

TO:

EBRD Independent Project Accountability Mechanism
Attn: Victoria Marquez-Mees, Chief Accountability Officer
European Bank for Reconstruction and Development
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REQUEST FOR NON-COMPLIANCE REVIEW

	<p>From:</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>Desistava Stoyanova, Za Zemiata</p> <p>Fidanka Bacheva McGrath, CEE Bankwatch Network</p> <p>Best contacted by e-mail.</p> <p>Confidentiality request: YES</p> <p>Fear of risk of retaliation for sharing our concerns with the IPAM: YES, fear of lower compensation for property expropriation.</p> <p>Country: Bulgaria</p>
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Description of the EBRD Project at issue:

The EBRD provided a grant to Maritsa East Mines company for excavator purchase as part of the Kozloduj Decommissioning Fund (KIDSF).

In addition, two BEH Bond Issue projects of the EBRD carry certain requirements towards BEH and its major subsidiaries, such as Maritsa East Mines Company: <http://www.ebrd.com/work-with-us/projects/psd/beh-bond-issue.html>

<https://www.ebrd.com/work-with-us/projects/psd/beh-bond-2018.html> .

There is no project summary document for the grant project part of the KIDSF, only a procurement notice about the design, manufacture, supply, construction and commissioning of bucket-wheel excavators of the SRs 2000 type and the SRs-200 type at Mini Maritza Iztok EAD, Bulgaria. They provide additional information about the replacement of three SRS 1200 dumpers with one new SRS 2000 rotary excavator at Troyanovo-North Pumping of a new SRs 200 excavator for the secondary excavation of 50 million m3 of the internal embankments on the southern border of "Troyanovo-North" mine:

<http://www.ebrd.com/work-with-us/procurement/p-pn-150901a.html>

<http://www.marica-iztok.com/en/page/proekti-s-vanshno-finansirane-58-1.html>

The latest enquiry with the PCM from September 2017 suggested that the KIDSF grant is still being disbursed thus the project is active and the EBRD has still a financial interest in it.

The two BEH Bond Issue projects are active, according to the project summary documents. The complaint concerns the implementation of the Resettlement Action Plan (RAP) for the Beli Bryag village, which concerns both EBRD client companies – the holding, BEH, and its daughter company, MME. Although, coal fired and nuclear plants were excluded from receiving EBRD's proceeds from the two BEH Bond projects, the coal mines were not.

Due to the nature of the BEH Bond investments, a derogation from the Bank's Environmental and Social Policy, Performance Requirement 1, was requested and granted by the Board for the two BEH bond projects. However, the Board Report for the first BEH Bond projects informs that: *“EBRD will agree with the Company an Environmental and Social Action Plan that will commit the Company to implement a corporate governance structure and environmental and social policies that will apply to its major subsidiaries in line with the Bank's Performance Requirements”*. The report also states that Environmental and Social standards are among the Conditionalities for the project for the duration of the EBRD investment.

In addition, the EBRD claims (in the PSD disclosed on 03 Aug 2018) that “BEH has sufficient EHS management systems and the capacity in place to fully implement the Bank's Performance Requirements.”

Harm that has been caused or might be caused by the Project:

The damages from the mine expansion are in several directions:

1. Loss of real estate property - dwelling, adjoining land and agricultural land

- 1.1 Loss of homes, which for some owners and households are the only ones.
- 1.2 Damage or demolition of the dwellings due to the proximity of the mine 500-600 m. Explosions in the mine are done daily.
- 1.3 Loss of adjacent land
- 1.4 Loss of agricultural land

2. Economic losses, livelihood loss and economic displacement due to loss of basic and additional incomes. Most residents of the village are retired. Pensions in Bulgaria are not enough for survival and thus, those villagers need an additional income or farming on their own land.

2.1 Loss of extra income because of the loss of agricultural land. Impossible to get the pasture and the fodder for the animals.

2.2 Loss of yard gardens from where fruits and vegetables are harvested; yard space where animals are housed and raised, for example, sheep, horses, donkeys, cows and bees, which give the residents the opportunity to generate and boost their income.

2.3 The health problems for the inhabitants of the village are increasing with the mine approaching, the overall noise background has increased – these include respiratory problems, plus the elderly fall into depression or increased nervousness and anxiety.

