

S₂ DENIVELLATION DE HUIT CARREFOURS A SFAX

Complaint SG/E/2018/43

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

CONCLUSIONS REPORT

16 November 2020¹

¹ The report contains events until 9 October 2020.

Prepared by

The Complaints Mechanism

External Distribution

Complainant

Promoter

Internal Distribution

Management Committee

Secretary General

Inspector General

EIB services concerned

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.

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

The European Ombudsman was “created” by the Maastricht Treaty of 1992 as a European Union (EU) institution to which any EU citizen or entity may appeal to investigate any EU institution or 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: <https://www.eib.org/en/about/accountability/complaints/index.htm>

ABBREVIATIONS

DGPC	Direction Générale des Ponts et Chaussées
EIB	European Investment Bank
EIB-CM	European Investment Bank's Complaints Mechanism
EU	European Union
FEMIP	Facilité Euro-méditerranéenne d'Investissement et de Partenariat
MEHAT	Ministère de l'Équipement, de l'Habitat et de l'Aménagement du Territoire Tunisien
PIU	Project Implementation Unit
RAP	Resettlement Action Plan
RPF	Resettlement Policy Framework

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Executive Summary

On 13 December 2018, the EIB Complaints Mechanism (EIB-CM) received a complaint from a local resident (hereinafter “the complainant”) concerning alleged negative impacts of one of the components of an EIB-financed roads programme on the building where he resides with his elderly mother as well as on two commercial shops on the ground floor of the same building. The complainant expressed concerns about the negative impacts in particular noise and vibrations on the health of his elderly mother who is suffering from a chronic illness and sleeping disorder. Furthermore, he claimed that the roadworks have caused damage to the building. In particular, the complainant alleged that the vibrations that resulted from the drilling and foundation works have damaged the structure of the building. The EIB-CM identified the following overarching allegations:

1. Alleged damage to private property and potential risks to the structure of the complainant’s building
2. Alleged negative health impacts due to high levels of noise, vibrations, unpleasant odours
3. Alleged loss of income due to the loss of rent from two rented commercial shops and failure to provide compensation in this respect

The EIB-CM carried out an assessment of the concerns raised by the complainant. Over the course of the assessment, the complainant also lodged a complaint with the local grievance redress mechanism. As a consequence, the complainant and the promoter engaged directly to address the concerns raised. The EIB-CM closely followed the procedure of the local grievance redress mechanism to address the complaint. This follow-up included regular calls with the complainant as well as interactions with the EIB services and their local consultant who participated in some of the meetings between the complainant and representatives of the promoter.

Following the complaint with the local grievance mechanism, the promoter and the complainant engaged directly and addressed the three sub-sets of his complaint. With regards to the alleged damages to the building two inspections have been agreed, and repairs have already been performed once and are potentially to be performed again depending on the outcome of the second inspection. Concerning the disruption caused by the project, the promoter offered to provide a rental allowance in order for the complainant and his mother to relocate to another apartment for the remaining duration of the works. Lastly, with regards to the compensation for loss of income, the complainant agreed to initiate the respective legal procedures.

On 21 September 2020, the complainant and the promoter reached an agreement on the pending concerns and thus addressed all the main allegations. The EIB services undertake to follow up with the promoter that important pending follow-up actions agreed between the promoter and the complainant are being implemented in a timely and complete manner. The local consultant of the EIB services offered to provide further assistance to the complainant if need be. In accordance with Article 1.4.3 and 2.3.3 of the EIB-CM Procedures, the complaint will be closed with the issuance of this conclusions report. Based on the Bank’s monitoring activity, the EIB-CM will submit a follow-up report to the complainant eight months after submitting this conclusions report.

