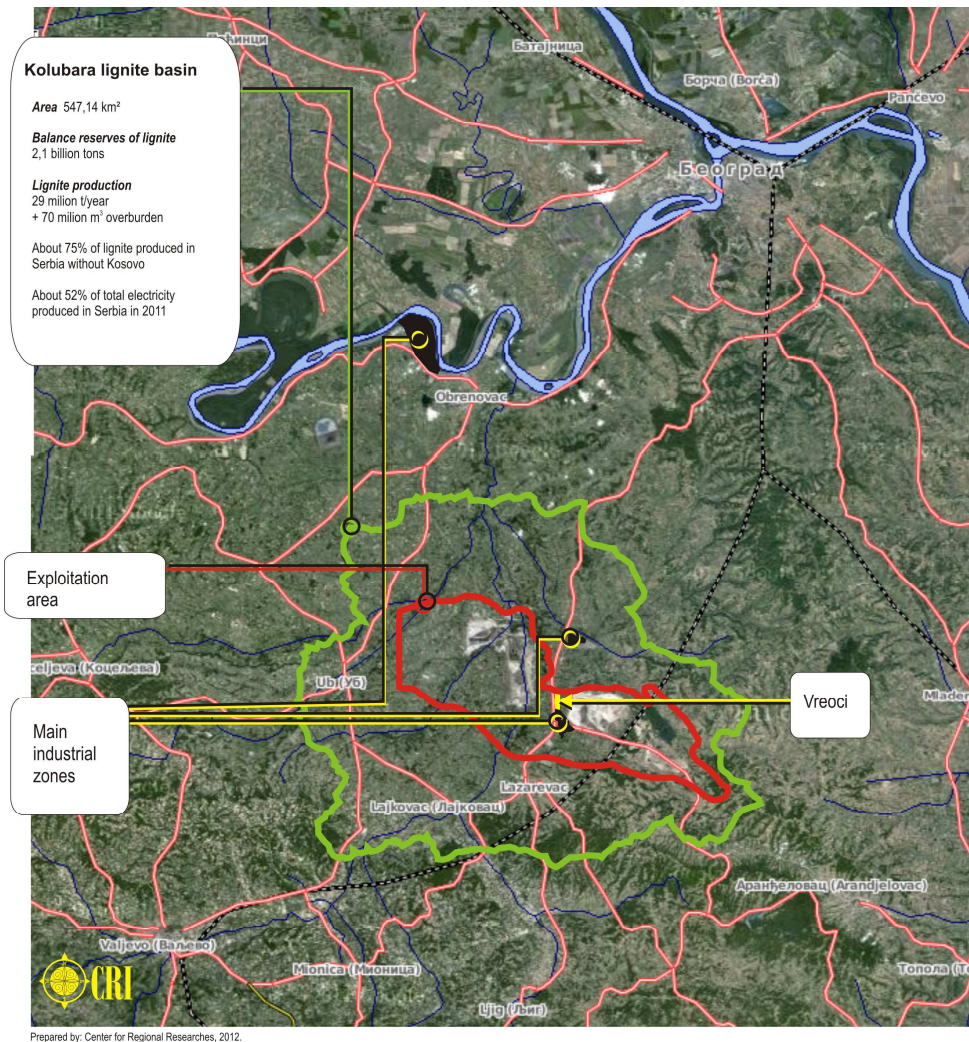
### 1. Kolubara mine basin and Vreoci – Topography and importance

**The Kolubara lignite basin** is located 50 km southwest of Belgrade in the basin of the river Kolubara. Kolubara lignite basin is part of peri-Pannonian region and is dominantly a lowland, with average elevation of 205 m, laying on mild hills and alluvial plains of river Kolubara and its tributaries (Turijska, Peštanska, Tamnava and others). Basin area is 547,14 km<sup>2</sup>. Land around the basin is very suitable for agriculture, 87% of it is agricultural land. [8]

River Kolubara is a tributary of the river Sava and belongs to medium-sized rivers in Serbia, with length of the watercourse of 123 km. Almost the entire Kolubara river is lowland river with no hydro-energetic potential. Kolubara river basin's water regimes are characterized by extreme variation – merely 1/3 of water basin originate from river sources, while 2/3 originate of torrential flood waves, which means that most of the water passes through the basin as flood waves in spring and winter, while the water level in the vegetation period is very low. [8]



Map 1: Kolubara lignite basin



It is cut by two strategic transportation routes along the central axis following the course of the Kolubara in a north-south direction: the principal road from Belgrade to Čačak and Bosnia and Herzegovina, Montenegro and Kosovo (I grade State road M 22), and the railroad Belgrade–Bar, the only railroad that connects Serbia and Montenegro. A number of regional roads pass through the basin, of which the most important section is Stepojevac–Vreoci–Lazarevac (II grade State roads R 201 i R 203). [8]

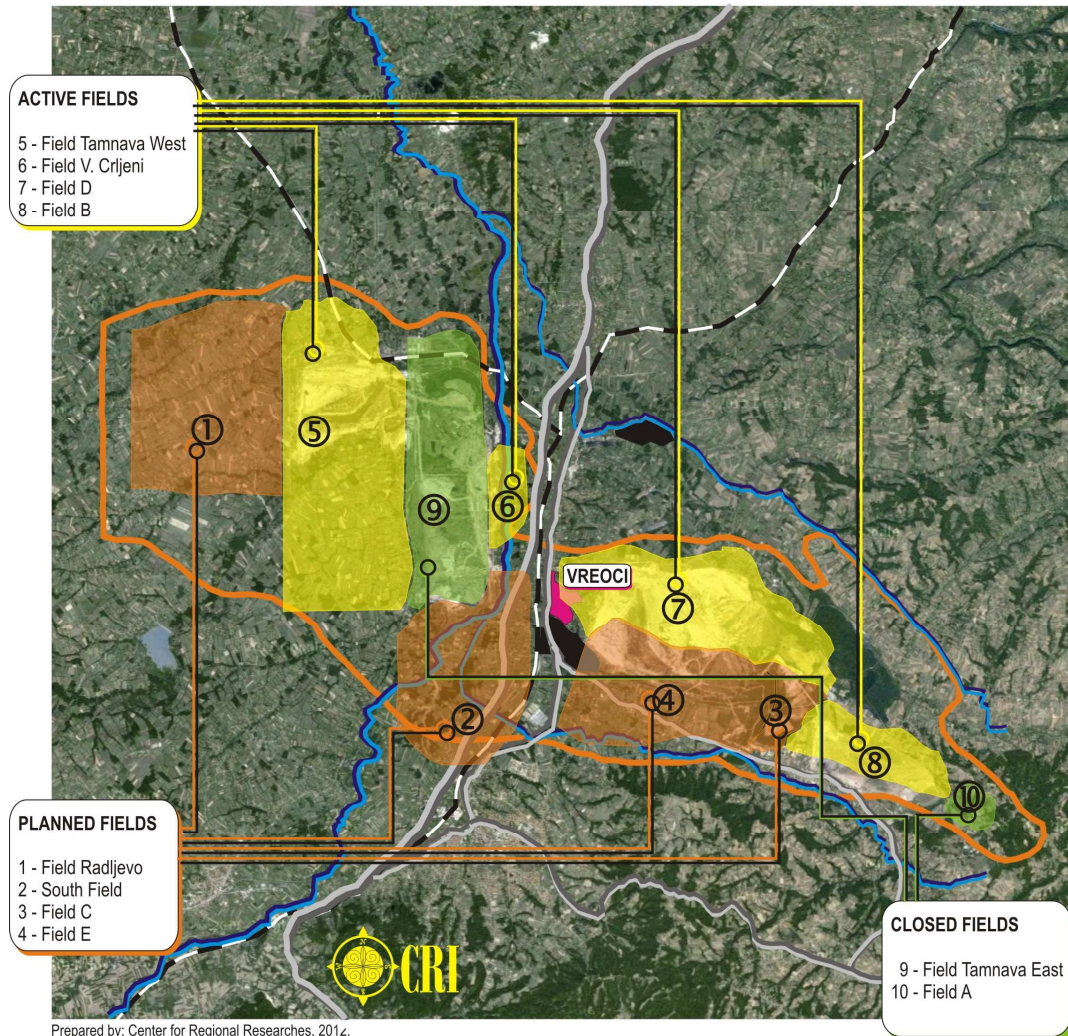
Kolubara lignite basin is widely considered to have exceptional strategic importance for Serbia. Officially, nearly 99% of balance reserves are based on lignite along with a small amount of brown-lignite coal. The total geological reserves of the Kolubara lignite basin are slightly over three billion tonnes of lignite, of which approximately 2.1 billion are balance reserves certified by the State Committee of the Ministry of Mines and Energy. The volume of coal production in the basin is at a stable level of around 29 million tonnes of coal annually, which amounts to 75% of coal produced yearly in Serbia without Kosovo. This production is followed by about 70 million cubic tonnes of overburden. Most of the lignite from the Kolubara lignite basin - some 90% - supplies the TPP Kolubara in Veliki Crljeni, TPP Nikola Tesla in Obrenovac and TPP Morava in Svilajnac, with a total capacity of about 3,100 MW, while the remaining part is processed for industrial and consumer purposes. Although the energy value of lignite is low (on average 7500 kJ/kg, with a high percentage of water and ash), about 52% of the 36 050 GWh total electricity produced in Serbia in 2011 was produced on the basis of the Kolubara mine lignite. [5], [4], [8]

**The exploitation area of Kolubara lignite basin** covers 133.9 km<sup>2</sup>, of which 51.14 km<sup>2</sup> or 38.2% of the area is used for mining purposes. The exploitation area is about 25 km long and 2 to 8 km wide. It covers the territory of two municipalities, Ub and Lajkovac, belonging to the Kolubara district, and two City municipalities, Lazarevac and Obrenovac, belonging to the City of Belgrade, as a part of Metropolitan Area. The most important part of the exploitation area is located on the territory of the Lazarevac cLazarevac. [8]

The Kolubara river divides the exploitation area into eastern and western parts. The eastern part of the area is located between the river Turija in the north, Peštan in the south and Kolubara in the west and is divided into five fields. One of these fields was closed (Field A), two are active fields (open pit mines on Field B and Field D) and two fields are designated for future exploitation (Field C and Field E). The western part of the area is located between the Kolubara river in the east and the rivers Tamnava and Ub in the northwest and is also divided into five fields. One of these fields was closed (Tamnava East Field ), two are active fields (open pit mines Tamnava West Field and Veliki Crljeni Field ), while two fields are designated for future exploitation (Radljevo Field and South Field). [8], [5], [11]

The thickness of the coal seam in the exploitation area varies between 2–10 m at the edges up to 25–45 m at the central parts of the area, and at some locations up to 100 m, which is why the depth of every pit is very different. The ratio of coal and overburden ranges from 1:1 to 1:10, depending on the depth of the coal. Coal is found at an average depth of 20–22 m, which explains the usage of open pit technology. [8], [1]

**Map 2: Exploitation area of Kolubara lignite basin**



Coal mining in Kolubara mine basin has begun in 1896. Open pit mining began in 1952. End of coal mining in the Kolubara mine basin is planned after the year 2060. [5], [8]

**The centre of the exploitation area of the Kolubara lignite basin is in Vreoci.** Vreoci is a twofold centre of the area. Firstly, Vreoci is the physical and natural centre of the exploitation area,



at the junction of the eastern and western part of the area. Communication of personnel and equipment between the two parts of the exploitation area is possible only through Vreoci. [7], [8]

Secondly, in Vreoci the industrial hub of the exploitation area of Kolubara lignite basin is located. The largest industrial-transportation zone of the basin area, covering 272 hectares, is located at the southern part of the settlement. About 7 km north of Vreoci in the settlement of Veliki Crljeni is the second major energy-industrial zone, covering an area of about 250 hectares, where TPP Kolubara and company Kolubara Universal (rubber processing and manufacturing of conveyor belts with steel cords and textiles, for the operation of equipment for open pit mines) are located. At about 7 km south of Vreoci lays the city district of Lazarevac, population of 30 000, where the most of the employees in the Kolubara mine basin live. To the west of Vreoci is the railway from Belgrade to Bar and Montenegro. About 500 m further west of the railway the principal road from Belgrade to Čačak (I grade State road M 22) passes, while the regional road Stepojevac–Vreoci–Lazarevac (II grade State roads R 201 i R 203) passes through Vreoci. The Kolubara river is located west of Vreoci at about 1.5 km. [8], [7]

**The industrial and transportation zone in Vreoci**, one of the largest in Serbia, covers 272 ha. It is located on the southern edge of Vreoci on the way to Lazarevac. Construction of the zone started in 1956 by building a plant for drying lignite and the zone was continuously expanded until 1986. The zone now has around 5,500 employees, much more than population of Vreoci. The zone comprises five companies associated with MB Kolubara: Kolubara Metal (production, repair and installation of equipment and machines for production and processing of coal, 2,800 employees); Kolubara Prerada (processing and refining of coal from surface mines, 1,800 employees); Kolubara Ugostiteljstvo (preparation of meals for 16 000 employees per day, 500 employees); Kolubara Promet (purchase and sale of coal for household consumption, 300 employees); and Xella Serbia (production of light gas concrete blocks, 100 employees). Finally, Vreoci is the key point of communication for about 8,000 employees in the open pits, from a total of 10,000 employees in MB Kolubara. [2], [8]

Kolubara Prerada occupies the largest area in the zone, and has crucial importance in the production of lignite. For the excavation of coal a system of bucket wheel excavators is used. After the removal of overburden, which is deposited to dumps by a tape system, the excavation of the layers of coal follows. Part of the coal is conveyed by conveyor belts to the processing plants, while most of it is loaded directly onto trains for the power plants. The processing plants are in Kolubara Prerada, which has an area of 207 ha and includes facilities for: dry separation (crushing and grading of raw coal in three phases); processing and refining of coal (wet separation, in which coal is washed and tailings extracted); drying and classification; heating, for the entire industrial zone and for Lazarevac; and rail transport of coal for the thermo power plants. For industrial and

consumer use Kolubara Prerada produces around 750 000 tonnes of crushed raw coal and 700 000 tonnes of dried coal annually [5]

A railway junction, with a total area of 18 ha, which is connected with the main railroad Belgrade–Bar is part of the industrial zone in Vreoci. Beside the main railroad the railway line for the transportation of coal for Veliki Crljeni (TPP Kolubara) and Obrenovac (TPP Nikola Tesla) also passes the industrial zone in Vreoci. Also, Vreoci is the terminal point of the narrow-gauge railway Vreoci–Rudovci, which transports coal from Field B. The railway junction has eight tracks and within it, in addition to passenger and freight stations, is the marshalling yard for arranging of transport trains for coal to thermal power plants. Several additional tracks serve for the needs of the crushing plant, drying and classification of coal, as well as for maintenance of all facilities and delivery of parts and equipment. [7], [8]

On the southwest side of Vreoci, between the railroad and principal road, is a wastewater treatment plant (WWTP) for all wastewater from the industrial zone. Several high-power facilities pass through and around Vreoci: two main power lines of 110 kV, and several buildings, required for power distribution and operation in the industrial zone, with voltages of 6 kV to 110 kV. [2], [8]

The settlement of Vreoci is completely enclosed on three sides by the mining and industrial facilities and buildings. From the south it is closed by the industrial zone and wastewater treatment plant. To the east and southeast of Vreoci is the open pit mine Field D, on the very edge of the settlement. To the west are the railway and principal road and the space designated for the future open pit mine South Field. Further to the west and northwest of Vreoci are the river Kolubara and open pit mine Veliki Crljeni. [7], [8]

**The settlement of Vreoci** is the biggest settlement in the city municipality of Lazarevac after the town of Lazarevac itself. Lazarevac is one of 17 City municipalities of City of Belgrade, part of its Metropolitan Area, area of 389 km<sup>2</sup>, with population about 60,000, from which around 30,000 is in town Lazarevac. [1], [8]

The economies of both Lazarevac and Vreoci are completely dependent on mining, energetic and related activities. Traditionally, every municipality and settlement in the exploitation area of the Kolubara lignite basin has been undeveloped and small, with no industrial tradition, except in energy and mining, where aside from mining agriculture is the dominant economic sector. Therefore, Lazarevac is most closely associated with the lignite basin and with MB Kolubara. Of 33 settlements in the city municipality, nine are located in the exploitation area of Kolubara lignite basin (Vreoci, Prkosava, Rudovci, Mali Crljeni, Veliki Crljeni, Baroševac, Zeoke, Medoševac i Cvetovac), bearing all the consequences of being located like that. [1], [8]

The area of Vreoci cadastral municipality is 1879.00 ha (approximately 19 km<sup>2</sup>), but the area remaining free of open pits is much lower, 1016 ha. The urbanized area of the settlement is about

200 ha. As a result of industrialization, Vreoci has been shaped as a linear structure along the road Stepojevac–Lazarevac. The urbanization of the settlement is directly linked with the development of the industrial zone on the exit from Vreoci towards Lazarevac. [8]

Vreoci is an old settlement. The first written record of Vreoci dates from 1528, from the Turkish census of the Belgrade district. The keeping of civil registers in Vreoci began in 1837, and an elementary school was opened in 1844. According to the 2002 census, 3210 residents lived in 1088 households in Vreoci. Most of the economically active population, 60%, is engaged in mining and industry, while only 5.4% is in agriculture. [2], [7]

Social functions present in Vreoci are the local office and MZ, located in the Cultural Hall, together with other (sport, ecological, cultural and other) associations, as well as the elementary school, post office and a clinic with a pharmacy. Vreoci has its own church and graveyard. [7]