3. Despite the talks, meetings and negotiations with the company regarding the resettlement Maritsa East Mines perceives the resettlement of Beli bryag as an ordinary sale or property purchase. The residents want to recover their housing and partly their lost income from agricultural land, gardens and yards. They have proposed a methodology that is used in Bulgaria and does not contradict the bank's ESP and Bulgarian laws.

4. There is no clear Resettlement Action Plan and a clear and transparent method for compensation that would be fair and equitable to restore housing and lands. The Framework Plan was made without their participation and consent.

5. There is no plan to move the remains of their relatives from the cemetery of the village that falls into the mine, it is not clear who will bear the cost, how will the Christian Orthodox religious rites of extraction, transfer and burial be performed.

After 2005 the village has been abandoned by the municipal administration and is in a desperate state because of the impending resettlement. Increased cases of theft, together with the lack of medical services and of any grocery stores forces people to leave and sell to the only buyer, the Maritsa East Mines. There is no security in the village to stop the raids of people looking for and collecting building materials, scrap metals. Fires have spread throughout the village as the mining company does not undertake any care of the abandoned or acquired houses, gardens and other property in it. In such an environment it is not easy to live, so people in the village have begun to seek the opportunity to settle elsewhere. They started leaving the village, but it turned out that the only property buyer is the mining company. Everyone that has left the village was forced to take a bank loan.

Whoever wants to leave the village applies to the Maritsa East Mines company. An ordinary purchase of real estate is carried out. It is not taken into account that for most owners this property is the only home they have, it is the graveyard of their families and place where they have grown their children.

The Maritsa East Mining company evaluates the price of the property and offers a price that can not cover the purchase or construction of a new home and a yard similar to the ones owned so far. The company uses the term market price estimation and prefers not to use the term compensation. Currently the price of one decare in regulation in the town of Radnevo, in the Gipsovo area, is over 14000 leva per 1000 square meters. The average cost for building a dwelling in the region of Radnevo is at least BGN 600 per square meter. The example is from the municipal center town Radnevo, which is about 5 km from the village of Beli Briag. What the mines offer in Beli Bryag is reckoned for a property market price from 15 years ago or a market price of property in villages that does not offer living conditions comparable to the conditions before the resettlement process started. In a way Beli Briag people are paying the price of the damages inflicted on them by the mine expansion and the protracted resettlement process – instead of being compensated for these damages and deteriorating working conditions.

A Problem-Solving initiative

Requesters are directly and personally affected by the Projects and in hope of resolving the issue, they pursued a Problem-Solving initiative in the period October 2017 – August 2020. Unfortunately, a resolution of the dispute between the parties turned out to be impossible.

The Problem-Solving completion report was published August 2020 and it underlined the main issues preventing the parties from reaching an agreement.

The complainants shared perspective that the EBRD Environmental and social policy is not complied with in the course of the resettlement of Beli Bryag. There were significant differences between the members of the Beli bryag community and the representatives of the “Mines Maritsa East” EAD in the legal interpretation on some of the provisions of the applicable legal framework. Part of this problem was the lack of accord on the calculation methodology of compensation amounts for properties, including property damages, health and moral damages payable to the residents.

The EBRD failed to guide the process to a successful end by remaining passive and not providing itself analysis and support for the questions raised by the requesters which could have cleared the issues and allowed for further discussion. It turns out that when it is in its favor EBRD adopts the local legislation and neglects the EU regulations. The mere provision of a place for a dialogue to be held does not fulfil the Bank’s obligation “*to facilitate dialogue and to try and assist them [the parties] to reach an agreement on issues of mutual concern*”. Therefore, the Bank’s role is supposed to be active it has to facilitate the dialogue by providing different remedies to the problems arising in the process, for example addressing the issue of the legal basis for the valuation methodology that is the very core of the whole process and due to which an impasse has been reached in the end represents such an omission by the Bank.

The mediation process was concluded without a final settlement agreement between the Parties, as the Expert deemed that no further progress towards resolution of the issues is possible. Due to the confidentiality of the mediation process, we ask the IPAM to refer to its own documentation and notes from the process, which can inform the IPAM compliance Review.

