Complaint (Request for Inspection) Form

To:
The Chair, Inspection Panel
The World Bank Accountability Mechanism, MSN: MC 10-1007, 1818 H St., NW, Washington, DC 20433, USA. Fax: +1(202)-522-0916. Email: ipanel@worldbank.org

(Please answer the questions below as best as you can. Once the form is submitted, we will contact you to collect any additional necessary information.)

Section 1: Complaint

1. What harm do you believe the World Bank-financed project caused or is likely to cause to you or your community? Please describe in as much detail as possible.

March 1st, 2022, marked the beginning of the implementation of the Law on Social Card[1], which had a disproportionately negative impact on the protection of minorities and their access to financial social benefits, including the Complainants. According to the information collected by Amnesty International about the adoption of the Law on Social Card, the Government of the Republic of Serbia prepared this piece of legislation with the support of the World Bank.[2] In Serbia, the World Bank funded the establishment of the Social Card Register in 2021 as part of a larger 82,600,000-euro public sector loan. However, "it is unclear if the Bank has, in this case, conducted a due diligence exercise during project planning and design to identify potential human rights risks and put in place adequate mitigation measures".[3]

The proclaimed aim for adopting this Law was more equitable distribution of social assistance and more effective and proactive performance of centers for social work – local administration offices responsible for distribution of financial social assistance in Serbia. Despite this, the Law brought the opposite results causing the loss of social benefits for many vulnerable citizens, primarily the Roma population.

The Law introduced the Social Card Register, which consolidates citizens' personal data from multiple official records, such as the Tax Administration, the Central Register for Citizens, the Pension and Disability Fund, etc., to which workers at centers for social work can now access more rapidly. The Social Card Register generates "notifications" about modifications in the socioeconomic status of an individual. In most cases, if the system finds that a beneficiary no longer meets the condition for social benefits, it does not enable him/her to adequately participate in the process and explain their situation before termination of rights.

The algorithm controlling if the beneficiaries meet the criteria for financial social assistance is not made public, even after the repeated freedom of information inquiries were made to the competent Ministry of Labour, Employment, Veteran and Social Affairs. In June 2022, non-governmental organization, the

[1] "Official Gazette of RS", no. 14/2021.
[2] Public Sector Efficiency and Green Recovery Development Policy Loan agreement between Republic of Serbia and International Bank for Reconstruction and Development, https://documents1.worldbank.org/curated/en/908181627498690315/pdf/Official-Documents-Loan-Agreement-for-Loan-9235-YF.pdf. The loan was a part of the World Bank's support for Western Balkan countries taking steps to "improve their social protection systems to make them fairer, more sustainable, more effective and better able to respond to people's needs." See: https://www.worldbank.org/en/region/eca/brief/advancing-social-protection-and-opportunities-for-reform-in-the-western-balkans
[3] Amnesty International, Trapped by Automation: Poverty and discrimination in Serbia's welfare state, December 2023.

A 11 - Initiative for Economic and Social Rights[4] submitted the request to access information under the Freedom of Information Act, but the Ministry of Labour, Employment, Veteran and Social Affairs rejected this request. After the successful appeal to the Commissioner for Information of Public Importance and Personal Data Protection, the Ministry once again rejected the request, while even the second successful appeal to the Commissioner did not bring the results, and the algorithm is still not made publicly available, more than two years since the Law entered into force.

The Law on Social Card disproportionately harms Roma communities, given their overrepresentation in the social welfare system, and subjects them to digital surveillance and arbitrariness in determination of their financial social benefits. This Law contradicts both domestic and international law, foresees the (semi) automation of decision-making in the procedures for exercising the right to financial social assistance and introduces the processing of up to 135 personal data of beneficiaries and potential beneficiaries of the social protection system.

Also, this Law is incompatible with a human rights-based approach to data because of its non-transparent algorithm, centralization of large amounts of data in a single register, non-compliance with data minimization principles, and the lack of adequate oversight and safeguards over a (semi) automated decision-making system. The introduction of this kind of decision-making process in the social protection system and in deciding on requests for financial social assistance resulted in emphasizing the existing flaws and structural discrimination in this field.

The Complainants experienced termination of their right(s) to financial social assistance exactly because of the introduction of this Law, and their socio-economic situation deteriorated after they lost the only steady income they received so far.

It has been observed that the Social Card Register, using consolidated applicant's data from a range of government databases, relies on inaccurate data which leads to negative outcomes for beneficiaries of financial social assistance.[5] These consequences are reflected in violations of the right to privacy and a situation in which many vulnerable citizens were left without the means necessary to ensure subsistence minimum. Since the beginning of its implementation, approximately 44,000 beneficiaries (which is slightly over 20% of all beneficiaries within the social protection system) have been left without their social benefits, i.e. without their primary income to meet life's needs. This extreme decline in the number of financial social assistance beneficiaries does not match the data on the poverty rate and/or other socioeconomic indicators in the country. A significant number of these cases leading to the termination of financial social assistance were related to errors in the calculation of income where the social card system notification points that beneficiaries earned a high amount of income and that their financial social assistance should be terminated.

One of the examples of the described flaws of the system is the situation in which the income from seasonal work, even though it is irrelevant for this kind of calculation, was taken as relevant when assessing the right to financial social assistance. This case happened to a large number of residents from the informal Roma settlement in [redacted]

[4] The organisation representing the Complainants.

[5] For more details about problems in practice caused by the social card system, please see: A 11 – Initiative for Economic and Social Rights, (Anti) Social Card, available at: https://antisocijalnekarte.org/en.

including all of the Complainants [redacted] and [redacted] All of them are of Roma origin, one of the most excluded and discriminated minority in Serbia. The majority of the inhabitants of this settlement performs seasonal work in agriculture, like picking peppers or other fruits or vegetables, which is a characteristic of the area, and this turned out to be the reason for the reduction or cancellation of financial social assistance to beneficiaries who were engaged in these jobs.