**Map 3: Social functions in Vreoci and its industrial zone**

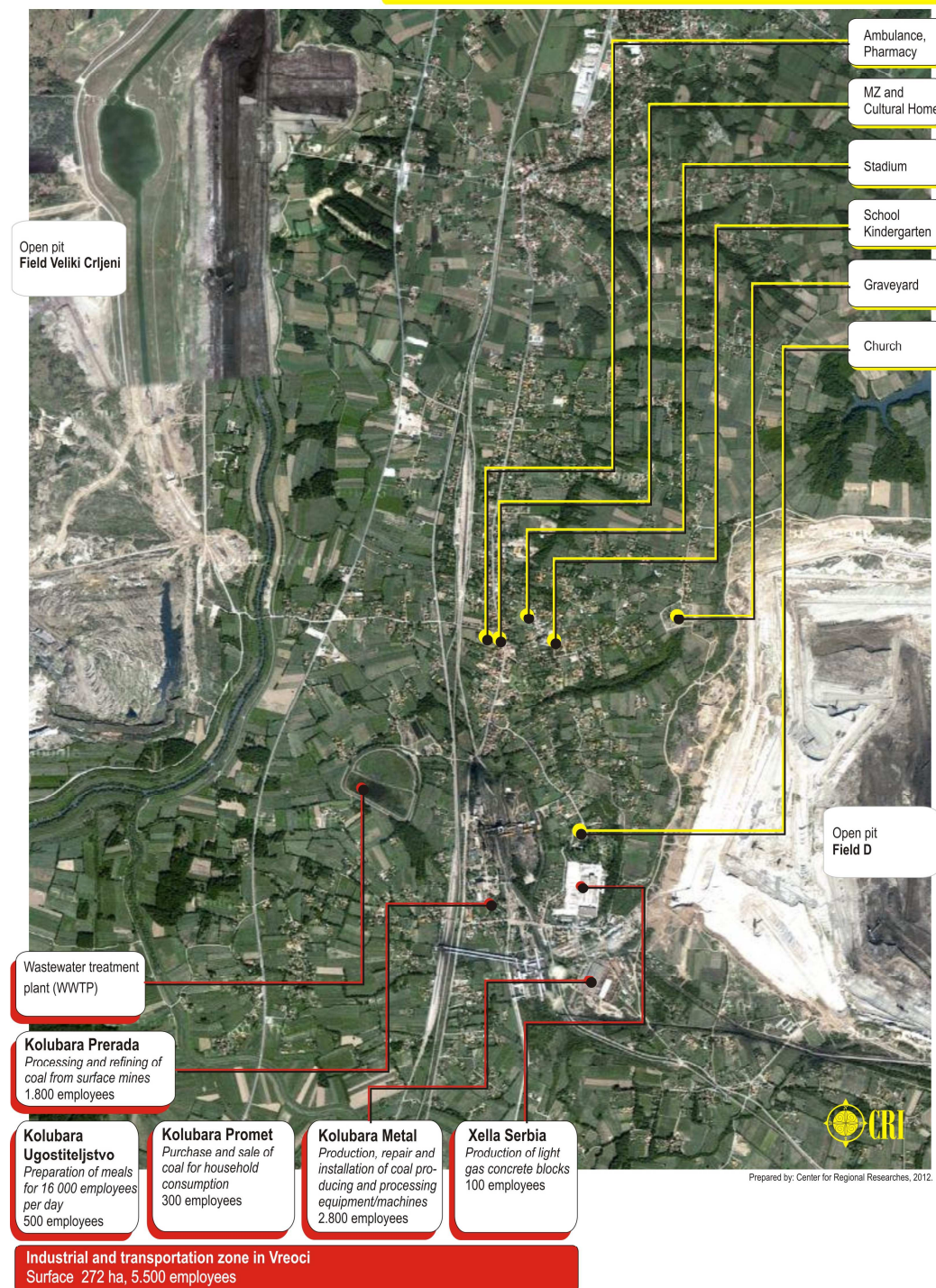
**Vreoci - the center of the exploitation area of Kolubara lignite basin**

Area of Vreoci cadastral municipality 1.879,00 ha

Area remaining free of open pits 1.016 ha

Urbanized area of the settlement 200 ha

3.210 inhabitants in 1.088 households



The official assessment is that beneath the settlement and industrial zone in Vreoci lays about 600 million tonnes of lignite. In order to use these reserves of coal, every valid planning document prescribes the relocation of Vreoci, so that the entire cadastral municipality of Vreoci in future, up to 2020, would be occupied for mining, for the expansion of open pit mine Field D and opening of a new open pit mine - South Field, as well as the relocation of the Kolubara river. Open pit mines in the area of the cadastral municipality Vreoci, after the rearrangement, should produce between 17 and 23 million tonnes of lignite annually, which is 60–70% of the total planned coal production in Kolubara lignite basin. [2], [6], [7], [8]

## **2. Environmental pollution in Vreoci**

**Environmental pollution in Vreoci is extremely high**, and is caused by the closeness of the industrial zone and open pits. The primary pollution occurs at near to its sources (in the industrial plants in Vreoci, at the open pits and dumps of ash and slag), and under adverse weather conditions secondary pollution occurs, caused by deposition of gases and particulate matter in a radius up to 10 km, that affects Vreoci and neighbouring areas. [7], [8]

**The use of open pit technology in the Kolubara lignite basin** changes the land radically and provokes spatial conflicts between the development of open pits and the environment, by the threat of destruction of the entire landscape. Another aspect of the negative impact is serious and permanent pollution of air, water and soil, thereby endangering the health of the population as well as animal and plant life. The third type of negative impacts are smaller and occasional exceedings of environmental quality standards, not significant individually, but which by cumulation can give rise to significant consequences. [8]

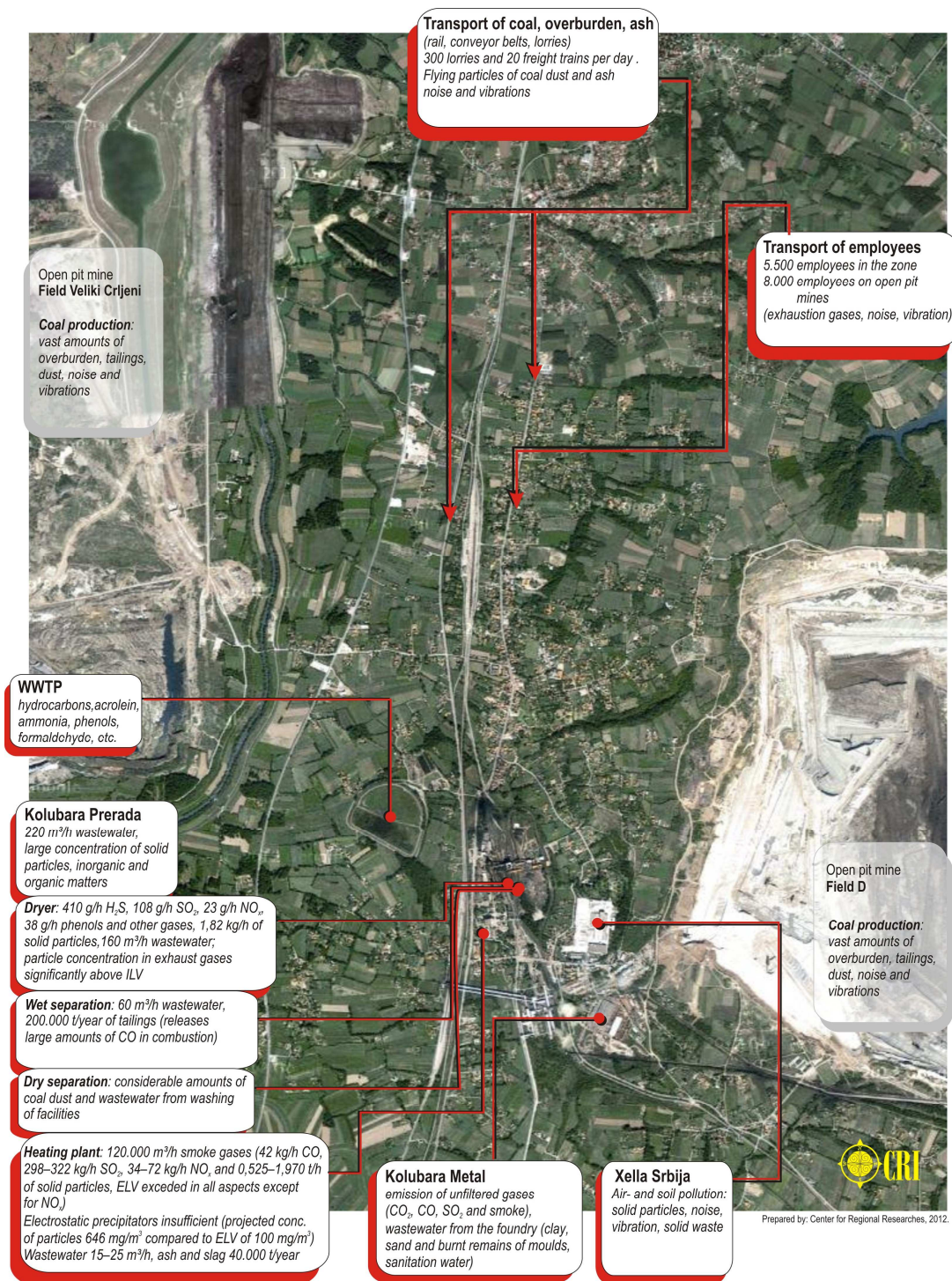
**Coal production at the open pit mines** of Field D and of Veliki Crljeni is followed by vast amounts of overburden, tailings, dust, noise and vibration. The volume of the production of overburden and tailings is much higher than lignite production and in the entire lignite basin in 2005 a total of 55.70 million m<sup>3</sup> of overburden to 26 million tonnes of coal was produced. Overburden and tailings are deposited in the open pit mines that are not operational anymore. The highest emissions of dust come from the zones of open pit mines and dumps of overburden and tailings. Pollution and emissions occurs also from mining equipment and vehicles, containing hazardous gases, nitrogen oxides, carbon monoxide, sulfur dioxide and volatile organic substances. [8]

**The industrial zone in Vreoci is the largest singular source of environmental pollution.** According to observations and measurements conducted in 1992 and then from 2001 to 2007, the most polluting facilities in the zone are: the facilities of Kolubara Prerada including the heating plant, Kolubara Metal, Xella Srbija, the coal transportation system and coal dumps, as well as



central wastewater treatment plant. Each of these facilities is undoubtedly source of pollution, and category of activities that require environmental impact assessment in accordance with article 30 of the Law on EIA (Official Herald of Republic of Serbia No. 135/04 and 36/09). [7], [8], [30]

**Map 4: Sources of pollution and amounts of emissions in Vreoci [7], [8]**



**There are five spatial zones of environmental vulnerability in Vreoci** based on the results of monitoring of imissions and receptors of pollution:

- Zone 1: at 250–500 m northwest from the dryer and dry separation plants and in the immediate vicinity of the industrial railway for Obrenovac and railroad Belgrade–Bar – emission limit values (ELV) of suspended particles in the air, total hydrocarbons, phenols, and sediment materials (measuring point: dry separation) are often exceeded;
- Zone 1a: space between the facilities of Xella and Kolubara Prerada width 100–150 m – increased pollution of suspended particles, sediment materials and increased noise;
- Zone 2: at 100–200 m around the sedimentation tank of the wastewater treatment plant – total hydrocarbons and phenols, and especially soot and suspended particles in the air during the winter (measuring point: waste water treatment plant) often exceed the legal limit value.
- Zone 2a: around the Community Hall – soot and suspended particles often exceed the legal limit value, especially during the winter (measuring point: Cultural Hall);
- Zone 3: occasional and less air pollution (northern part of settlement).

The spatial zones of vulnerability include the whole of Vreoci, and particularly the urbanized part of the settlement. [7], [8]

**Air pollution in Vreoci is extremely high**, as demonstrated by the results of measurements and extensive testing in 2002 and 2003. The air is polluted primarily by conventional pollutants ( $\text{NO}_x$ ,  $\text{SO}_2$ , soot, suspended particles, sediment material), and there are also pollution by specific pollutants (acrolein, phenol, formaldehyde, volatile hydrocarbons, organic nitrogen and sulfur compounds). The emissions come from the dry separation, drying plants and wastewater treatment plant. Concentrations of pollutants vary, and periodically – mostly in the winter – exceed the ELV by far. Air pollution is also a product of suspended particles and sediment material from the transshipment of coal, dust from the open pit mine, from processes in the industrial zone, from traffic. Measurements of imission values in many cases have shown exceeding of imission limit values (ILV), especially in Vreoci. Mean daily concentrations of suspended particles exceed the ILV for 14–82% at all five measuring points (the most at the Cultural Hall measuring point). The concentration of soot exceeds the ILV by 3–69% on four measuring points, and the most at the Cultural Home measuring point. Total sediment materials largely exceeds the ILV at the measuring points at the dry separation plant and at Barska Street. [7], [8]

**The pollution of land is very intensive.** It is most evident around the industrial zone, due to the deposition of ash particles and other particles from gases from the air, the fertilization of arable land with sludge from the filter residues of the wastewater treatment plant, spillage of polluted water, etc. Periodical tests of land quality have shown increased amounts of arsenic, while levels of some heavy metals (Cu, Zn, Cr, Pb, Ni, Hg) are elevated in comparison to the natural composition of the land. The results of measurements of sediment material around Kolubara Prerada show considerable excesses above the average annual concentration, as high as two times the average

value at all three measuring points (Cultural Hall, plant for dry separation and wastewater treatment plant). In the sediment materials the presence of heavy metals (Ni, Cr, Cd, Mn, Pb, etc.) was noted, while the concentration of some of them (Ni, Cr and Mn) periodically exceeds the maximum allowable concentration (MAC). [7], [8]

**The pollution of surface waters is also high.** . The results of water quality testing for the river Kolubara in 2001 before and after release of wastewater in the area around Vreoci (profiles Slovak, Beli Brod and Draževac) show that water quality was significantly worse after the discharge, although the water of Kolubara did not meet the prescribed requirements for Class II of water (of the five classes of water quality) even before the discharge : values of suspended materia often correspond to Class III or IV of water, while in periods of low water the quality goes below classifiable condition. The percentage of oxygen saturation and the amount of bacteria occasionally exceed the values prescribed for the class. Occasionally elevated concentrations of mercury, volatile phenols, hexavalent chromium, sulfides, mineral oil and other harmful substances occur. Saprobiological analysis shows moderate organic pollution of the water stream. Violation of the prescribed requirements for Class II water occurs due to an excessive number of coliform bacteria and high saprobic levels, and due to increased content of heavy metals (Cd, Hg, Cu, Ni), mineral oils, ammonia and phenols. Based on the tests, it can be assessed that the functioning of the wastewater treatment plant is not satisfactory. The water quality of the river Peštan is also monitored in Vreoci, and mainly corresponds to Class III water. The excesses are most often of suspended solids and change of organoleptic properties, while occasionally an increase of dissolved oxygen and percent oxygen saturation, presence of metals (Mn, Fe) and phenols and reduced electrical conductivity occurs. The regulated watercourses of Jaruga and Stari Peštan are quite small, and since they receive the wastewater from the plants for coal wet separation, they are constantly being highly polluted. [7], [8]

**Groundwater is polluted.** Measurements conducted in 2007 in the area around the sedimentation tank of WWTP showed that the water samples in piezometers exceeded the allowed values of each of basic parameter of water quality: colour, dissolved oxygen, COD, phenolic substances, iron, BOD<sub>5</sub>, suspended solids and the dry residue of filtered water. Groundwater used as a source for supplying the settlements is threatened by three parallel processes: (a) pollution of surface waters has tight interaction with the quality of groundwaters,; (b) operations in the open pit mine and associated drainage systems for their protection from groundwater inflow leads to the radical decrease of piezometric levels in groundwater sources (declining trend of ground water level) that largely aggravates the situation of public water supply systems and individual supply wells; (c) the groundwater is also polluted by the ash and slag dumps. [7], [8]

**The condition of the water supply network is very poor** in the entire exploitation area of Kolubara lignite basin, **especially in Vreoci**. Due to the drastic changes in the groundwater

regime, households are unable to supply their water from individual wells. There are serious problems also in the functioning of public services, since kindergartens, schools and clinics have no regular supply of drinking water. In Vreoci sanitation of the settlement is also very poor due to incomplete construction of sewers in some parts, and the system has lost the characteristics of the separation system. [7], [8]

**Management of municipal, industrial and hazardous waste in Vreoci is not satisfactory either in terms of collection nor disposal.** Organized collection of municipal solid waste is conducted at only about 30% of locations, mainly along the regional road. There are a number of illegal dumps, mostly in uninhabited areas near the open pits. Disposal of waste is conducted in the open pit mine Field D, but that dump is not adequately equipped with infrastructure to obtain the status of a sanitary landfill. Industrial waste is mainly sold as secondary raw material. The treatment of hazardous waste is not known. [7], [8]

**Noise and vibration levels in Vreoci are extremely high,** but not measured systematically. Periodical measurements performed in at Kolubara Prerada have shown that the noise level considerably exceeds the norm. [7], [8]

**Road and rail freight traffic in Vreoci is a particularly large source of pollution of air and soil, as well as noise and vibration pollution.** About 300 heavy trucks per day pass through Vreoci, and on the railroad there are over 20 coal-transporting freight trains passing daily. On the section Vreoci–Lazarevac, that is part of a II grade State road (R 203), within the annual traffic count, during last five years traffic volumes typical for I grade State roads were recorded, or more than 3,000 vehicles per day, and in the Spatial Plan of the exploitation area of the Kolubara lignite basin, traffic volume projected on that section is about 8,000 vehicles a day. [2], [7], [20], [8]

**Environmental pollution in Vreoci has constantly been extremely high, for at least the last two decades.** Pollution has grown with the development of the industrial zone and open pits, and with their reaching the current level during the mid 80's of the 20<sup>th</sup> century, which is their highest level since the formation of the industrial zone and beginning of the operation of the open pit mines, pollution has also reached its highest levels. The current systems for the reduction and treatment of all types of pollution are old and have been poorly maintained for decades, so the question is whether they have any significance for the reduction of pollution. In total, the entire area of Vreoci is a first-class endangered environment. [8], [30]

### **3. Institutional framework for addressing the problem of settlements Vreoci**

**The main entities in the institutional framework** making decisions regarding Vreoci are:

- 1) MB Kolubara ie. EPS; Lazarevac ie. the City of Belgrade; and
- 2) ministries competent for mining, energetic, environment protection, spatial planning, agriculture, water management, transport and finance ie. The Government of the Republic of Serbia. [8]

**MB Kolubara** in all official documents is *imprimis* as responsible for addressing the problems of Vreoci, primarily due to the needs and interests of its activities. [6], [7], [8]

In the past 25 years MB Kolubara has substantially changed its legal status several times, and with it its authorization and licences in relation to solving the problems of Vreoci. Until 1989 it had been an independent complex company named Mining-Energetic-Industrial Complex (acronym in Serbian REIK) Kolubara when by a decision of the Parliament of Serbia the Public Enterprise Electric Power Industry of Serbia (the name has remained to this day) was established, which REIK Kolubara became part of and thereby ceased to exist as an independent entity. Then in 1991 the Government established the Public Enterprise Mining Basin (MB) Kolubara, reduced by several organizational units compared to the situation from 1989, but as an independent entity of equal status as EPS. After the political changes in 2000, Serbia accelerated reforms and in 2004 it adopted a new Energy Law and the Energy Development Strategy until 2015. These documents prescribe the separation of energy activities from other activities for each entity involved in energy production. Based on that, in 2005 a decision of the Government established the current EPS, and by an internal decision of EPS, MB Kolubara was founded as a subsidiary company with the legal status of a limited liability company (acronym in Serbian d.o.o.). [21], [19], [4], [5]

