



Европейска инвестициона банка  
Evropská investiční banka  
Den Europæiske Investeringsbank  
Europäische Investitionsbank  
Euroopa Investeeringispank  
Ευρωπαϊκή Τράπεζα Επενδύσεων  
European Investment Bank  
Banco Europeo de Inversiones  
Banque européenne d'investissement  
An Banc Eorpach Infheistíochta  
Europska investicijska banka  
Banca europea per gli investimenti

Eiropas Investīciju banka  
Europos investicijų bankas  
Európai Beruházási Bank  
Bank Ewropew tal-Investment  
Europese Investeringsbank  
Europejski Bank Inwestycyjny  
Banco Europeu de Investimento  
Banca Europeană de Investiții  
Európska investičná banka  
Evropska Investicijska banka  
Euroopan investointipankki  
Europeiska investeringsbanken

Republika Srpska, Bosnia and Herzegovina

Luxembourg, 19 August 2019

IG/CM/DP/nh  
EIB – Public

Ref: SG/F/2019/03

Dear Sir,

We refer to our letter of 19 July 2019 in which we informed you that the EIB Group Complaints Mechanism Division (EIB-CM) is carrying out a review of your complaint, submitted by a letter dated 8 June 2019.

Your complaint concerns Banja Luka – Doboj motorway project in Republika Srpska (RS), Bosnia and Herzegovina, partially financed by the EIB (hereinafter: the project). In your letter, you challenge the validity of the project's subdivision plan ("Official Gazettes (O.G.) of the RS", No. 56/16).

The EIB Group Complaints Mechanism Policy and Procedures task the EIB-CM with addressing complaints concerning alleged maladministration by the EIB. Maladministration means poor or failed administration and it occurs when the EIB Group fails to act in accordance with a rule that is binding upon it<sup>1</sup>. The EIB Group's responsibilities concerning compliance of projects with national law are defined in its policies and procedures<sup>2</sup>.

The EIB Transport Policy requires the EIB to appraise all road projects that it finances<sup>3</sup>, prior to signing of the finance contract<sup>4</sup>. The finance contract for the project requires the promoter to implement it in line with national law and to provide the EIB with any information that the EIB may require. The EIB is required to monitor the project to ensure compliance of the project with the EIB finance contract<sup>5</sup>.

The RS law states that the project must comply with the relevant spatial documents<sup>6</sup>, including subdivision plans. The RS National Assembly adopts very detailed subdivision plans for areas around motorways<sup>7</sup>. The decisions on adoption of subdivision plans may contain annexes<sup>8</sup> and are published in the O.G. RS in the text determined and provided by the National Assembly<sup>9</sup>.

As part of its inquiry, the EIB-CM reviewed your complaint; analysed the applicable regulatory framework; and requested clarifications from the EIB Group operational services and the promoter. Given the content of your complaint, the EIB-CM deemed appropriate to reply by letter in line with § 4 of the EIB Group Complaints Mechanism Procedures. The EIB-CM made the following findings.

<sup>1</sup> § 3.1 of the EIB Group Complaints Mechanism Policy.

<sup>2</sup> § 3.3 of the EIB Group Complaints Mechanism Policy.

<sup>3</sup> § 28 of the EIB's Transport Lending Policy.

<sup>4</sup> <https://www.eib.org/en/projects/cycle/index.htm>, accessed on 22 July 2019.


<sup>5</sup> Paragraph 258 of the EIB's 2010 v. of the Environmental and Social Practices Handbook.

<sup>6</sup> Article 26(a)(1) and (4) of the RS Act on Spatial Planning and Construction ("O.G. RS", No. 40/13, 106/15 and 3/16).

<sup>7</sup> Articles 37 and 38 of the RS Act on Spatial Planning and Construction.

<sup>8</sup> Article 52 of the Rules on Drafting of Acts and other Regulations of Republika Srpska ("O.G. RS", No. 24/12).

<sup>9</sup> Article 4(1) and (2) of the Act on Publishing Acts and Other Regulations of Republika Srpska ("O.G. RS", No. 67/05 and 110/08).



On 22 June 2016, the RS National Assembly adopted the proposal for the project's subdivision plan. The Decision was published on 11 July 2016 in the O.G. RS. The Decision stipulates that the subdivision plan will be put on a permanent public display in the relevant local authorities, including Laktaši Municipality, and that the textual and graphical part of the Plan are contained in the Annex to the Decision and make its integral part. The Annex to the Decision has not been published in the O.G.

The EIB appraised the project. Once informed of the complaint, the EIB contacted the promoter with specific questions on the validity of the project's subdivision plan and received the relevant responses. In particular, the promoter explained that the textual and graphical parts of the plan number 13 A3 format books, which are not suitable for publication. According to the promoter, the plan is permanently accessible to the public in the relevant local authorities upon request.

The RS Constitutional Court is competent to decide on validity (legality) of legal acts<sup>10</sup>. According to the RS Constitution, anyone can initiate the proceedings to assess whether a legal act is in conformity with the Constitution or the law<sup>11</sup>. In case the RS Constitutional Court establishes that a legal act is not in conformity, the legal act ceases to be in effect as of the day of publication of the decision of the Court<sup>12</sup>. Decisions of the Court are publicly available and the Court proceedings are not subject to court tax<sup>13</sup>. The EIB-CM also notes that, in the past, you have already submitted cases related to the implementation of the project<sup>14</sup> before the RS Constitutional Court.

The EIB-CM considers the explanation provided by the promoter concerning the publication of the subdivision plans as reasonable. Finally, the EIB-CM notes that the plan is permanently accessible to the public in the relevant local authorities upon request.

Based on the above, the EIB-CM concludes that the allegation is ungrounded with respect to the role of the EIB. The EIB appraised and monitored the project; as such, the EIB-CM does not make any specific recommendations in this respect.

Finally, the EIB-CM notes that the RS Constitutional Court is the institution responsible for taking the view about validity (legality) of the project's subdivision plan. Its decisions are public and the court proceedings are not subject to court tax. Therefore, should you wish to pursue your matter further, you may consider the possibility to submit the case before the RS Constitutional Court.

Please note that complainants who are not satisfied with the outcome of the procedure before the EIB-CM can file a complaint of maladministration against the EIB Group with the European Ombudsman<sup>15</sup>.

Yours sincerely,

EUROPEAN INVESTMENT BANK

S. Derkum  
Head of Division  
Complaints Mechanism

R. Rando  
Senior Complaints Officer

<sup>10</sup> Article 115 of the RS Constitution ("O.G. RS", No. 21/92 – consolidated version, 28/94, 8/96, 13/96, 15/96, 16/96, 21/96, 21/02, 26/02, 30/02, 31/02, 69/02, 31/03, 98/03, 115/05, 117/05, 48/11).

<sup>11</sup> Article 120 of the RS Constitution.

<sup>12</sup> Article 120 of the RS Constitution.

<sup>13</sup> Articles 21 and 22 of the Act on the Constitutional Court of Republika Srpska ("O.G. RS", No. 104/11 and 92/12).

<sup>14</sup>

<sup>15</sup> § 4.5.1 of the EIB Group Complaints Mechanism Policy. Please see the European Ombudsman's Guide to complaints (in Croatian): <https://www.ombudsman.europa.eu/hr/make-a-complaint>, accessed on 22 July 2019.