

Corridor VC Mostar South

Complaint SG/E/2020/1

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

# CONCLUSIONS REPORT

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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 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 EO 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: <http://www.eib.org/en/about/accountability/complaints/index.htm>

**TABLE OF CONTENTS**

**EXECUTIVE SUMMARY ..... 5**

**1. THE COMPLAINT ..... 8**

**2. BACKGROUND INFORMATION ..... 10**

**3. APPLICABLE REGULATORY FRAMEWORK ..... 11**

**4. EIB-CM INQUIRY ..... 16**

**5. FINDINGS ..... 16**

**6. CONCLUSIONS ..... 23**

## EXECUTIVE SUMMARY

### The complaint

On 5 February 2020, a community grassroots group that represents more than 3 000 signees objecting to the modified Vc motorway route through South Mostar submitted a complaint highlighting a number of concerns. The first referred to the inadequacy of the 2017 environmental impact assessment for this route. The second is the unassessed impact of this route on refugee returnees and disregard for the well-being of this community. In addition, the complainants alleged a lack of access to remedies regarding the expropriation decision. The complainants alleged that even though these concerns had been raised on several occasions with the local promoter of this route, JP Autoceste, there had been no efforts to address them. This complaint follows an earlier one that was lodged in 2017 by the same group regarding related issues on the same project<sup>1</sup>.

### The project

The project is co-financed on a parallel basis with the European Bank for Reconstruction and Development (EBRD) and consists of the construction of a new 20.9 km long toll motorway with a design speed of 120 km/h, 2x2 lanes and separate 9.2 m wide carriageways, including a 2.6 km long twin tunnel and ancillary structures between Mostar South and Počitelj in the south of Bosnia and Herzegovina. The promoter responsible for implementing the project is JP Autoceste FBiH d.o.o. Mostar, the Public Motorway Company of the Federation of Bosnia and Herzegovina. **The area of complaint is located within the section financed by the EBRD.**

### Work performed by the EIB-CM

The EIB-CM has reviewed the relevant project documentation and the applicable regulatory framework. In addition, it has liaised with different Bank services and with the complainants to obtain information on the project. The allegations were assessed in the context of potential Bank maladministration, including its potential non-compliance with the applicable regulatory framework and/or failure to exercise adequate due diligence. In particular, the EIB-CM has assessed the due diligence carried out by the Bank in the areas related to the complainant's concerns.

### Conclusions

Considering the complainants' allegations, it is worth clarifying that it is the responsibility of the project promoter to carry out and provide the lending banks with all the necessary studies, to obtain all the required authorisations and to assure the compliance of the project with national laws and regulations and the EIB standards. In this context, it is important also to highlight that the preparation of a multi-criteria assessment and the selection of the set of project alternatives falls under the responsibility of the project promoter. The EIB receives the aforementioned studies and authorisations from the promoter and assesses whether the promoter has fulfilled all the applicable requirements and conditions for the project through due diligence and monitoring.

With regard to the allegation of inadequacy of the 2017 environmental impact assessment for the selected alignment, from the reported findings in sections 5.4, 5.5, 5.6, 5.8 and 5.9 of this report, the EIB-CM takes note that the promoter submitted a multi-criteria alternative route assessment to the EIB. The EIB reviewed the assessment with a view to ensuring its compliance with the applicable regulatory framework and in line with criteria that took into account environmental and social components. Further due diligence on the way the alignment was determined on this part of Corridor

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<sup>1</sup> Complaint Ref. SG/E/2017/15; the complaint was closed on 19 December 2019 with a conclusions report and a follow-up reply on 28 February 2020.

Vc had been performed by the EIB and EBRD. During the due diligence, the EIB concluded that there was no violation of the constitution nor of the parliamentary procedures in this respect.

On the basis of the reported findings, the EIB-CM takes note of the ongoing EIB monitoring of the project and the regular contact with its counterparts, including the promoter. As of the date of this report, the EIB has not disbursed any funds for the project. Therefore, as part of its standard procedures, and based on the gathered evidence, the EIB-CM takes note of the relevant EIB contractual conditions and acknowledges the fact that the EIB is following up with the promoter with a view to ensuring the fulfilment of applicable requirements and conditions for the project.

With regard to the alleged unassessed impact of the route on returnees and on the well-being of the community in accordance with EIB standards, as reported in section 5.22 of this report, the EIB-CM identified a lack of a detailed assessment on the impact of the project on minorities and returnees who might be vulnerable and at risk of suffering adverse, compounded or disproportionate impacts in line with Standard 7 of the EIB Environmental and Social Standards. Such an assessment would typically look into more detail on the different levels of vulnerability that would need to be mitigated by the project among the returnee population and provide practical measures to address any gaps with EIB standards. In this regard, the EIB-CM suggests that the EIB obtain, prior to the first disbursement:

- An assessment of the impact on minorities and returnees who might be vulnerable and at risk of suffering adverse, compounded or disproportionate impacts in line with Standard 7 of the EIB Environmental and Social Standards for consideration. The assessment should include, but not be limited to:
  - Identifying and assessing the eligibility of project-affected people to be included in the minorities and, in particular, returnees category;
  - Assessing the impact of land acquisition for the project on returnees;
  - Including additional compensatory measures and a mitigation plan to address gaps with EIB standards, if needed.
- Close involvement of a social expert on the social matters pertaining to the project.

The outcome of the assessment should be taken into account in the ex post audit of the implementation of the Land Acquisition and Livelihood Restoration Framework.

With regard to the alleged lack of effort on the part of the promoter to assess the complainants' concerns, the EIB-CM takes note that a public consultation had initially been planned for July 2020 and subsequently postponed due to the COVID-19 pandemic. A consultation meeting eventually took place in September 2020. The EIB received the information related to the public consultation and its outcome in November 2020. The EIB-CM noted the difficulty in organising a more effective stakeholder engagement process during the COVID-19 pandemic, where meetings were concentrated in major urban centres with limited access to guarantee a healthy and safe environment. The EIB-CM was informed that a stakeholder engagement plan with the main stakeholders is in the process of being updated that would include engagement with the range of stakeholders involved, including returnee associations.

The EIB services confirmed that an ex post audit of the implementation of the Land Acquisition and Livelihood Restoration Framework (LALRF) would be carried out to ascertain whether the social

development objectives of the 2017 LALRF and the 2020 LALRP have been met in relation to the project section concerned.

With regard to the expropriation process and the right to appeal, it is important to highlight that the expropriated lands had been declared of public interest in line with national law. However, the EIB-CM took note that expropriated persons had access to the court to challenge the amounts of compensation, a right that was exercised by some of the expropriated persons. From the information gathered, it appears that access to court is automatic if the offer is refused by the expropriated person. From the information provided by the EIB services, the process is regulated by the Law on Expropriation of the Federation of Bosnia and Herzegovina. JP Autoceste makes an offer to the owner as part of the acquisition process. If the owner refuses to accept the offer then the expropriation process is automatically forwarded to the local court, which hires licensed valuers and decides on the appropriateness of the amount offered. The EIB-CM will follow up on the actions taken by the Bank to implement the suggestions for improvements indicated in sections 6.3, 6.4. and 6.5 within six months from the date of this report.

| <b>Allegation</b>  | <b>Outcome</b>             |
|--|----------------------------|
| a) Inadequacy of the 2017 study in its assessment of the route   | No grounds                 |
| b) Unassessed impact of the route on refugee returnees and disregard for the well-being of the community | Suggestion for improvement |
| c) Lack of effort on the part of the promoter to address the concerns of project-affected people         | Suggestion for improvement |
| d) Concerns regarding the expropriation process and the lack of the right to appeal                      | No grounds                 |