Notably, the legal form of limited liability is the simplest legal form for companies, and is a form suitable for and mostly used by small and medium enterprises having a small number of employees: all decisions whether strategic or at a daily operational level are made at level of one executive individual. This legal form is completely inappropriate for a company with about 10,000 employees, and as a consequence the company suffers from poor organization and inadequate capacities to perform all the required tasks. More importantly, all those who are in some way connected with MB Kolubara suffer from the inappropriate legal form of the company, since because of its legal form, it is not able to make all necessary decisions in required volume, and especially not in the required timeframe necessary for effective performance. [29], [19]

**The relationship between EPS and MB Kolubara** is a very unequal one, based on the *Decision on the establishment of public enterprise for the production, distribution and trading of electricity*, from 2005. The Management Board of EPS has all ownership powers over MB Kolubara (Article 17, paragraph 1, item 10 of the Decision), including the authority on proprietary powers in some matters when they can may be directly performed by authorized representatives of EPS. **The management of MB Kolubara decides just about issues up to 50 million dinars value (a**

little less than half a million euros), while all decisions worth more than 50 million dinars are the responsibility of the Management Board of EPS. In this way, the only purchaser of the product (lignite) completely controls the manufacturer of that product. [21], [19]

**The city municipality of Lazarevac** is one of the 17 municipalities of the City of Belgrade. In 1971 it was added to the Belgrade Metropolitan Area by separation from the Kolubara District. Since it is 60 km away from the inner city area, for a long time it had the status of suburban municipality, with a few more jurisdictions compared with the inner urban municipalities. The Statute of the City of Belgrade from 2008, adopted based on the Law on the Capital City from 2007, abolishes the status of suburban municipalities and equates suburban and urban municipalities. The city municipality of Lazarevac, not being a unit of self-government, has reduced legal jurisdictions and budget compared to units of local *self-government* – the units being the City of Belgrade and the neighbouring municipalities that are not part of the City (Lajkovac, Ub, Ljig, Arandelovac). According to the *Law on Local Self-Government*, a unit of local self-government has all the jurisdictions of local authorities and their own revenues for the implementation of their jurisdiction. The Government is obliged to provide minimum funding for each unit of local government in case the unit is unable to collect the revenues, while the unit of local self-government retains its full autonomy from the Government. Therefore, the City municipality of Lazarevac has no income of its own, but is funded by revenues from the City of Belgrade. Also, the City municipality has jurisdiction only in small issues, such as eg. regarding the issuance of building permits, the municipality is deciding only for buildings up to 800 m<sup>2</sup> gross floor area, or in terms of road maintenance, is responsible for maintenance of only country and dirt roads, etc. [1], [3], [22]

**The relationship between the city municipality and the City of Belgrade** is a clearly and strictly hierarchical one. The City of Belgrade has full-scale legislative and statutory jurisdiction to direct the activities of city municipalities. The main instrument is the control over the execution of the budget of the city municipality, which is in the authority of the mayor of, who exercises his power through receiving quarterly reports of the President of the city municipality on the implementation of dedicated revenues of the city municipality (article 99 of the Statute of the City of Belgrade). Furthermore, a unit of local self-government, in accordance with the Law on Public Enterprises and Activities of General Interest (Official Herald of Republic of Serbia No. 25/00, 25/02, 107/05, 108/05 and 123/07), has no jurisdiction over a company that was founded by the Government. Therefore neither does the City of Belgrade have any possibility to influence companies such as EPS or MB Kolubara. [22]

**The ministries** responsible for mining, energy, environment, spatial planning, agriculture, water management, transport and finance are responsible for solving the problem of Vreoci in accordance with the type of work, eg. for the expansion of open pits, for preparation of planning

documents, for the relocation of settlements, for the relocation of watercourses and/or roads and for numerous other related activities. [23]

**However, the key role in decision-making always belongs to the Government.** Only the Government represents the Republic of Serbia as a legal entity and exercises the rights and obligations of the Republic of Serbia as a founder of public enterprises (Article 4 of the Law of the Government), and adopts its decisions by a majority vote of all members of the Government (Article 26). The Minister informs the Government on all matters from the scope of its jurisdiction, submits to the Government proposals for the regulation of issues within the jurisdiction of the Government and the National Assembly and is responsible for implementation of programmes and policy of the Government in scope of its competence (Article 14). Thus, the policy and allocation of budgetary resources of each ministry is decided by the Government as a whole, and the role of ministries in decision-making is primarily technical. Also, the Government has control and authority regarding upholding the legality and the transferring of certain budget funds over each unit of local *self-governments*, including the City of Belgrade, and from it to the City municipality of Lazarevac. [24], [3]

The institutional framework for addressing the problem of Vreoci indicates the existence of a considerable **gap between the jurisdictions and powers** of the key institutions. MB Kolubara, the city municipality of Lazarevac and the relevant ministries have the jurisdiction required to address issues related to operative activities (eg. preparation of documentation for the expansion of open pits, the implementation of the expropriation of real estate, the determination of environmental protection measures, etc.), but EPS, the City of Belgrade and the Government have the legal authority and financial resources for implementation of the decisions adopted by the institutions of the first group. That means that every institution from the first group, although competent to adopt decisions in area of its jurisdiction, has no power, legal and/or financial, to implement this decision in its entirety, since the institutions from the second group are authorized for implementation: MB Kolubara is controlled by EPS; the city municipality of Lazarevac is controlled by the City of Belgrade; and finally, ministries are controlled by the Government. Thus if the necessary decisions and actions of the organs and institutions of the second – controlling – group are not put into effect, decisions adopted by the organs and institutions from first – executive – group cannot be implemented. However, regarding the problem of Vreoci, only the Government controls all levels of decision-making, and any action or decision in terms of solving the problems in Vreoci by any other institution except than the Government itself is only a preparatory step for the Government's decision, and only the Government's decision has real consequences. But, the Government is not bound to accept any potential preparatory steps. [21], [22], [24]

This institutional framework, that is formed and maintained as a highly centralised system, particularly with regard to strategic areas that include the production of lignite and electricity, in this respect has not changed much over the past 20 years, regardless of changes of the Constitution of the Republic of Serbia since 2006. Apart from the strict centralization of decision-making, this institutional framework creates a large lack of responsibility of each entity. Since the decision is not bound to the implementation, each entity of the institutional framework may adopt any decision, and then transfers responsibility to the superior entity for the lack of implementation. Only the Government has no such option, but because of that, every implementation of decision is transformed into a political issue, by which regular action of state authorities is transformed into a permanent political campaign. [25]

#### **4. Policy of MB Kolubara and the EPS regarding Vreoci: Threats to Vreoci by the expansion of open pit mines**

For many years following 1952 and the beginning of the usage of open pit technology in the Kolubara lignite basin, the fact that this technology conflicts with the environment was substantially acknowledged and respected in the business operation RB Kolubara, ie. by its legal predecessor (Mining-Energetic-Industrial Complex – REIK Kolubara). During the period of largest investment in the energy sector in Serbia and Yugoslavia, from 1965–1979, and later with somewhat decreased investment volumes (that did not affect the amount of coal production) until 1989, the perpetually recurrent actions of expropriation of real estate for the expansion of open pit mines in the Kolubara lignite basin was carried out within three to five years before the occupation of land and property. [8], [9]

Political change and the dissolution of Yugoslavia during the 90s led to a termination of investing in the expansion of open pits. During that decade, when Serbia was under UN economic sanctions, the production of electricity was the only area of energy where Serbia was completely independent, and the production of electricity became a par excellence national-political interest. Since more than 95% of all lignite from Kolubara lignite basin is used to generate electricity, lignite production also became a national-political interest. Both productions, of electricity and lignite, had a decline in the 90s, but in 2005 they reached the level of 1990 and since then both have had a trend of slight increases. Regular works on the excavation of coal led to the situation that the open pits in 2000 reached up to the land and houses in Vreoci that were planned for expropriation in 1995, but expropriation has not been realized up to this day. [8], [9]

Since 2000 the development of the open pits of the Kolubara lignite basin entered into a new phase. Two large open pits, Field D and Field Tamnava East, have reached the end of their service life, and the conditions for opening of new open pits have not been created (Field E, Radljevo Field and South Field). Today the Tamnava East Field is already exhausted and serves as an overburden and tailings dumps for the open pit mine Tamnava West Field. The second important change of



circumstances is related to the conditions for the expansion of the open pits. The expansion of the open pits in the exploitation area over the past 50 years advanced from the edges toward the centre of the area, and in 2000 the open pit mine Field D has reached the center of the area, Vreoci, but over more than 20 years lands and houses have not been expropriated for the expansion of open pits, nor have other required actions for preparation of the ground for this purpose been performed. [8], [11]

In the new phase of the development of open pits, the policy of MB Kolubara and the EPS concerning Vreoci was implemented in three stages, the dynamics and quality of which, but not the objectives, were brought forth by the changes of leadership in each of members of the institutional framework (Prime Minister and the responsible ministers, directors and management of MB Kolubara and EPS, the mayor of Belgrade and president of City municipality of Lazarevac, and political leadership of the City and City municipality). This new phase of development of open pits in general is characterized by intensifying conflict between the technology of open pits and its environment, and the continual insistence of members of the institutional framework on achieving the interests of MB Kolubara and EPS at the expense of the citizens of Vreoci. [6], [7], [8], [9], [10]

**The first stage of the policy of MB Kolubara and EPS regarding Vreoci**, encompassed the period from 2001 to the first half of 2004, and was initiated through the complete negligence of the individual and collective rights and lawful interests of the citizens of Vreoci by MB Kolubara and City municipality of Lazarevac. [9]

In mid-2001 the management of MB Kolubara for the first time in 10 years undertook activities to expand the open pits and announced the idea of the relocation of the graveyard in Vreoci a few hundred metres north, in order to expand the open-pit Field D. Citizens of Vreoci demanded more details about these plans in order to plan their own lives and in March 2002 the director of EPS presented the internal MB Kolubara plans on expanding open-pit Field D and of opening the open-pit Veliki Crljeni Field on the territory of cadastral municipality of Vreoci. A highly bad solution was laid out in these plans: relocation of only half of the population of the settlement, reduction of the territory of the settlement to 1/3 of the current territory, the remaining part of the settlement left standing on a 500 m wide strip of land, between the two 100 m deep open pits, and other unacceptable solutions. Citizens of Vreoci held an assembly in April 2002 to discuss these plans by MB Kolubara and sent a request to the Government demanding the protection of their fundamental rights. Representatives of MZ of Vreoci, ES "Vreoci" and citizens of Vreoci were received in the Ministry of Mines and Energy. It was agreed that a commission would be formed, comprising representatives of the ministries of mining and energy, environment, economy and spatial planning, with the task of proposing a solution to the problem of Vreoci. The commission was formed in autumn of 2002 and it had 20 months for the preparation of a proposal. [9]

Regardless of the deadline that the Commission of the Government had, MB Kolubara announced that it would begin the relocation of the graveyard in Vreoci in maximum 12 months. Attempts by MZ Vreoci, ES "Vreoci" and citizens to open negotiations with MB Kolubara regarding the possibility of the relocation of the graveyard yielded no result. In January 2003, about 1,000 citizens of Vreoci, among whom were members of ES "Vreoci" and members of MZ Vreoci, blocked the regional road Stepojevac–Lazarevac, railway Belgrade–Bar and industrial railway Vreoci–Obrenovac, protesting against the relocation of the graveyard, and against the disastrous condition of the environment caused by the regular operations of MB Kolubara. The basic requirement of citizens and ES "Vreoci" was that if the graveyard was to be relocated, the whole settlement must also be relocated. After three days of protests, that were recorded by all national printed and broadcast media, the current Energy Minister, Kori Udovički arrived to Vreoci and issued a press release confirming the legitimacy of requests of the citizens, the need for acceptance of their interests in the process of expanding of open pit Field D and the necessity of urgent reduction of environmental pollution in Vreoci. In May 2003, at a meeting at the Ministry of Energy, the Minister introduced to the representatives of the MZ and citizens of Vreoci a decision, according to which MB Kolubara should bypass the graveyard, instead of relocating it, and the Vreoci would not be relocated for at least 10 years. The Minister sent a personal letter to each family in the settlement where, among other things, it was written that *"the law, your demands and a technical-economic analysis are forcing RB Kolubara to bypass the graveyard, at the cost of losing a lot of coal. (...) Only some ecologically endangered households will be relocated"*. So, the first stage was completed by the recognition of the legitimacy of the demands of MZ Vreoci and citizens of Vreoci and by the decision to postpone the expansion of open pits for at least a decade. [9], [13], [26]

**The second stage of policy by MB Kolubara and EPS regarding Vreoci**, from the second half of 2004 up to the first half of 2010, began with a legal-formalistic approach of all members of the institutional framework, especially RB Kolubara and EPS and the city municipality of Lazarevac, towards the citizens of Vreoci, followed by constant circumvention of acknowledgements of the legitimate rights and interests of the citizens. [10]

In autumn 2004 the Management of RB Kolubara again started activity on the relocation of the graveyard in Vreoci, despite the decision of the Minister in 2003, since the minister was changed after elections held in late 2003. This time, MZ Vreoci, ES "Vreoci", and citizens were involved in the decision-making process. New position of RB Kolubara and EPS on problem of Vreoci was that the open pit mines should expand immediately, and that precondition for their expansion was the relocation of the whole of Vreoci, including the graveyard. On this basis the currently applicable documents and decisions were adopted:

- 1) The Management Board of EPS, on November 12, 2007 adopted a Decision on the acceptance of the Programme guidelines for the relocation of the settlement of Vreoci, No. I-925/3, and

the Government gave consent to this decision by Decision No. 310-5277/2007-3, on November 22, 2007;

- 2) The Assembly of the city municipality of Lazarevac, in accordance with the Programming guidelines, on December 25, 2008, enacted a General Regulation Plan for the area of the Vreoci – the Programme guidelines and the results of a poll of residents of Vreoci regarding relocation are integral parts of Plan;
- 3) The Government, on December 30, 2008, enacted a Spatial Plan of the exploitation area of the Kolubara lignite basin;
- 4) The Government, on February 19, 2009, enacted a Decision on determining the public interest for expropriation – administrative transfer of real estate – lands and buildings on the land which by law may be subject to expropriation. The expropriation beneficiary is EPS, and the purpose of the expropriation is expansion of the open pit Field D and opening of the South Field;
- 5) The Assembly of the city municipality of Lazarevac, on March 30, 2009, adopted the Decision on terminating the use of the local graveyard in Vreoci (Official Gazette of the City of Belgrade No. 13/09), that prohibits the burial and building of new monuments and other memorials, determines Lazarevac 2 Šopić as a new graveyard, and authorizes RB Kolubara to perform transfer of mortal remains and monuments and other memorials at its own expense;
- 6) The Assembly of the city municipality of Lazarevac, on the same day, March 30, 2009, enacted a Conclusion that allows the relocation of the graveyard after signing of contracts and advance payments to owners of graves amounting to 35% of the assessed value<sup>\*\*</sup>. [6], [7], [8], [10]

The *Programme guidelines for the relocation of the settlement of Vreoci* is the basic document for solving the problem of Vreoci. It completely eliminates the problem of threats to Vreoci by the expansion of open pits and the problem of catastrophic environmental pollution in Vreoci, and it is also the baseline for the entire legal framework for addressing the problem of Vreoci. Programme guidelines set the ground rules about relocation. It was enacted as an internal document of EPS, without any consultations, but the rules in the Programme guidelines acknowledge all demands

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<sup>\*\*</sup> This conclusion is an example of violation of the prescribed rules on expropriation of real estate, because it legally binds the purchasing of secondary property with purchasing the real estate of the same person. The local graveyard in Vreoci is recorded in the cadastre not as a graveyard, but as ordinary parcel, where any person who is a guardian over the burial place has a stake in the property. Binding the purchasing of an ownership share of parcel of one person for the purchasing of all real estate of the same person is a violation of property rights. Moreover, the base for the advance payment is a rough estimate of real estate value prepared by the expropriation beneficiary, in this case MB Kolubara, the only customer in the process of expropriation. Because of the conflict of interests it is unacceptable that the price of real estate should be determined by MB Kolubara. A particular source of the problem is the fact that, because of the traditional avoidance by owners of registering their ownership in the real estate cadastre, the advance payment of the value of real estate was carried out to any representative of the household, usually to young persons, who often do not live in the settlement where their parents live, which is the source of a large number of subsequent litigations. However, despite the apparent illegality contained in this Conclusion, about 1/3 of households envisaged for the resettlement (about 350) accepted the advance payment.

and the lawful rights and interests of MZ Vreoci and citizens of Vreoci and generally are accepted by them. [6]

The entire legal framework for the implementation of resettlement of Vreoci was adopted, after the adoption of the Programme guidelines, within just three months, from December 25, 2008 up to March 30, 2009. [7], [8], [10]

The General Regulation Plan for the area of the Vreoci, though in compliance with the content of Programmatic basis, was passed very quickly, which was possible among other reasons, by ignoring all suggestions by ES "Vreoci", MZ Vreoci, and the citizens of Vreoci. At the public hearing on the Plan, held at the Cultural Hall of Vreoci, the planning commission of the city municipality of Lazarevac rejected all 37 explained and well justified objections and suggestions submitted by MZ Vreoci. A particularly controversial detail of the Plan was the proposal of the location of Kusadak for collective resettlement: this proposal was rejected by the citizens of Vreoci. Although rejection of this proposal was not taken into account, this location still had not been adjusted to its purpose and is not designated as construction land, which makes it completely inappropriate for any type of resettlement. The General Regulation Plan, from the aspect of site selection, is focused on the construction of municipal infrastructure and the development of Lazarevac, from the funds which should be provided by MB Kolubara and EPS, instead of focusing on the relocation of Vreoci. [7]

The most important parts of the General Regulation Plan for the area of Vreoci, in terms of addressing the problem of Vreoci, are:

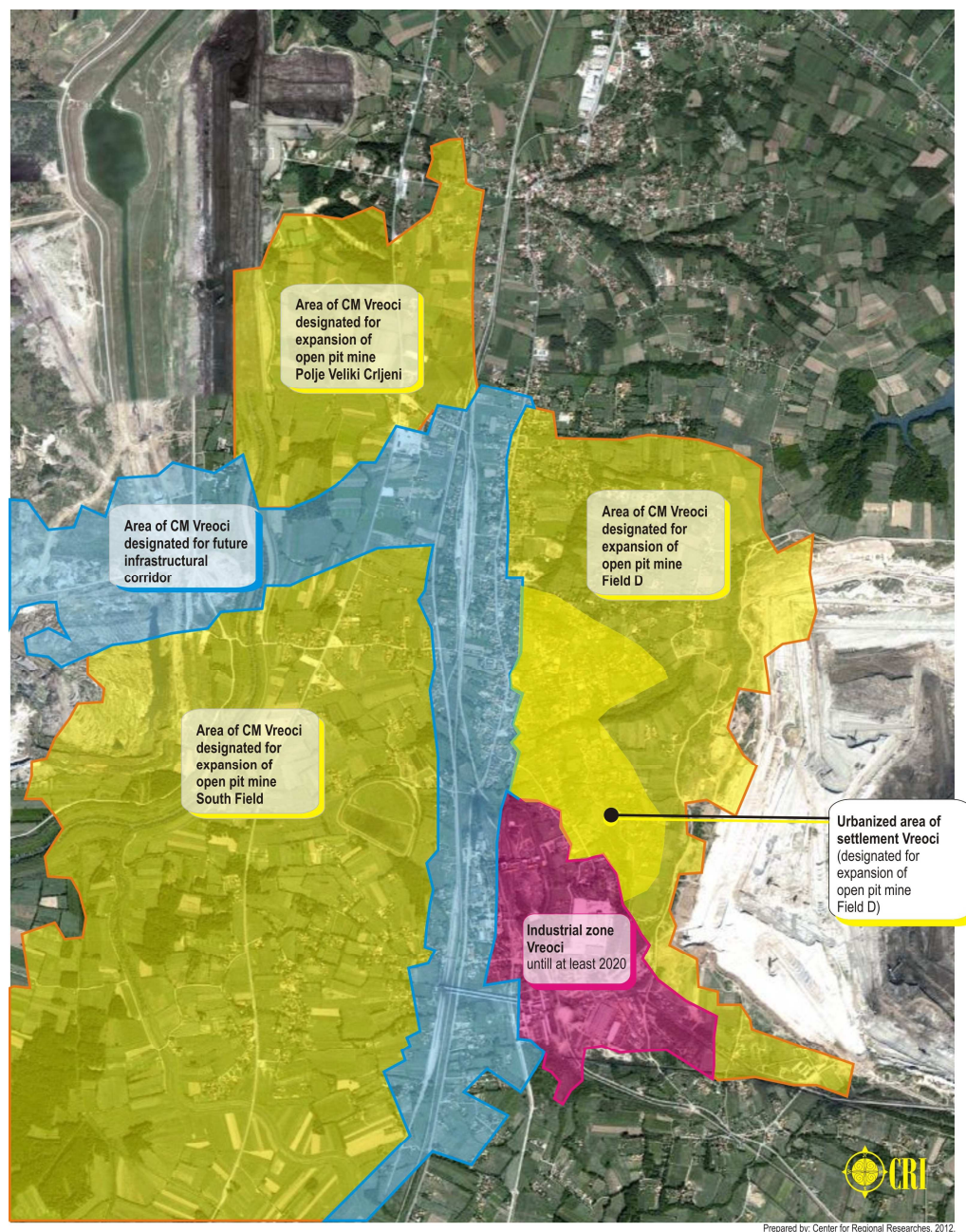
- 1) that the entire area of the cadastral municipality Vreoci up to 2020 should be occupied as an addition to the occupied areas for the open pits Tamnava East Field and Field D, and also for the expansion of open pit Field D, for the opening of new open pits South Field and Field Veliki Crljeni and for the relocation of the river bed Kolubara;
- 2) to resettle a total of 1006 out of 1088 households in Vreoci in the time frame of 2008–2015 in three phases:
  - a) Resettlement Phase 1, in the period 2005–2008, 85 households in the zone of Veliki Crljeni open pit field and on the Vreoci hill in the zone of open pit Field D;
  - b) Resettlement Phase 2, in the period 2008–2011, 603 households from the central part of Vreoci in the zone of Field D open pit and in the zone of the first phase of exploitation of the South Field open pit;
  - c) Resettlement Phase 3, in the period 2011–2015, 318 households in the zone of South Field open pit, in the zone of a new infrastructural corridor and parts of settlement that are indirectly endangered by mining operations. [7]

The weak point of the Plan is the fact that the realization of expansion of open pits is not possible without strict execution of the planned time frame for resettlement of Vreoci, because without previous resettlement living conditions in Vreoci will be unacceptable. The Plan also confirmed that

the urgent relocation of Vreoci is the only solution for the threats of open pits and environmental pollution of the settlement. [7], [15]

On the basis of Programme guidelines and the General Regulation Plan for the area of the Vreoci, on May 12, 2009, bodies to ensure stakeholder and public participation and transparency during the relocation were established: a Committee for monitoring the Vreoci resettlement (12 members – three representatives of EPS, MB Kolubara, Lazarevac and MZ Vreoci) and the Committee for monitoring the Vreoci graveyard relocation (10 members – three representatives of EPS and MB Kolubara and two representatives of the Lazarevac and MZ Vreoci). Despite the fact that the office of both the Committees was designated in the Cultural Hall in Vreoci, neither of these two Committees have ever held a session at its headquarters. The sessions were held only in the administrative building of MB Kolubara, and only MB Kolubara determined the time of their sessions and the content of the agenda. [6], [7], [10]

**Map 5: The General Regulation Plan land use of cadastral municipality Vreoci**



As a special type of control and guarantee for the implementation of the Programme guidelines and the General Regulation Plan for the area of Vreoci, the Government established a Project group for coordination of activities on the relocation of Vreoci by decision No. 310-01-00525-2009-06, on August 25, 2009. The project group consists of one representative of each relevant ministry (mines and energy, finance, and environment and spatial planning), two representatives of EPS and MB Kolubara and one representative of Lazarevac. [6], [7], [10]

The Committee for monitoring the Vreoci resettlement held 11 meetings until October 2010, approximately one session every month. This Committee includes also activities of the Committee for monitoring of the Vreoci graveyard relocation in its work, for reasons of economy, because its scope covers the whole scope of the second Committee. The work of this committee was characterized by a lack of implementation of the committee's decisions by MB Kolubara and Lazarevac, open indifference of MB Kolubara and Lazarevac to addressing the large number of irregularities in the implementation of the resettlement activities of the Vreoci (improper conduct of process of the appraisal of real estate in the process of expropriation, lack of drinking water in the Vreoci which MB Kolubara should provide, not providing sufficient conditions for the normal functioning of all institutions and public services in Vreoci - clinic, school, Cultural Hall, and others), as well as constant rejection of suggestions by representatives of MZ Vreoci. Representatives of MB Kolubara and Lazarevac especially ignored complaints about increasing delays in resettlement and constantly avoided suggesting locations for the collective relocation of the settlement. Furthermore, between the Committee for monitoring of resettlement and the Government's Project group for coordination of activities on resettlement no communication existed, so it is unknown whether the Project group acted at all. [27]

**The third stage of policy of MB Kolubara and EPS regarding Vreoci**, from mid 2010 to now, began with the decision of the Council of MZ Vreoci from June 28, 2010 to suspend its participation in the Committee for monitoring of Vreoci resettlement and in the Committee for monitoring the Vreoci graveyard relocation. The decision was taken at a citizens' gathering attended by hundreds of citizens and a large number of members of ES "Vreoci". With this decision, both of Committees have lost their legitimacy. This decision was the culmination of the growth of distrust of Council of MZ Vreoci and citizens of Vreoci, that was caused by a persistent legal-formalistic approach that avoided to solve the problem, and the lack of any proactive decisions or other activities of MB Kolubara and EPS and Lazarevac. [27]

While both of the Committees have lost their legitimacy and ceased to hold meetings from end of 2010, MB Kolubara and Lazarevac continued to conduct activities, mostly on the relocation of Vreoci graveyard Vreoci. However, on the 10th session of the Committee for monitoring of the resettlement of Vreoci held on November 17, 2010, without representatives of MZ Vreoci, the Committee unilaterally adopted a decision that Petka shall be the location for collective resettlement, and thus accepted the proposal of ES "Vreoci" and the Council of MZ Vreoci that was rejected during public hearings on the presentation of the General Regulation Plan. Simultaneously they made a unilateral commitment to extend special financial support for MZ Vreoci, public services and organizations in Vreoci and employment of unemployed people from Vreoci. These unilateral commitments have not been met to date, thus confirming the manipulative approach of MB Kolubara to problem solving in the Vreoci resettlement. [27]

The dispute about the local graveyard in Vreoci between citizens and MB Kolubara took a dramatic turn on July 04, 2011 when the police and representatives of MB Kolubara occupied the graveyard without any prior notice. Based on the above mentioned Decision of the Assembly of the city municipality of Lazarevac on terminating the use of the local graveyard in Vreoci, which regulates the relocation of the graveyard to the new location and authorized MB Kolubara to carry out relocation, as well as the Conclusion of the Government 05 No. 352-4102/2011 from May 27, 2011 and a letter from the Ministry of Environment, Mining and Spatial Planning No. 352-07-00004/2011-07 from June 21, 2011 addressed to the Ministry of Interior, workers sent by MB Kolubara and about 1,000 police officers surrounded the graveyard at 4 o'clock in the morning, after which began the process of exhumation of mortal remains and graveyard relocation. The occupation of the graveyard was followed by protests by citizens of Vreoci, launched by ES "Vreoci", and was recorded in all national printed and electronic media. [15]

One of the many disputable questions concerning the relocation of the graveyard in Vreoci is that MB Kolubara had determined 4409 grave sites for relocation, although the Council of MZ Vreoci has obtained data on the number of entries in the deaths register for Vreoci for the period from 1837 up to 2009 that is 8906 from the Archive of the City of Belgrade, as well as from the Secretariat for Administration of the City of Belgrade. Owners of more than 120 graves and tombstones sued MB Kolubara for the process of relocation of the graveyard, and the Court hasn't ruled on their lawsuits yet. In consequence of the raid of the police linked to relocation of the graveyard, the official communication between the Council of MZ Vreoci and MB Kolubara and EPS has ceased. [15]

The Committee for monitoring the Vreoci resettlement, after an interruption of longer than one year, held its 12th session on February 21, 2012, without representatives of the Council of MZ Vreoci. At that session, inter alia, it was stated that 1141 grave sites of a total of 4409 determined grave sites remain to be relocated to complete the relocation of Vreoci graveyard. [27]

Finally, in March 2012, on the initiative of MB Kolubara, a meeting was held with the participation of representatives of the Council of MZ Vreoci, citizens of Vreoci, MB Kolubara and Lazarevac, but at the meeting again no proposals that could alleviate disputable issues were made – no proposal for reconciliation because of the forced relocation of graveyard, no proposals of locations for the formation of New Vreoci settlement or any other proposals of measures for real improvement of the conditions in Vreoci and overcoming deep distrust. [27]

In mid-2012 conditions in Vreoci regarding the threat of expansion of open pits and disastrous environmental pollution is unchanged since before 2008, prior to adoption of the legal framework needed to solve all these problems. The everyday life of the citizens and the functioning of social services has the same problems as before the adoption of the General Regulation Plan for the area of Vreoci which establishes the responsibilities for maintenance of social functions in the settlement



until the final resettlement: the local water supply works only every two hours; pollution is unabated; the volume of freight transport, road and railway, is even higher, and so on. The problem of pollution in Vreoci is even more enlarged: because of preparatory works on the extension of the open pit Field D, heavy equipment is always present in the settlement, while a new transmission line of high voltage is being implemented through the settlement. Moreover, the local graveyard is still under 24 hours police guard, with strict prohibitions on visits by citizens of Vreoci. MB Kolubara treats Vreoci as a mechanical sum of households, using its vast superiority in negotiations with individual households for unfair estimation of prices of real estate – lands and buildings, continues with the relocation of the graveyard regardless of the attitude of citizens and owners of grave sites, and does not perform any activity aimed at collective resettlement in order to preserve the identity of the settlement and at the formation of settlement Novi Vreoci. [28]

*The most important fact is that the timeframe for the relocation Vreoci from Programme guidelines and the General Regulation Plan has been completely abandoned:* the number of resettled households from Vreoci up to June 2012 is less than 100, while the timeframe from the Plan prescribes that by 2011, 688 households should be resettled, or more than 2/3 of the total number of households planned for resettlement, including the whole urbanized part of the Vreoci. [28]

Non-implementation of the General Regulation Plan has aggravated the already disastrous living conditions in Vreoci. Apart from the the huge pollution caused by the proximity of open pits, the industrial zone and the transportation of coal through the settlement, and continuing violations of the property rights of citizens by MB Kolubara for activities on expanding of open pits, the General Regulation Plan added special measures to ensure a fair determination of the price of real estate in the process of expropriation and to facilitate the use of land after expropriation. These special measures state the prohibition of construction in the settlement and prohibit the use of graveyard. [10], [7]

**Table: Requirements for construction, reconstruction and adaptation of the household** (– prohibited, + permitted)

Type of construction	Defined time for resettlement			
	by 2011	2011–2016	2016–2020	after 2020
The formation of new lots and construction of new houses	–	–	–	–
Building a new home on an existing plot	–	–	–	+
Upgrading of an old house	–	–	+	+
The renovation of an old house	–	–	+	+
The construction of new auxiliary facilities	–	–	+	+
Upgrading or renovation of existing auxiliary facilities	–	+	+	+
Building a new fence or gate	–	+	+	+
Reconstruction of an existing fence	–	+	+	+
Construction of new commercial building in housing	–	–	+	+
Renovation of existing temporary building in housing	–	+	+	+
Construction and replacement of installation in a house	–	–	+	+
Reconstruction of existing installations in a house	–	+	+	+
Construction of septic tanks, digging wells	–	–	+	+

While the prohibition of use of the local graveyard shifts the cost and increases the expenses of burial for the citizens of Vreoci (transportation expenses of the deceased to a more remote new graveyard), the above table shows that any serious activity in the maintenance of facilities in housing is prohibited in the vast majority of households in Vreoci: not only that construction of new houses is prohibited, but also upgrading and renovation of old houses, new construction or renovation or upgrading of existing ancillary facilities, construction of new and replacement of old installations in the home and much more cannot take place. These special measures are meaningless if the timeframe for resettlement is not respected, but they could be, and in fact are a source of conflict, especially in determining the value of the property for expropriation. [7], [10]

## **5. Policy of MB Kolubara and EPS regarding Vreoci:**

### **Expansion of open pit mines as the only objective of the EBRD-financed Project**

The proposed investment programme for the modernisation of RB Kolubara's coal mining operations, with the wider hidden objective of the expansion of open pits involve relocation of Vreoci. The Bank failed to meet own requirements defined in *Environmental and social appraisal*, para. 5 : "Through appraisal activities such as risk assessment, auditing, or environmental and social impact assessment, the client will consider in an integrated manner the potential environmental and social issues and impacts associated with the proposed project. The information gained will inform the EBRD's own due diligence related to the client and project and will help to identify the applicable PRs and the appropriate measures to better manage risk and develop opportunities, in accordance with the applicable PRs. The appraisal process will be based on recent information, including an accurate description and delineation of the client's business or the project, and social and environmental baseline data at an appropriate level of detail. The appraisal should also identify applicable laws and regulations of the jurisdictions in which the project operates that pertain to environmental and social matters, including those laws implementing host country obligations under international law 2 (for example commitments related to land use planning and protected area management)."

### ***The presence of the Project in planning documents as a part of the development of mining***

Consistency in the policy of MB Kolubara and EPS regarding Vreoci, explored in Section 4 of this complaint, confirms that the EPS KOLUBARA ENVIRONMENTAL IMPROVEMENT PROJECT, submitted by the Client to the EBRD for a loan, is part of a wider strategy objective, namely the expansion of open pits. Besides this, the Project provides additional benefits to the Client by strengthening its internal power, which is then used in its relationship with local and central authorities, in the Client's relationship with interested representatives of collective entities, such as

the Council of MZ Vreoci, and councils of other MZ from areas designated for the expansion of open pits, or to achieve lower costs in negotiations with individual households for the expropriation of real estate. [28]

Though the environmental pollution in Vreoci, described in the Section 2 of this complaint has been continuous for over two decades, neither MB Kolubara nor EPS has conducted serious measures to reduce it. The political crisis and the disintegration of Yugoslavia during the 90s of the 20th century seriously harmed the production of electricity in Serbia, which became a top national-political issue. The bombing of FR Yugoslavia by NATO in 1999 caused particularly great damage to facilities for the distribution of electricity. Therefore, the primary interest of EPS since 2000, and since the changes in the political system in Serbia, has been the restoration, rehabilitation and modernization of production facilities and distribution of electricity. In the period 2001–2005 EPS and the state have invested about 400 million euros in the reconstruction of the generation system, mostly in capital repairs of thermo power plant blocks.

In the same period, 2001-2005, EPS invested only about 25 million euros in environmental issues. That means that environmental protection by reducing pollution from the thermo power plants and other plants of EPS and related companies, as well as reducing of emissions of greenhouse gases, was not the subject of investments, especially not of large investments. [8]

Besides, the Energy Development Strategy of Serbia for the period 2005–2015 (Official Herald of the Republic of Serbia No. 44/05) and the Decree on definition of the Implementation Programme of the Energy Development Strategy for the period 2007–2012 (Official Herald of the Republic of Serbia No. 17/07 and 73/07) puts the greatest emphasis on bringing into operation at least one new lignite-fired thermo power plant, installed capacity of 700 MW, as well as an increase of coal production by about 20%, from the current approximately 29 million tonnes to about 36 million tonnes annually. On the issue of reduction of the high pollution caused from Serbian thermal sector the energy policy of Serbia gives only brief mentions, without any serious measures for its real decrease. [8], [7]

It is therefore not surprising that this Environmental improvement project at Kolubara mine basin is outlined in the Spatial Plan of the exploitation area of the Kolubara lignite basin and in the General Regulation Plan for the area of the Vreoci, although without parts on the environmental protection. [8], [7]

The Spatial Plan of exploitation area of the Kolubara lignite basin, in the second part: *Concept of spatial planning and developmental policies for the use, development and protection of the area by sectors / 2.1. Mining*, emphasizes "the need that equipment for excavation should be rehabilitated and modernized as preparation for work on the new open pits" and the need for "replacement of equipment of open pit Field B and overhaul of equipment of open pit Field D". [8]

The equipment, to be purchased from the EBRD project is aimed to improve the efficiency of EPS' mining operations at the **whole** Kolubara basin.

The General Regulation Plan for the area of the Vreoci shows the purpose of the opening new pits even more clearly. The reason for adoption of the Plan is not the necessity for urban regulation of the settlement or environmental protection, but the adoption of the Plan was necessary as to justify the *Preliminary design and Feasibility study for expansion of open pit Field D* (Management board of EPS, No. 613/11 on March 3, 2006), the *General plan for the open pit Veliki Crljeni Field* and a corresponding study of contouring open pit South Field, as well as by the auxiliary studies: "*The feasibility study and preliminary design of limits of expansion of Field D*" (Kolubara Projekt, 2005), "*Study of conditions for the resettlement of Vreoci*", along with an opinion poll of households, index and evaluation of real estates (IAUS, 2005), and "*Choice of limits and the opening of open pit mine South Field in the Kolubara coal basin*" (Kolubara Projekt, 2006/07).

All these documents and studies were prepared or ordered by RB Kolubara, to be internal documents, with the sole purpose of the expansion of open pits and of increasing coal production.