Non-compliance with the Environmental and social policy (ESP-2014)

The complaint alleges that the EBRD has, first, itself failed to comply with its Environmental and Social Policy, and second, it has not ensured compliance of MME and BEH projects with the policy and has not properly guided its clients in the implementation of Performance Requirement 5 and 8.

I) EBRD Non-Compliance with its Environmental and Social Policy

1. The EBRD has failed to ensure resolving of the major problem in the resettlement process – the problem of supposedly conflicting policy requirements at national, EU and EBRD levels. The EBRD client, MME, has claimed that Bulgarian regulation is not allowing it to implement the EBRD requirements. This suggests that the **gap analysis** was not conducted to the required level of detail and with the intention to find a practical working solution that would allow meaningful implementation of articles 6 and 7 of the ESP, namely:

#6. The EBRD will seek within its mandate to ensure through its environmental and social appraisal and monitoring processes that projects are designed, implemented and operated in compliance with applicable regulatory requirements and good international practice (GIP). 3 Central to this approach is the application of the mitigation hierarchy.

#7. The EBRD, as a signatory to the European Principles for the Environment, 5 is committed to promoting the adoption of EU environmental principles, practices and substantive standards by EBRD-financed projects, where these can be applied at the project level, regardless of their geographical location. When host country regulations differ from EU substantive environmental standards, projects will be expected to meet whichever is more stringent.

Beli Bryag residents have requested a clear legal analysis and justification of MME's approach to Valuation and forming the Offers for buying properties in the village - from the EBRD, from its clients, MME and BEH, and from the EBRD E&S consultant, Green Partners, Romania. The adviser of Beli Bryag complainants – Za Zemiata, has provided several expert opinions and proposals from legal and valuation experts, however, these were not accepted by MME, as no justification why was provided – by either the EBRD or its clients and consultants.

EBRD has also failed to ensure that its clients would look into Good Industry Practice on resettlement, particularly from the European Union, although Beli Bryag people have suggested good practice examples from coal mining regions in Germany. MME have given example with the resettlement in the case of the hydroelectric power station located in Vranduk, Bosnia and Herzegovina.

The bank has published a Resettlement guidance and good practice – a document providing advice on interpreting and implementing Performance Requirement 5 (PR5): Land Acquisition, Involuntary Resettlement and Economic Displacement under its Environmental and Social Policy.. Although it is not a compliance document, it is not clear if the EBRD ensured that the Beli Bryag resettlement was following such good practice. Our experience suggests that the EBRD's approach to resettlement planning, especially in resolving the gaps identified in the gap analysis, is not robust enough in practice.

2. The EBRD has witnessed the infringement of human rights of Beli Bryag people, in breach of article 9 of its policy:

9. The EBRD recognises the responsibility of clients and their business activities to respect human rights 7 and that this is an integral aspect of environmental and social sustainability. This responsibility involves respecting human rights, avoiding infringement on the human rights of others, and addressing adverse human rights impacts that their business activities may cause, or to which they may contribute.

In the absence of sufficient progress with resettlement, while the living conditions in Beli Bryag have been deteriorating, the EBRD should have ensured that its clients take measures to alleviate the situation. For example, by implementing RAP measures that concerned cleaning the village, preventing fire hazards etc., or compensating with other measures, such as food and services delivery in the village.

Last but not least, the EBRD has accepted and legitimised the MME approached to the resettlement process as a process of acquiring land through market transactions, but not as a compensation process that should address the levels of harm and damage done on the physical and mental health of Beli Briag residents, on their livelihoods and culture. People had to go and ask the company to buy the land and property, but there has been very little space for negotiations with regards to wider compensations. The whole process is ill-conceived. The affected person informs MME that he/she wants to sell its property, then MME sends their own expert to make the valuation. After that the affected person has to either agree to the valuation or walk away from the “negotiations”. He/she does not have any room to negotiate, ask for different valuation, etc. Moreover, the affected person receives only a brief resume of the valuation and not the valuation itself with all the details that have led to it.

This goes fully against the human-rights based approach and the spirit of EBRD's policy and PR 5.