## CONCLUSIONS REPORT

### 1. THE COMPLAINT

- 1.1 On 5 February 2020, a community grassroots group that represents more than 3 000 signees submitted a complaint regarding the Corridor Vc motorway and the modified route through Mostar<sup>2</sup>. The complainants expressed a number of concerns regarding the modified route. The first is the inadequacy of the 2017 environmental impact assessment for this route. The second is the unassessed impact of this route on refugee returnees and disregard for the well-being of this community. Finally, even though these concerns had been raised on several occasions with the local promoter of this route, JP Autoceste, there has been no effort to address them. The complainants objected to the modified Vc motorway route through South Mostar.
- 1.2 With regard to the allegation of inadequacy of the 2017 environmental impact assessment, the complainants indicate that the initial comprehensive evaluation study of the Vc motorway performed in 2006 included an evaluation of the route that would go around the fertile valley in South Mostar. This route – initially proposed in 2006 – would bypass the inhabited area represented by their organisation. However, the complainants argue that this route was modified in 2017 by way of closed-door political negotiations. They allege that the route was adopted by political parties rather than on the basis of a comprehensive assessment to determine the route that would have the least negative impact on the local population.
- 1.3 A follow-up environmental impact assessment<sup>3</sup> was submitted to justify this route modification. In the complainants' view, this assessment is inadequate as an evaluation of the modified route. The complainants indicated that the assessment mentions the "descent to Gnojnice over populated areas with five tunnels and a viaduct and crosses the 'Royal Vineyards.'" This assessment includes the challenges of the route entering the protected airport zone, including a military zone, and a high incline greater than 4%, but does not take into account the impact of the motorway's connecting loop. In addition, it highlights that the area around the airport contains grade 1 high-quality agricultural land.
- 1.4 Furthermore, in the complainants' view, a social and socioeconomic assessment of the impact of this route on their community was never carried out. The environmental impact assessment mentions that no official census has been performed in Bosnia and Herzegovina since 1991, predating the population displacement caused by the 1990s wars. In addition, hundreds of homes have been rebuilt in this area by refugee returnees since the 2006 study. The complainants allege that the 2017 environmental impact assessment does not mention the reality of this situation or the potential impact of this route on these returnees represented by the organisation. Moreover, the impact of the road on the local economy is only discussed in general terms without any specific assessment of the area. As a result, the complainants believe that the 2017 environmental impact assessment used to justify the modified route through this region does not meet the minimum requirement for an environmental impact assessment.

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<sup>2</sup> <https://www.eib.org/de/about/accountability/complaints/cases/sg-e-2017-15-corridor-vc-mostar-south.htm>

<sup>3</sup> [91932100.pdf \(eib.org\)](#)



- 1.5 In a submission dated 16 June 2020, the complainants requested an EIB-CM mission to the region to assess the project's compliance with EIB standards and its impact on their community. In this letter, the complainants raised concerns regarding the expropriation; in particular, the letter of expropriation indicating "that appealing the decision is not allowed and that the decision is final."
- 1.6 With regard to the allegation of the unassessed impact on the community of returnees, the complainants argue that the promoter has not taken into consideration their specific situation.
- 1.7 According to the complainants, the modified route through the most fertile lands in this region was created on the basis of the 2017 environmental impact assessment and a political backroom agreement, pointing to a systematic attempt to disrupt the livelihoods and return of minority refugees in this region.
- 1.8 According to the complainants, the project promoter repeatedly cited that only a few homes would be affected by this modified route. Yet, there was no assessment of:
- the population that would be impacted by this route;
  - the number of refugees and returnees to this land that will once again be displaced;
  - the impact of this route on the economic resilience of this community.
- The complainants wonder how vineyards and other agricultural lands unique to this region that have taken over a decade to rebuild can be equitably compensated for. In their view, a simple exchange of land cannot restore the livelihoods of their farmers. A sustainable source of income from orchards and vineyards assured the return of refugees to the area and this motorway would threaten the resilience of the community.
- 1.9 Finally, the complainants argue that they have raised the above-mentioned concerns multiple times with the local promoter, JP Autoceste, and that they have been ignored. The only public hearings before the complaint submission had been held in 2016 to engage local stakeholders; however, this would have happened in Čapljina, which is in a completely different region from the one affected by the subsequently modified route. In their view, there have been no efforts to even attempt to create a partnership with their community. Both the petition with over 3 000 signees was ignored as well as subsequent protests.
- 1.10 The complainants assert that media reports indicate that only six people are against expropriation (2.62%). They clarify that, in reality, these six people are the landowners with the biggest lots/parcels. They had already started the legal proceedings against the approach adopted, arguing that expropriation would be in violation of their rights, and that all of them are of Serb nationality and minority returnees to this region. They allege that the impact of this expropriation process was not assessed before the 2017 environmental impact assessment or in any other formal evaluation on the impact of expropriation on returnees.
- 1.11 The project would have both a direct impact (direct land damage due to construction) and an indirect impact (pollution and long-term economic and cultural effects on the population). The complainants insist that one section of this motorway passes through settlements of newly built houses that received construction permits as late as 2014-2016 by the same municipality that is managing the subsequent expropriation. 3 000 individuals have signed a petition against this route alignment, demonstrating the direct and indirect impact it would have on the wider community.

- 1.12 According to the complainants, there has never been a true public hearing regarding the specific route alignment. JP Autoceste justified its actions based on inaccurate information to finance a project that is not approved by the wider public. The complainants consider the process to be undemocratic due to the suspension of local elections in the Mostar region for over 12 years.<sup>4</sup> The complainants take the view that local politics are biased at the expense of a vulnerable minority returnee population that suffered ethnic cleansing in the 1990s at the hands of the same political sector.

**TABLE 1 – SUMMARY OF ALLEGATIONS**

- |   |
|---|
| <ul style="list-style-type: none"> <li>a) Inadequacy of the 2017 study in its assessment of the route</li> <li>b) Unassessed impact of the route on refugee returnees and disregard for the well-being of the community</li> <li>c) Lack of effort on the part of the promoter to address the concerns of project-affected people</li> <li>d) Concerns regarding the expropriation process and the lack of the right to appeal</li> </ul> |
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## 2. **BACKGROUND INFORMATION**

### 2.1 *The project*

2.1.1 The operation is co-financed with the EBRD and consists of the construction of a new 20.9 km long toll motorway with a design speed of 120 km/h, 2x2 lanes and separate 9.2 m wide carriageways, including a 2.6 km long twin tunnel and ancillary structures between Mostar South and Počitelj in the south of Bosnia and Herzegovina. The EIB component concerns the Tunnel Kvanj–Buna section.

2.1.2 The project is part of a wider programme to develop the Pan-European Corridor Vc in Bosnia and Herzegovina and bring it to a higher functional level with increased road safety and capacity. The EIB has signed a loan agreement of €100 million with Bosnia and Herzegovina. The complaint concerns the part of the alignment financed by the EBRD. Although the EIB will continue to perform the due diligence and monitoring, the EBRD will lead the monitoring of this section.

2.1.3 As of the date of this report, the EIB has not yet made any disbursements. Any disbursement made by the EIB must fulfil the relevant conditions in the finance contract, including, as mentioned in the Environmental and Social Data Sheet, a Resettlement Action Plan for each subsection composing the 21 km long road project between Mostar South and Počitelj and evidence, in a form satisfactory to the Bank, that the three subsections composing the project are at a stage of maturity in terms of the design, approvals, land expropriation and acceptance from local communities that is compatible with a date of completion that allows the use of the project as a direct road link between Počitelj and Mostar.

2.1.4 The EIB-CM notes that the complainants have indicated to be returnees themselves in the complaint. Given that returnees fall within the core mandate of the UN Refugee Agency (UNHCR), it provides the core guidance in this area. Returnees are former refugees who have

<sup>4</sup> See the recent developments: <https://europeanwesternbalkans.com/2020/07/09/eu-welcomes-the-adoption-of-election-law-in-bih-allowing-mostar-municipal-election/> (accessed 10 July 2020).

returned to their country of origin spontaneously or in an organised fashion but have not yet been fully (re)integrated<sup>5</sup>. The UNHCR's engagement with returnees is usually time-limited; its aim is to hand responsibility over to others, notably development partners<sup>6</sup>. During the time of competence of the UNHCR, assistance for the reintegration of returnees provided by the international community in the country of origin is recognised as an important factor in promoting repatriation.