[7]In the General Regulation Plan, in section III: Development of mining activities and the impact on the environment / 1. The development of mining activities in the Kolubara basin and their impact on the environment, the following items contain very explicitly outline of the **EPS**

**KOLUBARA ENVIRONMENTAL IMPROVEMENT PROJECT:**

- a) "the need that existing excavation equipment revitalize and modernize for the operation on new open pits";
- b) "delays in the design and procurement of additional equipment";
- c) "opening of replacement capacities for the open pits where the exploitation cease by 2020 (Field B, Field Tamnava East and Field D)";
- d) "completion of investment program at the open pit Field Tamnava West and reaching the level of production from the current 9 million t/year up to the projected 12 million t/year, replacement of obsolete equipment on the Field B, as well as the revitalization of equipment from the Field D";
- e) "reduction of annual production at open pit mine Field Tamnava West after 2020, due to large deterioration of the coal deposit conditions in the southern part of the open pit mine (stratification of coal-bearing series), demands harmonization of the amounts of low-quality coal (from open pits Field Radljevo and Field Tamnava West) with the amounts of quality coal (from open pits Field E and South Field ), since for the homogenization of coal, that will have to occur, it is necessary that the quantities of low-quality coal and quality coal to be in the appropriate proportion ". [7]

These quotations prove that the mala fide and irresponsible attitude of MB Kolubara and the EPS toward the citizens of Vreoci in the process of acquiring land for the expansion of open pit are

incorporated in the key documents nominally dedicated to the resettlement of Vreoci. The real purpose of spatial and urban plans for more than 10 years, as well as the Project submitted to the EBRD, actually is to hide the true objective that is just the acquiring of land for expansion of the open pits and increase production of coal without fulfilling responsibilities to the citizens of Vreoci. [7], [8]

The EBRD Project appraisal of the Project submitted by the Client fail to comply with the Performance Requirements 3: Pollution Prevention and Abatement, namely:

- it fails to comply with the requirements defined in General, paragraph 6;
- it fails to comply with the requirements defined in Pollution prevention, resource conservation and energy efficiency, paragraphs 10 and 11;
- it fails to comply with the requirements defined in Ambient considerations, paragraph 16;
- it fails to comply with the requirements defined in Greenhouse gas emissions, paras. 17 and 19, which is explained and discussed below in the section "5. Policy of MB Kolubara and EPS regarding Vreoci: Expansion of open pit mines as the only objective of the EBRD-financed Project

### ***Potential harm that might be caused by the Project to Vreoci***

The environmental impact assessment study for the Project "Coal exploitation in the open pit mine Field C, for the capacity of 5 million tonnes annually, with the excavation of dump site Istočna kipa", that is part of documentation submitted by the Client to the Bank, mentions Vreoci several times, in context of potential direct and indirect harm that the Project might cause to the inhabitants of Vreoci. [31]

**Indirect harm, that the Project may cause to the Vreoci**, can be found in several places in the Study. *Chapter 2: Description of the location planned for the Project implementation / 2.10. Data on the existing economic and residential facilities and infrastructure and suprastructure facilities*, confirms that Vreoci is the spatial-geographic and production node for the transport and processing of coal, through and across which all the coal produced in the future open pit Field C is going to be transported and processed. [31]

Chapter 3. of the Study: Project Description / 3.2. Description of the object, the planned process and the technological features / 3.2.2.2. Production process and technological features, emphasizes that the Vreoci and the dry separation plant in Vreoci, is the point where all coal from future open pit Field C shall be brought by necessity, by five carriers with a total length of 4,780 m. [31]

**Direct harm which the Project will cause to the Vreoci** is given in the Study in *chapter 2. Description of the location planned for the Project implementation / 2.4. Water resources and water supply sources*, where it is stated that:

- "Open cast coal exploitation in the central part of Kolubara basin physically destroys the inter-stream aquifer, a greater part of the alluvial aquifer and disturbs the floor aquifer regime";
- The water supply system "Vreoci" provides water for a part of the population of Vreoci and the plants of Kolubara Prerada. The source consists of several drilled wells capturing water from various depths from three different hydro geological collectors. The source capacity in the present state amounts to 60 l/s. The source of this water supply system is jeopardized by the opening of the open cast mine (Field C) in this area". [31]

Space for open pit Field C is located southwest of Vreoci, but more important is that it is upstream of Vreoci's water supply system, on the river Peštan (see Map 2: Exploitation area of Kolubara lignite basin). The quoted consequences of open pit mining are inevitable and require more serious measures to protect water sources than the measures provided for in *chapter 10 of the Study: Summary of non-technical information*, especially because the source for the Medoševac water supply system, which supplies part of Vreoci, also is located downstream of the future open pit Field C. [31]

Water supply in Vreoci is very poor as stated in the parts 2. and 4. of this complaint. Local water supply in Vreoci works every two hours in the best case, and by appearance the water is not suitable for drinking, but only for technical purposes. In periods of low water levels in the Kolubara river basin, the water supply in Vreoci does not deliver water to residents of the Vreoci at all, but directs all water to the facilities of Kolubara Prerada. [28]

To avoid harm from the disturbance of regimes and supply of underground water or normal water supply of the Vreoci that may be caused by future work on the open pit Field C, the only satisfactory solution is to bring fresh water from distant areas that are not threatened by open pit mining. The need for water supply from remote areas is stated in the Spatial Plan for the exploitation area of Kolubara lignite basin, but not in the quoted study. This potential direct harm to the Vreoci is present throughout entire implementation of the Project. [8], [31]

Bearing in mind that development of the exploitation area of Kolubara lignite basin in the near future will almost completely surround Vreoci, which is explicitly defined through the General Regulations Plan for the area of the Vreoci, outlined in the section 4. of this complaint, as well as that this creates the most logical spatial connection of production and processing of lignite, there is no excuse for delay in the resettlement of Vreoci. The immediate need for resettlement is confirmed in all planning documents primarily by defining the target to increase coal production by about 20%, which is a direct increase in pollution of the Vreoci. The Bank should take into account the treatment of citizens of Vreoci by MB Kolubara and EPS and treat it as mala fide and

irresponsible behavior, the sole purpose of which is to acquire land for the expansion of open cast pits and increase production of coal, without fulfilling commitments to the citizens of Vreoci. [7], [8]

#### **PREVIOUS COMMUNICATION REGARDING THE ISSUES IN THIS COMPLAINT**

NOTE: Attached on the end of this complaint are three letters sent from MZ Vreoci to EBRD, and we have received one letter from EBRD as a reply (from 28 March 2012, by Mr. Kevin Bortz).

We have contacted the Project sponsor, and many other relevant national and international institutions in a number of letters, related to the resettlement issues raised in this Complaint, which is huge documentation, available on request, if relevant. All issues mentioned in those letters are indicated and more elaborated in this Complaint.

#### **THE FINAL STATEMENT**

The Complainants expect that the Bank, in the project complaint mechanism, within a reasonable timeframe shall conduct an examination of claims and allegations from this complaint and conduct its own investigation related to the Client's treatment of the resettlement of Vreoci, and to the failures in compliance with EBRD policies and potential harms of the Project to the Vreoci.

The Complainants consider that the Bank should decide as set forth in the Content of this complaint.

This Complaint is signed by authorized representatives of the Complainants and their signature confirms that this complaint is a statement of their will.

In Vreoci, August 17, 2012

Ecological Society "Vreoci"  
President of Managing Board

Gordana Kulić

Council of MZ – Local Community, MZ Vreoci  
President of the Council

Željko Stojković

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## LETTER FROM MZ VREOCI TO EBRD FROM JULY 5, 2011

COUNCIL OF THE LOCAL COMMUNITY VREOCI

REPUBLIC OF SERBIA

Date: 5.07.2011.

РЕПУБЛИКА СРБИЈА  
Општина Лазаревац  
МЕСНА ЗАЈЕДНИЦА  
бр. 01-334/1  
Датум 05 ЈУЛ 2011  
ВРЕОЦИ

For: The European Bank for Reconstruction and Development (EBRD) - to Directors

Subject: Request to postpone the decision on loan for the Environmental Improvement Project at the Kolubara Mine Basin in Serbia

Dear Sir/Madame,

We, representatives of the local community in Vreoci, are addressing you in regard with the prepared project to be financed by EBRD: the Environmental Improvement Project at the Kolubara Mine Basin in Serbia, project of EUR 140 million worth, e.g. social impacts of this project related to the relocation of households and settlements at Kolubara mining basin.

We request postponing your decision for certain time of this loan for the Electric Power Company of Serbia (EPS) and consequently to the Government of Serbia (that is giving guaranties for the loan) as the one of the most important request in preparation and approval process of this project is not being fulfilled, which is full implementation of the Plan of relocation of populated place Vreoci on sustainable and acceptable way for Vreoci citizens.

Despite the existence of two planning documents:

1. The Programme for setting the framework for relocation of the settlement Vreoci of 12.11.2007., and
2. The General Regulation Plan for the Settlement Vreoci of 17.12.2008.

in which there are defined principles of relocation (collective relocation) with whom in general the citizens of Vreoci are agreed, we would like to point on the irregularities made so far in their implementation, on the corruption and misuse of the funds aimed for relocation of the people in Vreoci, violation of the laws and the Serbian Constitution, on the delays in the implementation, which altogether represents unacceptable violations of the rights of the concerned stakeholders in the consultation process and implementation of the relocation programme.

People in Vreoci are confused, they live in uncertainty and in fear, as the media have produced picture of their totally groundless opposition to relocation which is at the end endangering electric energy security and production of the electric energy in the whole Serbia.

Currently in Serbia there is huge investigation against corruption activities and robbery in EPS. Considering this we have position that EBRD can not continue with the approval process for this loan until this investigation finalizes and reveal the corruption case related with the Vreoci settlement relocation, as we might end up in fraud, with no financial means for the sustainable relocation, in forced resettlement (according to existing practice in Serbia).



### Short review of main violations and irregularities:

1. The Serbian Ombudsman has concluded that allegations and complaints made by citizens of Vreoci are justified and confirmed violations of the Serbian laws and Constitution in his Recommendation No. 8260 dated on 21.04.2011.

2. In our letter to the Minister for Environment, Mining and Spatial Planning dated on 30.05.2011. we reiterated our decisions from the public hearings held in 2006 and 2007 that we are not in consent with the proposed locations "Lazarevac 2" for cemetery and location "Rasadnik" for the settlement (for us unacceptable locations) and that those locations are forced solutions, despite our publicly stated needs and request for relocation of the whole settlement to location „Petka”.

3. Until now no location is provided with the necessary infrastructure for collective relocation of Vreoci, and thus no conditions are set for the acceptable relocation.

4. Activities so far conducted on the land acquisition are showing that there is no process of relocation but of resettlement and that there is no possibility for relocation of our main objects of public importance such as: Culture House, Post office, House of pensioners, Youth House, ambulance building, playgrounds, Kindergarten, local fair, sport hall, shopping mall, veterinary station, local cemetery and the church, which is very important for us.

5. Process of assessing economic value of citizen's assets is particularly problematic. The value of the land is not being assessed according to the Law on expropriation on the basis of tax decisions issued by the Tax Administration, but through the findings of the mixed commission formed from representatives of the municipality and EPS, while the property –object on the land is being estimated by the City Center for Expertise in Belgrade who is in contract relations with the EPS; the situation which leads to undervaluation of property in Vreoci as the City Center for Expertise is paid by the EPS and biased. In both cases, it is conflict of interests and it is not logical that our assets and land is being assessed by the user of land acquisition. In addition, we do not have rights on separate and independent assessment done by the court expert because of this situation explained above.

6. Concerning the relocation of the local cemetery, process of expropriation has already started quite ago, while the user –the EPS- have not assured citizens of Vreoci and have give no guaranties that our rights will be respected in the procedure together with our deep concerns, values and emotions. Moreover, EPS has started signing of Contracts on (cemetery) displacement conditions with the physical persons that are not legally holders of the rights on grave use in Vreoci, which is setting the conditions for excavation of bodies in the settlement's cemetery without consent from the true holders. By doing like this, EPS will conduct grave breach (Art. 354 of the Criminal Law of Serbia). Because of these concerns, we wrote to Serbian Ombudsman and started several court cases on several instances which are still ongoing. Also, EPS has incorrectly stated the number of 4000 graves in Vreoci cemetery both in media and in official documents while we have received number of 8906 buried from the Archive Institution in City of Belgrade, and the Belgrade Administration (official data from the Book of deaths for period from 1837 to 2009). Citizens are in fear that more then half of our deceased will be forgotten, not evidenced, not respected and excavated violently without right on exhumations and church ceremony.

Despite the above mentioned since 04.07.2011. at 4.00 in the morning our cemetery has been occupied with approximately one thousand policeman, not allowing access to Vreoci citizens even for religious service, as the forced excavation of bodies has started.





Moreover, to be worse, this excavation is being conducted in summer time, during high temperatures, which is outrageous as the sanitary regulation is violated, as all of this is endangering health of our citizens, as the cemetery is located near the centre of the settlement.

We are also stressing that the primary school of 500 children is few hundred meters away from the cemetery, while the EPS will be conducting excavations in the next one year thus coinciding with the school activities. If this happen, our children will be exposed to infection risk as the excavations will be conducted also on the graves formed recently –for which did not pass mandatory resting period.

7. Citizens of vreoci do not have basic living conditions, because in addition to enormous pollution of land, air and water (coal dust, ash, sewage sludge, industrial waste) we face with the drinking water scarcity due to drying of wells, caused by mining activities, which is outrageous considering guaranties of citizens rights according to the international conventions and the national legislation quoted in the alien 1, of the chapter 2, point 2 of the General Regulation Plan for the Settlement Vreoci of 17.12.2008, and considering respect for the right to a healthy environment in accordance with Article 37 EU Charter and Article 74 Constitution of the Republic of Serbia. The above mentioned regulation plan have proclaimed the entire territory of the local community of Vreoci as pit surface, and we are excluded from solving our living problems until relocation.

**Recommendations, conclusions and requirements:**

- We want to point out clearly that it is only acceptable for us collectively to relocate on other place to ensure the preservation of our cultural and historical and spiritual heritage and identity and continuity of existence of our community also after the relocation, in accordance with the planning documents related to relocation, in which the EPS and the Serbian government took over that responsibility.
- We do NOT accept here on us application of well-established policy of bringing a fait accompli, which has been repeatedly applied in Serbia the cases of displacement) (Roma settlements in Belgrade, Corridor 10 in southern Serbia, and in many other cases of displacement for the construction of large buildings and other infrastructure objects)
- We request from the EBRD to postpone the decision on granting this loan, to provide monitoring of current state of the relocation in settlement of Vreoci, and send its delegation in Vreoci to ensure to citizens their rights guaranteed with the standards of EBRD and international legislation and laws of Serbia.

Yours respectively,

Council of the Local Community Vreoci

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President of the Council  
Mr. Slobodan Đokić



**LETTER FROM MZ VREOCI TO EBRD FROM JULY 20, 2011**

EUROPEAN BANK FOR RESTAURATION AND DEVELOPMENT (EBRD)- for the directors

**Subject:** Request for postponement of decision concerning the project: **PROJECT FOR IMPROVEMENT OF ENVIROMENT AT COAL BASIN KOLUBARA**

**Date:** 20.07.2011.

To whom it may concern,

СРБСКА СРЕМАЈ  
ОПШТИНА Вазаревац  
МЕСНА ЗАЈЕДНИЦА  
ПОЛ 01-359/1  
ДТУМ 20 JUL 2011  
БРЕОЦИ

Since we discovered from the media that you will decide on the 26<sup>th</sup> of July, 2011 concerning the request for a credit, for which PD RB "Kolubara" and EPS applied: **PROJECT FOR IMPROVEMENT OF ENVIROMENT AT COAL BASIN KOLUBARA**, we want to inform you that we have consulted, concerning this question, with the Ecological movement of Serbia, who is a Republic Alliance of Non- Government Organizations, who is going to initiate and organize a protest against an excessive and misused borrowing , in front of your busyness building in Belgrade on the 25<sup>th</sup> of July, 2011, at 11 o'clock, which will be transmitted by many domestic and foreign media.

Taking into account that the citizens of Vreoci and the Coal Basin Kolubara, for decades suffer many catastrophic living and ecological conditions, and since PD RB "Kolubara" and EPS haven't shown themselves as socially responsible companies, because of carelessness toward nature and living environment , where there is a broad spectrum of pollution of earth-air- water, once more, with this protest, we will send a request to EBRD, to not allow the approval of loan for the **PROJECT FOR IMPROVEMENT OF ENVIROMENT AT COAL BASIN KOLUBARA**, because PD RB "Kolubara" and EPS will, just as many other consumers, spend this money excessively, just as the recourses that were preplanned for solving of dust problems project in "Kolubara processing", which was credited for this purpose, but was never realized as a project.

Wastewater from this plant for processing of coal, still flow out untreated, uncooled, while the precipitator is in the center of this area. Air pollution is enormous. There is scum, ash, cinder, smoke, emissions, coal smoke, while in wastewater can be found traces of heavy metals and poisonous elements like: cyanide, phenol, mercury, led, nickel, arsenic, zinc, chrome, cadmium, nitrogen nitrate, phosphorus, carbon monoxide. The citizens are constantly exposed to the vibrations, dust, noise and many other unpleasant fumes. Across the roads of Vreoci, daily 300 heavy trucks pass by, and also 40 compositions of train wagons, with which coal is being transported. Electromagnetic radiation is right above our heads, since across the whole area, we have high-voltage transmission lines.

Managers of PD RB "Kolubara" are fed up with concerns for ecology and protection of environment, while the case on the field says otherwise. It's enough to look upon the uncultivated surfaces that remind us of moon craters, especially since after the exploitation of coal, re cultivation of the surface is not done, but is the case everywhere in the world.

Method by which the exhumation of the graves is done, is whole another story, because this is being done by the most primitive way with construction tools (shovels, picks, mining picks), without any piety for our dead, where the corpses are being broken into pieces while still in discomposing state. What is even worse, this is being done in the middle of July, when the temperature is over 40 degrees Celsius (104 degrees Fahrenheit).

Because of all the above, we request that you do not allow the approval of loan for a company that brakes laws, European standards, and technological norms, and before you make a decision about issuing this credit, we ask you to perform strict monitoring concerning this case, and send your delegation to the field, so that realization of rights which are guarantied by norms of EBRD and international legislation and laws of Serbia, would be made possible for the citizens of Vreoci.