For any potential beneficiary, the main condition for obtaining the right to financial social assistance is that their income is below the amount they would receive (11,445 dinars per person, appx. 100 euros calculated proportionately when there is a multi-member household). Income that goes into the calculation of this right is prescribed by the Rulebook on Forms in the Procedure for Exercising the Right to Financial Social Assistance[6] (further: Rulebook) and includes, among other sorts of income, the income from employment, work performed outside employment, temporary and casual employment, as well as seasonal jobs. However, the Law on Simplified Work Engagement on Seasonal Jobs in Certain Activities[7] (Law on Seasonal Workers) unequivocally stipulates that income stemming from seasonal work shall not affect the entitlement to financial social assistance, expressively prescribing in Art. 9 § 3 that:

"[R]emuneration for work realized by this law does not affect the realization and use of the right to financial social assistance, which is realized in accordance with the regulations on social protection".

The reason behind this provision was that these jobs are performed sporadically, often poorly paid and therefore cannot be considered as regular employment where an individual can engage in long-term employment relation and from which they can generate a steady income. The Social Card Register adopted this illegality, without considering the relevant legal framework. In the end, this resulted in massive termination or reduction of the amount of financial social assistance for beneficiaries engaged in seasonal work. Simply put, if someone was picking fruit or vegetables, the Social Card Registry would report this to the social worker by sending a notification with a binding instruction to cancel the right to financial social assistance (or reduce it, if the income from seasonal work does not reach the full amount of financial social assistance), which meant that the Law on Social Card was not in line with the relevant national legislation, thus resulted with the violations of the Complainants' rights.

The Complainants [redacted] beneficiaries of financial social assistance from the informal settlement [redacted] in late November and December 2022, had their financial social assistance reduced precisely because the Social Card Register in all three cases detected the income from seasonal work. During August and September 2022, the Complainants worked 10 days in total for a daily rate of around 2,000 dinars (less than 20 euros).

Complainant 1, [redacted] lives with his wife and two daughters, and the main income of the family was their financial social assistance.

Complainant 2, [redacted] who lives with her two minor children and regularly receives social benefits in the amount of approximately 20,000 dinars (less than 200 euros), and any

[6] "Official Gazette of RS", No. 39/2011
[7] "Official Gazette of RS", No. 50/2018

kind of reduction or loss of these benefits would affect the family greatly since they have no other income, nor there are any other able-body members who can potentially work and earn.

Complainant 3, [redacted] lives with her husband, four children and mother-in-law in very bad housing conditions and the financial social assistance for the whole family is around 25,000 dinars (around 220 euros).

In late November and December 2022, all three Complainants received the decisions of the Center for Social Work [redacted] according to which the amount of their financial social assistance was reduced by 80%, without being asked to provide any statement on the existence and kind of income. During the procedure before the Center for Social Work, the Complainants were denied the right to declare facts that are important for decision-making, i.e. the right to be heard, which is also a violation of the rules of administrative procedure, specifically the Art. 11 and Art. 106 § 5 of the Law on the General Administrative Procedure.[8] The mentioned notifications that social workers receive contain instructions for action, which means that no space is left for decision-making based on their assessment in specific situations when there is a possible error in data displayed in the Register.

The Complainants [redacted] and [redacted] then contacted A 11 – Initiative for Economic and Social Rights (further: A 11 Initiative), since the work of the organization is focused on the protection and improvement of economic and social rights of marginalized individuals and communities. On the advice of A 11 Initiative, the Complainants requested from Center for Social Work to make them available the source of these data, and they were given an extract from the Social Card Register that qualified the above income as "income stemming from employment and work performed outside an employment". In order to find out the origin of this income, they were referred to the Tax Administration and the National Employment Service, where they also failed to find any further details. Eventually, the certificate from the Central Register of Compulsory Insurance, which represents a document in which the origin of each income subject to mandatory contributions is recorded, showed that the origin of their detected income was their seasonal jobs. This meant that the decisions the Complainants got regarding the reduction of their financial social assistance not only went against the law, but this case also reversed the aim of the social protection – instead of providing an individual or a family with the means to live independently, the situation only push them further into poverty.

A 11 Initiative submitted appeals on behalf of all the three Complainants to the second-instance authority, the Provincial Secretariat for Social Policy, Demography and Gender Equality, which adopted the appeals, annulled the decisions and returned the cases to the first-instance body, i.e. Center for Social Work, for re-decision.[9] The Center for Social Work then issued new decisions in a repeated procedure that recognized the right of the Complainants to financial social assistance to the full extent.

Nevertheless, since the Law on Social Card was adopted, the illegal calculation of income from seasonal jobs has been conducted regularly and the violations of users' rights have been numerous. These violations can also be seen in the cases of Complainants 4, 5 and 6, [redacted] and [redacted] beneficiaries of financial social assistance who live in [redacted]

[8] "Official Gazzete of RS", no. 18/2016, 2/2023, 95/2018.
[9] Annex 2

Complainant 4, [redacted]s a [redacted]who lives with her four minor children. Her youngest three-year-old daughter has a determined 100% disability, and she suffers from a grave medical condition. The family regularly receives financial social assistance in the amount of approximately 17,000 dinars (around 150 euros) and taking into account that the Complainant is a [redacted] who has to be constantly looked after, there was no time for her to perform seasonal or any other work. However, around the same time, in December 2022, she was verbally notified by a social worker that her financial social assistance was going to be reduced, without receiving any official written decision about it. She was also told that the reduction is the result of the seasonal job she was engaged in, and the Complainant did not get the opportunity to explain her situation and that this does not match the facts.

A similar situation happened to Complainant 5, [redacted]who is also a [redacted]with three minor children. They live off financial social assistance in the monthly amount of around 22.000 dinars (appx. 200 euros). Considering her living situation and that she is the only one taking care of her children, Complainant 5 did not engage in any kind of seasonal work during the summer of 2022. Nevertheless, she was also verbally informed by a social worker that her financial social assistance would be canceled due to the seasonal job she performed. She has not received any decision on the cancelation of her social benefit, nor has she had the chance to explain that she did not work at all, but her financial social assistance was indeed suspended for three months. This posed a big problem for the Complainant since she struggled during this period to provide food for her children and cover the bills.

