

**Road Modernisation project
in the Federation of Bosnia and Herzegovina**

Complaint SG/E/2018/28

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

CONCLUSIONS REPORT

21 June 2019

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The EIB Complaints Mechanism

The EIB Complaints Mechanism is designed to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases in which members of the public feel that the EIB Group has done something wrong, i.e. if they consider that the EIB has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) – and one external – the European Ombudsman (EO).

Complainants that are not satisfied with the EIB-CM's reply have the right to lodge a complaint of maladministration against the EIB with the EO.

The EO was "created" by the Maastricht Treaty of 1992 as an EU institution to which a citizen or an entity may appeal to investigate an EU institution or a body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as set out by the European Ombudsman, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities and to project cycle-related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism is designed not only to address non-compliance by the EIB with its policies and procedures but also to endeavour to solve the problem(s) raised by complainants such as those regarding the implementation of projects.

For further and more detailed information regarding the EIB Complaints Mechanism please visit our website: <http://www.eib.org/about/accountability/complaints/index.htm>

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EXECUTIVE SUMMARY

The complaint

On 19 February 2018, the EIB's Complaints Mechanism (EIB-CM) received a complaint from an individual. The complaint concerns a reconstruction of an intersection of roads M5 and R403a in Bosnia and Herzegovina.

The competent authorities informed the complainant that, in line with the 2009 project's main design, part of his property would be expropriated for the reconstruction of the intersection. The complainant expressed his dissatisfaction with the project's potential impact on his property.

Findings and conclusions

Once it received the complaint, the EIB followed up with the promoter with a view to addressing the issues raised by the complainant. In November 2018, the promoter prepared a new main design for the project. In May 2019, the promoter confirmed that the 2018 project's main design does not require the expropriation of the complainant's property.

Therefore, the EIB-CM concludes that the promoter settled this issue. The EIB-CM did not identify any instances of maladministration by the EIB. Therefore, the EIB-CM closes the complaint with no recommendations.

1. COMPLAINT (ALLEGATIONS AND CLAIMS)

- 1.1 On 19 February 2018, the EIB's Complaints Mechanism (EIB-CM) received a complaint from an individual. The complaint concerns a reconstruction of an intersection of roads M5 and R403a in Bosnia and Herzegovina (BiH) (hereinafter "the project").

The complainant expressed his dissatisfaction with the project's potential impact on his property. The competent authorities informed the complainant that part of his property would be expropriated for the reconstruction of the intersection, in line with the project's main design.

In his complaint, the complainant states that he was not notified of the issuance of the project's April 2017 spatial planning permit¹. This prevented him from challenging the spatial planning permit via an administrative procedure. The complainant also objected to the November 2017 public interest decision². According to the complainant, the expropriation study, provided together with the proposal for the public interest decision, did not meet all the requirements set out in the Expropriation Act. For example, according to the complainant, the study did not include: (i) the expropriated property value estimate; and (ii) the expropriation aim.

- 1.2 The complainant calls for modifications to the project's main design with the aim of avoiding expropriation of his property for the reconstruction of the intersection.

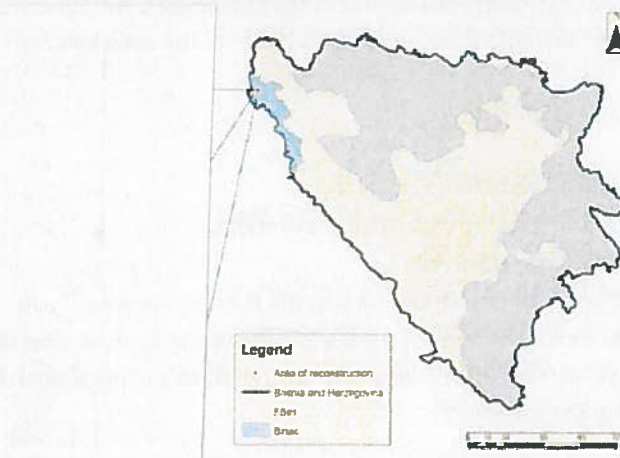
2. BACKGROUND INFORMATION

- 2.1 The intersection of roads M5 and R403a is located in Kamenica settlement within the city of Bihać³. Bihać is located in the Federation of Bosnia and Herzegovina (FBiH), one of the two entities that make up BiH.

