

S7 Expressway in Poland

Complaint SG/E/2015/14

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

Conclusions Report

9 December 2019

Prepared by

Complaints Mechanism

Confidentiality waived:

Yes¹

External Distribution

Complainant

Internal Distribution

EIB Secretary General

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Relevant EIB departments

¹ p.9 of the of the EIB-CM Initial Assessment Report (IAR), available at: <https://www.eib.org/attachments/complaints/sg-e-2015-14-initial-assessment-report-en.pdf>, accessed on 11 November 2019.

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 outcome of the procedure before the EIB-CM have the right to lodge a complaint of maladministration against the EIB with the EO.

The EO was “created” by the Maastricht Treaty of 1992 as an EU institution to which a citizen or an entity may appeal to investigate an EU institution or a body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as set out by the EO, 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 Group.

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

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

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EXECUTIVE SUMMARY

This report concerns a complaint regarding an approximately 7 km long section of the S7 Expressway between the town of Skarżysko-Kamienna and the Masovian Voivodeship border in Poland. The Stowarzyszenie Pracownia na rzecz Wszystkich Istot and Bankwatch – civil society organisations (CSOs) addressing environmental issues – allege that the European Investment Bank (EIB) failed to correctly assess:

- the project's environmental impact; and
- the validity of the project's environmental authorisation.

The complainant requested that the EIB:

- conduct an additional assessment of the project's compliance with the project applicable standards;
- refrain from disbursing the loan for the project until the project complies with the EIB environmental principles and standards.

In July 2017, the EIB Complaints Mechanism Division (EIB-CM) prepared an Initial Assessment Report in which it:

- noted that it will determine whether a detailed assessment of the project's compliance with the project applicable standards is necessary;
- noted that it will consider whether there is a need for EIB-CM's assistance in providing the possibility of a collaborative resolution process;
- suggested that the EIB continue the dialogue with the promoter with the aim of not disbursing funding allocated to the project before the EU Pilot and any related court proceedings are completed, all within the framework of the financial contract.

The EIB-CM monitored the relevant project-related developments. Once these were completed, the EIB-CM proceeded with the preparation of this report.

The reviewed evidence shows that in the past, the project experienced certain issues in compliance with the project applicable standards, which have since been resolved.

The environmental authorisations were gradually updated to address the noted issues. Eventually, the environmental authorisations: (i) took into account the Natura 2000 area; (ii) changed the layout of the junction; (iii) included an additional wildlife crossing. Furthermore, as a precautionary measure, the Polish authorities initiated the procedure for expansion of the Natura 2000 area, which should be finalised soon.

There is an ongoing EU infringement procedure concerning compliance of Polish national law with EU law. The European Commission considers that national law fails to provide an effective review procedure before a court with regard to road investment projects. However, the outcome of the infringement procedure should not affect the project. In the relevant national court proceeding, the national court concluded that there was a formal breach of the law but did not indicate any breaches of the law on merits. In June 2019, the court confirmed the validity of the construction permit for the project.

The reviewed evidence shows that the allegation is ungrounded with respect to the role of the EIB. During appraisal, the EIB checked compliance of the project with the relevant project applicable standards. The EIB made disbursements for the project conditional on receiving a copy of a valid environmental authorisation. The EIB agreed with the promoter to put the disbursement of the loan for the project on hold until further notice. The EIB monitored the outcome of the relevant project-related developments.

Based on the above, the EIB-CM considers that:

- additional assessment of the project's compliance with the project applicable standards is not necessary;
- there is no need for EIB-CM's assistance in providing the possibility of a collaborative resolution process;
- there is no need for further dialogue between the EIB and the promoter with the aim of not disbursing funding allocated to the project due to the issues covered by this report.

The EIB-CM does not make any specific recommendations in this respect and considers the case closed.

1. THE COMPLAINT (ALLEGATIONS AND CLAIMS)

- 1.1 In 2015, the European Investment Bank Complaints Mechanism Division (EIB-CM) received a complaint from Stowarzyszenie Pracownia na rzecz Wszystkich Istot and Bankwatch, civil society organisations (CSOs) addressing environmental issues (hereinafter the complainant)². The complaint concerns a section of the S7 Expressway in Poland³.
- 1.2 The complainant alleges that the EIB failed to correctly assess:
1. The project's environmental impact, namely:
 - a. Impact on habitats and species located within and outside the "Łasy Skarżyskie" Natura 2000 area (e.g. impact on protected butterfly species' habitats).
 - b. Lack of assessment of the cumulative impacts of the project.
 - c. Insufficient assessment of alternatives.
 - d. Lack of a wildlife crossing for large animals and inadequate place for the planned wildlife crossing for medium-sized animals.
 2. The validity of the project's environmental authorisation⁴.
- 1.3 The complainant requested that the EIB:
- conduct an additional assessment of the project's compliance with the project applicable standards;
 - refrain from disbursing the loan for the project until all environmental standards, including procedural standards, comply with the EIB environmental principles and standards⁵.