Complainant 6, [redacted]lives alone and receives financial social assistance in the amount of around 10,000 dinars monthly (appx. 90 euros). Like in the previous two cases, during the same time, he was informed by a social worker that his right will be terminated due to his engagement in the seasonal job. However, the Complainant did not perform any seasonal job because during August and September 2022 (the period for which the calculation was made) he was abroad.[10] As the Complainants [redacted]and [redacted] he also did not receive any written decision that would contain an explanation, nor he was invited to give a statement before the competent Center for Social Welfare. Other than the mentioned reasons, the lack of a written decision in these three cases presents an additional challenge, as it prevents the beneficiaries from exercising their right to a legal remedy. It is important to emphasize that the described situations are not limited to the Complainants, who are only taken as typical examples of the negative effects the Social Card Register has brought, and that many beneficiaries of financial social assistance have their right lost or reduced due to this newly adopted piece of legislation.

These discrepancies and flaws have a profound negative impact on the lives of citizens who are already in a vulnerable position. Considering the impact of loss of benefits for Complainants and other persons without any other income, and its consequences on human dignity and ability to meet existential needs and given the frequency of the mentioned errors, it is unacceptable to rely solely on correcting the described widespread omissions through appellate procedures, especially having in mind how long these procedures can last. Due to the inconsistencies of the Law on Social Card with the provisions of the Constitution and international treaties that guarantee social protection rights, the A 11 Initiative submitted an initiative for the review of its constitutionality in April 2022. Members of the International

[10] The photos of the Complainant's passport proving he was in Germany at the time in question are added to the Complaint.

Network for Economic, Social and Cultural Rights (ESCR-Net) supported this initiative by submitting an *amicus curiae* brief to the Constitutional Court of the Republic of Serbia – a joint expert opinion in which, among other things, it is reminded that the extensive data processing of beneficiaries of the social protection system is contrary to the principles of personal data protection, the right to social protection, as well as the prohibition of discrimination, particularly since there is a large Roma population affected. The Constitutional Court remained silent, despite receiving rush notices.

Complainants would like to stress that these consequences and violations of their rights are a direct result of non-compliance of the Borrower and the Bank with the applicable policies.

2. What is the name of the World Bank project? (If known)

Public Sector Efficiency and Green Recovery DPL, Project ID: P164575

3. Where is the World Bank project located? (Please include country name)

Republic of Serbia

4. Do you live in the project area?

Yes, all Complainants live in the project area.

5. Have your concerns previously been reported to the World Bank? If yes, please provide the details about those communications and explain why you are not satisfied with the Bank's response.

The A 11 – Initiative for Economic and Social Rights, organization representing the complainants works in close partnership with Amnesty International since the adoption of the Law on Social Card. This partnership started in November 2022, when Amnesty International, together with other human rights organizations prepared and submitted amicus brief to the Constitutional Court of Serbia in the case of the constitutional review of the Law on Social Card.[11] In December 2023, Amnesty International revealed that the Law on Social Card was funded by the World Bank loan, and stated: "In Serbia, the World Bank funded the establishment of the Social Card registry in 2021 as part of a larger 82,600,000-euro public sector loan".[12]

Because of that, the complainants haven't had the chance to report their concerns to the World Bank management, as it would be ineffective and practically without any prospect for success, for a number of reasons. The first reason is that they were already negatively affected by the implementation of this legislation in December 2022, when their financial social benefits were terminated or significantly decreased, due to the Law on Social Card.

Another reason for this is the fact that after the Law was adopted, the issues raised by its implementation were in the domain of Serbian administrative and judicial bodies, and not the World Bank. The complainants would like to stress that at this moment, the Bank does not have mechanisms for rectifying the situation they were put in due to the implementation of the Law. Finally, the lack of transparency about the project implementation affected their situation as they only learned about the Bank's role in the introduction of the Law on Social Cards recently – almost two years since the Law entered into

[11] More information here: A 11 Initiative, *Support grows for A 11 constitutional challenge to the Social Cards Law*, online: https://www.a11initiative.org/en/support-grows-for-a-11-constitutional-challenge-to-the-social-cards-law/

[12] Amnesty International, Trapped by Automation, Poverty and Discrimination in Serbia's Welfare State, online: https://www.amnesty.org/en/latest/research/2023/12/trapped-by-automation-poverty-and-discrimination-in-serbias-welfare-state/

force.[13] It should be noted that there was not a single public information available to complainants, civil society organizations or other institutions that would even point to the fact that the introduction of the Social Card registry was funded by the World Bank's loan to Serbia, as it can be seen in the explanation of the Draft Law, the Government of the Republic of Serbia submitted to the National Parliament of the Republic of Serbia in December 2021.[14]

However, after unofficial information that the World Bank funded the project which resulted with the introduction of the Law on Social Card, the complainants' representatives tried everything reasonable to get more information from the World Bank and its engagement with the Government of Serbia and the adoption of the Law on Social Card, and consequently to raise concerns about the project.

On 21 February 2023, together with the UN Human Rights Unit to Serbia, the A 11 Initiative organised the meeting with other UN and development agencies working with the most vulnerable population groups in Serbia. Although [redacted] Specialist for Social Protection, World Bank office to Serbia was invited to the meeting, she declined the invitation.

On 21 April 2023, Amnesty International sent an interview request to [redacted] Specialist for Social Protection, World Bank office to Serbia, but did not receive any response.

On 25 April 2023, Amnesty International sent an interview request to [redacted] Specialist for Social Protection, World Bank office to Serbia, but did not receive any response.

On 27 June 2023, Amnesty International sent an interview request to [redacted] Specialist for Social Protection, World Bank office to Serbia, but did not receive any response.

On 3 July 2023, Amnesty International sent an interview request to [redacted] Specialist for Social Protection, World Bank office to Serbia, but did not receive any response.

On 10 July 2023, Amnesty International Europe Director, [redacted] sent a letter with questions for the attention of [redacted] World Bank Country Manager for Serbia, and [redacted] World Bank Country Director for the Western Balkans. This letter remained unanswered.

On 7 November 2023, Amnesty International sent a letter with the key findings of the report on the implementation of the Social Cards Registry in Serbia, and addressed it to [redacted] Minister of Labour, Employment, Veteran and Social Affairs and the attention of [redacted] World Bank Country Manager for Serbia, and [redacted] World Bank Country Director for the Western Balkans. None of the letters were answered.
Having all this in mind, and especially the lack of legal knowledge and even literacy of some of the Complainants, it was practically impossible for them to raise these issues with the World Bank management.