¹ Spatial planning permit issued in favour of JP Ceste FBiH by the Una-Sana Canton Ministry for Construction, Spatial Planning and Environmental Protection, No 11/2-23-11793-UP-1/16, dated 21 April 2017.

² Decision declaring public interest for land expropriation with the aim of reconstructing the intersection of the M5 and R403a roads in Kamenica, city of Bihać, issued in favour of JP Ceste FBiH by the Bihać city council, Decision No GV-31-7936, dated 29 November 2017.

³ Section 6.2 under the following link: <https://lpcfbih.ba/en/activities/modernization-of-main-roads/38>, accessed on 17 May 2019.

PICTURE 1 – LOCATION OF THE PROJECT⁴

- 2.2 The project is one of a number of projects financed under an Investment Loan Road Modernisation in FBiH between the EIB and BiH⁵. In addition to the EIB, the World Bank is co-financing the road modernisation in FBiH. JP Ceste FBiH, a public company in charge of construction, reconstruction and maintenance of roads in FBiH is the project promoter (hereinafter “the promoter”).

3. REGULATORY FRAMEWORK

The EIB-CM

- 3.1 The EIB-CM addresses complaints concerning alleged maladministration by the EIB⁶. Maladministration means poor or failed administration. This occurs when the EIB fails to act in accordance with the applicable legislation and/or established policies, standards and procedures. Maladministration may relate to the social impacts of EIB’s activities⁷ or to EIB’s decisions, actions or omissions which fail to give due consideration to legitimate concerns of stakeholders⁸.
- 3.2 For each admissible complaint, the EIB-CM prepares a conclusions report⁹. The report contains the outcomes of the complaint. Solving a problem that gave rise to the complaint during the

⁴ Section 3 of the Environmental and Social Management Plan (ESMP) for the Project of the Reconstruction of the Black Spot Roundabout in Kamenica, city of Bihać, dated October 2017, available under the following link: https://jpcfbih.ba/assets/upload/dokumenti/modernizacija/ESMP_13_Kamenica.pdf, accessed on 17 May 2019. The promoter prepared the ESMP in line with the applicable standards (World Bank Operational Policies OP. 4.01 on Environmental Assessment – Section 2 of the ESMP). The ESMP aims at identifying all of the potential environmental and social impacts associated with this project activity (Section 2 of the ESMP).

⁵ For the full list of projects co-financed by the EIB and the World Bank, see <https://jpcfbih.ba/en/activities/modernization-of-main-roads/38>, accessed on 17 May 2019. More information about the Investment Loan Road Modernisation in FBiH is available at: <http://www.eib.org/en/projects/pipelines/pipeline/20120418>, accessed on 17 May 2019.

⁶ Section II, § 3 and 4 and Section III, § 1.4 of the European Investment Bank Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (CMPTR).

⁷ Section II, § 1.2 of the CMPTR.

⁸ § 3 of the European Investment Bank Complaints Mechanism Operating Procedures (CMOP).

⁹ Section IV, § 7.11 of the CMPTR.

complaints handling process may be one of the outcomes¹⁰. The EIB-CM endeavours to resolve these problems¹¹ taking into account the interests of the stakeholders¹².

Project applicable standards

3.3 The project applicable standards include:

- Relevant international treaties and conventions
- Relevant European Union law
- Applicable national legislation, such as the Expropriation Act¹³ and
- Applicable social standards of the EIB and the World Bank, such as the EIB's Standard 6 on involuntary resettlement¹⁴ and the World Bank's Operational Manual OP 4.12 on Involuntary Resettlement¹⁵.

3.4 The Expropriation Act stipulates conditions and procedures for land acquisition with the aim of constructing public interest objects¹⁶. The Expropriation Act allows the competent authorities to expropriate land to construct roads¹⁷.

To expropriate land, the competent authorities must first issue a decision confirming a public interest (public interest decision)¹⁸. A proposal for establishment of a public interest contains an expropriation study that contains, inter alia: (i) the expropriated property value estimate; and (ii) the expropriation aim¹⁹. The proposal should also contain a spatial planning permit²⁰.

3.5 The EIB's Standard 6 and the World Bank's OP 4.12 overlap in many aspects. The objective of both is to avoid, or at least minimise, involuntary resettlement²¹ whenever feasible by exploring alternative project design²²; and both require the promoter to prepare a resettlement (action) plan (RAP)²³ for projects involving involuntary resettlement²⁴. The project must comply with the RAP.