II) EBRD's failure to ensure its client's Compliance with Performance requirement 5 of the EBRD Environmental and social policy: Land Acquisition, Involuntary Resettlement and Economic Displacement

In the introduction to Performance requirement (PR) 5: Land acquisition, Restriction on land use and involuntary resettlement it is said that the “*Application of this Performance Requirement (PR) supports and is consistent with the universal respect for, and observance of, human rights and freedoms and specifically the right to adequate housing and the continuous improvement of living conditions.*”.

According to the Office of the United Nations High commissioner for human rights¹ the right to adequate housing includes the following freedoms:

- Protection against forced evictions and the arbitrary destruction and demolition of one's home;
- The right to be free from arbitrary interference with one's home, privacy and family; and
- The right to choose one's residence, to determine where to live and to freedom of movement.

For housing to be adequate, it must, at a minimum, meet the following criteria:

- Security of tenure: housing is not adequate if its occupants do not have a degree of tenure security which guarantees legal protection against forced evictions, harassment and other threats.
- Availability of services, materials, facilities and infrastructure: housing is not adequate if its occupants do not have safe drinking water, adequate sanitation, energy for cooking, heating, lighting, food storage or refuse disposal.
- Affordability: housing is not adequate if its cost threatens or compromises the occupants' enjoyment of other human rights.
- Habitability: housing is not adequate if it does not guarantee physical safety or provide adequate space, as well as protection against the cold, damp, heat, rain, wind, other threats to health and structural hazards.
- Accessibility: housing is not adequate if the specific needs of disadvantaged and marginalized groups are not taken into account.
- Location: housing is not adequate if it is cut off from employment opportunities, health-care services, schools, childcare centers and other social facilities, or if located in polluted or dangerous areas.
- Cultural adequacy: housing is not adequate if it does not respect and take into account the expression of cultural identity.

In the Resettlement action plan for the village of Beli bryag, presented by the MME there is no mention of this basic human right nor is there a plan to achieve this minimal standard.

Article 25(1) of the Universal declaration of human rights (UDHR) states that *"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."* This provision sets out some of the elements of this right: a) food; b) clothing; c) housing; d) medical care; and e) necessary social services.

The international covenant on economic, social and cultural rights, adopted by the General assembly of the United Nations also proclaims in its art. 11, para. 1 that: *"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the*

¹ https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf

realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.“

However, due to the lack of any actions taken by the MME and the complete lack of predictability vis-à-vis the resettlement of Beli bryag, the residents are forced to live in conditions worsening every year. The security of tenure is out of the question - ten years after the publication of the land use plan no legal action has been undertaken by the MME. There isn't a clear timetable set for the resettlement process, as it has been shifting regularly with many delays. The last letter dated 03.09.2021 from the MMI states that the process of acquiring land plots and houses in Beli bryag has been temporarily frozen.

According to p. 12 PR 5 affected persons shall be given the opportunity to participate in the proposed timing.

The MME has not taken any action in this direction, the people are in constant anxiety as they do not know when or if they are to be moved.

There aren't stores in the area due to the small number of residents. That forces the people to travel to the nearby city of Radnevo but not everyone can afford to do so on a regular base. There isn't any transportation and people are forced to use their cars, if they have ones, or ask others for help. Old and/or disabled people are practically unable to travel without assistance.

There aren't any public healthcare facilities, even so much as a pharmacy or a general physician attending to the people. the roads in the village, if any, are deteriorating, which makes the access to the houses difficult.

There aren't social facilities of any kind, once again due to the decreasing number of residents.

Despite the requirement to have a plan to mitigate the adverse impacts on affected people where the displacement could not be avoided the MME has abandoned the village and no measures are proposed. In 2019 a fire nearly destroyed some of the houses, the fire started in the houses bought by the MME and left unattended resulting in this incident. Not to mention the wild animals such as wolves and foxes living in the abandoned buildings that represent a threat to the livestock of the villagers and additionally cause discomfort or even fear amongst some of the residents.

It is easily seen that the right to adequate housing and continuous improvement of living conditions is grossly neglected.

In p. 11 of PR 5 is said: *“The client will consider feasible alternative project designs to avoid or at least minimize physical and/or economic displacement, while balancing environmental, social, and economic costs and benefits.”*

The Beli bryag community has offered a way to deal with the dwellings issue – the Radnevo municipality to provide a site in Radnevo and MME to start the construction of houses in which the residents to take part with additional financing on their part.