6. If known, please list the World Bank's operational policies procedures you believe have not been followed.

- Assessment and Management of Environmental and Social Risks and Impacts (ESS1) of the Environmental and Social Framework

This standard within the ESF obliges the Borrowers to conduct environmental and social assessments of projects proposed for Bank financing to help ensure that projects are environmentally and socially

[13] According to the Art. 24 of the Law on Social Cards, the implementation of the Law started on 1 March 2022. Please see unofficial English translation of the Law on Social Cards. Original, Serbian text is available in „Official Gazette of RS", no. 14/2021.
[14] Annex 3.

sustainable, which will be proportionate to the risks and impacts of the project. It is also prescribed that it will inform the design of the project and be used to identify mitigation measures and actions and to improve decision-making. The Borrower should manage environmental and social risks and impacts of the project throughout the project life cycle in a systematic manner, proportionate to the nature and scale of the project and potential risks and impacts. These obligations are expressively prescribed and the Borrower should act as follows: a) Conduct an environmental and social assessment of the proposed project, including stakeholder engagement; b) Undertake stakeholder engagement and disclose appropriate information in accordance with ESS10; c) Develop an Environmental and Social Commitment Plan, and implement all measures and actions set out in the legal agreement including the ESCP; and d) Conduct monitoring and reporting on the environmental and social performance of the project against the ESSs.

- Bank Directive: Addressing Risks and Impacts on Disadvantaged or Vulnerable Individuals or Groups

This Directive establishes directions for Bank staff regarding due diligence obligations relating to the **identification of, and mitigation of risks and impacts on, individuals or groups who, because of their particular circumstances, may be disadvantaged or vulnerable**. In paragraph 2 the Directive states that the task team will **assist the Borrower in establishing arrangements for undertaking and preparation of** the environmental and **social assessment of the project as required by ESS1**, including by reviewing and providing its no-objection to relevant terms of reference (if any) prepared by the Borrower with the respect to the assessment and, as and when appropriate, supports the Borrower in carrying out consultations with stakeholders. The task team also has an obligation to review the terms of reference for the environmental and social assessment to verify that it a) identifies (or requires the identification of) groups or individuals affected by the project that may be disadvantaged or vulnerable; and (b) requires an assessment of project risks and impacts, and identification of differentiated mitigation measures, as they pertain to the disadvantaged or vulnerable individuals or groups that are identified. In addition, the task team also needs to review the Borrower's Stakeholder Engagement Plan (SEP), to verify it was adequately made and it contains all the relevant information and assessment.

As set in **par. 5 of the Directive, the task team should undertake due diligence of the project**, with respect to disadvantaged or vulnerable individuals or groups, by (a) reviewing the environmental and social assessment conducted by the Borrower to verify that it addresses the relevant project risks and impacts, including the (i) risk that project-related impacts fall disproportionately on individuals or groups who, because of their particular circumstances, may be disadvantaged or vulnerable; and (ii) risk of prejudice or discrimination toward individuals or groups in providing access to development resources and project benefits, particularly in the case of those who may be disadvantaged or vulnerable; (b) if appropriate in the context of a particular project, participating in the consultation activities of the Borrower, including with disadvantaged or vulnerable individuals or groups; (c) considering the potential significance of risks and impacts on disadvantaged or vulnerable individuals or groups in order for the Bank to determine whether to require the Borrower to retain, or whether the Bank should retain, independent third party specialists to assist in the identification of such individuals or groups and assessment of the risks and impacts on them; and (d) reviewing information provided by the Borrower or through the Bank's own efforts about the project's risks and impacts on disadvantaged or vulnerable individuals or groups. Through its due diligence, the task team ascertains whether: (i) the environmental and social assessment has properly identified the disadvantaged or vulnerable individuals or groups; and (ii) appropriate differentiated mitigation measures have been incorporated into project design and documented in relevant project documents so that adverse impacts do not fall disproportionately on the disadvantaged or vulnerable, and they are not disadvantaged in sharing any development benefits resulting from the project. This due diligence contributes to the Bank's decision-making as to whether or not to proceed with the proposed project.

Having in mind the obligations set in ESS1 for the Borrower and in the Bank Directive - Addressing Risks and Impacts on Disadvantaged or Vulnerable Individuals or Groups are intertwined and lean on one another, both the Borrower and the task team of the Bank have failed to fulfill them. There is no proof whatsoever that the Borrower acted in accordance with the Assessment and Management of Environmental and Social Risks and Impacts (ESS1), since no social and environmental assessment was undertaken nor made public, especially having in mind the adoption of the Law on Social Card itself (which introduced the Social Card Register), where all the relevant legal steps were also bypassed. The Borrower also did not engage any relevant stakeholders in the consultation as prescribed in its obligations, nor did it adopt the Environmental and Social Commitment Plan. There was also no public consultations before the adoption of the Law on Social Card, as prescribed by national legislation.

In line with these omissions on the Borrower's side, the task team of the Bank has also breached its obligations set in the mentioned Bank Directive. Since there was no environmental and social assessment of the project, the task team failed to fulfill its first obligation set in the Directive, which states that they will assist the Borrower in establishing arrangements for undertaking and preparing this assessment. No individuals or groups have been identified as affected by the project and no assessment of project risks and impacts and identification of differentiated mitigation measures has been undertaken. Alongside this, the task team also failed to undertake its due diligence, as prescribed in paragraph 5 of the Directive, which refers to reviewing the social and environmental assessment conducted by the Borrower and participation in consultation with affected disadvantaged individuals and groups, among other activities. All these requirements have a goal that adverse impacts of the project do not fall disproportionately on the disadvantaged or vulnerable individuals or groups.