CONCLUSIONS REPORT

Project: S2 Dénivellation de huit carrefours à Sfax

Date received: 13 December 2018

Confidential: No

1. COMPLAINT

- 1.1 On 13 December 2018, the EIB Complaints Mechanism (EIB-CM) received a complaint from a local resident (hereinafter “the complainant”) concerning alleged negative impacts of an EIB-financed roads programme on the building where he resides with his mother as well as on two commercial shops on the ground floor of the same building. The complainant explained that the complaint had been lodged on his behalf as well as on the behalf of his mother.
- 1.2 The complainant alleged that the construction machinery is exposing his building to very high levels of noise and vibrations. The complainant was concerned about the negative impacts on the health of his elderly mother who is suffering from a chronic illness and sleeping disorder.
- 1.3 Furthermore, he claimed that the roadworks have caused damage to the building. In particular, the complainant alleged that the vibrations that resulted from the drilling and foundation works have damaged the structure and roof of the building. The complainant further alleged that the works caused cracks in the walls of the upper second floor that led to the infiltration of rainwater.
- 1.4 The complainant also stated that the project has affected the business activity of the commercial stores in the area. In this regard, the complainant explained that he was renting out two shops located in the ground floor of the same building where he resides. The tenant(s) of these shops decided to leave due to the negative impacts of the project on the commercial activity. The complainant highlighted that the rental income constituted an essential source of income for his family. In addition, the complainant alleged that parking a car became very difficult during the construction works. Due to the above, the complainant claimed rights to be compensated for the damages caused and the loss of income.

1.5 In summary, the EIB-CM identified the following main allegations:

1. Alleged damage to private property and potential risks to the structure of the complainant's building
2. Alleged negative health impacts due to high levels of noise, vibrations, and unpleasant odours
3. Alleged loss of income due to the loss of rent from two rented commercial shops and failure to provide compensation in this respect

2. **BACKGROUND INFORMATION**

- 2.1 The *Modernisation Routière II*² operation is a sovereign framework loan of EUR 150 million with the Republic of Tunisia, financed by the EIB under the EU External Lending Mandate. This framework loan concerns a multi-scheme operation to finance the construction and upgrading of roads in Tunisia. In total, the framework operation consists of six sub-projects. The EIB Board of Directors approved the framework loan on 15 December 2015 and the Bank signed the corresponding finance agreement on 18 December 2015.
- 2.2 The framework loan includes a sub-operation called *S2 Dénivellation de huit carrefours à Sfax* ("the project")³ that concerns the construction of eight grade-separated interchanges along the main inner bypass (Rocade km4) of the city of Sfax. The proposed allocation of EUR 32.7 million represents 50% of the estimated project cost. The EIB Board of Directors approved the project on 29 September 2017.
- 2.3 The project is being implemented by the Ministry of Equipment, Housing, and Infrastructure (*Ministère de l'Équipement, de l'Habitat et de l'Aménagement du Territoire, MEHAT*)⁴, acting through the Directorate General for Roads and Bridges (*Direction Générale des Ponts et Chaussées, DGPC* or "the promoter"). The promoter has set up a Project Implementation Unit (PIU) for the supervision and technical coordination of works, the administration of tender procedures, the environmental and social management, and the general follow-up of the project's implementation. The PIU's team includes a sub-unit based in Sfax in charge of the implementation of the project locally. Additionally, the promoter has mobilised external consultants to supervise construction works.
- 2.4 The Bank provides technical assistance to reinforce the promoter's capacity and to mitigate project implementation risks. International consultants with experience in project implementation and environmental and social risk management are supporting the PIU. This technical assistance assignment is funded by the *Facilité Euro-Méditerranéenne d'Investissement et de Partenariat* (FEMIP). The Bank does also provide technical advice

² Find out more about the framework operation at: <https://www.eib.org/fr/projects/pipelines/pipeline/20150308>.

³ See more on the Project at: <https://www.eib.org/en/projects/pipelines/pipeline/20170152>.

⁴ More information about the Ministry of Equipment, Housing, and Infrastructure can be found at: <http://www.mehat.gov.tn>.

through in-house staff based in Luxembourg and in Tunisia and through a local social consultant mobilised under EIB's own resources.

