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**RE: The project for Construction of a combined heat-and-power plant for the recovery of RDF waste in Sofia, Bulgaria**

Dear Madam/Sir,

We would like to present to your attention our main objections against the project for "Construction of a combined heat and power plant in Sofia for the recovery of RDF waste" (The Project). The objections laid out below are elaborated citizens' and non-governmental organisations' legal complaints against Sofia Municipal Council's decision from 17.05.2018 for taking a long-term municipal loan of € 67 Mio. Loan from the European Investment Bank (EIB) to fund the Municipality's co-financing to the Project. The rest of the necessary funding is expected to come from Operational Programme Environment 2014-2020, managed by the Ministry for Environment and Water. Our motivation against the project is structured under 7 points and we consider each one of them to represent a sufficient reason for the Project's termination and redesign.

1) The project indicators do not comply with the requirements of the new Circular Economy Package, specifically the updated targets in the Waste Framework Directive, Packaging and Packaging Waste Directive, nor of the Single Use Plastics Directive anticipated to enter into force in May 2019;

2) The capacity of the unit exceeds the current RDF production in Sofia by three times;

- 3) The project allocates investments in an end-of-pipe solution which is outside the scope of the circular economy, while depriving of funding other urgently needed actions like separate biodegradable waste collection and composting, mandatory as of end 2023;
- 4) The ECB loan contract for co-financing obliges Sofia Municipality to abstain from privatization of the district heating company Toplofikacia Sofia AD, notwithstanding that in another decision of the Municipal Council attracting a strategic investor is motivated as vital for its financial survival;
- 5) Sofia Municipality has made contentious statements about the amount particulate matter to be generated by the RDF incineration installation compared to that generated when powered by natural gas;
- 6) The project is not endorsed by the people living in the neighboring residential areas;
- 7) The cost-benefit analysis is classified as ‘confidential’: although Sofia Municipality’s refusal to release the information was ruled illegal by the court at first instance, the Municipality has appealed the decision at second instance, since it wants the analysis to remain ‘secret’; as a result the Project is likely to be executed in conditions of total intransparency about its financial parameters.

More details about each point are laid out below:

## 1. The project indicators do not meet the requirements of the EU Circular Economy Package

### 1.1. The Circular Economy Package, in force since 4 July 2018

On 18 April 2018 the European Parliament approved the new Circular Economy Package which sets up more ambitious goals on separate collection of waste, separate collection for new streams like biodegradable waste and textiles, and more strict limits to landfilling. This new legislation must be transposed into national legislation by 4 July 2020, before the construction of the RDF incineration unit to be funded with the loan, would be completed.

According to the EP press release 20180411IPR01518, the new legislation introduces new priority goals that require Bulgaria, as a Member State, respectively Sofia Municipality, to focus on changing its current waste management strategy:

„By 2025, at least 55% of municipal waste (from households and businesses) should be recycled, says the text, as agreed with Council of Ministers. The target will rise to 60% by 2030 and 65% by 2035. 65% of packaging materials will have to be recycled by 2025, and 70% by 2030. Separate targets are set for specific packaging materials, such as paper and cardboard, plastics, glass, metal and wood.”

Bulgaria recycled 32% of its waste in 2016. The new package also limits the share of the landfilling which could not exceed 10% by 2035. In 2016 the landfilled waste in Bulgaria is 64%.

“Textiles and hazardous waste from households will have to be collected separately by 2025. By 2024, biodegradable waste will also have to be either collected separately or recycled at home through composting.”