No such analysis is included in the RAP of the MME.

The RAP does not comply with p. 17 of the EBRD ESP PR 4, which states that *“The client will offer all displaced persons and communities compensation for loss of assets at full*

replacement cost¹² and other assistance. This is intended to restore, and potentially improve, their standards of living and/or livelihoods¹³ of displaced persons to pre-displacement levels. The measures can be based on land, resources, wages and/or business activities. Standards for compensation will be transparent and consistent within the project. Compensation will be provided before displacement or imposition of access restrictions. Where livelihoods of displaced persons are land-based, or where land is collectively owned, the client will offer, where feasible, land-based compensation, taking into account seasonal and agricultural timing requirements. The client will provide opportunities to displaced persons and communities to derive appropriate development benefits from the project”.

The valuation methodology proposed by the MME does not ensure the full replacement cost of the properties in Beli bryag, as it is clearly stated in the RAP, table 3 Main gaps between local legislation and EBRD requirements. In the RAP, p. 7, it is said that *“the price for a square meter for a property within the village varied from BGN 2 in 2010 to BGN 10 in 2015”*. Such prices are highly inadequate given the present real estate market in Bulgaria and the ongoing high inflation.

The methodology used by MME penalises Beli Bryag property owners and their families for damage inflicted on the village by the mine expansion and the protracted resettlement process. The methodology includes depreciation of the property due to the fact that it is situated in Beli Bryag and market prices are compared with similar dilapidated villages. In other words, property owners are once suffering harm from having to live in unacceptable living conditions, and then made to pay for it with up to thirty per cent cut off the value of their properties.

Despite the detailed analysis of the problem from the claimants presented to the MME and the obvious lack of legal obstacles to the implementation of a different valuation methodology the MME did not change its approach claiming that they are bound by the law to use this methodology that does not lead to a just compensation.

The MME acting as an equal party in the voluntary process of acquiring of the land plots and/or houses is acting according to the civil legislation as an equal participant in the economic life. Art. 63a, para. 1 of the Energy Act speaks of a contract between the energy company and the owners. If such a contract turns out to be impossible then the energy company has the right to ask the minister of energy to initiate the procedure for alienation of the land/houses.

According to the Interpretation decision # 3 from 27.06.2016 r. given in regard to interpretation case # 5 / 2015 r. of the Supreme administrative court:

„According to art. 57, para. 1 of the State properties Act the rights of the property rights of the state in commercial companies are exercised by the Council of ministers or by the ministers themselves according to their sectoral competence. The respective minister [...] does not act as an administrative body - authority body but acts as a commercial entity. He exercises the rights of the sole owner of the capital /in case of EOOD or OOD/ and the acts issued by him / despite the used terminology/ have civil consequences.”

That being said, it is clear that the MME could use a different methodology in order to bridge the gaps in this field – an obligation imposed on them by the PR 5, p. 47.

Moreover, an alternative valuation has been made by a different set of specialists and presented to the MME that did not take it into consideration. The valuation has been made by Dill Ventures Ltd – a team of specialists with significant experience in the field – Nikolai Markov, CFA, former director in Ernst and Young Bulgaria with 15 years of professional experience, Svetla Dragneva, CFA, certified and registered appraiser with 17 years of professional experience and Sonya Vangelova, former manager in Ernst and Young Bulgaria with 11 years of experience. Despite this highly qualified team of specialists their valuation has been completely disregarded by the MME. The results were astounding – Dill Ventures Ltd. used a methodology based on the reconstruction costs while MME used the market-based approach. The difference between the results is as follows:

- Reconstruction value – 168 000 leva (without VAT)
- Market value – 51-60 000 leva

It is easily seen that the methodology used by the MME greatly penalizes the residents.