3. APPLICABLE REGULATORY FRAMEWORK

- 3.1 The EIB-CM Policy⁵ and the EIB-CM Procedures⁶ apply to complaints of alleged maladministration lodged against the EIB. According to Article 3 of the EIB-CM Policy, maladministration means poor or failed administration and occurs when the EIB fails to act in accordance with a rule or principle that is binding upon it, including its own policies, standards, and procedures. When discharging its functions and pursuant to Article 5.3.2 of its policy, among other things the EIB-CM assesses concerns of maladministration raised by complainants; evaluates and reports on compliance with the EIB's relevant regulatory framework; provides advice and recommendations to the EIB's Management; and follows up and reports on efforts to take corrective actions, whenever applicable. Further, the EIB-CM enables alternative and pre-emptive resolution of disputes. When discharging its functions, the EIB-CM attempts to resolve problems raised by complainants through consensual processes in cooperation with the relevant internal and external stakeholders.⁷
- 3.2 According to the finance contract, the applicable environmental and social standards include, beyond national regulations, the EIB Statement of Environmental and Social Principles and Standards ("the statement")⁸ and the EIB's Environmental and Social Handbook in its version 9.0 of 02/12/2013 ("the handbook").⁹ Art. 2 of the statement notes that promoters are responsible for preparing, implementing, and operating projects financed by the EIB and that they are responsible for the fulfilment of EIB requirements. Art. 8 of the Statement states that the EIB monitors the environmental and social performance of a project that the EIB is financing.
- 3.3 In particular, standard 1 of the handbook outlines the promoter's responsibilities related to assessing and managing environmental and social impacts and risks, considering them during the selection of alternatives and applying a mitigation hierarchy to compensate/remedy significant adverse residual effects. The promoter develops an environmental and social management system that identifies actions to be taken and clarifies different responsibilities.¹⁰ Standard 6 of the handbook on involuntary resettlement aims at respecting the right to property of all affected people and at mitigating any adverse impact arising from their loss of assets, or access to assets and/or restrictions of land use, whether temporary or permanent, direct or indirect, partial or in their totality. In line with EIB's requirements under standard 6, the DGPC prepared a Resettlement Policy Framework (RPF) for the framework operation in 2015, which was updated in 2018¹¹ as well as a Resettlement Action Plan (RAP)

⁵ Available at: <https://www.eib.org/en/publications/complaints-mechanism-policy>.

⁶ Available at: <https://www.eib.org/en/publications/complaints-mechanism-procedures>.

⁷ Article 5.3.2 of the EIB-CM Policy.

⁸ Available at: http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf.

⁹ http://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf.

¹⁰ The Handbook, Vol. II: Procedures, paragraph 7 on the Role of the Promoter, p. 97.

¹¹ The updated Resettlement Policy Framework is available at: <https://www.eib.org/fr/registers/all/85351451>.

for the project.¹² The updated RPF clearly states that people affected temporarily or permanently by the loss of property or by the loss of income linked to the implementation of any sub-project of the framework operation have a right to compensation.¹³ The total or partial loss of income is equally covered by the RAP and listed as giving right to compensation.

- 3.4 Standard 9 on occupational and public health, safety, and security takes account of the fact that project activities can increase exposure to hazards, risks, and negative impacts in terms of public health and safety. Air pollution and elevated noise levels explicitly form part of the health risks identified by standard 9. The promoter shall ensure that health and safety risks are duly identified and adequately mitigated.
- 3.5 In line with standard 6 as well as standard 9, the promoter needs to grant affected people free and easy access to an independent and effective grievance redress mechanism. The mechanism shall address their health and safety concerns as well as specific concerns about compensation and relocation in a timely and effective manner and shall not impede access to other redress mechanisms, such as judicial, administrative or extrajudicial means of complaint. The promoter will duly inform the community members of the existence of the grievance mechanism.

4. WORK PERFORMED

- 4.1 Following the admissibility of the complaint and in line with Article 2.2 of the EIB-CM Procedures, the EIB-CM carried out an initial assessment. The objective of the assessment is to clarify the concerns raised by the complainant and to determine if further work is necessary to address the issues raised by the complainant. To this end, the EIB-CM held several meetings with the EIB services concerned in which it obtained clarifications and further details regarding the EIB's due diligence and the ongoing monitoring of the project. The EIB-CM gathered and reviewed the EIB project documentation.
- 4.2 Over the course of the assessment, the complainant also lodged a complaint with the local grievance redress mechanism on 13 March 2019. As a consequence, the promoter, with the support of the regional directorate of Sfax (*direction regional de l'équipement et de l'habitat de Sfax*), engaged directly with the complainant to address the concerns raised as further outlined in the next section. The process by the local grievance redress mechanism was supported at times by the social consultant of the technical assistance and the local consultant of the EIB services. In line with its above-mentioned mandate to enable alternative and pre-emptive resolution of disputes, the EIB-CM decided based on the information gathered during its assessment to support this ongoing consensual process through close cooperation with the relevant internal and external stakeholders. This included regular calls with the complainant as well as interactions with the EIB services and their local consultant who participated in some of the meetings between the complainant and representatives of the promoter. The EIB services at the same time interacted closely with the promoter and the technical assistance

¹² Available at: <https://www.eib.org/en/registers/all/84864484>.