However, this was the exact and direct result of the Bank's project and the introduction of the Social Card Register in Serbia. Having in mind the fact that two years into the implementation of the project, the Social Card Register stripped more than 44,000 beneficiaries of their right to financial social assistance, partially as a result of mistakes in the Register and (semi) automated decision-making process. These effects could have been avoided if the preventive obligations were fulfilled accordingly. Absurdly, there was no discrimination towards vulnerable groups and communities regarding the project's benefits, but rather the project's effects introduce discrimination towards marginalized individuals who are in the social welfare system. If an adequate assessment had been made, which would include the consultation with the disadvantaged community on whose lives the implementation of the Social Card Register had a disproportionately negative effect, it is possible that there would be no proceeding with the finalization of the project.

7. Do you expect any form of retaliation or threats for filing this complaint?

At this moment it is hard to assess if retaliation measures will follow the submission of this complaint.

8. In addition to receiving information about the Compliance investigation process, would you also like to receive information about the option of dispute resolution?

No, we do not wish to discuss the option of dispute resolution.

Section 2: Contact Information

9. Are you complainants or a representative of complainants*?

Complainants: ☐ Representing a complainant or community: ☒ Other: ☐ (Please explain)

10. Would you like your name and contact details to be kept confidential? (We will not disclose your identities to anyone without your prior consent.) Yes ☐ No ☒

11. Complainants' or representatives' names (minimum two names and signatures are required):

	Complainant /Representative 1	**Complainant /Representative 2**
Name	Nadja Marković	Danilo Ćurčić
Address	A 11 – Initiative for Economic and Social Rights, [redacted] Serbia	A 11 – Initiative for Economic and Social Rights, [redacted] Serbia
Phone	[redacted]	[redacted]
Email		

12. By completing and submitting this form, we authorize the Inspection Panel to investigate the issues as described in this form.

Signature 1	**Signature 2**
[redacted]	[redacted]

Signatures (more signatures can be sent as an attachment):

NOTES:

- **If you are a representative of complainants, we will need a letter from the complainants authorizing you to represent them.*
- *Please attach supporting documents, if available.*
- *If you have any difficulty in completing the form, please contact the World Bank Accountability Mechanism at Email: ipanel@worldbank.org or by phone: +1-202-458-5200.*

INICIJATIVA ZA EKONOMSKA I SOCIJALNA PRAVA

A11 – Initiative for Economic and Social Rights
Address: [redacted]

Additional Information regarding the Complaint submitted to the World Bank's Inspection Panel on 31 March 2024, regarding the Public Sector Efficiency and Green Recovery DPL, Project ID: P164575

After the introduction of the Social Card Register, all types of income of beneficiaries are now detected, even those that should not be relevant for deciding on social protection rights. However, beneficiaries are not provided with the clear procedure to refute this information before the Social Welfare Centers.

Complainant 7

One of the common cases is that an individual earns an income through informal work such as collecting secondary raw materials, or any other work, but that the detected income in the Social Card Register is much higher than the earned one, which then leads to a termination of their financial social assistance. This is exactly what happened to [redacted] **from Belgrade, Complainant 7**, who is a single mother of a minor child and who was a beneficiary of financial social assistance until December 2022, when her right ended since income obtained from working temporary and occasional jobs was detected in her Social Card.

In addition to receiving financial social assistance, she occasionally worked as a [redacted] and [redacted]. During August and September 2022, she worked as a tour guide for 8 days in total, earning 1,500 dinars (appx. 13 euros) a day. In order to be eligible for financial social assistance, an individual should have no income at all or the income lower than the financial social assistance they would receive (in that case, the financial social assistance would be decreased proportionately) and this decision is based on the income generated over three months period prior to submitting a request. [redacted] monthly income was around 4,000 dinars (appx. 35 euros), while the monthly amount of financial social assistance for a two-member, single-parent family would be around 17,000 dinars (appx. 150 euros). One day [redacted] was called by a social worker and informed that she was going to lose her right completely due to her income.

At the Social Welfare Centre [redacted] she informed the social worker that she had worked for 9 days during the three months and provided the contract with a travel agency as evidence. Unfortunately, the social worker followed the instructions received in the notification with the Social Card Registry and ignores the evidence [redacted] provided them with. Data extracted from the Social Card Register showed that her income was much higher: 45,707 dinars (appx. 400 euros) in August, 29,181 dinars (appx. 250 euros) in September and 36,419 dinars (appx. 320 euros) in October.

Although the extract from the Central Register of Mandatory Social Insurance, a document in which the origin of each income subject to mandatory social insurance contributions is recorded, proved the actual figures, [redacted] did not appeal because she had been told that, until the process of the appeal is ongoing (which can take as long as 6 months), she did not have the right to submit a new request for financial social assistance.[1]

Complainant 8

Other than the errors in the detected amount itself, it was observed that the Social Card Register lists as income something that cannot be categorized as such, for example, inheritance. In this regard, there are cases that clearly indicate that the Social Card Register is not set in accordance with the Law on Social Protection. The Law on Social Protection defines in Art. 82 that an able-body individual may own up to 0.5 hectares, or up to 1 hectare of land if a person is incapable of work, in order to exercise the right to financial social assistance. However, the Guidance for Application of the Social Card provided to all social workers, includes absolute rights (property rights in particular) as well as inheritance and gifts in the category of irregular income, with their market value used to assess it. For illustration, if a person owns 0.1 hectare of land (less than required by the legal census), its market value set by the Tax Administration will be considered as their income and their right to financial social assistance will be suspended.

This exactly was the way in which the increased financial social assistance for [redacted] **Complainant 8**, was terminated. She lives in dire housing conditions in one informal Roma settlement in Belgrade and her loss of the right to financial social assistance is an obvious example of the described harm resulted with the implementation of the Social Cards Registry. Namely, [redacted] has severe illness and disability, which means that she is not able to work. In addition to financial social assistance, she is also a beneficiary of allowance for assistance and care for another person and considering she cannot work, these social benefits are her only income.