In January 2016, the promoter prepared the RAP for a number of projects financed under the Loan (see § 2.2)²⁵. The RAP states that the involuntary resettlement should be avoided where

¹⁰ § 5.6.5 of the CMOP.

¹¹ Section II, § 3.1, indent 3, Section II, § 3.2, Section III, § 4.2, item k) and Section IV, § 7.7 of the CMPTR.

¹² Section IV, § 7.8 of the CMPTR.

¹³ Expropriation Act of the Federation of BiH ("Official Gazettes of FBiH", No 70/07, 36/10 and 25/12).

¹⁴ The project must comply with the EIB Statement of Environmental and Social Principles and Standards (ESPS). The EIB's social principles and standards, as laid down in the ESPS, are further elaborated on in the EIB 2013 Environmental and Social Handbook (§ 12 of the Background section of the ESPS). The Handbook contains Standard 6 on involuntary resettlement.

¹⁵ <https://policies.worldbank.org/sites/ppf3/PPFDocuments/090224b0822f89db.pdf>, accessed on 17 May 2019.

¹⁶ Article 1 of the Expropriation Act.

¹⁷ Article 3 of the Expropriation Act.

¹⁸ Article 5 of the Expropriation Act.

¹⁹ Article 16 of the Expropriation Act.

²⁰ Articles 5 and 14 of the Expropriation Act.

²¹ The involuntary resettlement is, inter alia, associated with loss of land as a consequence of declaring a public purpose in cases of land acquisition and expropriation (Standard 6, section 13).

²² Standard 6, section 4, indent 1 of the EIB 2013 Environmental and Social Handbook and Section 2, item a) of the OP 4.12.

²³ RAP is the document in which the promoter describes the impacts of the involuntary resettlement, specifies the procedures that will be followed to identify, evaluate and compensate the impacts and defines the actions to be undertaken during all phases of the resettlement (Standard 6, statement 19 of the EIB 2013 Environmental and Social Handbook).

²⁴ Standard 6, section 62 of the EIB 2013 Environmental and Social Handbook and OP 4.12, section 17.

²⁵ Available under the following link: <http://documents.worldbank.org/curated/en/116031468201252938/pdf/SFG1974-V2-RP-P152406-Box394880B-PUBLIC-Disclosed-3-21-2016.pdf>, accessed on 17 May 2019.

feasible, or minimised, exploring all viable alternative project designs²⁶. To the extent possible, according to the RAP, amicable negotiations and agreements with project affected persons should be sought to avoid or minimise the extent of involuntary resettlement²⁷.

Allocation of responsibilities (EIB's due diligence)

- 3.6 Compliance with the project applicable standards is the primary responsibility of the promoter and the competent authorities²⁸. The competent authorities issue relevant permits and decisions (e.g. spatial planning permit and public interest decision). The promoter must comply with these permits and relevant decisions.

The promoter is required to fulfil any additional EIB requirements²⁹. The promoter is required to promptly inform the EIB of, inter alia, any claim in respect of the social matters affecting the project including any breach or alleged breach of social standards.

- 3.7 Whereas, compliance with the project applicable standards is the primary responsibility of the promoter and the competent authorities, the EIB has a duty to ensure such compliance³⁰. The EIB fulfils this requirement through exercising its due diligence on the project. The EIB conducts a technical appraisal of the projects presented to it for funding. The physical monitoring aims at verifying the actual implementation and initial operation of the project itself³¹.

4. WORK PERFORMED

- 4.1 The EIB-CM assessed the allegation in the context of the EIB's potential maladministration. In particular, the EIB-CM assessed the EIB's due diligence in the areas related to the complainant's concerns. This includes project appraisal and monitoring.
- 4.2 The EIB-CM liaised with the relevant EIB operational services and the complainant with the aim of acquiring information about the project as well as the specific location of the complainant's property. The EIB-CM carried out a desk review of the available project-related documents³² and contacted the complainant and the relevant EIB operational services/promoter with a request for additional information.
- 4.3 From the gathered information, the EIB-CM noted that the promoter was carrying out a review of the project's main design that would avoid the expropriation of the complainant's property for the reconstruction of the intersection. In this context, the EIB-CM identified a problem-solving opportunity. In this regard, as part of their monitoring of the project the EIB services together with the EIB-CM followed up with the project promoter in order to obtain

²⁶ Section 4 of the RAP.