Sincerely,



COUNSEL OF THE LOCAL COMMUNITY VREOCI

Dise Djurdjevica, 91  
11560 Vreoci, Republic of Serbia  
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for

President of the Counsel of the Local Community



Mr. Slobodan Djokic

**LETTER FROM MZ VREOCI TO EBRD FROM MARCH 13, 2012**

**Local Community of Vreoci,  
Belgrade city municipality of Lazarevac  
Republic of Serbia**

Date: **13.03.2012.**

**To:** Directors of EBRD and to

Environmental and social department: [environmentandsocial@ebrd.com](mailto:environmentandsocial@ebrd.com),

Office for communication with civil society: [CSO@ebrd.com](mailto:CSO@ebrd.com)

Chief Compliance office: [compliance@ebrd.com](mailto:compliance@ebrd.com)

And natural resources department: Mr Kevin Bortz ,Subject: **The request for the suspension of the credit arrangement with energy company IC MB "Kolubara" for ENVIRONMENTAL IMPROVEMENT PROJECT IN KOLUBARA MINING BASIN**

We address you for the constant and increasing violations of human and property rights by the Public Company Mining Basin "Kolubara" - Lazarevac that has applied and signed the credit arrangement regarding the Environmental improvement project in Kolubara mining basin (Project ID 41 923 EPS Kolubara Environmental Improvement).

With regret we want to state that the attitude of the mentioned company since our first addressing to you on 05.07.2011 has not changed in no way for the better. Planning documents - Program basis for the relocation of settlements in Vreoci from 12.11.2007 (Board of directors decision PE "EEPS number I-925/3 from 12.11.2007 to which the Government of RS approved 05 No. 310-5277/2007-3 22.11.2007) and General Regulation Plan for the settlement Vreoci (from 17.12.2008 number 145/2008-XI - "Official Gazette of the City of Belgrade" 54/08) are still not respected. On the field there is a gross violation of the dynamics of the process:

## **1. Delay of the relocation:**

Considering that the dynamics of moving of the households is behind the schedule, as determined in the "General Regulation Plan for the settlement Vreoci", there is a situation where the speed of the execution of technical works related to the relocation of the transport and energy infrastructure necessary to expand the open pit mines has surpassed the planned eviction of households, so during the installation of power transmission lines of 110 and 35 thousand volts (110 and 35 KV) diagonally through the center of the village over the households, foreseen for final eviction in 2011, households are still inhabited.

Regarding this issue Local community Vreoci has during the public insight in the Spatial plan of city municipality of Lazarevac with the Report of the Strategic environmental assessment,<sup>1</sup>, submitted an complaint. After the public meeting held on 31.01.2012, the Planning Commission of the City Administration of Belgrade, which was formed in accordance with the Law on planning and construction ("Official Gazette of RS", no. 72/09, 81/09, 64/10 and 24/11) in a closed session 02.02.2012 (174th Session), discussed the submission of complaints by the stakeholders- including one from Vreoci representatives, and have accepted complaint of Vreoci community about the terms for the transmission lines.

The textual part of underlying plan is to be complemented in the chapter: Rules of regulation and network construction and infrastructure objects, electric power infrastructure in a way that will be added in the following sentence; "For the power lines voltage of 35kV or more it is necessary to develop special urban documentation in accordance with law".

The final version of the underlying Spatial plan with the Report about the public insight will be submitted to the City Council of Belgrade in order to accept it, after which it will be directed to the Belgrade City Council for consideration and adoption, from which it clear that the construction of these power lines is done without proper planning documentation and outside the law.

## **2. Negligence of the company about the environmental, infrastructure and utility conditions of life in the village during the process of moving to the end of the Project:**

Most pressing issues regarding condition of environment in Vreoci community are as follows: Noise, dust, vibration, fumes, the unresolved problem of waste water from industrial plants from Kolubara-processing plant, electromagnetic radiation from the power lines above heads of inhabitants, destroying of the road in the possession of the local government by transport trucks and machinery of IC MB "Kolubara" (Kolubara uses public roads as internally industrial infrastructure but without providing resources for their maintenance).

Waste water - still the unresolved problem of waste water from the plant "Kolubara processing" that flows out from the factory untreated, uncooled, un-piped, while the filter sedimentation tank of waste water is in the center of the village- contrary to all technical regulations and applicable laws- from which further through systems of open channels the wastewater is released into the river Kolubara (we have video footage).

Heavy machinery of Public company Mining Basin "Kolubara" passes by our houses as this is already an open pit mine, and not an inhabited town. On this issue we

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<sup>1</sup> Prepared from the side of Secretariat for urban planning and construction of the City Administration of Belgrade

addressed the Director of PC MB "Kolubara" on 04.01.2011, and an immediate cause for this was the passage of trucks heavier than 5 tons on the streets of Vreoci although forbidden by traffic regulations notified by the traffic signs. Problems that occur on the field are:

Falling of dangerous materials from trucks and trailers, damages on the communal roads, danger for the children and pedestrian for the reason of massive scale of industrial traffic few meters from houses, school and other

Also the passage of such machinery is contrary to republican law on environmental protection, due to toxic materials transported without specially precautionary measures, in trucks without a tarpaulin.

### **3. Discrimination of vulnerable inhabitants of Vreoci in becoming employed by “ Kolubara” mining company , contrary to the undertaken commitments:**

Regarding this issue we addressed the Director of IC MB "Kolubara" in writing on date 05.01.2011, and to this day we have not received an answer, although **the obligations of employment of vulnerable citizens** from the territory of LC Vreoci, confirmed in a document of IC MB "Kolubara": Relocation of the settlements in Vreoci 26.11.2011 under Item 3 - Employment of unemployed persons from Vreoci.

### **4. Withholding of financial support to the local community and civic associations of Vreoci:**

The decision to take over the costs of the local community of Vreoci, starting from 01.01.2011, which is in accordance with the planning regulations issued by the Monitoring Committee for the relocation of settlements in Vreoci on a session on 17.11.2010 under the 3rd agenda item - conclusion No. 7, and PC MB "Kolubara" confirmed on 26.11.2010 in the case: Moving settlements of Vreoci are generally not respected.

This issue has become especially relevant after the statement of Mrs. Vukice Popadić - Assistant Director of IC MB "Kolubara" for environmental protection, stated at a consultative meeting: Climate change, energy and the environment (CCEE) organized by: CEKOR & Rockefeller Brothers Fund held on 21.02.2012 , "that PC MB "Kolubara" is a socially responsible company because last ( during 2011) year “Kolubara” has approved donations in the amount of 1,300,000 €"; after such presentation of the “Kolubara” manager for environment, President of the Council of LC Vreoci Mr. Zeljko Stojkovic stated "that PC MB "Kolubara" is not a socially responsible company because as a beneficiary of the expropriation, violates the rights of the population covered by the plans for social displacement, contrary to the positive examples of business practices, norms of EBRD and obligations undertaken in the Stakeholder engagement Plan (PC MB "Kolubara" - PE EPIS, February 2011) "; **after such discussion we got impression that the reason for failure to comply with obligation to support financially work of local community in Vreoci is not lack of money, but the intention to shutdown the local community which is struggling for protection of rights of Vreoci community.**

### **5. Failure to comply with the Law on Expropriation:**

Implementation of the principles of contractual relocation – by paying up to 30% of agreed sums to people that should be relocated without clear guarantee that remaining sum will be paid off in some reasonable time “Kolubara” is braking its legal obligations from Serbian Law on expropriation

### **6. Devaluation of property:**

By payment of amounts significantly smaller than the market value of land contrary to the Law on planning and construction, PC MB "Kolubara" acquires unlawful material gain at the expense of the citizens of Vreoci (filed a criminal complaint to the Higher Public Prosecutor's Office in Belgrade on 30.11.2011, the case No. KTR - 4468 / 11). Also, extensive material has been submitted to the Special Prosecutor Mr. Mirko Radosavljevic in a special department for organized crime, the High Court in Belgrade about organized crime in PC MB "Kolubara" regarding the illegality of the expropriation procedures in Vreoci.

**7. Failure to comply with the Law on cemeteries and burial grounds (Art. 18-20):**

Forcing people to agree to exhume their deceased before they make the expropriation of property, so before they are able to know where their new residence will be, as the location for a collective move of Vreoci is not yet established. Around 120 court cases have been raised in the Administrative Court relating to the attempt to cancel decisions for illegal and forced excavation and transfer of remains from Vreoci cemetery to cemetery Lazarevac 2 - Šopić).

**8. Failure to meet the most important social aspect in the process of moving - the obligation of the collective relocation to preserve the entity of the local community and the continuity of existence:**

The situation on the field is such that in practice the obligation of determining the location and construction of new settlements with the objects of public infrastructure is not respected. Together with lack of space and solution for social infrastructure there is no possibility that the citizen can obtain adequate land for the construction of a new household on the site for the collective relocation, which is contrary to the Relocation plan because in this case it's about an individual displacement and not a collective relocation.

**As for concerns about the credibility of the Council of LC Vreoci** in the documents of EBRD we inform you that the Council of LC Vreoci as the basic unit of local government was legally elected in the electoral assembly of 2008. The population that we represent (about 3000 people) is still not displaced, and they live on their addresses in a populated area of Vreoci. In October 2011, the population census was taken in the Republic of Serbia on which forthcoming statistics will show that the population still resides in Vreoci at their addresses in their homes, led by their legitimate political representatives - the Council of LC Vreoci. Since this year are the regular elections in Serbia, these same citizens will get the invitations for the elections to their proper addresses, while the elections will be organized at three polling stations in the territory of Vreoci.

The viewing angle of EBRD is not clear to us on this issue, especially as the representatives of EBRD (Michaela, Martin and Jan) on 24.08.2011 were at the meeting in LC Vreoci with the representatives of the local community, especially given that the LC Vreoci completely legally, in their correspondence with the government agencies, uses a seal, otherwise it would have been accused and convicted of misrepresentation, which would constitute a criminal offense. Therefore we expect from EBRD and its employees to fully respect citizens and their elected representatives in Vreoci and other local communities affected by this project and to change attitude from now on in communicate with Our and other local communities.

From all of the foregoing it is evident that the energy company PC MB "Kolubara" contrary to law and positive examples of business practices as well as the norms of the EBRD, and pursuant to commitments in the Action Plan for Environmental Protection and Social Affairs of 25.02.2011 (ARUP) and Stakeholder Engagement Plan from 01.02.2011

(EPIS), realizes their interests in violation of the law and European conventions guaranteed human, property and social rights of local people and communities covered by the displacement of the mine expansion needs.

**The request:**

From EBRD this time we explicitly demand that the loan arrangement with the company PC MB "Kolubara" is suspended, given that it turned out to be socially irresponsible and criminally, both in terms of corruption and in terms of violations of laws and social rights of citizens of Vreoci included in the displacement given that in the credit agreement you have not conditioned power company IC MB "Kolubara" in terms of fulfilling unexecuted obligations to the community and the population.

Sincerely

COUNCIL OF THE LOCAL COMMUNITY OF VREOCI  
Street Diše Đurđević no. 91

11550 Vreoci, Serbia

e-mail: [mzvreoci@neobee.net](mailto:mzvreoci@neobee.net)

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TEL/FAX: +381 11 8144 000

**President of the Council**

**Željko Stojković, s.r.**

### **Serbia: EPS Kolubara Environmental Improvement (41923) PCM**

#### **Management Response**

##### **Summary**

Management appreciate the opportunity to comment on the Complaint received from the Vreoci Ecological Society and the Council of Mesna Zajednica Vreoci (together “the Complainants”)<sup>1</sup> with regard to the Kolubara Project.

We believe that:

- (1) an appropriate environmental and social appraisal of the Kolubara Environmental Improvement Project (“the Project”) was performed, and;
- (2) That it has not been established that the specific Project that the Bank is funding will potentially cause environmental and social harm to the residents of Vreoci (not to be confused with existing/historical environmental legacy issues associated with other operations closer to the community).

On point (1) EBRD is satisfied that the Project was appropriately appraised and is structured to meet the requirements of the Bank’s 2008 Environmental and Social Policy. On point (2), EBRD believes that it is extremely unlikely that the EBRD Project will result in significant environmental or social harm in Vreoci. Actual harm to date can be ruled out as the Project has not yet started (i.e. the EBRD loan has not disbursed). Potential harm is unlikely as the Project is located at least 8km from the community of Vreoci and will be subject to extensive environmental management and monitoring requirements. We note that environmental and social impacts in Vreoci are dominated by the large open cast mines directly adjacent to the town, Field D and Veliki Crljeni, and by pollution from the town’s industrial zone, none of which is being financed by EBRD. The definition of the Project that is being financed by the Bank is clear and does not relate to the larger area of historic and existing environmental and social legacy issues that exist in the area. The Bank has met with Vreoci community members (even though Vreoci is at some distance from the EBRD Project site) to listen to their concerns, and to clarify for them the specific Project being financed.

We note the expected environmental benefits of the Project and we also note that there is no obvious link between the Project and the resettlement/ relocation of Vreoci that is raised in the Complaint. That being said, EBRD recognises that the environmental situation in Vreoci needs attention, particularly with regard to local air quality. The industrial sources of pollution in the town are in need of either extensive refurbishment, or decommissioning. EBRD staff have proactively met with local groups in Vreoci and have discussed these issues with EPS/Kolubara. EBRD would be willing to engage again, on a best efforts basis, with both the Company and the Complainants to investigate possible solutions, but it is imperative

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<sup>1</sup> [NB: The pdf file “Document Properties” has CEKOR, the Serbian Bankwatch affiliate, as the author of the complaint.]

to separate what is done as mitigation for the EBRD Project (in the ESAP) and what is more appropriately termed, *capacity building*, as a proactive initiative.

## **Background**

EPS is the largest company in Serbia, with around 35,000 employees. It forms the bulk of Serbia's electricity and lignite mining sector and, as such, contributes 5%-10% of the country's GDP. The activities are extensive, encompassing mining, thermal and hydro power generation and electricity distribution and supply. RB Kolubara ("the Company") is one of 11 EPS subsidiaries, and is responsible for open cast mining in the Kolubara mining basin. The mining basin covers an area of around 1,200 km<sup>2</sup> and is made up of a series of separate fields at different stages of development – exhausted, in production, and yet to be opened [see map]. Open cast mining has been carried out in this mining basin since the 1950s. In addition to mining, RB Kolubara provides some local services and amenities such as water supply, district heating and sports and recreational facilities. Both RB Kolubara, and its parent, EPS, are large, complex organisations.

EBRD has financed several projects with EPS and its subsidiaries since 2001. Initially these projects focused on the need to rehabilitate an economically vital industrial sector after the conflicts in the Balkans, with loans to finance the rehabilitation of thermal power plants and to introduce new mining equipment. More recently, EBRD has made targeted investments aimed at improving the environmental performance and long term sustainability of the industry. These investments have involved the rehabilitation and expansion of small scale hydro power, advanced electricity metering to improve demand-side management, and the Kolubara Environmental Improvement Project.

For each of these projects, EBRD has been consistent in implementing the approach set out in the Environmental and Social Policy and Performance Requirement 1. The business activity that EBRD is financing is subject to environmental and social appraisal and is structured to comply with the Performance Requirements. The appraisal takes place in the context of the "area or influence" but it is not reasonable, practical or desirable for EBRD to seek to impose its requirements on the whole of a client's operations, or to be held accountable for every aspect of those operations. However, EBRD is proactive in engaging with clients to assist them in improving their wider environmental and social performance. In the case of EPS, this proactive approach has included providing €185,000 for auditing and improving occupational health and safety management, and requesting EPS to commission independent environmental audits of each of the eleven subsidiary companies. These audits have resulted in detailed recommendations, some of which relate to facilities in Vreoci, and many of which would involve considerable capital expenditure to implement. We are currently waiting on EPS' management response to these recommendations.

## **The Project**

The current EBRD Project, which is being financed jointly with KfW, comprises three components:



- (1) A coal management system, to be located at the site existing coal storage yard adjacent to the Tamnava West Field.
- (2) A coal excavator, conveyor and spreader system for the new open cast mine Field C in the eastern part of the Kolubara Mining Basin; and,
- (3) A spreader system for inter-burden at the Tamnava West Field open cast mine.

The Project will allow RB Kolubara to extract coal more efficiently and cleanly. Currently, part of lower quality lignite is dumped together with inter-burden, which is not cost-effective and is wasteful. Moreover, this increases the dumped overburden volume and causes uncontrolled fires on the dump sites and increased greenhouse gas emissions.

In the Nikola Tesla A and B power plants (supplied by lignite from the Kolubara fields) the present high variations in the quality of the lignite causes significant operational and hence environmental problems, which this project will address. Low quality lignite has to be supplemented by heavy fuel oil, which is polluting, or if the quality is too low the boiler has to be shut down. Heavy fuel oil is then needed to restart the boiler. Lignite that has too high a calorific value is also a problem as it can melt ash and damage the boilers, and also leads to shut downs (again requiring the use of heavy fuel oil to restart the boilers). EPS estimate that 70% of unplanned outages are caused by coal quality problems.

Once the project has been completed, RB Kolubara will supply lignite that is of a more uniform quality. This will allow the power plants to generate in accordance with their design parameters, leading to more stable and efficient operation and controlled uniform emissions. This will result in lower levels of CO<sub>2</sub> and other emissions as well as reduced wear and tear and maintenance costs, and a significant reduction in the use of polluting heavy fuel oil. EPS estimated that providing uniform quality coal to its thermal power plants will add 1.5%-2% to their operating efficiency.

As of November 2012, the Project is still in the tendering stage and none of the EBRD funds have yet been disbursed. Land acquisition and resettlement required for Field C is complete and for Tamnava West is complete for mining operations scheduled to 2018. RB Kolubara has begun extracting lignite from Field C using old bucket excavators. This activity is not being financed by the Bank but was visited as part of an EBRD monitoring visit to observe the area of influence of the project.

### **Environmental and Social Appraisal**

EBRD Management believes that the project was appraised in line with the requirements of the Bank's Environmental and Social Policy. In summary, this appraisal comprised the following steps:

- An Initial Environmental and Social Examination was carried out on the 15-16 September 2010 by EBRD's environmental specialist. This determined that the project should be categorised "A".

- RB Kolubara had already prepared Environmental Impact Assessments for Field C and the expansion Tamnava West prior to EBRD's involvement in the Project. Public consultation and most of the land acquisition and resettlement was also completed in accordance with Serbian legislation/ requirements.
- EBRD engaged an Environmental and Social Consultant, Ove Arup & Partners ("Arup") to review the existing documents and processes and carry out a "gap analysis" to identify any additional requirements needed to meet EBRD's Policy and Performance Requirements. Arup also prepared a Non-Technical Summary (NTS), Stakeholder Engagement Plan (SEP) and an Environmental and Social Action Plan (ESAP). In preparing these documents, Arup reviewed a number of documents that cover wider aspects of RB Kolubara's mining operations, including the *Strategic Environmental Impact Assessment of the Spatial Plan for the Area of Kolubara Lignite Basin (2008)*.
- The EIAs, NTS, SEP and ESAP were disclosed on EPS's website in Serbian and English on 2 March 2011 and the EBRD disclosed the project ESIA webpage, including links to the Client's website at the same time. They were also made available in hard copy by the Client locally and in EBRD's Belgrade office. The Project was approved by EBRD's Board of Directors on 26 July 2011.
- Following Project approval, EBRD's environmental and social specialists have carried out monitoring visits in August 2011, March 2012, and September 2012. They have also met with the Company (December 2011) to follow up on progress being made on issues it had agreed to address. As previously mentioned, Project implementation has not yet started but the Company has progressed with implementing the environmental and social commitments in the ESAP. This is generally on schedule, although with some slippage in dates. Recognising that the original ESAP schedule was overly ambitious, EBRD and RB Kolubara agreed to revise some of the dates. The updated ESAP, along with an updated Project Summary Document, was posted on EBRD's website in March 2012.