In November 2022, [redacted] was notified about the termination of her financial social assistance because of inheritance income in the amount of 1,066,656 dinars (appx. 9,000 euros). After the engagement of A 11 Initiative, it was found that [redacted] inherited land covering an area of 333,33 m^2, which was converted into market value and this amount was stated in the decision on termination of her right. Even though the Law on Social Protection prescribes that the threshold is 10,000 m^2 (1 hectare), [redacted] lost the right to financial social assistance because the Social Card Register expressed the land ownership in market value and not in square footage. The Social Card Register in this respect fundamentally contradicts the Law on Social Protection and its implementation leads to a direct violation of this regulation. The second-instance authority overturned this decision

[1] This practice is contrary to the law because there are no legal obstacles to submitting a new request for financial social assistance, especially keeping in mind that a different period of time for income calculation is estimated. Not being aware of this, she gave up on the appeal, thinking that she could not afford months of waiting for a second-instance decision without any kind of income.

after the appeal and returned the case to the Social Welfare Centre [redacted] for re-decision, without but focused only on the violation of procedural aspects of the Law.

Complainant 9

Another example of how the wrong classification of income in the Social Card Register violates the Law on Social Protection is the case of [redacted], Complainant 9. She and her family (a husband, daughter and grandson) are beneficiaries of financial social assistance in the monthly amount of around 25,000 dinars (appx. 220 euros) and they live in a social apartment in Belgrade. Given the extremely high living costs in social housing units in Belgrade, it often happens that users of these apartments fall into arrears. Due to the difficulty of paying all the utility costs on time, which can reach up to 20,000 dinars per month (appx. 180 euros), these tenants are frequently in a predicament where they must choose between paying their bills and covering essential needs.

These problems are also affecting [redacted] and her family due to the fact that her household accumulated significant debts due to the aforementioned reasons. The mediation process, in which her family participated regarding their forced eviction, resulted in covering all debts caused by unaffordable housing, so that they would not be at risk of becoming homeless. However, the payment of these debts was considered as income by the Social Card Register and [redacted] was warned that she would lose her right to financial social assistance. Although the social worker asked for the details of this "income", from which it could be seen that there was no real income involved, [redacted] statement that this did not match the factual case and that she not only did not work or earn, but was also not responsible for the situation, was not taken into account.

The social worker in this case simply followed the instruction from the notification received within the Social Card Register and took data from it as only relevant information, defining the above as income from temporary and casual employment. To make things even worse, on the same occasion, a donation that was allocated to cover the funeral costs of [redacted] daughter who had passed away a couple of months earlier, was also calculated as an "income". Since the Social Welfare Centre [redacted] failed to provide any support regarding this situation and the expenses that it brought, she turned to A 11 Initiative for help. In both of these cases, the amounts paid for completely different purposes were classified as income, therefore violating the Law, and preventing her from exercising her right to financial social assistance. The appeal that A 11 Initiative submitted on behalf of [redacted] alongside evidence regarding the origin of the "income" in question, was eventually successful. However, the procedure took months and during the whole time, this family did not have any means to cover their basic necessities.

Non-Compliance of the Law on Social Card with other Legal Instruments in Serbia

I *Non-compliance of Articles 6, 7, 8 and 11 of the Law on Social Card with the provisions of the Personal Data Protection Law*[2]

From the perspective of the Personal Data Protection Law[3], the mentioned provisions are violating one of the main principles of personal data protection – the principle of minimization of data and limitations based on the processing purpose, which are prescribed by Art. 5 of the Law on Social Card. Based on the Law on Social Card 135 personal data of the beneficiary of social protection rights and services or of the person who is exercising social protection rights are being processed. This volume of personal data that is processed does not exist in any other life situation in the Republic of Serbia and indicates disproportionate volume of personal data processing of beneficiaries of financial social assistance and those citizens who submit requests to exercise rights from the social protection system.

For example, even the Law on records and data processing in the field of internal affairs[4] foresees a more modest scope of personal data processing in situations of use of police powers. Although Art. 4 of the Law on Social Card states the data processing purposes, the abovementioned provisions do not specify which data or data sets are processed for each specified processing purpose, but the data and processing operations are listed collectively, whereby the norms contained in the provisions of Art. 6, 7, 8 and 9 remain insufficiently precise and do not meet the "minimum standard that entails the requirement for the certainty of a legal norm".

The constitutional principle of the unity of the legal order dictates that the basic principles and legal institutes provided for in the laws that regulate one area of social relations in a systemic manner should also be respected in special laws, unless that law explicitly prescribes the possibility of regulating the same issues differently.[5] The Law on Social Card expressly stipulates in Art. 18 para. 2 that the processing carried out by data users (explicitly stated public authorities) should be proportionate to the purpose, i.e. that users process data which are appropriate, essential and limited to what is necessary in relation to the purpose of processing, in accordance with the law which regulates the personal data protection. Likewise, when enacting the law governing the protection of personal data - the Personal Data Protection Law, the legislator foresaw its systemic importance for the regulation of this area, so in Art. 100 of the Personal Data Protection Law stipulates that the provisions of other laws related to personal data processing must be harmonized with the provisions of this law by the end of 2020.

As the Law on Social Card is by its nature a special law that regulates certain issues of personal data processing of users of rights and services from the social protection system, as well as persons in the process of exercising rights, the provisions of this regulation must be

[2] For more information about the DPIA of the Data Protection Commissioner of the Republic of Serbia, please see Annex 4.
[3] Official Gazette of RS, no. 87/2018
[4] Official Gazette of RS, No. 24/2018.
[5] Constitutional Court, Už 13652/2018, IUz-361/2012

harmonized with the provisions of the "umbrella" law - of the Personal Data Protection Law. Also, the provisions of this law must be particularly precise "since the need for accessibility, clarity, certainty and substantive non-contradiction, in procedures in which certain legal provisions are subsidiarily applied, requires that their precision must be as high as possible".[6] In the case of insufficient precision of the norm, there is greater uncertainty in the process of finding and applying the relevant legal norm, which makes it more difficult to use a right. Bearing in mind that the Law on Social Card processes the data of some of the most vulnerable categories of citizens of Serbia, the requirement for the precision of the legal norm must be additionally emphasized.

Despite of all that, these provisions are insufficiently clear and precise, and do not meet even the minimum requirements from the point of view of data minimization, because they prescribe which specific data are necessary for the realization of each individual processing purpose from Art. 4 of the Law on Social Card. On the other hand, data minimization, which implies the state's obligation not to collect and process data that is redundant in relation to the intended purpose of processing, is one of the basic obligations from Art. 5 of the Council of Europe Convention on the Protection of Individuals with Regard to Automatic Personal Data Processing[7] which is an integral part of the legal system of the Republic of Serbia.