²⁷ Section 4 of the RAP.

²⁸ § 2 of the ESPS, Volume II, paragraph 64 of the EIB 2013 Environmental and Social Handbook; § 3 of the CMOP.

²⁹ § 2 of the ESPS.

³⁰ § 3 of the CMOP.

³¹ Volume II, paragraph 270 of the EIB 2013 Environmental and Social Handbook.

³² e.g. Environmental and Social Data Sheet, Resettlement Action Plan, Environmental and Social Management Plan, Expropriation Act.

updates regarding the ongoing process of the reviews of the main design and ensure that the complainant is duly informed.

5. FINDINGS

Project applicable standards

- 5.1 The promoter intends to reconstruct the intersection by replacing it with a roundabout. The objective is to remove an accident black spot³³. The construction of the roundabout involves expropriation of a number of land plots located near the intersection. The reconstruction should be carried out in line with the project's main design. The initial project's main design, prepared in 2009, was used as a basis for the RAP, prepared in 2016³⁴. According to the RAP, 62 land plots should be partially or fully expropriated³⁵. The RAP specifies which procedures and actions the promoter should take to properly resettle and compensate affected people³⁶.

According to the RAP, the expropriation should encompass part of land plot 2507³⁷, owned by the complainant³⁸. Land plot 2507 measures 497 m², of which 8% should be expropriated³⁹. According to the RAP, a fence, gate and draw-well should be moved onto the remaining part of the land plot⁴⁰. If they cannot be moved, the compensation should be agreed and paid to the complainant⁴¹. The land plot does not have any productive use and the expropriation is not expected to have a negative economic impact⁴².

PICTURE 2 – CURRENT SITUATION AND THE 2009 MAIN DESIGN WITH LAND PLOT No 2507 (blue square)⁴³

³³ The Study of Black Spots in FBiH classifies this intersection as a black spot.

³⁴ Concluded on the basis of Section 4 of the ESMP.

³⁵ Table 3 of the RAP; Section 6.1 of the ESMP.

³⁶ Section 1.2 of the RAP.

³⁷ Land Plot No 2507 located in Bihać, Kralje Cadaster Municipality, title deed No 1293: total area size 497 m² consisting of a built area (104 m²), yard (273 m²) and field (120 m²) – information available at: <http://www.katastar.ba/prehled>, accessed on 17 May 2019.

³⁸ Information available at: <http://www.katastar.ba/prehled>, accessed on 17 May 2019.

³⁹ Annex 3 of the RAP.

⁴⁰ Section 6.1 of the ESMP.

⁴¹ Section 6.1 of the ESMP.

⁴² Section 6.1 of the ESMP.

⁴³ Photo on the left - information available on the FBiH Geodetic Administration website (<http://www.fgu.com.ba/en/>), under the following link: <http://www.katastar.ba/geoportal/prehlednik/?center=6328742.18711077.4969036.2688898&level=13>, accessed on 17 May 2019; Map on the right - Section 4 of the ESMP.

- 5.2 In order to build the roundabout, the promoter is required to obtain the relevant permits (e.g. spatial planning permit) and to finalise the expropriation procedure.

In April 2017, the competent authority issued the spatial planning permit for the project. The spatial planning permit, which is one of the preconditions for building the roundabout, served as a basis for the issuance of the public interest decision in November 2017. The public interest decision is a precondition for expropriation of the affected land plots, including land plot 2507⁴⁴.

- 5.3 The complainant challenged both the spatial planning permit and the public interest decision before a competent court. In July and September 2018, the court upheld the complainant's claims and requested the competent authorities to repeat the procedures for issuance of both the public interest decision and the spatial planning permit⁴⁵.

With respect to the spatial planning permit, the court concluded that while the public call for the review of the 2009 main design was in line with the applicable legislation, the failure to provide the complainant with a copy of the spatial planning permit was not in keeping with the legislation. The court concluded that this prevented the complainant from challenging the spatial planning permit in an administrative procedure. The court ordered the procedure for issuance of the spatial planning permit to be repeated.

With respect to the public interest decision, the court concluded that the expropriation proposal did not contain the expropriation study, as set out in the Expropriation Act. The expropriation study did not contain: (i) the expropriated property value estimate; and (ii) the expropriation aim.