### **3. APPLICABLE REGULATORY FRAMEWORK**

#### **3.1 *The EIB-CM***

3.1.1 Any natural or legal person who alleges a case of maladministration by the EIB Group in its decisions, actions and/or omissions can lodge a complaint. The EIB-CM addresses complaints concerning alleged maladministration by the EIB<sup>7</sup>. 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<sup>8</sup>.

3.1.2 Complaints against entities other than the EIB, international organisations, or EIB Group counterparts such as borrowers/promoters are not handled by the EIB-CM. In such cases, the EIB-CM may inform the complainant of the possibility to address the complaint to another authority, which may be competent to handle her/his case<sup>9</sup>.

#### **3.2 *EIB Environmental and Social Standards***

*Standard 1: Assessment and management of environmental and social impacts and risks*

3.2.1 Standard 1 outlines the promoter's responsibilities related to assessing environmental and social impacts, considering them during the selection of alternatives<sup>10</sup>.

3.2.2 Pursuant to the EIB's Environmental and Social Handbook, the EIB recognises the need for a proactive approach to ensure that environmental and social considerations are taken into

<sup>5</sup> ExCom, No. 18 (1980) (<https://www.unhcr.org/excom/exconc/3ae68c6e8/voluntary-repatriation.html>), No. 40 (1985) (<https://www.unhcr.org/excom/exconc/3ae68c9518/voluntary-repatriation.html>), No. 74 (1994) (<https://www.unhcr.org/excom/exconc/3ae68c6a4/general-conclusion-international-protection.html>), and No. 101 (2004) (<https://www.unhcr.org/excom/exconc/417527674/conclusion-legal-safety-issues-context-voluntary-repatriation-refugees.html>); GA Res. 40/118 of 13 December 1985 (<https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/478/25/IMG/NR047825.pdf?OpenElement>) (<https://www.unhcr.org/excom/exconc/417527674/conclusion-legal-safety-issues-context-voluntary-repatriation-refugees.html>); GA Res. 49/169 of 24 February 1995 (<https://undocs.org/en/A/RES/49/169>).

<sup>6</sup> <https://emergency.unhcr.org/entry/55600/unhcrs-mandate-for-refugees-stateless-persons-and-idps#2,1591691102900>

<sup>7</sup> Section 4.3.1 of the EIB-CM Policy.

<sup>8</sup> Section 3 of the EIB-CM Policy.

<sup>9</sup> Section 4.3.2 of the EIB-CM Policy.

<sup>10</sup> Standard 1, paragraph 12 indicates that when the EIB is co-financing in partnership with other IFIs that have developed, and apply their own environment and social (E&S) policies, adequate implementation of those policies may prove enough to meet the EIB E&S standards, pursuant to the EIB's own assessment. Such possibility does not relinquish the EIB's own environmental and social due diligence duty and any gaps between that and other lenders' shall be duly accounted for. Pursuant to Standard 1, paragraph 28, a comprehensive environmental and/or social assessment is carried out for projects classified under Annex I of the EU EIA Directive, and/or where an environmental and social impact assessment is required by national legislation or for projects where likely significant impacts and risks on the environment, population, human health and well-being have been determined. These projects require specific formalised and participatory assessment processes. It includes comprehensive and context-specific stakeholder identification and analysis (Standard 1, paragraph 36).

account during the early stages of strategic decision-making by promoters so as to have a real influence on the choice of alternative developments; the EIB is responsible for assessing whether the promoter has fulfilled applicable EIB standards as well as national legislation.

- 3.2.3 In addition, the finance contract incorporates the key elements identified in the discussions between the Bank and the promoter during project preparation. Conditions are stipulated for disbursement (e.g. environmental conditions which must be fulfilled to the satisfaction of the EIB prior to any funds being disbursed by the EIB).

*Standard 6: Involuntary resettlement*

- 3.2.4 The objective of Standard 6 includes the respect of individuals', groups' and communities' right to adequate housing and to an adequate standard of living, as well as other rights that may be impacted by resettlement. It indicates that projects often necessitate land acquisition, expropriation and/or restrictions on land use, resulting in the temporary or permanent resettlement of people from their original places of residence or their economic activities or subsistence practices. When affected persons and communities do not have the choice to refuse such displacement, this process is known as involuntary resettlement<sup>11</sup>.

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<sup>11</sup> The complexity of displacement must be duly appreciated and its impact and remedy carefully analysed, planned and delivered as it may negatively affect the economic and social well-being of affected people and provoke severe economic and social problems. Income sources can be irreparably lost, people can be relocated to environments where their skills may be less applicable and monetary compensation may not be sufficient to prevent long-term hardship or disadvantage. Project-induced involuntary resettlement should be avoided by analysing alternative project designs and locations. If it is unavoidable, the promoter, with full involvement in the decision-making process of all stakeholders, and in particular the affected people, should adopt adequate steps to minimise and mitigate its adverse impacts from an early stage. Resettlement is a process to assist those displaced to replace their housing, assets, livelihoods, land, access to resources and services and to improve or at least restore their socioeconomic and cultural conditions to those levels existing prior to the project. During appraisal, different alternatives have to be analysed with regards to their environmental impacts. "Compensation" refers primarily to the cost of payment for expropriated land (including trees and crops that cannot be harvested), housing, structures, and other fixed assets, including assets acquired for temporary project use. It includes the costs incurred to help directly acquire substitute properties as well as the cost of acquiring resettlement sites. (Standard 6, paragraph 6).

The promoter is required, as a minimum, to restore the living conditions of those affected by the project and, ideally, to work on the continuous improvement of their living conditions. In addition, the EIB is committed to upholding the Aarhus Convention, which emphasises citizens' rights to justice, to be consulted and to enjoy access to information on projects, plans and programmes that will have environmental and social impacts on them, their assets and their lives. Forced evictions shall not take place. In rare cases when they do, evictions must be carried out lawfully, only in exceptional circumstances and in full accordance with relevant international human rights and humanitarian law. Experience with involuntary resettlement underlines the importance of planning and managing it properly as early as possible in the project life cycle, in consultation with all key stakeholders. (Standard 6, paragraphs 26-29).

Where land has been taken, affected persons should be compensated with land of commensurate quality, size and value, or better. The promoter is required to offer to the affected persons an informed choice of either compensation in kind (land-for-land; land plot and house to replace affected land plot and house) or monetary compensation at the outset. The promoter is expected to comply with the choice stated by the affected persons. Whenever replacement land is offered, affected households should be provided with land for which a combination of productive potential, locational advantages, and other factors is at least equivalent to the advantages of the land taken. In exceptional cases when this is not possible, adequate compensation must be provided. Monetary compensation shall take into account full replacement cost based on market value, productive potential, or equivalent residential quality, including any administrative charges, title fees, or other legal transaction costs (Standard 6, paragraphs 40-41).

Opportunities for dialogue and consultation must be extended effectively to the full spectrum of affected persons, paying particular attention to the full participation in the consultation process of women, vulnerable and marginalised groups, in accordance with Standard 7, and, where necessary, adopting additional/complementary special measures or procedures (Standard 6, paragraph 51).

Any forced evictions shall be undertaken in full respect for human rights. In rare cases where the promoter is compelled to proceed with compulsory possession, the rationale justifying this action needs to be provided to the EIB in advance. In order to avoid breaching human rights, and in line with the UN Basic Principles for Development-based Evictions and Displacement and other relevant standards, the EIB requires that any such evictions:

(a) are authorised by law;

*Standard 7: Rights and interests of vulnerable groups*

- 3.2.5 Pursuant to Standard 7, some individuals or groups may be less resilient to risks and adverse impacts than others. Vulnerable groups may include returnees (Standard 7, paragraph 9). The promoter will take the necessary measures to appropriately manage the risks and adverse impacts of the EIB operation on vulnerable individuals and groups. In doing so, the promoter will seek to avoid, minimise, or otherwise mitigate or remedy the exposure of vulnerable populations to project-related risks and adverse impacts. As a means to foster those project outcomes, the promoter will properly address discriminatory practices, inequalities and other factors which contribute to vulnerability and will, as appropriate, strengthen the adaptive capacity of vulnerable individuals or groups by promoting inclusive development and benefit sharing. (Standard 7, paragraph 17). Procedural requirements include screening and social assessment (Standard 7, paragraphs 19-20), as well as information and public participation (Standard 7, paragraphs 21-22).