Especially contested are the provisions in Art. 6 para. 4 of the Law on Social Card, which stipulates that "exceptionally, the Social Card can also process data on persons from socially endangered and vulnerable groups (children and young people, persons over 65 years of age, persons with disabilities, persons with mental disorders, single parents, unemployed persons and other socially vulnerable categories whose monthly income is below the appropriate level) whose right is determined by the Government in cases of providing assistance according to the conditions it defines for each individual case". Bearing in mind that we are dealing with the processing of data that are particularly sensitive by their nature, this norm is insufficiently precise, because it does not prescribe in a clear way in which cases, and under which conditions this exception applies.

Furthermore, Art. 7 para. 1, item 6 of the Law on Social Card stipulates that as one of the general data on the beneficiary of social protection rights and services or persons in the process of exercising rights, *data on nationality* is also collected and processed. The contested provision of the law does not specify whether these personal data are collected for each person or only for persons who exercise some special, additional rights based on belonging to a certain national group. It should be noted that the Constitution of the Republic of Serbia in Art. 47 stipulates that the expression of nationality is free and that *no one is obliged to declare his nationality*, thus the provision from Art. 7 para. 1 item 6 is

[6] Constitutional Court, I Už 51/ 2012

[7] Law on Ratification of the Convention on the Protection of Persons in Relation to Automatic Processing of Personal Data, "Official Gazette of Federal Republic of Yugoslavia – International Agreements", No. 1/92, "Official Gazette of RS – International Agreements", No. 12/2010, "Official Gazette of Serbia and Montenegro – International Agreements", No. 11/2005, "Official Gazette of RS – International Agreements", No. 98/2008 and 4/2020.

inconsistent with the constitutional guarantees regarding the collection of data on the nationality of citizens.

II *Non-compliance of Article 9 of the Law on Social Card with Articles 4, 21 and 42 of the Constitution of the Republic of Serbia*

Art. 4 para. 1 of the Constitution of the Republic of Serbia stipulates that the legal system is unique. Art. 21 of the Constitution stipulates that everyone is equal before the Constitution and the law and that everyone has the right to equal legal protection, without discrimination (Art. 21, para. 2). It is further stated that any discrimination, direct or indirect, on any basis is prohibited, especially on the basis of race, gender, nationality, social origin, birth, religion, political or other belief, property status, culture, language, age and mental or physical disability (Art. 21, para. 3). Art. 42 of the Constitution guarantees the protection of personal data. This provision of the Constitution stipulates that collecting, holding, processing and use of personal data shall be regulated by law. In addition, the use of personal data outside the purpose for which they were collected, in accordance with the law, is prohibited and punishable, except for the purposes of conducting criminal proceedings or protecting the security of the Republic of Serbia, in the manner provided by law.

On the other hand, the Art. 9 of the Law on Social Card stipulates that personal data of persons who are connected to the beneficiary or potential beneficiary of the social protection system are also collected and processed. In addition to the fact that it is not precisely defined whether this applies only to the former extramarital partner who lives in the household with the applicant or to the former extramarital partner who is obliged to participate in supporting the household, or to some other situation, the question is also when the administrative authorities will act in cases where there are several former extramarital partners - whether they are all considered to be connected persons and when that connection of importance for the Law on Social Card ends. In addition, the question is whether these data are also taken into account in cases of domestic violence, non-payment of alimony or other cases in which, due to the income or property of a higher value of the former extramarital partner, it could happen that Social Welfare Centres reject the request or revoke the right which was granted to the applicant.

Provision of Art. 9 of the Law on Social Card is inconsistent with the provisions of Art. 21 of the Constitution of the Republic of Serbia, which guarantees the prohibition of indirect or direct discrimination. This refers especially to persons connected with the beneficiary of the social protection system. Insufficiently precisely defined "connection" of a person to a person who submits a request for realization of the right to financial social assistance or realizes the right to financial social assistance discriminates these persons in relation to other categories of citizens, contrary to the guarantees contained in Art. 21 of the Constitution of the Republic of Serbia. The very fact that a person is, for example, the former extramarital partner of a person who submits a request for the right to financial

social assistance, leads to the processing of personal data of this person, despite the fact that the person has no legal interest in this situation, it puts that person in an unequal position in relation to other citizens based solely on the fact that is a former extramarital partner of someone.

III *Non-compliance of Art. 17 of the Law on Social Card with the provisions of the Council of Europe Convention on the Protection of Individuals with Regard to Automatic Processing of Personal Data*

The Constitution of the Republic of Serbia in Art. 16 and Art. 194 stipulates that the generally accepted rules of international law and ratified international treaties are an integral part of the legal system of the Republic of Serbia and that they are directly applicable, as well as that ratified international treaties must be in accordance with the Constitution.

The Council of Europe Convention on the Protection of Individuals with Regard to Automatic Personal Data Processing has been an integral part of the legal system of the Republic of Serbia since the entry into force of the Law on Confirmation of the Convention on the Protection of Individuals with Regard to Automatic Personal Data Processing. Thus, it is important to note that the provision from Art. 9 of the Convention stipulates that every person has the right "to not be referred to by a decision that significantly affects him, which is based solely on automatic data processing without taking into account his views". The Convention allows exceptions and limitations to this rule, only when such an exception is prescribed by law, when they respect the essence of fundamental rights and freedoms and when they represent a necessary and proportionate measure in a democratic society for, among other things, the protection of important economic and financial interests of the state and other important goals of general public interest.

Art. 17 of the Law on the Social Card stipulates that if, during the processing, non-conformity of the user's data, i.e. of connected persons, is determined, a *notification* is made about this and forwarded to the records from the field of social protection. This *notification* contains instructions to the data user (authorities responsible for the implementation of social protection, in accordance with Art. 11 of the Law on Social Card) that it is necessary to verify data by inspecting and downloading data from official records, documentation and public documents: that it is necessary to make the decision based on the request of the party or that it is necessary to start the procedure *ex officio*, because facts with a significant impact on the realization, change or termination of rights from social protection have been learned.