2. BACKGROUND INFORMATION

- 2.1 The EIB, together with EU Cohesion Fund grants and budgetary contributions from the Polish State, is financing a number of sections of the S7 Expressway. The General Directorate for National Roads and Motorways (GDDKiA), the body responsible for the construction, maintenance and operation of the national road network in Poland⁶, is the project promoter (hereinafter the promoter). Bank Gospodarstwa Krajowego is the project borrower (hereinafter the borrower).
- 2.2 The complaint concerns an approximately 7 km long section of the S7 Expressway between the town of Skarżysko-Kamienna and the Masovian Voivodeship border in Poland bypassing the town of Skarżysko-Kamienna⁷ (hereinafter the project). The project consists of a number of objects including:
- Skarżysko Północ junction (see letter A on Picture 1); and
 - one wildlife crossing (see letter B on Picture 1).

Works on the project commenced in 2017. Up to date of the completion of this report, the promoter financed the project exclusively from its own sources and no EIB funds have been used. The works are expected to be completed by May 2020.

² Section 1.1 of the EIB-CM Initial Assessment Report (IAR), available at: <https://www.eib.org/attachments/complaints/sg-e-2015-14-initial-assessment-report-en.pdf>, accessed on 11 November 2019.

³ Section 3.4 of the IAR.

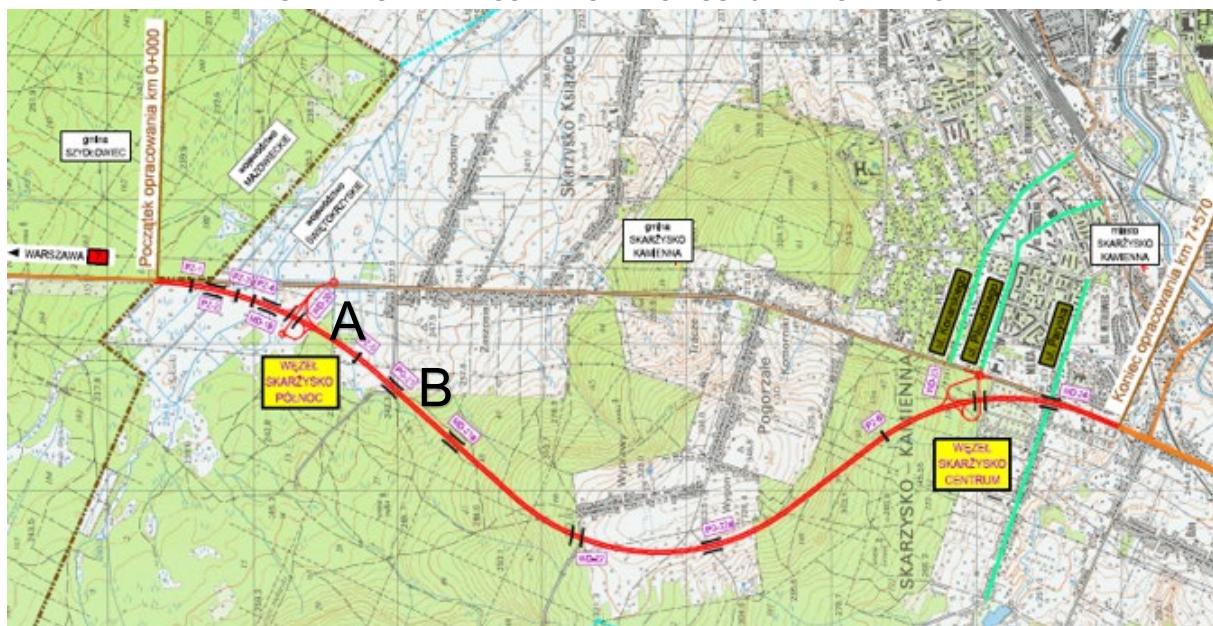
⁴ Section 1.1 of the IAR.