*Standard 10: Stakeholder engagement and public consultation*

- 3.2.6 Standard 10 outlines a systematic approach to stakeholder engagement that the promoter is expected to build and maintain by way of a “constructive relationship with relevant stakeholders.” Stakeholder engagement is an inclusive and iterative process that involves, in varying degrees, stakeholder analysis and engagement planning, timely disclosure and dissemination of/access to information, public consultations and stakeholder participation, and a mechanism ensuring access to grievance and remedy (Standard 10)<sup>12</sup>.

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(b) are carried out in accordance with international human rights standards, including with the procedural protections against forced evictions outlined in General Comment 7 of the UN Committee on Economic, Social and Cultural Rights;

(c) are undertaken solely for the purpose of promoting general welfare;

(d) are reasonable and proportionate with regard to promoting general welfare; and,

(e) ensure full, fair and timely compensation, rehabilitation and non-regression of rights including the right to an adequate standard of living.

Before any decision to initiate a process of compulsory possession, the promoter must demonstrate to the EIB that this is unavoidable and that the above conditions can be met in the event that forced evictions are required. (Standard 6, paragraphs 54-55).

The promoter will provide the EIB with adequate documentation in relation thereto, namely an acceptable Resettlement Policy Framework (RPF) or Resettlement Action Plan(s) (RAP). No work activities shall commence before the promoter has addressed the involuntary resettlement in a manner consistent with the principles and standards presented here and satisfactory to the EIB (Standard 6, paragraph 58).

Both RPFs and RAPs need to include measures to ensure that the displaced persons are: (i) informed about their options and rights pertaining to resettlement; (ii) effectively consulted on, offered choices among, and provided with technically and economically feasible resettlement alternatives which take into account the suggestions made by the affected community as much as possible (Standard 6, paragraph 65);

<sup>12</sup> A meaningful engagement process allows for the efficient implementation of a financed operation and, in particular, the early and effective identification, assessment and management of any environmental and social risks, impacts and opportunities. The views, interests and concerns of project-affected communities and other interested stakeholders are heard, understood and taken into account throughout the project life cycle.

Broad community support is a collection of expressions by the affected communities, through individuals and their legitimate representatives, in support of the project. There may be broad community support even if some individuals or groups object to the project. Free, prior and informed engagement defines a practice of public consultation and participation that is:

- a. free from external manipulation, interference, coercion, or intimidation;
- b. based on prior disclosure and dissemination of information;
- c. undertaken on an informed basis with information that is relevant, transparent, objective, meaningful, and easily accessible in culturally appropriate local language(s), and in a format that is understandable to the affected individuals and communities;
- d. takes into account and is responsive to the needs, rights and interests of both women and men, if necessary through separate forums and engagements; and,

3.2.7 The consultation process is part of the public commitment of the promoter. Where communities are, or are likely to be, affected by adverse impacts from a project, the promoter will undertake a process of meaningful consultation in a manner that provides the affected parties with opportunities to identify and express their views on project risks, impacts and mitigation measures, and engage in a collaborative process with the project in responding to and addressing considerations raised. Initial stakeholder consultations will occur early enough for the rights and interests of impacted individuals and communities to influence decisions made throughout the project life cycle<sup>13</sup>.

### 3.3 *Relevant contractual clauses*

3.3.1 As at the time of loan approval, and as part of its due diligence, the Bank is required to obtain evidence, in a form satisfactory to the Bank, that the three subsections composing the project are at a stage of maturity in terms of their design, approvals, land expropriation and acceptance from local communities that is compatible with a date of completion that allows the use of the project as a direct road link between Počitelj and Mostar. The following contractual clause was agreed, among others:

The disbursement of the first tranche is conditional upon receipt by the Bank, in a form and substance satisfactory to it, of the following documents or evidence, among others:

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e. includes targeted capacity building and/or other assistance as necessary to empower impacted individuals and communities, in particular those who are vulnerable and marginalised, to fully and effectively participate in engagement and consultation processes.

Stakeholders are those who will be or are likely to be directly or indirectly affected, positively or negatively, by a project (commonly referred to as project-affected people or project-affected communities), as well as those who might have an interest in, or may influence, the project. A Stakeholder Engagement Plan (SEP) is intended as a blueprint that outlines a project's stakeholder engagement strategy and guides its roll-out. As a rule, it describes the regulatory and/or promoter's requirements for consultation and disclosure; identifies and prioritises key stakeholder groups; provides a strategy and timetable for sharing information and engaging and consulting with each of these groups; describes resources and responsibilities for implementing stakeholder engagement activities; and describes how stakeholder engagement activities will be incorporated into the promoter's environmental and social management system (ESMS). The same plan also establishes firm references and links to the operation's grievance mechanism. The scope and level of detail of the plan should be scaled to fit the needs of the project.

Stakeholder analysis needs to clearly identify and differentiate between the different types of stakeholders, including consideration of their rights, roles, duties and responsibilities in the given context, outlining rights-holders and duty-bearers. Such analysis will help identify all impacted individuals and communities (right bearers) and the rights which they hold and may be threatened or interfered with in an operation. Government agencies, promoters and other parties (e.g. suppliers and contractors), as duty-bearers, have the obligation and responsibility to ensure that these rights are upheld. Particular attention will be placed upon the identification of vulnerable individuals and groups in the given project context and their meaningful engagement in consultation processes.

Stakeholder identification and analysis is a critical element in the stakeholder engagement process and the development of relevant activities and measures that will take characteristics and interests of stakeholders into account. Failure to identify all relevant stakeholders can aggravate existing issues and subsequently jeopardise project objectives. Many of the techniques and methodologies common to socioeconomic assessments can aid in identifying stakeholders and determining how and to what extent a particular project may affect them.

<sup>13</sup> The promoter will consult all identified stakeholders at strategic decision-making points during the project life cycle and certainly before any impact is delivered. The frequency and degree of subsequent engagement and consultations will depend on the nature and magnitude of risks and current and potential adverse environmental or social impacts arising from the project. At minimum, the promoter will ensure that a regular, consistent and reliable platform of ongoing dialogue and communication with stakeholders is maintained.

Within the context of such dialogue, the promoter will consider, take into account and respond to all views expressed as appropriate and report to stakeholders on the rationale of ultimate decisions. Such rationale will need to demonstrate that impacts causing interference with people's human rights are in accordance with the law of the state in question, in pursuit of a legitimate public aim and proportionate to the objectives sought to be achieved by the project. Key in this process is the promoter's responsiveness and the meaningful ongoing engagement and consultations with impacted individuals, communities and other relevant stakeholders.

- an updated environmental impact assessment approved by the competent authority in Bosnia and Herzegovina detailing the environmental impacts and associated mitigation/compensation measures regarding the tunnelling operations included in the project and their possible cumulative effects with other projects already executed or approved in the project area after 2006;
- written confirmation from the relevant authorities that the possible impacts of the project on nature conservation sites have been assessed in compliance with the requirements of the EU Habitat (92/43/EEC) and Birds (79/409/EEC) Directives, which shall also include the assessment of impacts on identified potential future nature conservation sites in the project area;
- evidence, in a form satisfactory to the Bank, that the three subsections composing the project are at a stage of maturity in terms of their design, approvals, land expropriation and acceptance from local communities that is compatible with a date of completion that allows the use of the project as a direct road link between Počitelj and Mostar;
- a Resettlement Action Plan in a format and content acceptable by the Bank for each subsection composing the 21 km long road project between Mostar South and Počitelj;

### 3.4 *EIA Directive*

3.4.1 In line with the EIB Environmental and Social Standards (Standards 6 to 9), for projects located in Candidate Countries and potential candidate countries, the promoter will apply the classification provided by Annexes I and II to the EU EIA Directive or relevant EU legislation and criteria qualifying for a social assessment. Directive 2011/92/EU defines the environmental impact assessment (EIA) process which ensures that projects likely to have significant effects on the environment are made subject to an assessment prior to their authorisation. Consultation with the public is a key feature of the environmental impact assessment processes. To ensure effective public participation, the environmental impact assessment report and other information must be provided as early as possible. Authorities have to decide within a reasonable time whether to approve the project or not. They must make available to the public, as well as to environmental, local and regional bodies, the content of a positive decision, including the main reasons for their approval and any environmental or other conditions they attach. If they refuse development consent, they should explain why.