Following from the above:

A) As of 2024 Sofia Municipality should ensure separate collection of biodegradable waste, by providing individual containers. On the one hand, that will incur costs for supplying biodegradable waste collection and / or home composters to all properties in Sofia. **At the same time, providing separate collection of biodegradable waste for all generators in Sofia will lead to drastic reduction in the quantities of waste to be processed into RDF for incineration.** In 2015 an analysis on composition and quantities of household solid waste on the territory of Sofia Municipality was conducted. According to it (table 4.4 on page 40), food waste is 18.7% of total waste, garden waste – 7.63%, wood waste – 2.62%. Today these three types of **biodegradable waste make up nearly 30% of the waste sent to the Mechanical-Biological Treatment facility at ‘Sadinata’ site by Yana village, where RDF is produced.** In addition to the much lower than projected amounts of mixed waste by 2024, **new investments will still be necessary for the provision of bins for the mandatory separate collection of biodegradable waste and for composting facilities for 1/3 of the municipal waste,** not for incineration which is the purpose of the bank loan and EU funding.

B) As of 2025, Sofia Municipality shall have to ensure separate collection of textile. From then on, this waste stream, currently accounting for 3.19% of the waste sent to the MBT plant, would also no longer be incinerated.

C) The Circular Economy Package introduces new individual goals on paper and plastics packaging recycling, for paper – 75 % by 2025 and 85% by 2030 and for plastics – 50% by 2025 and 55% by 2030. Here the goal is again to divert these materials from incineration and landfilling. According to the latest data, currently **paper accounts for 22.8%, and plastics - for 16.3% of the mixed waste sent to MBT.**

D) According to the Circular Economy Package, the total volume of the landfilled waste should be reduced to 10% of the waste generated. The mass balance below forecasts this percentage in case the RDF incineration unit would be operational:

All waste received at the mechanical-biological treatment facility: 100% (410 000 tons)

Of which currently 16% are landfilled, no data is available for 40,1%, RDF is 43.9%, therefore:

a) the amount incinerated is 180 000 tons or 43.9%

- output of bottom ash for disposal is 32 000 tons or 7,8% (based again on 410 000 t)

- filter ash for disposal in specialized disposal sites for hazardous waste: 8 240 tons or 2%

**The total of all disposed waste from the process (16% + 7,8% + 2%) is equal to 25,8% and is higher than the new limit of 10%, that is ca. 2.6 times over the 2030 goal limits.** The incineration plant would be responsible to a significant extent for this poor result as it

produces  $\frac{1}{4}$  new waste out of every ton of RDF incinerated, namely the filter, slag, bottom ashes. **It becomes clear now that, even before its construction, that the Project for an RDF-fired combined heat-and-power generation unit in Sofia does not comply with the goals provided by the circular economy package.** The project is generally not in conformity with the philosophy and context of the environmental policy that lead to elaboration of this package, which is expected to introduce further restrictions to waste incineration and landfilling. We also highlight the fact that in her report to the Municipal Council for approval of the loan, the mayor of Sofia Yordanka Fandakova refers to previous Regulation 1303/2013 EU – a document that is 5 years older than the more up-to-date Circular Economy Package, which is ignored in the motivation.

1.2 COM (2017) 34 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the role of waste-to-energy in the circular economy.

**The European Commission, through this Communication, calls upon other institutions to guarantee that waste incineration should in no case happen at the expense reuse and recycling, which are the higher levels of the waste hierarchy.** The second goal of the Communication is to preclude investment in ‘dead assets’, also called "incinerators without a future" due to the unrealistic foretasted quantities of waste for incineration.

Furthermore, the incineration of municipal solid waste is seen as the least favourable process, in case all higher levels of the waste hierarchy levels (e.g. recycling, composting and anaerobic digestion of organic waste), have been exhausted. **Waste incineration in existing plants in other EU member states, as well as co-incineration in cement kilns, which is the current situation in Bulgaria, is seen as a better option than the construction of new facilities.** We would like to highlight the fact that this Communication was released 4 years after Regulation 1303/2013 EU, which was referred to in the report of the mayor Yordanka Fandakova to the Municipal Council for approval of the loan. The Communication is not mentioned in the motivation.