The content of the above provisions of the Law on Social Card makes it clear that there is a semi-automated or automated data processing, which only informs data users that it is necessary to take certain actions regarding the rights of the person whose personal data is contained in the Social Card. Therefore, in accordance with the guarantees from Art. 9 of the Convention of the Council of Europe on the Protection of Individuals with Regard to the

Automatic Personal Data Processing, the user is prevented from having his views taken into account in relation to the automated personal data processing. Bearing in mind the non-transparency of the algorithm that provides notification of the need for reconciliation, and the fact that the most common consequence of reconciliation is the cancellation or amendment of the decision on exercising the right to financial social assistance, this provision is disproportionate in a democratic society to the goal that is sought to be achieved in order to protect important economic and financial interests of the state.

The disproportionality of the provision and the exclusion of the possibility of the person whose personal data was processed in the Social Card "to take into account his views" must be viewed in the context of this regulation in its full capacity - taking into account that the established database processes at least 135 personal data of the most vulnerable citizens of Serbia and that this processing is disproportionate to any other personal data processing in the Republic of Serbia. Regarding the issue of disproportionality, it is important to note that the automatic review, i.e., the creation and delivery of the notification from Art. 17 of the Law on Social Card significantly "tightens" the conditions provided for by the Law on Social Protection[8], which brings this issue back to the field of respect for the constitutional principle of the unity of the legal system, because the law regulating the special processing of personal data in the social protection system violates the rights from the social protection system itself, which are regulated by the Social Protection Act.

The Law on Social Protection in Art. 96 and Art. 97 prescribes the procedure for reviewing the conditions for exercising the right to financial social benefits. Thus, the provision of Art. 96 of the Law on Social Protection prescribes that the social welfare centre reviews the conditions for exercising the right to financial social benefits in May based on the income of the beneficiary of the right realized in the previous three months, except for beneficiaries who are considered able to work, who receive financial social benefits for nine months during the calendar year. Furthermore, Art. 97 of the Law prescribes the duty of beneficiaries of the right to financial social benefits to inform the decision-making authority about changes that affect the recognized right within 15 days from the day the change occurred. Contrary to these provisions, Art. 17 of the Law on Social Card prescribes automatic data verification, which is carried out 24 hours a day, every day of the year. In addition, this is done in a non-transparent way, because it is unknown how the algorithm that performs the verification is regulated (n.b. there is no provision in the Law on Social Card about this), and the beneficiary of financial social benefits, the data subject, is also not given the option to take into account his views when making a decision, contrary to the guarantees from Art. 9 of the Convention of the Council of Europe on the Protection of Individuals with Regard to the Automatic Personal Data Processing.

IV *Non-compliance of Art. 17 of the Law on Social Card with the provisions of Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms*

[8] Official Gazette of RS, No. 24/2011.

As already mentioned, although the automated processing of personal data is carried out based on the provision from Art. 17 of the Law on Social Card, the norm does not prescribe how this processing is to be carried out, nor does it transparently regulate the functioning of the algorithm on the basis of which this processing is made.

Through the previously described extensive processing of personal data of beneficiaries and potential beneficiaries of the social protection system which is insufficiently regulated by law, the Social Card Registry creates an extremely intimate image of each individual, even if the beneficiaries are in no way disturbed by such personal data processing.[9]

Personal data processing provided for by the Law on Social Card is an undoubted interference with the right to respect for private and family life, as interpreted in its practice by the European Court of Human Rights (European Court of Human Rights, (*Amann* v. *Switzerland* [Grand Chamber], 2000, paras 66-67; *Rotaru* v. *Romania* [Grand Chamber], 2000, paras. 43-44), *Uzun* v. *Germany*, 2010, para. 51, P.G. and *J.H.* v. *the United Kingdom*, 2001, para. 57). In order for this interference with the right to private and family life to be in accordance with the guarantees from Art. 8 of the European Convention on Human Rights, it must be: prescribed by law, necessary in a democratic society and established to achieve a legitimate goal.

Although this interference is prescribed by somewhat vague provisions that are not precise enough (as already described), in general, the matter of processing personal data of users and potential users of the social protection system is regulated by law.

On the other hand, the enhanced achievement of the intended provision of the right to financial benefits in the social protection system and reduction of rights abuses are considered as legitimate goals. However, in order for the contested provisions of the Law on Social Card to be able to improve the system of financial social benefits and reduce abuses in the exercise of these rights, it is necessary to have data on the degree of abuses in the social protection system. Such data do not exist. Simple, the system of control and processing of 135 personal data of beneficiaries of financial social assistance and potential beneficiaries of financial social assistance was established in order to prevent potential abuse of the system, without the existence of a real risk of this phenomenon, the eradication of which would certainly be a legitimate goal.

Therefore, the degree of personal data processing and the inconsistency of the contested provisions of the Law on Social Card must be analysed from the perspective of necessity in a democratic society. States have a special responsibility in the establishment and implementation of new technologies and their balance in relation to potential interference with respect for private and family life (European Court of Human Rights, *S. and Marper* v. *the United Kingdom* (2004), No. 30562/04 and 30566/ 04.

[9] Court of Justice European Union, Case C-293/12, paragraph 33

Finally, in order to assess whether the processing of personal data in the Social Card Registry is in accordance with the requirements of Art. 8 of the European Convention on Human Rights, it is necessary to look at whether the processing is transparent, what is its purpose and how the principles of minimizing the processing of personal data have been applied (The Hague District Court, *NJCM and others* v. *the Netherlands* (2020) The Hague District Court ECLI: NL: RBDHA:2020:1878 (SyRI)).

V *Non-compliance of Art. 17 of the Law on Social Card with the provisions of Art. 9 of the International Covenant on Economic, Social and Cultural Rights*

Finally, provisions from Art. 17 of the Law on Social Card contradict the provisions of Art. 9 of the International Covenant on Economic, Social and Cultural Rights, which guarantees the right to social security. The Committee on Economic, Social and Cultural Rights interprets this provision in such a way that the abolition, reduction or termination of rights from the social protection system must be based on *reasonable criteria that have been assessed in an adequate procedure* (Committee on Economic, Social and Cultural Rights of the United Nations, General comment 19 (2008), page 8).

In Belgrade, 18 April 2024