3.4.2 With regard to the allegations that some of the expropriation decisions excluded the possibility of presenting remedies against expropriation procedures<sup>14</sup>, Article 6(1) of the European Convention on Human Rights<sup>15</sup> provides that “In the determination of his civil rights and obligations [...] everyone is entitled to a [...] hearing within a reasonable time by [a] [...] tribunal.” The right of access to a court means that there must be a judicial avenue for claims concerning civil rights<sup>16</sup>. Article 6(1) embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one

<sup>14</sup> <https://www.klix.ba/vijesti/bih/hercegovci-zbog-autoputa-pisali-novalicu-iznosite-neistine-a-sattler-vam-treba-zbog-kredita/200515081> (accessed 15 May 2020). See also: <https://www.bljesak.info/gospodarstvo/ulaganja/mostar-jug-tunel-kvanj-trasa-autoputa-koja-ce-natjerati-ljude-na-iseljavanje/312487> (accessed 19 May 2020)

<sup>15</sup> <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/signatures>

<sup>16</sup> Case of *Brumărescu v. Romania*, 28342/95, Judgment (Merits), Court (Grand Chamber), 28/10/1999, para. 59, <http://hudoc.echr.coe.int/eng?i=001-62891>

aspect only. For the right of access to be effective, an individual must have a clear, practical opportunity to challenge an act that is an interference with his or her rights<sup>17</sup>.

#### **4. EIB-CM INQUIRY**

- 4.1 The EIB-CM has reviewed the relevant project documentation and the applicable regulatory framework. In addition, it has liaised with different Bank services to obtain information on the project.
- 4.2 The allegations were assessed in the context of potential Bank maladministration, including the Bank's potential non-compliance with the applicable regulatory framework and/or failure to exercise adequate due diligence. In particular, the EIB-CM has assessed the due diligence carried out by the Bank in the areas related to the complainants' concerns.
- 4.3 After the complaint was lodged, the EIB-CM made calls and exchanged emails with the complainants' representatives to obtain clarifications and provide information on the EIB-CM general scope and way to proceed. During one such call, the complainants' representatives expressed their preference for a compliance review over a dispute resolution process.
- 4.4 As part of the EIB-CM review, a site visit to meet with the complainants, the project promoter and other stakeholders would normally have taken place. However, due to the COVID-19 pandemic and the travel restrictions imposed on EIB staff travel, a site visit to the project area was not possible.

#### **5. FINDINGS**

- 5.1 The EIB-CM has learned, through an update provided by the promoter to the EIB at the end of March 2020, that JP Autoceste procured a consultant to amend the environmental impact assessment in accordance with EBRD recommendations, following an EBRD environmental and social due diligence report on the compliance of the Mostar South–Tunnel Kvanj motorway section with EBRD requirements. Some delays in the finalisation of the new environmental impact assessment were attributed to the COVID-19 situation. According to the information received, the Federal Ministry of Environment and Tourism publicly announced the completion of the environmental impact assessment on 22 July 2020<sup>18</sup>, and that relevant documentation would be publicly available. Furthermore, a public consultation meeting as part of the legal procedure for the issuance of an environmental permit took place in September 2020. On 17 February 2021, the Federal Ministry of Environment and Tourism issued an environmental permit. In March 2021 the environmental permit was challenged in court and the case is still pending. The environmental permit for the subsection Tunnel Kvanj–Buna was issued in May 2019.
- 5.2 Given the pending public consultations at the time the complaint was lodged, the EIB-CM considered that the planned consultations would be an opportunity for the project-affected people to express their concerns and obtain further information regarding the project and its

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<sup>17</sup> Case of Beneficio Cappella Paolini v. San Marino, 40786/98, Judgment (Merits), Court (Second Section), 13/07/2004 para. 28, <http://hudoc.echr.coe.int/eng?i=001-61897>

<sup>18</sup> <http://www.jpautoceste.ba/en/documentation-regarding-the-requirements-of-european-bank-for-reconstruction-and-development-ebrd/>



impacts. A public consultation meeting was subsequently organised on 14 September 2020 by the Federal Ministry of Environment and Tourism at Mostar City Hall. The EIB-CM takes note of the EIB services' active monitoring of the situation to ensure that EIB standards are fulfilled.

- 5.3 Furthermore, the EIB-CM has learned that the EBRD met with JP Autoceste and some of the complainants in 2020 and 2021, discussing some of the concerns, including route selection, land expropriation impacts and stakeholder engagement. The EBRD informed the EIB that any land acquisition or other related impacts will be conducted in line with Performance Requirement 5 of the EBRD's Environmental and Social Policy related to Land Acquisition, Involuntary Resettlement and Economic Displacement. JP Autoceste representatives summarised the stakeholder engagement that has been carried out to date for the project and agreed to follow up on the question of how the national authorities have been involved in the routing and military assets in the vicinity of the alignment.
- 5.4 According to the information received from the EIB services, an environmental and social impact assessment (ESIA) is part of the documents published on 22 July 2020. The standard procedure is to first select the alignment (using multi-criteria analyses) and then prepare an environmental and social impact assessment. A multi-criteria analysis had been undertaken before 2006 with an initial public consultation that year on an alignment in the valley approximately 1 km from the current alignment. In 2017, the current alignment was approved by the Parliament of the Federation of Bosnia and Herzegovina; work on an environmental and social impact assessment started thereafter. The EBRD indicated that it had no remit over the alignment selection, as this process was led by the Government of the Federation of Bosnia and Herzegovina and is governed by national legislation. A letter from Prime Minister Novalić dated 12 May 2020 confirmed that there would be no legal barriers to the construction of the road, citing the following references:
1. Official Gazette No. 100/17 of 25 December 2017 with the decision of the Parliament on the alignment of this section<sup>19</sup>.
  2. Official Gazette No. 101/18 of 19 December 2018 with the decision of the Government of the Federation of Bosnia and Herzegovina on public interest<sup>20</sup>.
  3. Official Gazette No 29/18 with the decision of the Constitutional Court of the Federation of Bosnia and Herzegovina at the request of the Vice-President of the Federation of Bosnia and Herzegovina related to the procedure for adoption of the alignment<sup>21</sup>.
- 5.5 In addition, the promoter has shared information indicating that expropriation was progressing. In a submission dated June 2020, the complainants highlighted that the land expropriation started at the end of April to May 2019 when members of their community started to receive letters from the Department of Finance and Real Estate of Mostar Municipality, the office responsible for land expropriation, at the request of the promoter. They attached a sample letter sent on 20 May 2019 to one landowner with a request for the owner to be present at the property on 29 May 2019, highlighting the brief period between both events. The complainants alleged that in some cases the owner did not receive this type of letter and that estimators showed up and entered their property without the homeowners being present to make an estimate. Each letter ended with a statement that appeal is not allowed and that decision on expropriation is final.