⁵ Section 2 of the IAR.

⁶ Section 3.1 of the IAR.

⁷ Section 3.4 of the IAR. Please note that the section Skarżysko-Kamienna and the Masovian Voivodeship Border is located on the 54 km of 2x2 expressway between Radom and Skarżysko Kamienna.

PICTURE 1 – S7 EXPRESSWAY SECTION SUBJECT TO THE COMPLAINT



3. REGULATORY FRAMEWORK

Complaints Mechanism⁸

- 3.1 The EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (CMPTR) task the EIB-CM with addressing complaints concerning alleged maladministration by the EIB⁹. 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 procedures¹⁰. Maladministration may also relate to the environmental or social impacts of the EIB's activities¹¹.

The CMPTR specifies the role of the EIB-CM. The EIB-CM, inter alia, gathers and reviews existing information on the subject under complaint, conducts appropriate inquiries with a view to assessing whether the EIB's policies and procedures have been followed and promotes adherence to the EIB's policies¹².

Project applicable standards

- 3.2 Project applicable standards are set in a number of EIB's policies and procedures, such as the EIB Transport Lending Policy¹³; the EIB Statement of Environmental and Social Principles and Standards (ESPS)¹⁴; and the Environmental and Social Practices Handbook¹⁵, further implementing the ESPS¹⁶.

The project applicable standards require the project to comply with EU and national environmental law¹⁷.

⁸ In this case, the EIB-CM applied the EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure and the EIB Complaints Mechanism Operating Procedures, which were applicable when the complaint was lodged and registered.

⁹ Section II, § 3 and 4 and Section III, § 1.4 of the CMPTR.

¹⁰ Section II, § 1.2 of the CMPTR.

¹¹ Section II, § 1.2 of the CMPTR.

¹² Section III, § 4.2 of the CMPTR.

¹³ Available at: http://www.eib.org/attachments/strategies/transport_lending_policy_en.pdf, accessed on 11 November 2019.

¹⁴ Available at: http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf, accessed on 11 November 2019.

¹⁵ E.g. EIB's 2010 v. Environmental and Social Practices Handbook.

¹⁶ Paragraph 12 of the Background section of the ESPS.

¹⁷ Paragraph 56 of the 2010 version of the Handbook.

The two most relevant pieces of the EU law are the Environmental Impact Assessment (EIA) Directive¹⁸ and the Habitats Directive^{19,20}. The EIA Directive requires the project to undergo an EIA before receiving a construction permit²¹. If the EIA shows that the project is likely to have a significant effect on the environment, the EIA should also contain appropriate prevention and mitigation measures²². The Habitats Directive requires the project to undergo an assessment if the project is likely to have a significant effect on a Natura 2000 area²³. Natura 2000 is a network of nature protection areas in the EU. If the assessment shows that the project may adversely affect the protected area, in principle, the project will not be implemented²⁴. This assessment may be carried out as part of the EIA or separately.

The EIA and Habitats Directives are transposed into national law. The project must comply with this and other aspects of the national law. The national law requires the project to obtain a construction permit. However, the Act of 10 April 2003 on Special Rules for Preparing and Implementing Road Investment Projects provides some exceptions concerning the validity of permits for roads in Poland. In line with the Act, a national court cannot annul the permit if the application for the annulment was lodged 14 days after the permit became final and the investor has started the road construction works²⁵. In such cases, the court may only conclude on possible breaches of the law, without affecting the validity of the permit²⁶. The purpose of this is to introduce a restriction on repealing defective decisions for reasons of common good (public interest), i.e. the construction of roads in Poland. The Constitutional Tribunal, in the judgement of 16 October 2012 K 4/10, held that this is a proportional measure serving a public interest²⁷.

Role of the EIB

- 3.3 The EIB's policies and procedures note that the responsibility for the project's compliance with the project applicable standards is with the promoter²⁸. For example, the promoter is responsible for carrying out an EIA in line with the EIA Directive and for carrying out the assessment in line with the Habitats Directive²⁹. The EIB's policies and procedures also note that the regulatory and enforcement tasks lie with the country's competent authorities³⁰. However, the EIB will not finance projects that do not meet project applicable standards³¹.

Whether the projects meet the project applicable standards is established as part of the EIB's project appraisal and monitoring.

The appraisal takes place prior to signature of the finance contract³² and it aims at, inter alia, assessing: (i) whether the project complies with the project applicable standards; and (ii) the project's impact. For example, where applicable, the EIB confirms that the main stages of the

¹⁸ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.