During the disclosure period prior to Board approval, EBRD staff and Board members received letters from the Council of the Local Community of Vreoci and from CEKOR, a Serbian NGO. These raised issues about resettlement in Vreoci and the relocation of a local cemetery, both of which were planned to enable the expansion of a mine, Field D, which is adjacent to the town. The issue of pollution from the coal processing plant in Vreoci was also raised. EBRD responded that it did not regard the impacts on Vreoci to be part of the scope of the EBRD Project, but that it would investigate the issues and facilitate a discussion between the Company and the local groups. The Bank engaged independent Serbian social consultants, Link011, to manage this process and prepare a report. A public meeting was held in Vreoci on 24 August 2011, attended by 11 local people (plus EBRD staff and consultants and EPS representatives). This meeting was followed by a visit to the cemetery and to a waste water settling pond. The consultants' report was shared with the groups who attended

the meeting. The consultant's overall conclusions were that it was difficult to untangle genuine grievances from attempts to advance personal agendas, that EPS was operating in line with Serbia legal requirements, but that communication and engagement with the local community could be improved.

In parallel with this work, EPS agreed to commission independent environmental audits of each of its subsidiary companies. This initiative stemmed from a commitment in the loan agreement of a previous EPS project to carry out regular environmental audits of the project, but EPS management decided to extend the scope of the audits to cover the whole of the group and its subsidiaries. This work (financed by EPS own funds) was carried out by independent environmental consultants, Tekon/Dekonta, in 2011 and the results were presented to EBRD in March 2012. This was an extensive and detailed piece of work, with the final reports running to around 2,000 pages. The reports include lengthy recommended action plans and some of these actions will require considerable capital expenditure to implement (in excess of several hundred million Euros in the case of thermal power plant upgrades) and take a significant period of time. Given resource and capacity constraints, it is not practical for EPS to adopt all of the recommendations from these reports and EBRD has asked EPS to prepare a management plan based on priority actions. It is worth emphasising that this largely a voluntary exercise undertaken by EPS, most of the audits do not relate to EBRD projects, and the Bank has limited capacity to require EPS to implement the recommendations beyond the commitments in the ESAP. However, the Bank is willing to continue to work with EPS to achieve practical and sustainable environmental improvements where possible.

### **EBRD's Response to Complaint Issues**

This table summarises EBRD's Response to the main concerns alleged in the complaint document. The wording of the Complaint has been summarised in some instances

<b>Complaint</b>	<b>EBRD Response</b>
<i>That the project strengthened the power of the client in negotiations for land acquisition.</i>	EBRD is not aware of any instances where this is the case, and no evidence is included in the Complaint with regard to the EBRD Project. The land acquisition and resettlement process was appraised by Arup and by EBRD's social specialist. Arup did not identify any significant gaps between EPS' land acquisition process and EBRD's Performance Requirement 5. Arup concluded that " <i>All resettlement necessary for the project to proceed has been completed, and no resettlement is required during the loan period</i> " <sup>2</sup>
<i>That the Project appraisal failed to comply with PR1</i>	The project appraisal was reviewed by Arup and found to be in line with PR1. Arup concluded that "... it is considered

<sup>2</sup> Environmental and Social Gap Analysis Report, Arup, April 2011

<i>paragraph 5 [environmental and social appraisal].</i>	<i>that the EIAs identify and assess the main or significant environmental impacts that are likely to arise as a result of the works and as such complies with the requirements of the EU EIA directive”<sup>3</sup>. The Complainant may not be clear on the difference between Project components and requirements, and other activities that are beyond the scope of the Project, but which are associated with the Client. As described above, the Bank has included EPS activities in Vreoci within its wider appraisal of EPS, and has engaged with both the Company and Vreoci community groups to assist in assessing and attempting to resolve disputes. Audits of existing operations and review of action plans may improve the situation in Vreoci, but we need to emphasize that they are a proactive initiative of the Client and not directly associated with the Bank Project.</i>
<i>That the Project appraisal failed to comply with PR3 paragraph 6 [EU standards] and paragraphs 10 and 11 [pollution prevention] .</i>	<i>Arup reported that “Potential environmental impacts from the continued operation of the site include air and surface and groundwater quality, soil contamination and noise impacts. Key mitigation measures proposed include the introduction of appropriate water collection and treatment techniques, the prevention of dust generation by enclosure and wetting and the use of appropriately specified plant to reduce noise generation. There will be ongoing environmental monitoring of air and water quality, soil contamination and noise levels in the areas, and should issues arise, corrective measures will be implemented. Corrective measures would include spill response and clean up, additional damping down to prevent dust generation and the provision of noise barriers should noise exceed specified levels.” and “Mitigation and monitoring measures as described in the EIAs including water and air quality, ecology and cultural heritage need to be implemented throughout the lifetime of the project. Plans to achieve this are more advanced for Tamnava West Field (for example in the Supervising Engineer’s Inception Report) and similar plans need to be developed, agreed, implemented and monitored for Field C.” The requirement for an Inception Report for Field C was included in the ESAP and it has been prepared by EPS.</i>
<i>That the Project appraisal</i>	<i>Arup state that “Both EIAs described the ambient conditions</i>

<sup>3</sup> Environmental and Social Gap Analysis Report, Arup, April 2011

<i>failed to comply with PR3 paragraph 16 [ambient conditions]</i>	<i>(baseline) of the area on which the proposed mining activities may have an environmental impact. An assessment of the potential impact upon this baseline and measures to reduce those impacts are also described in subsequent sections.”<sup>4</sup></i>
<i>That the Project appraisal failed to comply with PR3 paragraph 17 and 19 [greenhouse gases].</i>	The principal aim of the project is to improve the efficiency of the thermal power plants that use coal from RB Kolubara. EBRD’s energy efficiency engineer estimated the CO2 emission reductions at the TENT A and TENT B power plants to be approximately 200,000 tonnes per year.

### **Potential Harm**

The Complaint describes *Indirect Harm* and *Direct Harm* that the Complainants believe the Project will cause. Regarding the *Indirect Harm*, coal will continue to be transported through Vreoci on the existing railway line at similar rates to now. It is not explained in the Complaint how this specific EBRD Project will cause harm or what the consequences of it will be. EBRD does not consider that the environmental or social impact of this rail transportation resulting from the Project will be significant.

EBRD does agree that the overall environmental situation in Vreoci is poor. The town is located directly between two large open cast mines, Field D and Veliki Crljeni. The industrial zone in the town is a major source of air pollution, particularly the coal processing plant that provides coal for household use and the district heating plant (“Toplana”). Measures to address the environmental impacts of these facilities have been included in “The Green Book of the Electrical Power Industry of Serbia” and in the recommendations of the Tekon/Dekonta audits, but these have not yet been implemented by EPS.

The potential *Direct Harm* alleged by the Complainants relates to the impact of the Project on ground water levels. It is the case that ground water levels in the Kolubara area have lowered as a result of the extensive historical and on-going mining activities across the region. On the specific issue of the impact of Field C on ground water in Vreoci, RB Kolubara believe that is will not be significant due to the physical separation (approximately 8 km) and the fact that Field D lies directly between Field C and the village and is an older and deeper mine (70m). The company is responsible for operating some of the water supply system in the region and has stated that all local residences have access to free piped water supplies. Water supplies to Vreoci and other villages have been restricted at times in the summer due to the prolonged drought in Serbia, and the fact that water is provided free and therefore used inefficiently.

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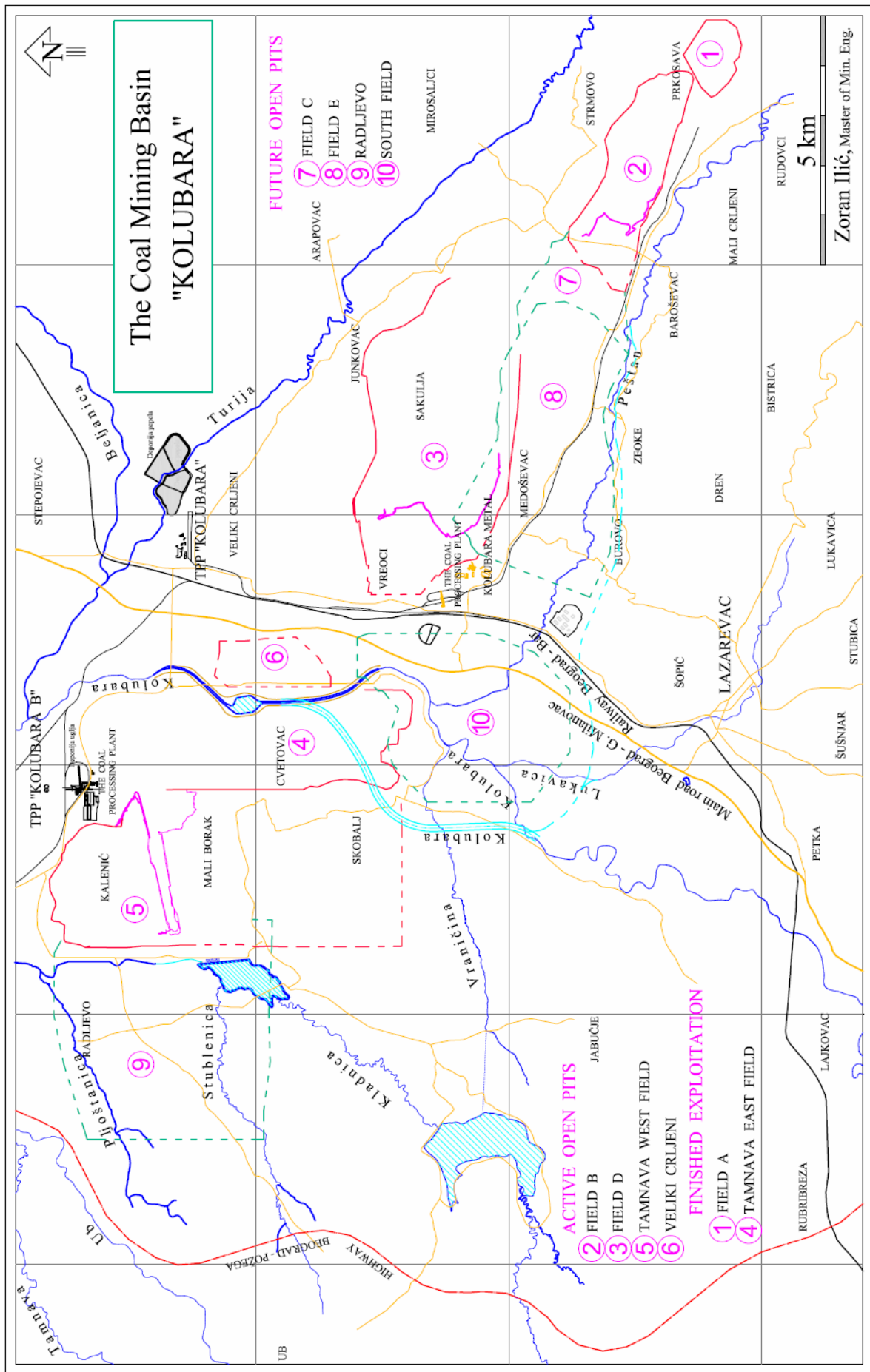
<sup>4</sup> Environmental and Social Gap Analysis Report, Arup, April 2011

Groundwater wells are used by some local people for gardening, etc., but this water is untreated and would not be recommended for drinking.

EBRD notes that the quote from the EIA in this section of the Complaint is not accurate. The complaint quotes the EIA as saying “The source of this water supply system is jeopardized by the opening of the open cast mine (Field C) in this area”. However the actual text of EIA does not include the reference to Field C and is making a more general point about ground water levels in the area. It is important that the actual text is used, and not an altered or interpreted text.

## **Conclusions**

1. The primary objective of the project is to help to improve the efficiency of, and reduce pollution from, the thermal power plants that are supplied with lignite from the Kolubara mining basin. The project is expected to result in CO<sub>2</sub> emission reductions of approximately 200,000 tonnes per year.
2. The essence of the complaint revolves around two issues: firstly, whether EBRD carried out an appropriate environmental and social assessment of the Kolubara Environmental Improvement Project, and secondly, whether it has been established that the project will cause environmental and social harm to the residents of Vreoci (not to be confused with existing or historical environmental legacy issues).
3. The Bank’s management conclude that in relation to the first issue, the EBRD is satisfied that the project was appropriately appraised (both by the Bank’s environmental and social experts, and by independent consultants engaged by the Bank), and is structured to meet the requirements of the Bank’s 2008 Environmental and Social Policy.
4. In relation to the second issue, as noted above, it is important to clearly distinguish between the issue of the environmental and social harm to the residents of Vreoci arising from this project, and the existing or historical environmental legacy issues associated with mining operations in other fields closer to Vreoci, operations which have been going on since the 1950’s. The Bank believe that it has not been established that the specific Project the Bank is financing will potentially cause environmental and social harm to the residents of Vreoci. Actual harm is ruled out since no disbursements have yet taken place under the Project.
5. EBRD is willing, on a best efforts basis, to engage again with both the RB Kolubara Company, and the Complainants to investigate possible solutions to improve the environmental situation in the community of Vreoci, but this is more appropriately termed a capacity building initiative, which is not directly related to the Kolubara Environmental Improvement Project.





## **Annex 3: Client's Response**

Rudarski basen "Kolubara" d.o.o.

№ 2-01-2195

12 March 2013

Lazarevac

**JP "Elektroprivreda Srbije", Beograd  
attn. Mr Slobodan Mitrovic**

**Answers to the questions of the independent expert engaged by EBRD from the meeting held with  
EPS – RB Kolubara representatives on 14 February 2013 regarding the Vreoci Local Community  
complaints submitted under the project grievance mechanism**

### **1. Vreoci village resettlement – project background and implementation**

Vreoci Village Resettlement Project provides for the expansion of Field D, Veliki Crljeni, Field G, Field E and South Field open cast mines unblocking large coal amounts within the Kolubara Coal Basin (geological coal reserves within the Vreoci Local Community are some 500 million tons).

According to the 2002 census, Vreoci village had 3210 inhabitants and 1088 households. Vreoci Cadastral Municipality, i.e. the village area covers some 1879 ha. Part of the village has already been resettled for coal mining purposes (Tamnava – East, Field D, Kolubara River, industrial facilities, etc.). The village area contains numerous energy and industrial facilities (Drying Plant, Heating Plant, Gasbeton, Kolubara-Metal, etc.) with adverse environmental impact in the village itself. The village is located next to a lignite deposit, while the deposit mining feasibility was established by the Preliminary Design and Feasibility Study considering Field D expansion (adopted by the EPS Management Board № 613/11 dated 26 March 2006), Detailed Design for the Veliki Crljeni Field, as well as by the South Field Boundaries Identification Study.

Vreoci village resettlement is based on the General Regulation Plan and the Vreoci Resettlement Programme (published in the Official Gazette of the City of Belgrade № 54/08).

The above planning documents were based on the Vreoci Village Resettlement Guidelines adopted by the EPS Management Board on 12 November 2007 and approved by the Serbian Government (Decision 05 № 310-5277/2007-3 dated 22 November 2007). The document was agreed with the Vreoci Local Community population (Protocol № 36041 dated 6 November 2007).

In the period up to 2010, 200 households were resettled with some 1000 inhabitants, while 845 households with some 2000 inhabitants still need to be resettled. The resettlement needs to be finalised by late 2015, according to the schedule identified by the Resettlement Programme.

Households are resettled collectively or individually, solely depending on their own choice. Organised resettlement involves an award of a construction lot containing the entire infrastructure in exchange for the part of the expropriated property of the owner, together with a cash compensation paid for the remaining part of the property. Individual resettlement implies cash compensation paid for the expropriated property and an additional compensation of EUR 30,000 paid in RSD equivalent value covering the construction lot acquisition and development costs. A special Social Programme was adopted for the resettlement of poor households unable to organise and finance the resettlement on their own.

An advance payment (35% of the property value established by the court expert after the preliminary assessment) is paid to the property owners being resettled as part of the resettlement preparation process, under the Resettlement Conditions Agreement.

Relocation costs of cemeteries and other structures of general interest are borne by RB Kolubara in line with the current regulations and adopted planning documents also agreed with the local population.

### **2. Stakeholder engagement and consultations held so far**

During the Vreoci village resettlement planning documentation drafting and adoption phase, Vreoci population was timely notified about the schedule and scope of the future resettlement activities, thus ensuring their direct involvement in the process and enabling them to voice their positions, opinions and suggestions related to the conditions, deadlines and methods of the Vreoci village resettlement and local cemetery relocation, respecting their civil and political, economic and social rights.

Polling of the affected population during the planning documentation preparation and implementation phases was carried out on three occasions:



- when the Vreoci Village Resettlement Guidelines were drafted in 2006,
- during the General Regulation and Resettlement Plan development in 2008,
- in the process of signing of the resettlement conditions agreements, when the population was also polled about the initiated expropriation procedures.

In addition to polling, the local population was notified on public meetings, through different media and during the public presentation of the General Regulation Plan.

Out of the total number of owners who opted for the resettlement under the Vreoci Village Resettlement Guidelines (811), 704 owners or 86.8% have chosen the individual resettlement.

Organised resettlement was chosen by a relatively small number of owners whose households were being resettled (67 or 8.2%), mostly to the Lazarevac site.

40 owners and tenants living in apartment blocks opted for the organised resettlement under the social programme, while only 5 have opted for cash compensation.

### 3. Resettlement practice

The following activities have been implemented so far:

- Total number of resettled households – 845;
- Number of households whose property has so far been covered by the full expropriation procedures and who have signed the resettlement conditions agreements is **671, out of which 626 living in family houses and 45 in apartment blocks (flats)**;
- Resettlement Conditions Agreements were signed and advanced payments paid (35% of the property value established by the court expert in preliminary assessment) with 432 owners;
- 287 households have been paid in full so far during the expropriation procedure;
- 106 owners refused to sign the Resettlement Conditions Agreements and advanced payments (some did not agree with the offered advance payment level, some requested full expropriation outside the resettlement programme, others accepted resettlement without advance payments due to impending expropriation);
- 44 households did not answer the call to sign agreements and agree the resettlement method;
- Negotiations were held with flat owners and tenants living in apartment blocks mostly covered by the Social Programme regarding the compensation form – cash compensation or building of another adequate flat at the Rasadnik site in Lazarevac (45 flats);
- Local cemetery containing 4450 graves was relocated to the new site, Lazarevac 2 - Sopic;
- 140 construction lots were fully developed and equipped at the Rasadnik site in Lazarevac for the citizens opting for collective resettlement (35 construction lots have been awarded so far, where owners have already started building new houses).