<sup>19</sup> <http://www.jpautoceste.ba/wp-content/uploads/2018/10/Prostorni-plan-podru%C4%8Dja-posebni-obilje%C5%BEja-od-zna%C4%8Dja-za-Federaciju-BiH-Autocesta-na-Koridoru-Vc-za-2008-%E2%80%93-2028-.pdf>

<sup>20</sup> <https://fmpvs.gov.ba/wp-content/uploads/2017/Vodoprivreda/Vode-uredbe/Vode-Uredba-101-18.pdf>

<sup>21</sup> <http://www.upfbih.ba/uimages/dokumenti/KU20Elektroprivreda20292018.pdf>

- 5.6 The EIB-CM understands that the new version of the environmental and social impact assessment was made public on 22 July 2020. Once finalised, it went through a 120-day public disclosure period, as per the EBRD's Environmental and Social Policy.
- 5.7 The EIB-CM had access to the Land Acquisition and Livelihood Restoration Framework<sup>22</sup>, which mentions the location of affected land plots (by settlements), including the following<sup>23</sup>:

| Location of affected land plots (by settlements)  | Local Community |
|---|-----------------|
| ▪ Gnojnice Donje (beginning of section and interchange)   | LC Gnojnice     |
| ▪ Ortijes (section along the auxiliary airport runway)  | LC Buna         |
| ▪ Blagaj (part of the section along the auxiliary airport runway)                                 | LC Blagaj       |
| ▪ Kosor (part of the section along the auxiliary airport runway and crossing agricultural fields) |                 |
| ▪ Malo Polje (part of the section crossing the river Buna)  |                 |
| ▪ Hodbina (entrance into Tunnel Kvanj and end of the section)                                     | LC Buna         |

- 5.8 The document<sup>24</sup> indicates that a census database was developed to identify all categories of impacts, the people affected by land acquisition (owners/users of affected land plots) and the expected loss of assets. This database contains data on the location and cadastral municipality, land plot number, type of impact, name of project-affected people, total area of land plot (m<sup>2</sup>) and percentage of the plot affected by land acquisition, structures (residential/commercial), type of land plot, other assets on the land (natural objects or auxiliary structures), and information on economic/physical displacement<sup>25</sup>.
- 5.9 A socioeconomic survey was conducted to solicit the opinions of the project-affected people about the project impacts and compensation arrangements, as well as to obtain specific data on the current livelihoods and living conditions of project-affected people, including the identification of vulnerable categories. The survey was initially conducted during individual hearings with project-affected people between April and May 2019 by the representatives of the Department of Property and Legal Affairs of JP Autoceste (Mostar), on the basis of survey questionnaires prepared by land acquisition experts. During this period, 92 out of a total of 231 project-affected people were surveyed, while 18 project-affected people did not wish to be surveyed<sup>26</sup>.
- 5.10 An additional survey was organised during the development of the Land Acquisition and Livelihood Restoration Plan (LALRP) in November 2019 in order to attempt to interview the remaining 121 project-affected people. The residents of the project area were notified about the survey seven days in advance – a written notification was posted at various visible places along the route of the section Mostar South–Tunnel Kvanj. The notification contained information about the survey and the project, and confirmation that the data collected would not be publicly disclosed. Project-affected people were also given a telephone number that they could call free of charge to do a telephone survey.
- 5.11 The team of surveyors visited all the identified properties. Only four project-affected people were present in the four allegedly inhabited houses in the field at the time of the survey, as the majority of the other project-affected people did not live in the project area. Interviews were carried out with two project-affected people, while the other two did not wish to be

<sup>22</sup> Livelihood restoration framework prepared in July 2020. Volume 7: Land Acquisition and Livelihood Restoration Framework for section Mostar South–Tunnel Kvanj. <https://jpautoceste.ba/wp-content/uploads/2020/07/Volume-7-LALRP-1.pdf> (accessed 8 September 2020).

<sup>23</sup> Idem, p. 13

<sup>24</sup> Idem.

<sup>25</sup> Idem, p. 21.

<sup>26</sup> Idem.

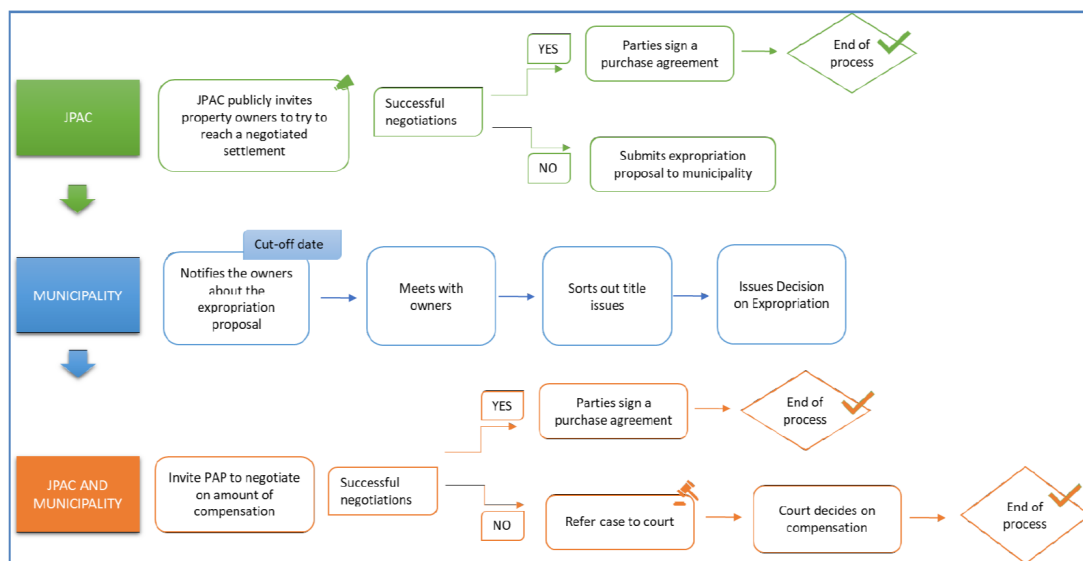
surveyed. Any land plots where no one was present to interview were recorded in the Field Observation Table. No project-affected people contacted the consultant for a subsequent telephone survey even though they were provided with contact details in the letter of notification.

5.12 The following three questionnaires were used for the socioeconomic survey:

- (i) Questionnaire for landowners and users living on affected land
- (ii) Questionnaire for landowners and users not living on affected land
- (iii) Questionnaire for businesses.

5.13 The EIB-CM takes note of the survey efforts. On the other hand, with regard to EIB Environmental and Social Standards on involuntary resettlement (Standard 6), they cover not only those persons living in a certain area, but also their economic activities. If involuntary resettlement is unavoidable, the promoter must fully involve all stakeholders in the decision-making process, in particular the affected people, and adopt adequate steps to minimise and mitigate its adverse impacts from an early stage.

5.14 Furthermore, the EIB-CM had access to the following expropriation procedure<sup>27</sup>. The EIB-CM takes note that only the amount of compensation would be at stake at court level:



5.15 The EIB-CM notes that consultants performed a gap analysis with regard to EBRD standards and policies. To illustrate some of the key issues at stake, pertinent excerpts are shared below:

| Issue                  | EBRD requirement  | Gap between EBRD requirement and local legislation   | Measures to bridge the gap   |
|------------------------|---|--|--|
| Negotiated settlements | Clients are expected to seek to acquire property through negotiated settlements by providing fair and appropriate compensation even if they have the legal means to gain access to the land through an expropriation procedure. | Expropriation beneficiaries are <b>legally required</b> to seek to achieve negotiated settlements (emphasis added). The Law makes a reference to a purchase agreement as a way to avoid expropriation. | Maximum efforts will be made to sign negotiated settlements with project-affected people in order to avoid expropriation, and such efforts shall be documented, as defined |

<sup>27</sup> Idem, p. 24.