¹⁹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

²⁰ Paragraph 36 of the ESPS.

²¹ Article 1(1), Article 2(1), Article 4(1) and Annex I, item 7(b) of the EIA Directive.

²² Articles 5(1)(c) and 8a(1)(b) of the EIA Directive.

²³ Article 6(3) of the Habitats Directive.

²⁴ Article 6(3) and (4) of the Habitats Directive.

²⁵ Article 31(1) of the Polish Act of 10 April 2003 on Special Rules for Preparing and Implementing Road Investment Projects – "The final decision on road investment realisation permit cannot be annulled, if the application for annulment of that decision was lodged after the expiry of 14 days from the day on which the decision becomes final and the investor has started the construction of the road. Article 158 § 2 of the Code of administrative proceedings shall apply mutatis mutandis."

²⁶ Article 31(2) of the Polish Act of 10 April 2003 on Special Rules for Preparing and Implementing Road Investment Projects – "In the case of the action against the decision on road investment realisation permit, which was immediately enforceable, the administrative court after a period of 14[1] days from the date of when the construction of the road started can only state that the decision infringes the law for the reasons listed in Article 145 or 156 of the Code of Administrative Procedure."

²⁷ Section 6.10 of the Ruling of the Supreme Administrative Court of 5 June 2019, available in [PL](#).

²⁸ Paragraph 2 of the ESPS Statement and paragraph 60 of the 2010 version of the Handbook.

²⁹ Paragraph 95 of the 2010 version of the Handbook.

³⁰ Paragraph 60 of the 2010 version of the Handbook.

³¹ Paragraph 6 of the ESPS Statement.

³² <https://www.eib.org/en/projects/cycle/index.htm>, accessed on 11 November 2019.

EIA are complete and documented and that the assessment, in line with the Habitats Directive, has been carried out either as part of an EIA or separately³³. Sometimes, the appraisal results in conditions for disbursement. The conditions are included in the finance contract³⁴ and the promoter must complete the conditions to the satisfaction of the EIB prior to the disbursement of the EIB financing³⁵.

Once the promoter and the EIB sign the finance contract, the EIB is required to monitor the project. The monitoring aims to ensure that the project complies with the EIB's approval conditions³⁶. The EIB monitors projects on the basis of reports provided by the promoter³⁷, as well as EIB visits, information provided by the local community, etc.³⁸. Close follow-up of environmental and social actions that are required as part of the finance contract (in particular those related to disbursement conditions) is essential³⁹.

4. WORK PERFORMED BY THE EIB-CM

- 4.1 The EIB-CM conducted an initial assessment resulting in the Initial Assessment Report (IAR) dated 31 July 2017. In the IAR, the EIB-CM referred to the ongoing EU Pilot relevant for the complaint⁴⁰. The EU Pilot is an informal dialogue between the European Commission and the relevant Member State about issues related to potential non-compliance with EU law⁴¹.

In the IAR, the EIB-CM suggested that the EIB:

- continue the dialogue with the promoter with the aim of not disbursing funding allocated to the project before the EU Pilot and any related court proceedings are completed, all within the framework of the financial contract;
- take into account the outcome of the EU Pilot and any related court proceedings in the EIB's monitoring activities⁴².

In the IAR, the EIB-CM noted that it will:

- determine, on the basis of the outcome of the EU Pilot, any related court proceedings and possible relevant updates/outcomes provided by the EIB, whether a detailed assessment of the allegations is necessary;
- consider, in the event that the outcome of the EU Pilot requires new measures to be taken and provided there is willingness on the part of the actors involved, offering the EIB-CM's assistance by providing the possibility of a collaborative resolution process to ensure the continuation of cooperation between the promoter and the complainant⁴³.

- 4.2 The EIB-CM monitored the outcome of the EU Pilot and the related court proceedings. Once these were resolved, the EIB-CM analysed the actions of the EIB and proceeded with the preparation of this report.

³³ Paragraph 101 of the 2010 v. of the Handbook.

³⁴ Paragraph 7 of the ESPS Statement.

³⁵ Paragraph 242 and 243, indent 2 of the EIB's 2010 version of the Handbook.

³⁶ Paragraph 258 of the EIB's 2010 version of the Handbook.

³⁷ These reports include information concerning: changes to technical specifications; update on the cost of the project; a description of any major issue with an impact on the environment; etc.

