

Banja Luka – Dobož Motorway
Expropriation

Complaint SG/E/2019/03

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

Initial Assessment Report

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Prepared by

EIB Complaints Mechanism

Confidential: No

External Distribution:

- Complainant

Internal Distribution:

- Inspector General
- Relevant EIB services concerned

The EIB Complaints Mechanism

The EIB Complaints Mechanism is designed to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases in which members of the public feel that the EIB Group has done something wrong, i.e. if they consider that the EIB Group has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB Group, 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).

Maladministration means poor or failed administration. It occurs when the EIB Group fails to act in accordance with a rule or principle that is binding upon it, including its own policies, standards and procedures. Examples of maladministration include administrative irregularities, unlawful discrimination, unjustified refusals of information, abuse of power, unnecessary delays as well as a failure by the EIB Group to comply with its own obligations in the appraisal and monitoring of projects financed by the EIB Group. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities.

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

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

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1. COMPLAINT

- 1.1 On 4 March 2019, the EIB Complaints Mechanism (EIB-CM) received a complaint from lawyers representing a number of individuals and families (hereinafter, the complainant). The complaint concerns seven individual cases allegedly related to the construction of EIB-financed motorway sections on the territories of Laktaši and Prnjavor municipalities in Republika Srpska (RS), Bosnia and Herzegovina (BiH).

TABLE 1 – INDIVIDUAL CASES AS PART OF THE COMPLAINT

Case	Location	Expropriation
Case 1	Village of Drugovići, Laktaši municipality	Ongoing
Case 2	Village of Drugovići, Laktaši municipality	Ongoing
Case 3	Village of Potočani, Prnjavor municipality	Ongoing
Case 4	Laktaši, Laktaši municipality	Ongoing
Case 5	Laktaši, Laktaši municipality	Ongoing
Case 6	Village of Krnete, Aleksandrovac, Laktaši municipality	Ongoing
Case 7	Settlement of Okolica, Prnjavor municipality	Not included

With respect to the cases presented in Table 1, the complainant stated that the competent RS authorities did not carry out expropriation in line with the regulatory framework, including the EIB standards.

- 1.2 The complainant asked the EIB to investigate possible breaches of the regulatory framework and, if needed, to take appropriate steps to remedy the situation (e.g. full expropriation of property).

2. THE PROJECT

- 2.1 The complaint concerns construction of a motorway between Banja Luka and Doboј in RS, BiH. The EIB is financing the western section of the motorway, i.e. the 35.3 km long section between Banja Luka (Mahovljani interchange) and Prnjavor¹. The section is located on the territories of Laktaši and Prnjavor municipalities. The section has been completed and in use since 2 October 2018².
- 2.2 The RS Motorways³ are implementing the project (hereinafter, the promoter)⁴. The state of BiH is the borrower. The EIB Board of Directors approved the project on 4 June 2013 and the finance contract for the project, implemented as an investment loan, was concluded on 16 December 2013.

3. WORK PERFORMED

- 3.1 § 4.2.1 of the EIB Group Complaints Mechanism Policy (Policy) and § 2.1.3 of the EIB Group Complaints Mechanism Procedures (Procedures) require the EIB-CM to carry out the initial assessment of the complaint⁵. The objective of the initial assessment is to clarify the concerns raised by the complainant, understand the complainant's position and the validity of the concerns raised as well as to determine if further work by the

¹ For more information about the project, see: <http://www.eib.org/projects/pipelines/pipeline/20110622>, accessed on 9 December 2019.

² See: <http://opstinaprnjavor.net/danas-otvaranje-posljednje-dionice-autoputa-banjaluka-doboj/?script=lat>, accessed on 9 December 2019.

³ A public company with the purpose of managing motorways in RS.

⁴ Please note that a management consultant is assisting the promoter in project implementation, administration and supervision. In some cases, the information was provided by the consultants on behalf of the promoter (e.g. bi-annual progress reports). In such cases, the EIB-CM interpreted this as if the information was provided by the promoter.

⁵ Please note that this complaint concerns the social impacts of an EIB-financed project. As noted in § 2.1.2 of the Procedures, complaints related to social impacts of financed projects usually raise complex issues. For this reason, and because of the sensitivity of the relations involving the project promoter, national authorities, civil society organisations and project affected people, particular attention needs to be paid to the specific processes regarding these types of complaints. In line with § 2.1.2 of the Procedures, for these types of complaint, the normal process is formally structured in two phases: an initial assessment phase and a mediation or investigation phase.

EIB-CM is necessary and/or possible in order to address the allegation or resolve the issues raised by the complainant⁶. The further work may include investigation/compliance review or mediation between the parties. This report contains the results of the EIB-CM's initial assessment.