| Issue                                    | EBRD requirement   | Gap between EBRD requirement and local legislation  | Measures to bridge the gap  |
|--|--|---|---|
|  |  |   | under the “Key Principles” chapter of this LALRP.   |
| Resettlement planning and implementation | <p>PR 5 requires the Client to carry out a socioeconomic baseline assessment on project-affected people, in order to identify impacts related to land acquisition and restrictions on land use and develop appropriate actions to minimise and mitigate resettlement impacts.</p> <p>PR 5 also requires the preparation and implementation of detailed land acquisition plans.</p> | <p>The Law has no explicit requirements related to socioeconomic surveys or the development of resettlement plans.</p> <p>However, with a view to facilitating expropriation in an early phase, the Law requires development of an expropriation study, which includes a geodetic and cadastral plan of the area identified for expropriation, list of affected owners and properties, evaluation of the property value, and other related information.</p> <p>The scope of the expropriation study is not, however, identical to the socioeconomic baseline assessment as required by PR 5</p>   | A socioeconomic survey and census were carried out for this section, as described in this LALRP.                |
| Vulnerable groups                        | PR 5 requires that particular attention must be paid to vulnerable groups and individuals.   | <p><b>There are no specific provisions in the Law on Expropriation which require consultations with and providing assistance to vulnerable groups in the expropriation process,</b> while PR 5 requires that special attention must be given to the needs of vulnerable individuals (emphasis added).</p> <p>In practice, socially disadvantaged persons are identified in the phase of the public call. Impacts on this population are to a certain extent mitigated through social welfare measures implemented by responsible municipalities and social welfare centres, as well as by applying specific remedies regulated by the Law on Expropriation in the form of increased compensation for expropriated properties to formal owners, and in each specific case taking into account the social status, financial situation, unemployment, income level, etc.</p> | Appropriate measures will be applied in line with the requirements of the LALRP.                                |
| Participation/ consultations             | The EBRD requires the appropriate disclosure of information and the involvement of the entire affected population from the earliest phase and during resettlement activities in order to facilitate their early and informed participation in the decision-making processes in relation to resettlement.   | Several Articles of the Law on Expropriation stipulate notifying of/consultation with property owners and stakeholders.   | Disclosure of information and consultations will be carried in out in line with the requirements of this LALRP. |

- 5.16 With regard to the progress of land acquisition activities, the promoter has confirmed that expropriations were already underway at the time of the submission of the complaint, as indicated by the complainants, as per the statistics included in the LARLP, including on pending disputes<sup>28</sup>.
- 5.17 The LALRP highlights that “Land acquisition activities were initiated in January 2019 for all of the affected land plots and is ongoing. The completion of land acquisition was finalised by the end of 2020.” A previous version of the LALRP – shared with the EIB-CM during the compliance review exercise – explained the logic of starting the land acquisition process before the LALRP was approved and before consultation with the public:

“1. A completed land acquisition process is a condition for the issuance of a construction/building permit in the Federation of Bosnia and Herzegovina.

2. The land acquisition process in the Federation of Bosnia and Herzegovina takes a lot of time because:

- Municipalities are in charge of the land acquisition process even though Corridor Vc is a project of federal interest and the Government of the Federation of Bosnia and Herzegovina adopts decisions on public interest for each highway section;

- The land acquisition process for a highway section implies hundreds of cases and some municipalities do not employ enough staff for such a work overload;

- Land registry books in many municipalities are outdated (the person registered in the land registry is different from the actual owner/user, who may be the heir, the person who purchased the property but failed to report such a transfer, etc.) and the municipal authority is responsible for identifying the real owner in the decision on expropriation;

3. A lot of Bosnia and Herzegovina residents (and landowners) migrated during the war and post-war period and it is not easy to reach them for the LALRP census, so initial measures taken as part of the land acquisition process, such as a formal site investigation (attended by the municipal committee, official court experts, a JP Autoceste representative and the landowner) may help in gathering information for socioeconomic surveys for the LALRP.”

- 5.18 The EIB-CM understands the practical considerations; however, EIB standards require the planning and management of involuntary resettlement as early as possible in the project life cycle, as mentioned above, in consultation with all key stakeholders.
- 5.19 At the time of handling the complaint, the promoter informed the Bank that a public consultation meeting would take place within ten days after disclosure of the documentation. The EIB-CM takes note that the organisations represented by the complainants were not listed among the shared lists of invitees. The EIB-CM shared this information related to the date of the planned consultation with the complainants.
- 5.20 The complainants alleged that there is an additional issue with military property that should be subject to expropriation based on this new route alignment. On 18 November 2019, the Ministry of Defence of Bosnia and Herzegovina made an appeal about the unlawful expropriation of military property/land in the area of the new route. JP Autoceste obtained the agreement of the Ministry of Defence for the Buna–Stanojevici section of the motorway, which does not involve the actual location of the Ortijes military airport on the Jug Mostar–Buna section. Agreement for the route on the section where Ortijes Airport is located would never have been obtained. The State of Bosnia and Herzegovina has ownership of military

<sup>28</sup> <https://jpaautoceste.ba/wp-content/uploads/2020/07/Volume-7-LALRP-1.pdf>, p. 32

properties rather than the Federation of Bosnia and Herzegovina, and all military properties are considered prospective NATO assets.

- 5.21 The EIB-CM welcomes the efforts mentioned above. However, it considers that as several organisations are mentioned among those to be invited to discuss the LALRP, all pertinent organisations of project-affected people could have been invited, including those representing the complainants; they are not mentioned in the stakeholder engagement plan either<sup>29</sup>. In addition, given the progress of some expropriation procedures, it remains unclear how such consultations may impact the situation of those project-affected people who have already received a notice of expropriation.
- 5.22 Furthermore, the EIB-CM also notes that the environmental and social impact assessment identified a group of Serb returnees living in a settlement near the motorway section<sup>30</sup>. Furthermore, in both the environmental and social impact assessment and LALRP surveys 56% of the interviewed land owners not residing on land plots affected by land acquisition identified themselves as Serbs, and not returnees. In addition to that, the EIB-CM takes note that the LALRP does not include returnees, who might be vulnerable and at risk of suffering adverse, compounded or disproportionate impacts, in the list of the vulnerable population.
- 5.23 The plan with regard to vulnerable persons is to hold individual meetings in order to explain criteria that will be taken into account for assistance and entitlements and to identify their needs in relation to land acquisition as well as to find a way to satisfy the identified needs. According to the applicable standards, vulnerable people are to be consulted on the type of assistance they need, and are to be provided with assistance suitable to their needs. In addition, given the applicable standards, the right of project-affected persons to be heard – including in front of a competent court in the case of expropriation – should be included. It is important to highlight that the expropriated lands had been declared of public interest in line with national law. However, the EIB-CM took note that expropriated persons had access to court to challenge the amounts of compensation.
- 5.24 Furthermore, the EIB-CM has received additional information from the complainants, who compared the information shared in media news releases with information that they obtained locally. According to them, a media news release from 23 May 2020<sup>31</sup> from JP Autoceste provided inaccurate information on land expropriation. In that text there was information that a total of 377 parcels needed to be expropriated and that until then they had expropriated 217 (with 160 still needing to be expropriated).
- 5.25 Furthermore, the complainants indicated that there are further inaccuracies in the information shared with the press. It is stated that there are 229 subjects of expropriation and that so far 147 had been completed, and that the total money spent for that expropriation was BAM 7 411 965.70. However, according to their assessment, the total number of people who accepted expropriation was about 30 who own small parcels and do not live on or cultivate their land. The complainants questioned how the BAM 7 million which was claimed for expropriation by JP Autoceste has been spent.
- 5.26 With regard to the complainants' concerns about the alleged inaccurate information on the level of completion of expropriation and the available budget, the EIB-CM has shared this information with the EIB services and understands that it is being followed up with their counterparts, in particular regarding the feedback of the public hearings and the finalisation

<sup>29</sup> <https://jpautoceste.ba/wp-content/uploads/2020/07/Volume-6-SEP-1.pdf>, p. 19

<sup>30</sup> [Volume-1-ESIA-1.pdf \(jpautoceste.ba\)](https://jpautoceste.ba), section 6.6, p. 126

<sup>31</sup> <https://www.bljesak.info/gospodarstvo/ulaganja/stvarne-brojke-eksproprijacije-na-poddionici-mostar-jug-tunelkvanj/313000>

of the LALRP. Furthermore, the EIB services will continue to monitor stakeholder engagement with a view to ensuring compliance with EIB standards.