³⁸ Paragraph 8 of the ESPS Statement.

³⁹ Paragraph 260 of EIB's 2010 version of the Handbook.

⁴⁰ Section 8.1 of the IAR.

⁴¹ https://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/eu_pilot/index_en.htm, accessed on 11 November 2019.

⁴² Section 8.5 of the IAR.

⁴³ Section 8.5 of the IAR.

5. FINDINGS

5.1 Project applicable standards

Environmental impact

5.1.1 In this case, the environmental authorisation process underwent three phases, namely:

- Original procedure
- 1st update
- 2nd update (see Section 1 of Annex I of this report).

During the process, the relevant environmental authorisations were updated to address the noted issues concerning the project's environmental impact.

5.1.2 The initial 2007 EIA Report and the 2008 environmental decision did not take into account the "Łasy Skarżyskie"⁴⁴ Natura 2000 area, established in 2011. The area is located 250 m from the S7 Expressway. The 2 383 ha area hosts a number of species, including Marsh Fritillary (*Euphydryas aurinia*)⁴⁵, a protected butterfly species⁴⁶. Therefore, the relevant national court declared the environmental decision invalid as it breached the requirements of the Habitats Directive⁴⁷. Subsequently, as part of Phase 2 of the environmental authorisation process, the EIA report, environmental decision and the construction permit were revised to take into account the protected area.

5.1.3 Due to further concerns about compliance of the project with the EIA and Habitats Directives, the European Commission initiated an EU Pilot in November 2016⁴⁸. The Commission liaised with the Polish authorities with the aim of implementing the project in line with the project applicable standards. The promoter modified the project in line with the discussion with the Commission as part of Phase 3 of the environmental authorisation process.

In July 2019, the Commission closed the EU Pilot. Table 1 presents the results of the EU Pilot procedure.

TABLE 1 – RESULTS OF THE EU PILOT PROCEDURE

Relevant issues	Actions taken by the Polish authorities
Impact on habitats and species (e.g. butterflies) located within and outside the Natura 2000 area "Łasy Skarżyskie" and assessment of alternatives	<p>In November 2017, the Polish authorities issued a modification to the construction permit changing the layout of the junction and reducing the impact of the project on the habitat of the butterflies located outside the Natura 2000 area by taking up less space.</p> <p>In November 2018, the Polish authorities initiated the procedure⁴⁹ to include the plot where the plants with the butterflies have been relocated in the Nature 2000 network as a precautionary measure (expansion of the Natura 2000 area). As a result, the authorities will have a legal obligation to establish the necessary conservation measures and to take all appropriate steps to avoid the deterioration of the habitat of the butterflies including monitoring of the effectiveness of relocation of its host plants.</p> <p>The Polish authorities indicated that the relocation of the protected plant species was successful and confirmed the presence of the butterflies on the relocated plants.</p>

⁴⁴ PLH 260011.

⁴⁵ <http://natura2000.eea.europa.eu/Natura2000/SDF.aspx?site=PLH260011>, accessed on 11 November 2019. Please note that the Marsh Fritillary is Habitats Directive's Annex II species, requiring designation of protected areas.

⁴⁶ <https://eunis.eea.europa.eu/species/Euphydryas%20aurinia>, accessed on 11 November 2019.

⁴⁷ Environmental and Social Data Sheet (ESDS), available at: <https://www.eib.org/attachments/registers/49619265.pdf>, accessed on 11 November 2019.