**According to all above figures and calculations, the Project falls under the “incinerators without future” category and should not receive public funding.**

2. The capacity of the RDF incineration unit is 3 times greater than the current production of RDF at Sofia’s MBT plant

According to the Sofia Waste Treatment Enterprise’s annual reports to the Executive Environment Agency, the amount of RDF produced at the Mechanical-Biological Treatment Facility ‘Sadinata’ is as follows:

2016: 51 669,42 tons/year;

2017: “monthly production of 4 550 tons”, i.e. maximum of 54 600 tons/year;

2018: the company website states that 23 656 tons of RDF were produced during H1 2018, which makes for less than 4 000 tons/month.

Even though various excuses on technological and operative grounds were used to justify the low amounts of RDF produced in 2016 and 2017, as well as for 2015 ( the first non-complete year of exploitation), **the persistent final results demonstrate a stable production of RDF for only 30% of the capacity of the planned incinerator** (180 000 t/y). No reserves are available for reaching the full capacity, as the EU funding does not allow waste quantities from other municipalities to be treated there. **The claims that Sofia’s sewage sludge could also be incinerated are pure speculation. Sofia Waste Treatment Enterprise meanwhile runs an own anaerobic digester that generates green electricity – also funded by OP Environment in the former period. At the same under a public service contract Sofia Municipality will be obliged to guarantee regular supply to district heating company Toplofikacia Sofia of pre-defined amounts of RDF with sufficient calorific value, for a period of 15 years. From an environmental point of view, this ‘incinerator-centric’ model represents a conflict of interest - the more waste is generated by the citizens of the municipality, and the lower the recycling rate, the lower penalties for non-delivery will be due by the municipal budget.** This represents yet another contraction with the waste management hierarchy and the rationale of the circular economy.

3. The project allocates investments to end-of-pipe treatment, while depriving of proper funding other urgent activities like separate biodegradable waste collection (after 2024) and composting

As already mentioned (see section 1.1), the total quantity of the three main types of biodegradable waste – food, garden and wood, account for 28.95% of the mixed waste sent to the Mechanical-Biological Treatment Facility ‘Sadinata’, and is currently made into RDF or stabilised and landfilled (used as landfill cover). According to the Circular Economy Package, as of 2024 this stream needs to be collected separately in special containers and redirected for composting and/or anaerobic digestion. The existing site of Sofia Waste Treatment Enterprise ‘Han Bogrov’ (annual capacity of 20 000 tons) does not have the necessary capacity and a new procedure for its enlargement or construction of **a new site for treatment of some additional 100 000 - 150 000 tons organic waste should be launched in a very short term. Therefore, the currently proposed incineration project needs to be transformed in view of that fact, for the short time remaining for absorption of OP Environment 2014-2020 funds. Failing that, local taxpayers will have to cover the full costs of compliance very soon.**

4. Under the loan contract for co-financing Sofia Municipality is obliged to abstain from privatisation of District Heating Company Toplofikacia Sofia, notwithstanding that another decision of the Municipal Council states that the traction of a strategic investor is vital for the company’s financial survival.

Point 6 (5), subparagraph (n) of the draft contract with EIB prohibits Sofia Municipality from privatizing Toplofikacia Sofia, even of just a portion of its shares, before the loan is repaid (unless the creditor gives its explicit consent). At the same time, Decision No 33 from 03.12.2015 of the Municipal Council prepares the ground for a concession of the activity of Toplofikacia Sofia. In Point 5 of this Decision the Municipal Council “instructs the Mayor of Sofia Municipality to inform Bulgarian Energy Holding on the stage of the preparation of a procedure for service concession for heating and electricity generation services, currently provided by Toplofikacia Sofia.” Moreover, public statements by members of the Municipal Council make it clear that such a capital investment is vital for the financial survival of the company, which is already overindebted and deprived of capital. Although from legal point of view this concession does not constitute reallocation of shares, it concerns the same set of productive assets that could not possibly be owned simultaneously by both Toplofikacia Sofia and the investor. Any project, regardless of whether it is environmental or other, loses its value if it puts under risk the traction of an investor, and as a consequence, the financial survival of the major district heating company of the capital.