- 5.4 In November 2018, the promoter prepared a new main design for the project. In line with the 2018 main design, land plot No 2507 owned by the complainant will not be expropriated. In May 2019, the promoter was in the process of submitting a request for the issuance of a new spatial planning permit, which should be based on the 2018 main design.

⁴⁴ <http://bihac.org/cms/features/documents/uploads/1511434555264829723.pdf>, accessed on 17 May 2019.

⁴⁵ The Cantonal Court in Bihać (*Kantonalni sud u Bihaću*) issued the following judgements:

- Judgement No 01 0 U 013654 18 U, issued on 18 September 2018, in which the Court approved the action of the complainant; and amended decision No 11/2-23-2122-UP-1/18 by accepting the proposal of the complainant for renewal of the procedure for issuance of the spatial planning permit.
- Judgement No 01 0 U 013286 18 U, issued on 20 July 2018, in which the Court approved the action of the complainant; annulled the public interest decision; and requested renewal of the procedure for its issuance.

PICTURE 3 – 2009 MAIN DESIGN WITH LAND PLOT No 2507 (blue square) and 2018 MAIN DESIGN WITH LAND PLOT No 2507 (red square)

EIB due diligence

- 5.5 In relation to the concerns raised in the complaint, the EIB-CM noted that during its appraisal, the EIB took into account all the projects under the Loan. The EIB concluded that the projects are consistent with the EIB Transport Lending Policy and that the potential social impacts of the projects are likely to be minor and temporary⁴⁶.
- 5.6 Once it learned about the complaint, the EIB contacted the promoter requesting clarifications. The promoter informed the EIB that, in connection with its grievance mechanism⁴⁷, it had received a complaint from the same complainant in February 2018. Therein, the complainant also objected to the expropriation of part of his land for the reconstruction of the intersection. The promoter also informed the EIB that it had taken steps to modify the main design for the reconstruction of the intersection with the aim of avoiding expropriation of the complainant's property⁴⁸.
- 5.7 The EIB continued to follow up on the developments concerning the modification of the project's main design. In May 2019, the promoter provided the EIB with the modified 2018 main design and a written statement confirming that: (i) in line with the 2018 main design, land plot no 2507 owned by the complainant will not be subject to expropriation; and (ii) that the promoter intends to submit a request for the issuance of a new spatial planning permit in line with the 2018 main design.

⁴⁶ Environmental and Social Data Sheet, dated 12 March 2015, available at: <http://www.eib.org/attachments/registers/58521188.pdf>, accessed on 17 May 2019.

⁴⁷ More information on the grievance mechanism established by the promoter in this case is available in Section 10.2.1 of the ESMP.

⁴⁸ In February 2018, the promoter presented the complainant with the draft modified main design, which avoids the need for expropriation of land plot 2507, owned by the complainant, who was pleased with the draft modified main design presented.

6. CONCLUSIONS

- 6.1 The EIB-CM observes that the available evidence shows that the promoter has taken the necessary steps to address the relevant challenges and will relaunch the permit procedure soon.
- 6.2 The EIB-CM concludes that the EIB carried out its role in line with the applicable regulatory framework. Once it received the complaint, the EIB followed up with the promoter in order to address the issues raised by the complainant.
- 6.3 With regard to the alleged expropriation of the complainant's property, in light of the findings reported in § 5.7, the EIB-CM takes note that in May 2019 the promoter confirmed that the new project's main design does not require the expropriation of the complainant's property. Therefore, the EIB-CM concludes that the promoter properly settled this issue.
- 6.4 In light of the reported findings and conclusions, the EIB-CM did not identify any instances of maladministration by the EIB. Therefore, the EIB-CM closes the complaint with no recommendations.

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21 June 2019

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21 June 2019

LIST OF ABBREVIATIONS

CMOP	European Investment Bank Complaints Mechanism Operating Procedures
CMPTR	European Investment Bank Complaints Mechanism Principles, Terms of Reference and Rules of Procedure
EIB	European Investment Bank
EIB-CM	EIB's Complaints Mechanism Division
EO	European Ombudsman
ESMP	Environmental and Social Management Plan
ESPS	EIB Statement of Environmental and Social Principles and Standards
RAP	Resettlement (Action) Plan