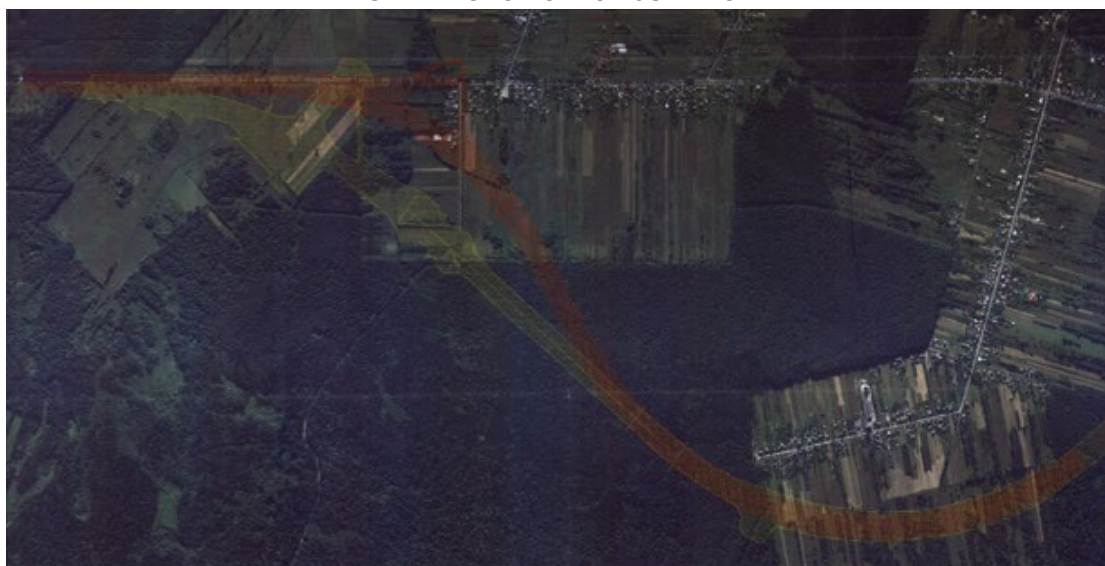
⁴⁸ EU Pilot 8130/15/ENVI.

⁴⁹ The official declaration to designate this Natura 2000 site and a draft Standard Data Form were provided in November 2018.

Relevant issues	Actions taken by the Polish authorities
	The Polish authorities confirmed that according to the EIA, the butterfly population outside the Natura 2000 area and the key butterfly population inside are not connected ⁵⁰ .
Cumulative impacts of the project	The Polish authorities explained that the industrial zone was mentioned in the “Amendment to the Land Use Plan for Skarżysko-Kamienna” adopted on 29 May 2008. As no details are known about the possible scope or activities under this project, it was not possible to assess the cumulative effects. The Polish authorities also noted that the junction was not designed in relation to the future industrial zone. Should the authorities plan to develop the industrial zone, before authorising such a development, they will have to carry out an appropriate assessment of its impact on Natura 2000, including in combination with existing road infrastructure (assessment of the cumulative effects with the S7 express road).
Wildlife crossings	In November 2017, the Polish authorities issued a modification to the construction permit including an additional wildlife crossing for medium-sized animals.

- 5.1.4 The relevant environmental authorisations have been challenged before the relevant national courts. The courts have issued the final verdicts in which they did not identify any instances of non-compliance of the project with the relevant law on the merits (see § 5.1.9).
- 5.1.5 The old (in yellow) and the new (in red) layout of the Skarżysko Północ junction are indicated on Picture 2.

PICTURE 2 – OLD (IN YELLOW) AND NEW (IN RED) LAYOUT OF THE SKARŻYSKO PÓŁNOC JUNCTION



At the time of drafting of this report, the Polish authorities have not yet finalised the procedure for expansion of the Natura 2000 area by inclusion of the plot where the plants with the butterflies have been relocated (see row 1 of Table 1 above)⁵¹. However, the public consultation procedure for the expansion took place in May 2019⁵² and the overall procedure should be finalised soon.

- 5.1.6 Concerning the alternatives, the final project layout is a result of a long process. Before the EU Pilot, the complainant and the promoter discussed the layout of the project, but these

⁵⁰ Because of the 10 km distance and other barriers (forest areas, the existing DK7 road).

⁵¹ <http://geoserwis.gdos.gov.pl/mapy/?showExternalObject=52F141F096FA99CCC8ECE040FE302B0D>, accessed on 25 November 2019.

⁵² <https://natura2000.gdos.gov.pl/lista-zmian-granic-obszarow-natura2000-2019>, accessed on 3 December 2019.

discussions were suspended in 2016⁵³. As part of the EIA, two alternatives and their respective impacts on the environment have been analysed⁵⁴.

- 5.1.7 Concerning the wildlife crossings, the promoter considers that large animals will use two wildlife crossings in the forest instead. The PZ-19 and PZ-20 large animal wildlife crossings are located approximately 2.5 km and 3.5 km, respectively, from the junction and the medium-sized wildlife crossing⁵⁵. The promoter notes that the results of field research supported by the information from the adequate forest services show that large animals use the forest area rather than the open fields on which the Skarżysko Północ junction will be built. Therefore, wildlife crossings for medium-sized animals should be sufficient.

Validity of the project's environmental authorisation

- 5.1.8 The project's environmental authorisation process consists of three relevant documents, namely:

- EIA report, including supplemental EIA report
- Environmental decision
- Construction permit⁵⁶.