According to its own RAP, 6.1. *“If the evaluation of the owner’s property, prepared by the licensed evaluator selected by him/her is higher – MME will stick to the assessment prepared by the licensed appraiser selected by the Company under the Public Procurement Law, which is determined on the basis of a fair market price”.*

According to the Resettlement guidance and good practice (RGGP) of the EBRD, part 4 Asset inventory and valuation 4.3.1 Appointing qualified specialists *« The asset inventory and valuation process can be a source of conflict on projects, especially if the valuers are not independent from the client. If this is the case, affected people can rightfully claim a conflict of interest and the fairness and transparency of the valuation and compensation process can be thrown into doubt. Valuations are often complex and require expert knowledge of agriculture, forestry, civil engineering, economics, technology, geology, and so on. It is therefore important to ensure the valuer appointed has the right skills and credentials, as this can be another potential source of discontent for affected people. »*

In the present case there isn’t an active market, the Resettlement guidance and good practices proposes ways to overcome this challenge :

« Review the valuation methodology used in the project area to determine whether the basis for compensation is market value or cadastral value and how these compare to replacement value, required under PR5 »

The MME stick to their methodology and did not even wish to consider others despite the obvious disproportion between the full replacement value – the term used by the ESP and the replacement value – the term used by the MME. Moreover, the RGGP advises to *“test a variety of valuation approaches to determine which is most beneficial for the affected people.”*

« For valuation of land where markets are not active or market data is limited, consider alternatives which can include: – The “income capitalisation” method of valuation, which converts the income of a property into an estimate of its value. This should be based on the “highest and best” use for the land rather than its current use on the valuation date. This method better reflects market value because a prudent buyer would put the land to its best use and manage it for highest yielding production – Replacement cost method, where the value of

the property is determined by the costs of constructing a new structure of the same size and features in a new location, including building materials and costs of labour. In applying this method of valuation, depreciation of structures and assets should not be taken into account. »Despite these recommendations a significant depreciation of structures is taken into account rendering impossible the reach of a satisfactory outcome of this process for the residents.

As far as the agricultural land plots are concerned the prices, in case that there isn't an active market, are determined based on the **Ordinance on the procedure for determining agricultural lands prices**², its methodology is outdated and does not reflect the full replacement cost for the plots.

In the *Kostov and others vs Bulgaria*³ the European court of human rights has reached the following conclusion with respect to the current regulation in Bulgaria:

*“103. However, as the Court already noted, the documents provided to it do not allow it to determine precisely such a value. The deficiencies established by the Court in the present case flow from the fact that **the calculation under the Regulation [Ordinance on the procedure for determining agricultural lands prices] does not lead to the award of compensation that is reasonably related to the value of the applicants' land and the applicable rules do not enable the domestic courts to include additional elements in their analysis, when the restrictions under domestic law as to the properties to be treated as comparable do not allow them to establish the market value.**”*

According to p. 31 of the PR 5 *“In the case of physically displaced persons under paragraph 18 (i) or (ii), the client will offer the choice of replacement property of equal or higher value, or cash compensation at full replacement value where appropriate”*.

Clearly, this requirement is not complied with by the MME. Moreover, the deteriorating living conditions in the village of Beli bryag have led to further depreciation of the houses and the land plots of the residents.

The complete loss of community facilities, utilities and public amenities is in flagrant non-compliance with the PR 5, p. 40. Additionally, no *“suitable alternatives”* have been proposed to the members of the Beli bryag community. They are forced to go to the city in order to get the necessary supplies for their living, no medical help is available in the village, there are no stores of any kind, the public roads are in terrible condition. All that, mildly put, is in non-compliance with the PR 5.

The requirement of p. 37 of compensation or provision of an alternative on livelihood by providing replacement property or additional targeted assistance, including alternatives from which affected person and communities may choose has not been met. Not only there isn't a perspective for improvement of the livelihood of the residents but also, it's impossible to maintain the bare minimum of living conditions. One of the last bullets of p. 37 states that the client shall provide *„opportunities to restore, and where possible improve, their income earning capacity, production levels, and standards of living”*.

² <https://lex.bg/laws/ldoc/-549944832>

³ [https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%226581/12%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-202440%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%226581/12%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-202440%22]})

According to PR 5 the resettlement plan must include additional measures relating to livelihood improvement where possible or restoration when it comes to projects involving economic displacement with significant impacts on livelihoods or income generation, which is the present case.