5. Sofia Municipality has made contentious statements about the amount particulate matter (PM) to be generated by the RDF incineration installation compared to that generated when powered by natural gas

The European Court of Justice has ruled against Bulgaria in a case brought by the European Commission against the country over its failure to implement measures to reduce concentration of dust particles and air pollution. **It has become increasingly difficult to justify the construction a new source of dust pollution in Sofia. That is the reason for the absurd claim made by Sofia Municipality representatives that the incineration of RDF would improve air quality in Sofia, as it would replace another source of fine particulate matter (PM) – natural gas (???)**. The environmental impact assessment (EIA) report correctly sums up both sources, as no closure of old facilities is planned. In addition, Toplofikacia Sofia’s the annual IPPC permit report provides no data about PM emissions, therefore it is not clear what sources of information are used in the EIA report. Considering the high stakes involved, the management of OP Environment ought to draw upon international expertise to verify the stated "replacement of an old source of PM".

6. The project is not endorsed by the people living in the neighboring residential areas

**A new ‘neighbourhood’ was set up on the urban plan upon a narrow strip of undeveloped land located between Toplofikacia Sofia power plant and the neighbourhood of TEC Sofia (Sofia thermal power plant), in order to stop citizens from appealing against the Project, because they no longer can be considered as direct neighbors with the right to appeal.** A citizens’ complaint against this new development plan is in Court, currently at second instance. **The impact assessment on human health in the EIA report covers only the facility staff and does not take into account the residents of neighboring areas.** Excluding citizens in this way from the decision-making process is unacceptable, especially when a project worth over € 158 Million is concerned.

7. The cost-benefit analysis is classified as ‘confidential’

Considering the obvious incompatibility of the Project with the goals of the Circular Economy Package and the facility’s unrealistically high capacity, **citizens and NGOs asked for access to general project documents such as up-to-date conceptual design, cost benefit analysis, feasibility study, state aid analysis and analysis of the conformity of the Project, including its appendices and annexes, with EU policies on the climate change. Sofia Municipality rejected access to these documents in its Decision no. 283/17.05.2018 – a decision which was appealed by NGOs on the grounds of Law on the Access to Information and won at first instance.** In its Judgment 612/02.02.2018, Administrative Case 4474/2017, panel 39 of the Sofia Administrative Court decided to annul Decision no. COA17-OИ94-110/27.03.17 of the Deputy Mayor of Sofia Municipality and return the file for application for access to public information for new decision by Sofia Municipality. **However, Sofia Municipality did not fulfill its obligations under the judgment and has in turn appealed it before the Supreme Administrative Court (session is scheduled for 2019).** We would like to draw special attention to this case, as in its appeal against the judgment of the first instance court, Sofia Municipality, represented by the Deputy Mayor Yoana Hristova, reaffirms its decision to reject access to 5 of 6 requested documents, on the grounds of being "not in possession of final up-to-date analyses". To our greatest disappointment, on page 8 of the Report for approval by the Municipal Council, the Mayor Yordanka Fandakova declares that at least three of these documents have been submitted to the Ministry of Environment and Water and Ministry of Finance, respectively:

Feasibility study,

Cost-benefit analysis, and

State aid analysis

We believe this constitutes withholding of information from the public – an act that entirely subverts public discussion. Inasmuch as we find the Project untenable from environmental and financial points of view, the non-disclosure of these documents serves to prove our opinion.

All of the above arguments cannot possibly be omitted during the process of reviewing the Project, unless executed in an atmosphere of unprofessional negligence and mismanagement.

We call for the only logical solution – reject OP Environment funding for the Project for Construction of a combined heat-and-power plant for the recovery of RDF waste in Sofia.

Sincerely,

Emil Georgiev (Chairman)

Momtchil Iakimov (board member)

Nikolay Petkov (board member)