The entire process lasted from October 2007 to June 2019. For a detailed overview of the process, see Section 1 of Annex I of this report.

- 5.1.9 The process ended in June 2019 with the ruling of the Polish Supreme Administrative Court on the validity of the final construction permit. The court ruled that the construction permit was issued in violation of the law due to formal shortcomings (the EIA report was supplemented by an unauthorised person)⁵⁷. However, the court concluded that the permit is valid, in line with national law⁵⁸ (see § 3.2).

The court did not examine the case on merits (substance of the supplemented EIA report). However, the court noted that the complainant did not produce a counter-report that would undermine the permit⁵⁹.

- 5.1.10 There is an ongoing EU infringement procedure concerning the compliance of Polish national law with the EIA Directive with respect to access to justice⁶⁰. The European Commission considers that national law (see § 3.2) fails to provide an effective review procedure before a court or another independent and impartial body with regard to road investment projects⁶¹.

5.2. Role of the EIB⁶²

Environmental impact

- 5.2.1 The EIB carried out a site visit during appraisal. The EIB noted that an EIA is required for the project⁶³. Furthermore, the EIB noted that while the initial EIA did not take into account the "Łasy Skarżyskie" Natura 2000 area, the later EIA did⁶⁴. As part of its project monitoring, the

⁵³ Section 7.6.8 of the IAR.

⁵⁴ Section 7.6.8 of the IAR.

⁵⁵ Information obtained by using Google maps.

⁵⁶ The construction permit contains certain environmental aspects (e.g. see the Ruling of the Supreme Administrative Court of 5 June 2019, available in [PL](#)) and therefore is considered an environmental authorisation.

⁵⁷ Section 6.11 of the Ruling of the Supreme Administrative Court of 5 June 2019, available in [PL](#).

⁵⁸ Section 6.9 of the Ruling of the Supreme Administrative Court of 5 June 2019, available in [PL](#).

⁵⁹ Section 6.12 of the Ruling of the Supreme Administrative Court of 5 June 2019, available in [PL](#).

⁶⁰ Infringement number: 2016/2046, see: https://europa.eu/rapid/press-release_MEMO-19-1472_en.htm, accessed on 11 November 2019.

⁶¹ As required under Article 11(1) of the EIA Directive.

⁶² Please note that sections 4.1 - 4.4 of the IAR present additional activities carried out by the EIB.

⁶³ ESDS.

⁶⁴ Section 7.3.5 of the IAR.

EIB has been reviewing the promoter's monitoring reports; engaging with the promoter to address the relevant issues; and undertook site visits to the area.

- 5.2.2 The EIB noted the relevant EU Pilot and followed up on the developments with the European Commission. In application of the principle of precaution, the EIB agreed with the promoter to put the disbursement of the loan for the project on hold until further notice⁶⁵. The EIB noted that the Commission closed the EU Pilot concluding that there were no infringements of EU law.

Validity of the project's environmental decision

- 5.2.3 The IAR states that the EIB carried out its appraisal correctly concerning the validity of the project's environmental authorisation⁶⁶. During its appraisal, the EIB noted the early developments concerning the EIA report, environmental decision and construction permit, including the relevant court cases⁶⁷ (see Phase 1 of Section 1 of Annex I of this report).

Considering that at that time, the national court declared the environmental decision invalid, the EIB made disbursements for the project conditional on receiving a copy of the environmental authorisation⁶⁸.

- 5.2.4 The EIB followed the developments concerning the relevant court cases regarding the final construction permit (see Phase 3 of Section 1 of Annex I of this report). The EIB analysed the ruling of the Supreme Administrative Court. The EIB noted that the court ruled that: (i) the construction permit was issued in violation of the law due to formal shortcomings (the EIA report was supplemented by an unauthorised person); (ii) no arguments (other than those already dismissed by previous instances) or evidence have been brought forward by the complainant as to whether the conclusions of the environmental impact report were not correct on merit; and (iii) the permit is valid, in line with the national law.

The EIB took the view that there are also no grounds to believe that the minor formal deficiencies of the decision could lead to a situation in which the borrower would not be able to service the loan. Finally, the EIB considers that prior to a possible disbursement, the promoter has to confirm that the construction permit for the project is valid and in force.

6. CONCLUSIONS AND RECOMMENDATIONS

- 6.1 The reviewed evidence shows that in the past, the project experienced certain issues in compliance with the project applicable standards, which have since been resolved.