### 4. Answers to individual questions from the Vreoci Local Community complaints

#### Resettlement schedule

The above data indicate that despite initial delays, resettlement will be executed according to the schedule identified by the planning documentation.

35 kV transmission line cited in the complaint will be constructed in line with the planning and technical documentation.

#### Employment of the Vreoci village population

Since PD RB Kolubara began operating, the majority of working population of Vreoci has been employed by this company, its subsidiaries or the thermal power plant operated by EPS. There is a very small number of families with one, two or more members not employed by the PD RB Kolubara. According to the employee records of PD RB Kolubara and its subsidiaries, there are currently over 600 people residing in Vreoci employed by the company. Since 2010, when employment was limited in PD RB Kolubara due to transition issues, some 40 people from Vreoci were employed by PD RB Kolubara and its subsidiaries.



#### Application of the Expropriation Act and compensation payments

Expropriated property compensations are paid to owners based on the value established by an independent court expert, while land value estimates are obtained from the Tax Administration.

Average compensation paid to the individual Vreoci household including land, structures and crops is some EUR 150,000.00. Majority of compensations were paid based on agreements signed with PD RB Kolubara, while a small number of households (ca. 30) settled their compensation payments in court under a non-litigious procedure.

#### Financial assistance to the Vreoci Local Council, public services and citizens' associations

In accordance with the obligations identified by the Resettlement Programme, PD RB Kolubara finances the Vreoci Local Council operations under the Contract № 2-01-5-1195 dated 22 June 2012, medical centre under the Contract № 2629/1 dated 14 November 2011 and the *Turbina* Sports Society under contracts signed in 2011, 2012 and 2013.

#### Application of the Cemeteries and Burial Act during cemetery relocation

Vreoci cemetery relocation to the Lazarevac 2 – Sopic site was executed in accordance with the planning documentation, Cemeteries and Burial Act, decisions adopted by the Lazarevac Municipality and through voluntary cooperation with the majority of citizens, grave owners. During the relocation, ombudsman intervened with a recommendation indicated by the complainant. However, the procedure was suspended by the ombudsman after actions undertaken by PD RB Kolubara and Lazarevac Municipality, while the ombudsman subsequently notified all the stakeholders about this. 130 lawsuits filed to the Administrative Court were rejected as unfounded (except two, accepted for formal reasons), confirming that the cemetery relocation was carried fully in accordance with the law.

4450 graves were relocated from the Vreoci cemetery, which is the entire number of graves identified at the existing cemetery. Larger number of graves indicated in the complaint is obviously the number of people who died at the Vreoci village and was taken from the public register and not those buried at the cemetery which was relocated. Therefore, no remains or monuments of these people were found.

#### Social aspects of the resettlement – collective resettlement aimed at preserving the local community and its continuity

The above polling results and the past resettlement practice confirm that the majority of citizens opted for individual resettlement and not for the resettlement to one, joint location. This was mostly influenced by the social structure of households with up to three generations living together prior to resettlement. Compensations were mostly used to address housing needs of individual household members in different ways (purchase of flats, building of smaller family houses, etc.).

Under the Vreoci General Regulation Plan, public facilities will be built in the part of the village not affected by the compulsory resettlement, ensuring the continuity of the Vreoci village.

### **5. Answers to environmental queries**

Kolubara Environmental Improvement Project required an environmental and social due diligence, including the verification and review of the existing documentation to assess environmental and social impacts of the project. In addition, the proposed project activities were also assessed against EBRD Performance Requirements resulting in the gap analysis report.

Following the results of the above initial investigations, an **Environmental and Social Action Plan (ESAP)** was drafted. It comprises impact mitigation, reduction or minimisation measures, as well as the improvement measures of the existing environmental management systems and performance in line with the EBRD Performance Requirements during the project lifetime.

When it comes to health and safety, the document contains a number of recommendations based on activities already implemented under the health and safety management system of EPS, while this document addresses specific project needs.

**Environmental and Social Action Plan (ESAP)** comprises 22 (twenty-two) sections. Their implementation was started immediately according to the planned schedule with regular notification of the bank and submission of documents under the established procedure (by Mr Slobodan Mitrovic, operative



project manager). The following local community health and safety documents foreseen by ESAP were sent to the Bank: Health and Safety (H&S) Risk Assessment for possible hazards and risks to the community affected by the Field C and Tamnava West Field operations. Out of the 22 ESAP sections, only the requirements defined by section 2 have still not been met, given that the foreseen activities require a longer time period (flora and fauna register preparation requires a period of one year).

**Stakeholder Engagement Plan (SEP)** was also prepared, describing the stakeholder identification and engagement method throughout project implementation.

SEP also provides grievance mechanisms, as well as methods for resolving other potential problems. In addition, SEP describes the previously implemented stakeholder engagement activities, signed and implemented resettlement agreements, compensation payments. In this respect, the following documents were submitted to the Bank: Stakeholder Grievance Mechanism, Human Resources Management Policy, Resettlement Action Plan for Tamnava West Field and Field C open cast mines.

In the past several years, documentation considering coal production, spatial planning and environmental impact assessment was developed and used to define the basic project components. The following documentation was prepared prior to the loan application:

- Republic of Serbia Spatial Plan (OG RS № 13/96);
- Kolubara Coal Basin Spatial Plan;
- Kolubara Coal Basin Mining Area Spatial Plan;
- Strategic Environmental Impact Assessment of the Kolubara Coal Basin Mining Area Spatial Plan, 2008;
- Strategic Environmental Impact Assessment of the Barosevac, Medosevac, Zeoke and Burovo Area General Regulation Plan;
- Environmental Impact Assessment of the Tamnava West Field Open Cast Mine Expansion, European Bank for Reconstruction and Development, CARDS FRAMEWORK CONTRACT HPC, HPC Harress Pickel Consult & LDK CONSULTANTS, 2002;
- Environmental Impact Assessment of the Tamnava West Field Supplementary Mining Design, Elektroprivreda Srbije;
- Field C Mining Design (5 million tons annual capacity, with the Istocna Kipa dump site excavation) Environmental Impact Assessment, Elektroprivreda Srbije, 2009;

PD RB Kolubara prepares environmental impact assessment studies for all facilities (works, activities) defined by the Environmental Protection Act. All the studies were subject to public consultations and made available to the relevant stakeholders.

PD RB Kolubara sends comprehensive six-month and annual environmental reports to the Bank, considering the environmental status based on the measurements obtained by the certified laboratories and negative impacts prevention and mitigations measures for its production units. Given the above, below are presented only the latest measurements with clarifications, demonstrating the PD RB Kolubara environmental conditions and negating the statements from the complaint.

To monitor its operations, in accordance with the laws and decisions of the relevant ministries, the *Prerada* Subsidiary regularly measures air quality within its impact zone, together with the Heating Plant emissions, surface and groundwater quality, soil quality and noise levels within the impact zone. These results were presented in the above 2012 Environmental Report submitted to the Bank on 11 March 2013, while the following text contains the most important air, water and noise levels measurement results for the Vreoci village.

**Air Quality Monitoring within the *Prerada* Subsidiary Impact Zone** has been carried out since 1987 by the competent laboratories. Measurements included SO<sub>2</sub>, CO<sub>2</sub>, NO<sub>2</sub>, soot and particulate matter air concentrations based 24-hour samples.

Air quality within the *Prerada* Subsidiary impact zone in 2012 was controlled by the certified laboratory of the Mining Institute – Zemun. Measurements covered the period between 1 January and 30 September 2012 on four measuring points: Vreoci Water Supply Station, Waste Water Treatment Plant, Cable Car Station and Medosevac Water Supply Station.

*Prerada* Subsidiary Impact Zone Air Quality Reports and individual Harmful Substance Air Emission Measurements Reports are regularly submitted to the following institutions: Ministry of Energy, Development and Environment, Serbian Environmental Agency, EPS HQ, Belgrade Environmental Secretariat.

Table below shows the 2012 air quality analysis data for the *Prerada* Subsidiary.



AIR QUALITY IN 2012 PRERADA SUBSIDIARY							
COMPLIANCE WITH THE LEGAL REQUIREMENTS (COMPLIANCE AND NON-COMPLIANCE PERCENTAGE)							
Air quality indicators	Particulate matter, PM10(µg/m³)						
Averaging period	Limit value (LM)	Tolerance value (TV)			Tolerance limits (TL)		
*One day	50	70			20		
Calendar year	40	46			6		
	LM exceedence (C <sub>24</sub> ) 1.01.2012- 30.09.2012 Vreoci water supply station 49.2% Waste water treatment plant 55.6% Cable car station 52.4% Medosevac water supply station 23.8%	TV exceedence (C <sub>24</sub> ) 1.01.2012 - 30.09.2012 Vreoci water supply station 25.4% Waste water treatment plant 39.7% Cable car station 31.7% Medosevac water supply station 12.7%					
Air quality indicators	Sooth (µg/m³)	NO <sub>2</sub> (µg/m³)			SO <sub>2</sub> (µg/m³)		
Averaging period	Maximum permitted value (MPV)	LM	TV	TL	LM	TV	TL
*One day							
Calendar year	50	85	35.8	120.8	125		
Air quality indicators	50	40	18	58	50		
	Limit values exceeded on the following points: 1.01.2012 - 30.09.2012 Vreoci water supply station 0.4% Waste water treatment plant 1.2% Cable car station 0.8% Medosevac water supply station 0.8%	100% of measured values are below the limit and tolerance values.			100% of measured values are below the limit and tolerance values.		

LM – limit values  
TV – tolerance value  
TL – tolerance limit

Air quality was analysed based on measurement results compared with the limit and tolerance values for CO<sub>2</sub>, NO<sub>2</sub>, sooth and particulate matter, stipulated by the Decree defining the monitoring conditions and air quality requirements (OG RS № 11/2010) and the Decree amending the Decree defining the monitoring conditions and air quality requirements (OG RS № 75/2010). The above decrees were aligned with EU regulations.

The above measurements indicate that CO<sub>2</sub>, NO<sub>2</sub> concentrations do not exceed limit values, sooth concentrations occasionally slightly exceed limit values only during winter (heating season, individual furnaces impact), while particulate matter exceeds limit values due to high traffic load.

Regarding the **ash and slag landfill impact on Vreoci**, an Environmental Impact Assessment Study of the Medosevac Ash and Slag Landfill As-Built Design – Field D was developed, concluding that the landfill impact is very small, since the disposal cassette was lined with an impermeable HDPE foil resistant to

climate changes, while land degraded by mining operations was used for landfill construction, which is positive from an environmental position. The disposed landfill material is humid preventing ash and slag particles dispersion by wind.

In accordance with the Water Act, wastewater, treated water, Kolubara River water and groundwater quality is regularly controlled by the authorised and certified laboratory four times a year. Authorised and certified laboratory of the Belgrade Public Health Office investigates the quality of waste, surface, groundwater and soil quality within the *Prerada* Subsidiary impact zone.

The certified water testing laboratory of the *Prerada* Subsidiary performs daily wastewater quality measurements, while surface water quality is tested once a week.

Water testing laboratory results, obtained by the measurements at the wastewater treatment plant inlet and outlet indicate that the measured parameters concentrations at the plant outlet are higher than the permitted values; however, much lower than the inlet concentrations. WWTP efficiency level is:

- particulate matter concentrations – 89.4 %
- organic substances concentrations, i.e. biological oxygen demand – 84.13 %
- phenol concentration 79.86%.

Quality testing results of waste, treated and surface waters, discharged into the Kolubara River, obtained by the certified laboratory of the Belgrade Public Health Office (four testing rounds) are provided below.

Results of physical-chemical analyses of waste and surface waters

Parameters	Measuring unit	WWTP inlet	WWTP outlet	Kolubara River upstream	Kolubara River downstream	WWTP treatment level (%)
Appearance		Turbid	Turbid	Slightly turbid	Slightly turbid	
Visible waste substances		Present	Present		None	
Turbidity (descriptive)		Turbid	Turbid	Slightly turbid	Slightly turbid	
Water colour - descriptive		Brown-black	Brown	Light yellow	Light yellow	
Dissolved oxygen	mg/l	1.0 –6.8	3.4 - 4.4	4,0 - 8.2	3.7 - 8.2	
pH		7,50-8.10	7,7-8,0	7.8- 8,2	7.7 - 9.3	
Particulate matter	mg/l	2640-4539	192 -449	46 - 52	44 - 49	89.4%
Suspended substances	mg/l	-	0.3 - 06	< 0.1-0.1	0.1 - 0.5	
COD	mgO <sub>2</sub> /l	2046 -4960	201.6-1260	4.4-65	8.8 -31.8	84.13%
BOD <sub>5</sub>	mgO <sub>2</sub> /l	1374-3850	39.6 –1080	1.7-5.5	2 - 73.4	78.57%
Ammonia	mgNH <sub>3</sub> N/l	<0.05-1.43	<0,05–0.06	0,3 -0,87	0.2 - 0.9	
Iron	mg/l	14.9 - 70	1.18 -2.23	0.345-0.56	0.493-0.7	
Manganese	mg/l	-	0.12	0.1	0.175	
Phenols	mg/l	0.03 -5.7	0.004-0,053	0.004-0.009	<0.001-0.013	79.86%
Arsenic	mg/l	1.83	0.665	< 0,02	0.033	63.67%

Following the above measurement results, it may be concluded that the Kolubara River impact is negligible despite effluent limit values exceedence.



Mining Institute from Zemun performed environmental noise level measurements on two instances in 2012. Measured values were analysed in accordance with the Decree defining noise indicators, limit values and environmental noise indicators assessment methods (OG RS № 75/10). Given that the *Prerada* Subsidiary area was not acoustically zoned, noise indicator limit values in an open area for zone 5 were taken conditionally.

Measured noise levels in the *Prerada* Subsidiary impact zone – 6 March 2012

Measurement number	Reference measurement time interval (h)	L <sub>Aeq,30min</sub> dB(A)		Prescribed level L <sub>RAeq,30min</sub> dB(A)		Limit value dB(A)
		Measuring point 1	Measuring point 2	Measuring point 1	Measuring point 2	
1	12 h (06 h – 18 h)	58.7	52.9	65	58	65
2		59.9	55.6			
3		59.5	51.8			
4		59.7	52.6			
5		59.1	51.8			
6		61.9	51.7			
7	4 h (18 h -22 h)	60.2	50.2	61	51	65
8		60.8	50.9			
9			51.8			
10	8 h (22 h – 06 h)	57.9	52.3	62	57	55
11		52.3	50.8			
12		60.5				

Measured noise levels in the *Prerada* Subsidiary impact zone – 23 August 2012

Measurement number	Reference measurement time interval (h)	L <sub>Aeq,30min</sub> dB(A)		Prescribed level L <sub>RAeq,30min</sub> dB(A)		Limit value dB(A)
		Measuring point 1	Measuring point 2	Measuring point 1	Measuring point 2	
1	12 h (06 h – 18 h)	55.3	60.7	56	62	65
2		54.7	55.9			
3		61.3	56.9			
4		52.9	54.0			
5		56.4				
6						
7	4 h (18 h -22 h)	54.9	48.3	63	57	65
8		61.6	55.7			
9						
10	8 h (22 h – 06 h)	62.3	57.2	62	62	55
11		61.1	57.4			
12						

In line with the Decree defining noise indicators, limit values, noise indicators assessment methods, disturbance and harmful environmental noise effects (OG RS № 75/10), and noise indicators limit values in open areas for day – evening and night, the following may be concluded:

- Environmental noise levels for the *Prerada* Subsidiary - day operation on measuring points MM-1 and MM-2 do not exceed the environmental noise limit values.
- Environmental noise levels for the *Prerada* Subsidiary - night operation regime on measuring points MM-1 and MM-2 slightly exceeds environmental noise limit values. However, it should be noted that compensations have been paid to all the households from this zone and the majority of the population has been resettled.

There are no radiation sources (specified in the complaint) from the *Prerada* Subsidiary (radioactive lighting arresters were replaced), while coal radiation levels in *Prerada*, *Toplana* and *Susara* subsidiaries are regularly measured by the authorised organisations in accordance with the law, together with employee health and working environment radioactivity (no impact on the living environment).

**Land degradation** caused by the open cast mining operations is without a doubt the most significant negative impact, while other impacts such as noise created by the mining machinery, dust emission (from operating benches and dump sites, loading stations and rubber belt conveyers) mostly affect the working environment, without any living environment impacts. Such impacts are mitigated by personal protection equipment and operating areas mechanisms.

Open cast mine operations alter the landscape by creating residual pits. Such residual pits are subject to technical and biological reclamation after the completion of mining operations. The main purpose of reclamation is to restore the original landscape as much as possible.

Technical and biological reclamation is carried out according to the adopted and standardised RB Kolubara procedure. Since 1974, considerable areas affected by mining operations were reclaimed. Biological reclamation involves planting of agricultural and forest species. In addition to the reclamation obligation after the mining operations, RB Kolubara is also under obligation to manage responsibly the entire land in its ownership. This is witnessed by the numerous degraded areas and dump site reclamation projects, as well as by some 700 ha of forests and 150 ha of agricultural land.

#### Cooperation with the Vreoci Local Community

In December 2013, the new Vreoci Local Council was elected which established full cooperation with the PD RB Kolubara. Meetings were held to discuss water supply and other resettlement and environmental issues. Full agreement was reached to continue the cooperation ensuring planned resettlement and creation of adequate living conditions during the resettlement activities.

**6. Planned and spent funds for the Vreoci village resettlement under the Resettlement Programme**

1. Development of study, technical and planning documentation

Spent: EUR 664,323.39

2. Compensation payments for the expropriated properties and advance payments

Planned: EUR 146,700,000.00

Paid: EUR 62,585,653.66

3. Collective resettlement sites acquisition and equipping costs, construction of public facilities

Planned: EUR 21,711,300.00

Spent: EUR 8,113,682.58

4. New cemetery construction and existing cemetery relocation costs

Planned: EUR 11,838,000.00

Spent: EUR 10,492,764.07

5. Financing of local council, public services and citizens' associations activities

Spent: EUR 150,311.17

**Annexes:** Local council, medical centre and *Turbina* Sports Society financial assistance agreements  
Protocols from the meetings held with the local council representatives  
New PD RB Kolubara Grievance Mechanism  
Ombudsman Notice

  
PD RB Kolubara Manager  
Milorad Grcic, B.B.A.