¹³ Section 14, Eligibility of Project Affected People (*Eligibilité des PAPs*).

consultant. As part of its monitoring of the project the EIB services also performed site visits to the location of the complainant's building in June 2019 and in January 2020. The Bank's local social consultant was tasked to monitor the situation on the ground.

5. PROGRESS TO RESOLVE THE DISPUTE AND FOUND AGREEMENT

5.1 On 20 February 2019, the EIB services informed the promoter of the complaint and requested clarifications. The promoter was further requested to inquire regarding the issues raised by the complainant and to take actions to address his concerns if necessary. The promoter informed the EIB that the complainant had not lodged a complaint at the national level and that no actions had been taken. The promoter explained that two staff members were being trained to handle the communication with project-affected people. The promoter indicated that should a complaint be lodged with the local grievance mechanism, the latter will take appropriate actions to address the matter.

5.2 On 13 March 2019, the complainant lodged a complaint with the promoter and with the governorate of Sfax. Following the complaint with the local grievance mechanism, the promoter and the complainant engaged directly and addressed the three sub-sets of his complaint as follows:

- With regards to the alleged damage to the building (*allegation 1*), the promoter contacted the complainant for an appointment for a visual inspection of the alleged impacts and cracks on the building. On 23 April 2019, a technical team performed the visual audit of the cracks. Following the technical audit, repair works took place on 30 September 2019. The complainant at the time felt that the works had not been properly finalised. In February 2020, the complainant informed the EIB-CM that repairs of the cracks had been finalised to his satisfaction in January 2020. The complainant indicated, however, that additional cracks surfaced since.
- In a meeting on 11 June 2020, the promoter and the complainant consequently agreed that a second expert should be mobilised to inspect the new cracks. The inspection took place on 30 June 2020 to the satisfaction of the complainant. At the time of this report, the respective technical expertise was not yet shared. The EIB services have been following up with the promoter regarding the findings of the inspection and consequent actions. While the EIB-CM acknowledges the readiness of the promoter to address the alleged damages it notes with concern the rather long duration between inspection of the damage and the consequent repairs. This aspect therefore will require close continued monitoring by the EIB services as mentioned below.
- Concerning the disruption caused by the project (*allegation 2*), the promoter offered to provide a rental allowance in order for the complainant and his mother to relocate to another apartment for the remaining duration of the works. In addition, the promoter offered to compensate for the respective moving charges. The adequate amount of the monthly rental allowance was a subject of concern and negotiation between the parties

discussed over various written exchanges and meetings. On 21 September 2020, the promoter and the complainant agreed on the compensation amount for the monthly rental allowance. The complainant confirmed to the EIB-CM that he is in the process of looking for an apartment to move to for the remainder of the works.

- With regard to the compensation for loss of income (*allegation 3*), the promoter informed the complainant of the need to raise this issue before the local court in Sfax. The promoter has expressed that it has no general objection to compensating for the loss of income of the complainant. At the same time, the promoter argues that it does not have the authority nor competence to evaluate the claimed loss of income but has to rely on independent judicial experts for such an assessment. During a meeting on 21 September 2020, the complainant has agreed to initiate the respective legal procedure. The social expert has confirmed to the EIB-CM that the fees linked with such legal proceedings can be recovered by the complainant.

6. **CONCLUSIONS**

- 6.1 Based on the information available and its discussions with the complainant and the EIB services, the EIB-CM concludes as follows.
- 6.2 On 21 September 2020, the complainant and the promoter reached an agreement on the pending concerns and thus addressed all main allegations. The agreed points have been recorded in a note signed by both parties, which was shared with the EIB-CM.
- 6.3 The EIB-CM is aware that despite the agreements reached, important follow-up actions to the accepted resolutions are pending. These include the second inspection report of alleged damages and potential consequent repairs, the actual provision of the rental allowance, and the follow-up and subsequent actions to the outcome of the judicial proceedings.
- 6.4 The EIB services undertake to follow up with the promoter to ensure that these actions agreed between the promoter and the complainant are being implemented in a timely and complete manner.
- 6.5 In accordance with Art. 1.4.3 and 2.3.3 of the EIB-CM Procedures the complaint will be closed with the issuance of this conclusions report. Based on the Bank's monitoring activity, the EIB-CM will submit a follow-up report regarding the implementation of the agreed actions to the complainant eight months after submitting this conclusions report.