The environmental authorisations were progressively updated to address the noted issues. First, the EIA did not take into account a Natura 2000 area. Then, the European Commission initiated an EU Pilot procedure due to concerns about compliance of the project with the EIA and Habitats Directives. Eventually, the environmental authorisations: (i) took into account the Natura 2000 area; (ii) changed the layout of the Skarżysko Północ junction; and (iii) included an additional wildlife crossing. Furthermore, as a precautionary measure, the Polish authorities initiated the procedure for expansion of the Natura 2000 area, which should be finalised soon.

As it stands, in line with national law, a national court may conclude on possible breaches of the law, but cannot annul the related construction permit for a road project if more than 14 days have passed and the road construction works have commenced. This aspect of national law triggered an ongoing EU infringement procedure. However, the outcome of the infringement

⁶⁵ Section 7.6.12 of the IAR.

⁶⁶ Section 7.3.6 of the IAR.

⁶⁷ ESDS.

⁶⁸ ESDS.

procedure should not affect the project. In the related case, the national court concluded that there was a formal breach of the law but did not indicate any breaches of the law on merits. The court confirmed the validity of the construction permit in June 2019.

- 6.2 The reviewed evidence shows that the allegation is ungrounded with respect to the role of the EIB. During appraisal, the EIB checked compliance of the project with the relevant project applicable standards. The EIB engaged with the promoter with the aim of addressing the relevant issues and maintained contact with the European Commission. Considering the noted issues concerning environmental authorisations, the EIB made disbursements for the project conditional on receiving a copy of a valid environmental authorisation. The EIB noted the relevant EU Pilot and, in line with the complainant's claim, agreed with the promoter to put the disbursement of the loan for the project on hold until further notice. The EIB monitored the outcome of the EU Pilot and the relevant national court cases. The EIB took note of the project's improvements and the final ruling of the relevant national court.

Based on the above, the EIB-CM considers that:

- an additional assessment of the project's compliance with the project applicable standards is not necessary;
- there is no need for EIB-CM's assistance in providing the possibility of a collaborative resolution process;
- there is no need for the further dialogue between the EIB and the promoter with the aim of not disbursing funding allocated to the project due to the issues covered by this report.

- 6.3 The EIB-CM does not make any specific recommendations in this respect and considers the case closed.

LIST OF ABBREVIATIONS

CMPTR	EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure
CSO	Civil society organisation
IAR	Initial Assessment Report
EIA	Environmental Impact Assessment
EIB	European Investment Bank
EIB-CM	EIB Complaints Mechanism Division
EO	European Ombudsman
ESDS	Environmental and Social Data Sheet
ESPS	EIB Statement of Environmental and Social Principles and Standards

ANNEX I – CHRONOLOGICAL OVERVIEW OF THE PROJECT**1. Project's environmental authorisation**

Phase 1 Original Procedure		Natura 2000 LASZY SKARŻYSKIE area established Jan 2011	Phase 2 1st update (taking into account Natura 2000 LASZY SKARŻYSKIE area)		EU Pilot initiated Nov 2016	Phase 3 2nd update (taking into account changes to Skarżysko Północ junction; an additional wildlife crossing)	
Oct 2007	EIA report		Oct 2011	EIA report		Feb 2017	EIA report supplemental
Oct 2008	Environmental decision		Jan 2014	Environmental decision		Not required	
Jun 2013	1 st instance court declares the environmental decision invalid		Nov 2014	1 st instance court considers the environmental decision valid			
			May 2016	2 nd instance court considers the environmental decision valid			
Aug 2010	Construction permit		Jan 2016	Construction permit		Nov 2017	Construction permit
-	-		Jul 2016	1 st instance court considers the construction permit valid		Oct 2018	1 st instance court considers the construction permit valid
Mar 2015	2 nd instance court considers the construction permit valid and requested some minor changes concerning acoustic screens		Dec 2016	2 nd instance court considers the construction permit valid		Jun 2019	2 nd instance court considers the construction permit valid. However, the court concluded that permit was issued in breach of the law (formal breach)

2. Role of the EIB

- Dec 2013 Finance contract concluded.
- Sep 2014 Complainant approached the EIB's operational services.
- Sep 2014 – Sep 2015 Numerous activities by the EIB's operational services with the aim of addressing the concerns raised by the complainant.
- Sep 2015 EIB-CM registers the complaint.
- Jul 2017 EIB-CM issues its IAR.