- 5.27 The public consultation meeting was organised on 14 September 2020 by the Federal Ministry of Environment and Tourism at Mostar City Hall. The meeting invitation was announced in advance on the website of the Ministry of Environment and Tourism on 28 August 2020<sup>32</sup> as well as in the local newspaper Dnevni Avaz and Dnevni list. The meeting started at 11:00 and ended at 14:00. As per the COVID-19 health and safety measures, the meeting participation was limited to 50 participants. Participation in the public consultation via video conference was also enabled; the comments were addressed by the ESIA consultant and shared with the relevant parties.
- 5.28 Prior to the consultation meeting, the environmental and social impact assessment for the subsection was made electronically available online (promoter, Ministry and EBRD websites), hard copies were made available to the public in several locations (JP Autoceste office in Mostar and Sarajevo, Mostar City Hall, local communities MZ Gnojnic, MZ Blagaj and MZ Buna, and the administrative building of the Federal Ministry of Environment and Tourism in Sarajevo).
- 5.29 Following the presentation of the environmental and social impact assessment, an active question and answer session took place in which several citizens and stakeholders raised questions and concerns to the committee in place, which provided clarifications and answers to the public. Written comments from the public were also submitted to the Ministry and the promoter until December 2020 to which written answers were provided. As a result of the public consultation and comments, a list of further actions to address the issues raised were developed and published in the Public Consultation Report<sup>33</sup>.

## 6. **CONCLUSIONS**

- 6.1 Considering the complainants' allegations, it is worth clarifying that it is the responsibility of the project promoter to carry out and provide the Bank with all the necessary studies, to obtain all the required authorisations and to assure the compliance of the project with EIB standards and national laws and regulations. In this context, it is important also to highlight that the selection of the set of project alternatives falls under the responsibility of the project promoter. The EIB receives the aforementioned studies and authorisations from the promoter and assesses whether the promoter has fulfilled all the applicable requirements and conditions for the project through due diligence and monitoring.
- 6.2 With regard to the allegation of inadequacy of the 2017 environmental impact assessment for the selected alignment, from the reported findings in sections 5.4, 5.5, 5.7 and 5.8, the EIB-CM takes note that the promoter has provided the relevant information and documentation to the EIB. The assessment was conducted through a multi-criteria evaluation considering environmental and social concerns, among other aspects. The EIB has assessed it with a view to ensuring its compliance with the applicable regulatory framework. Further due diligence on the way the alignment was determined on this part of Corridor Vc was performed and it was concluded that there was no violation of the constitution nor of the parliamentary procedures in this respect.

<sup>32</sup> [Javna rasprava - JP Autoceste Federacije, dionica autoputa Mostar jug - Tunel Kvanj | Federalno ministarstvo okoliša i turizma - Bosna i Hercegovina \(fmoit.gov.ba\)](#)

<sup>33</sup> Page 20 of Public Consultation Report [ESIA-Mostar-South-Tunnel-Kvanj\\_Public-Consultation-Report\\_December-2020.pdf \(jpautoceste.ba\)](#)

- 6.3 On the basis of the reported findings, the EIB-CM takes note of the ongoing EIB monitoring on the project and the regular contact with its counterparts, including the promoter. As of the date of this report, the EIB has not disbursed any funds for the project. Therefore, as part of its standard procedures, and based on the gathered evidence, the EIB-CM takes note of the relevant EIB contractual conditions and acknowledges the fact that the EIB is following up with the promoter with a view to ensuring the fulfilment of applicable requirements and conditions for the project. The EIB-CM takes note that the environmental permit has been challenged in court and that as of the date of issue of this report the case is still pending. The EIB-CM suggests that the EIB services closely follow the outcome of the court in this respect.
- 6.4 With regard to the alleged unassessed impact of the route on refugee returnees and on the well-being of the community in accordance with EIB standards, as reported in section 5.22, the EIB-CM identified a lack of assessment of the impact on minorities and returnees; the LALRP does not include returnees, who might be vulnerable and at risk of suffering adverse, compounded or disproportionate impacts, in the list of the vulnerable population. In this regard, the EIB-CM suggests that the EIB obtain, prior to the first disbursement:
- An assessment of the impact on minorities and returnees who might be vulnerable and at risk of suffering adverse, compounded or disproportionate impacts in line with Standard 7 of the EIB Environmental and Social Standards for consideration. The assessment should include, but not be limited to:
    - Identifying and assessing the eligibility of project-affected people to be included in the minorities and, in particular, returnees category; -
    - Assessing impact of land acquisition for the project on returnees;
    - Including additional compensatory measures and a mitigation plan to address gaps with EIB standards, if needed; -
  - Close involvement of a social expert on the social matters pertaining to the project

In line with the requirements of Standard 7, the assessment should be made available to the public and shared with affected communities for comments before finalisation. The outcome of the assessment should be taken into account in the ex post audit of the implementation of the Land Acquisition and Livelihood Restoration Framework.

The EIB-CM was informed that a stakeholder engagement plan with the main stakeholders is in the process of being updated that would include engagement with the range of stakeholders involved, including returnee associations.

The EIB services confirmed that an ex post audit of the implementation of the 2017 Land Acquisition and Livelihood Restoration Framework (LALRF) and the related 2020 Land Acquisition and Livelihood Restoration Plan (LALRP) would be performed by a competent third party before the end of Q1 2022. The audit would seek to ascertain whether the social development objectives of the LALRF and LALRP have been met in relation to the project section concerned. Accordingly, the audit would check, among other things, that: (i) project-affected people had access to entitlements as appropriate to their status; (ii) stakeholder engagement, disclosure and dispute resolution mechanisms worked as intended; (iii) any vulnerable groups have been duly accorded their additional protection measures in line with the 2017 LALRF; and (iv) the livelihoods of displaced persons have been restored or improved. In the event that the audit discovers any failure to identify or accord due entitlements to a project-affected person or a negative affect of the project on the standard of living of a



project-affected person, the audit will prepare a rectification plan to be implemented by the promoter as soon as practicable.

- 6.5 With regard to the alleged lack of effort on the part of the promoter to assess the complainants' concerns, given the unfinished or pending public consultation processes at the time the complaint was lodged, the EIB-CM takes note that the public consultation process is one of the venues for complainants to raise their concerns and for the promoter to take them into consideration. The EIB received the information related to the outcome of the public consultation by the end of 2020, which is being reviewed by the EIB competent services. In this regard, the EIB-CM suggests that the EIB services closely review the consultation process with a view to ensuring that the process is compliant with the EIB Social Standards and that it addressed the complainants' concerns. The EIB-CM noted the difficulty in organising an effective stakeholder engagement process during the COVID-19 pandemic, where meetings were concentrated in major urban centres with limited access to guarantee a healthy and safe environment. Therefore, to guarantee a safe and effective engagement process, the EIB-CM suggests that the EIB services further support the promoter in identifying additional and alternative communication channels with the public (i.e. social media, blogs/forums, radio programmes) to reach out to all the affected population for future planned engagements.
- 6.6 With regard to the expropriation process and the right to appeal, it is important to highlight that the expropriated lands had been declared of public interest in line with national law. However, the EIB-CM took note that expropriated persons had access to court to challenge the amounts of compensation, a right that was exercised by some of the expropriated persons. The EIB-CM takes note that the expropriation decision that was made public indicated that "An appeal may be lodged against the decision to the Federal Administration for Geodetic and Property Affairs of the Federation of Bosnia and Herzegovina, within 15 days from the day of delivery of the Decision." From the information gathered, it appears that access to court is automatic if the offer is refused by the expropriated person. From the information provided by the EIB services, the process is regulated by the Law on Expropriation of the Federation of Bosnia and Herzegovina. JP Autoceste makes an offer to the owner as part of the acquisition process. If the owner refuses to accept the offer then the expropriation process is automatically forwarded to the local court, which hires licensed valuers and decides on the appropriateness of the offered amount.
- 6.7 The EIB-CM will follow up on the actions taken by the Bank to implement the suggestions indicated in sections 6.3, 6.4 and 6.5 within six months from the date of this report.

## Complaints Mechanism