However, in the present case the omission of the MME to take the right action has not led to a livelihood improvement but rather to its deterioration. The MME had the opportunity to pay a fair market price to the owner of the lands in the village or to initiate an expropriation procedure before the Ministry of Energy (in case of lack of consent of the owners). Despite the fact that the MME had the obligation to use one of these instruments to get possession over the whole land in the village during the term of 10 years after its regulation plan has been adopted, it has not taken any action in either direction. The simple result of this omission of the MME is that the living conditions in the village deteriorated significantly and the owners have a smaller chance to obtain a fair price for their properties which could allow to acquire a new home in another village/city.

There aren't any specific measures envisaged in the RAP of the MME in regard to this requirement. The RAP simply mentions the PR 5 of the ESP enlisting some of its key elements.

The gaps found in the Bulgarian legislation and government practice and the PR 5 are not addressed properly. According to p. 41 PR 5 *"The client may need to include in its plan: [...] (ii) the measures proposed to bridge any gaps between such entitlements and the requirements of this PR"*. For example, the gap due to the valuation methodology hasn't been bridged – the MME simply outlines the two methods used but even used simultaneously they do not consider the full replacement cost of the property.

Moreover, according to p. 30 PR 5: *"If people living in the project area must move to another location, the client will: (i) offer displaced persons choices among feasible resettlement options, including adequate replacement housing or cash compensation where appropriate; and (ii) provide relocation assistance suited to the needs of each group of displaced persons, with particular attention paid to the needs of the poor and the vulnerable."*

There weren't any replacement housing options offered by the MME meeting these criteria. It should be kept in mind that a simple replacement doesn't take into consideration the needs and capabilities of the affected persons as they must be able to cultivate the offered land and not simply own it.

III) EBRDs failure to ensure its clients' compliance with Performance requirement 8 of the EBRD Environmental and social policy: Cultural heritage

Performance requirement 8 *"recognises the importance of cultural heritage for present and future generations. The aim is to protect cultural heritage and to guide clients to avoiding or mitigating adverse impacts on cultural heritage in the course of their business operations. The clients are expected to be precautionary in their approach to the management and sustainable use of cultural heritage"*.

Despite the requirement and the numerous attempts of the residents to obtain clarity on the issue with the village cemetery, absolutely no measures are foreseen in the RAP and to this

date there isn't a plan for the relocation of the cemetery⁴. According to the press release of the MME the plan should have been elaborated by their specialists from sector "Investments" taking into consideration Performance requirement 8: Cultural heritage of the EBRD ESP.

One of the objectives in PR 8 is to support the protection and conservation of cultural heritage (p. 4). The matter is of great importance and could not be dealt with the demonstrated negligence on behalf of the MME. The cemetery is essential part of the spiritual and social life of the village. As the majority of the people are Christians the cemetery is a holy place where not only funerals but regular rituals take place. P. 6 of PR 8 defines the cultural heritage as "*a reflection and expression of their evolving values, beliefs, knowledge and traditions*".

The attitude of MME towards this issue is troublesome, to say the least. Not a single survey was conducted on the matter taking into account that this holy place is to be visited by the heirs of those buried there. They should have easy access and not worry about the final resting place of their predecessors.

P. 12 of PR 8 reads: "*The client will be required to develop appropriate measures for minimising and mitigating adverse impacts on the cultural heritage. The mitigation measures will address the results of the field surveys, expert assessment of the significance of cultural heritage, national legislation and relevant international conventions, and the results of consultations with affected communities and other relevant stakeholders. Such mitigation measures will be included in the client's overall ESMS and project-specific ESMP, or in a specific Cultural Heritage Management Plan that will also include an implementation timeline and a resource need estimate for each of the mitigation measures. The client will also ensure that trained and qualified personnel are available to oversee the implementation of mitigation measures, and that any third parties, such as contractors, working on the project have the necessary skills and expertise and are managed and monitored in accordance with PR 1*".

The RAP does not contain any of the required documents and plans in regard to this PR.

Moreover despite the newly adopted ESP from 2019 and the adoption of Resettlement guidance and good practice in 2017 by the EBRD the RAP has not been updated in order to take into account the changes.

Based on the fact that the non-compliance with the Environmental and social policy of the European Bank for reconstruction and development is unquestionable, we ask the IPAM to recommend remedial changes related to the actions or omissions of the Bank.

⁴ <https://www.marica-iztok.com/page/premestvane-na-grobishteto-na-selo-beli-briag-93-4.html>