- 3.2 As per § 2.2.2 of the Procedures, during the initial assessment the EIB-CM: (i) had an initial meeting with the EIB services⁷; (ii) reviewed EIB documents; (iii) requested and received information from the promoter⁸; and (iv) conducted a site visit during which it met with the complainant, promoter and relevant national authorities (e.g. RS attorney general⁹)¹⁰.
- 3.3 § 2.2.5 of the Procedures states that the EIB-CM should identify relevant stakeholders who are to be involved in a possible alternative dispute resolution (e.g. mediation) and understand their views and willingness to resolve the issues. The RS attorney general and the complainant are the relevant parties participating in the expropriation process. According to the RS general attorney, mediation is not possible in these cases because the RS national law does not provide for such a possibility¹¹.
- 3.4 § 2.1.4 of the Procedures states that the EIB-CM reviews activities for which the EIB can be held responsible. Therefore, the EIB-CM identified the location of each of the cases pertaining to the complaint (see § 1.1) with the aim of establishing whether they concern EIB-financed motorway sections. The EIB-CM noted that while cases 1, 2, 3 and 7 are located on EIB-financed motorway sections, cases 4, 5 and 6 are not (see Map 1).

⁶ § 2.2.1 of the Procedures.

⁷ The meeting took place on 15 April 2019.

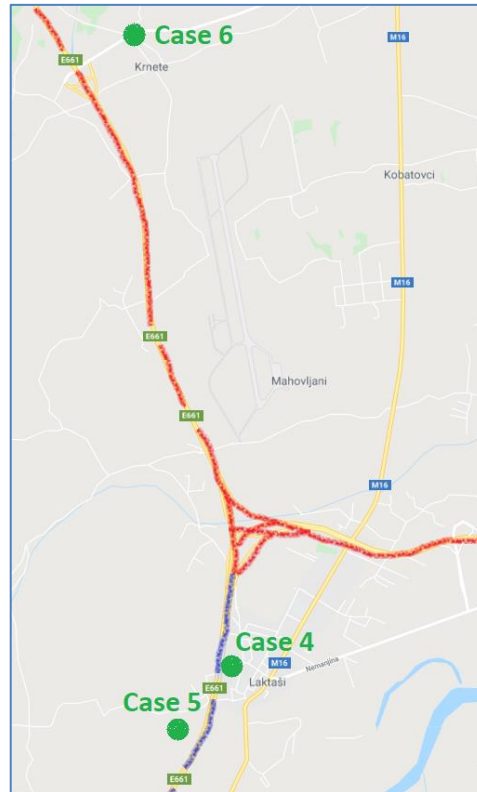
⁸ The email correspondence took place in the period May – July 2019. A telephone call with the promoter took place in June 2019.

⁹ The RS attorney general represents RS and its institutions in the issues concerning their property rights and interests.

¹⁰ The mission to RS took place in October 2019.

¹¹ Information provided by the RS general attorney. This statement takes into account the possibility of having an agreement on the expropriation early in the procedure (see Articles 25 and 27 of the RS Expropriation Act).

MAP 1 – LOCATION OF CASES 4, 5 AND 6 IN RELATION TO EIB-FINANCED SECTIONS OF THE MOTORWAYS (IN RED)¹²



- 3.5 § 2.2.4 of the Procedures sets out key questions to be addressed during the initial assessment, namely:
- Understand how the relevant EIB services have (i) verified compliance with the applicable regulatory framework, including EIB standards and (ii) carried out appropriate monitoring of project implementation;
 - Assess potential indications that EIB standards have failed to provide an adequate level of protection and safeguards;
 - Identify, if any, reasonable indications of non-compliance with the applicable regulatory framework.
- 3.6 The regulatory framework includes:
- The EIB’s policies, procedures and standards such as the EIB Statement of Environmental and Social Principles and Standards and the related Handbook.
 - RS national legislation, such as the RS Expropriation Act¹³.
- 3.7 The project triggered involuntary resettlement¹⁴. In addition to EIB standards concerning involuntary resettlement induced by EIB-financed projects, the national law lays down a procedure to be followed by local authorities in order to implement the project, including a number of checks and balances to ensure fair expropriation.

¹² The location of cases 4, 5 and 6 was established using the information:

- Provided by the complainant in the complaint and during the EIB-CM’s October 2019 mission.
- Provided by the promoter in an email sent on 18 July 2019 and during the EIB-CM’s October 2019 mission.
- Contained in the RS Cadastre, accessible at: http://ekatastar.rgurs.org/Javni_Uvid, accessed on 9 December 2019.

Please note that cases 4 and 5 are located on the Banja Luka – Gradiška motorway section, not financed by the EIB (financed by RS). Case 6 is located on a state road, not financed by the EIB.

¹³ (“O.G. RS”, No. 112/06, 37/07, 66/08 – correction, 110/08, 106/10 – decision of the Constitutional Court, 121/10 - decision of the Constitutional Court, 2/15 - decision of the Constitutional Court and 79/15).

¹⁴ Involuntary resettlement is a physical or economic displacement resulting from project-related land acquisition – Annex 13 – Guidance Note 1 on Involuntary Resettlement of the 2010 v. of the Handbook; Standard 6, para. 12 of the 2013 v. of the Handbook.

- 3.8 The EIB-CM carried out an initial review of the EIB's appraisal and monitoring. During the appraisal, the EIB noted that the project implementation is associated with the need for private land acquisition and resettlement of a certain number of affected households¹⁵. The EIB noted that the Environmental and Social Action Plan¹⁶, outlining precautionary measures to minimise possible impacts stemming from land acquisition¹⁷, and the Stakeholder Engagement Plan¹⁸, had been prepared¹⁹. From a review of the EIB appraisal, it results that, while the majority of people provided the beneficiary of expropriation (municipality) with consent to enter into possession of their properties²⁰, 10 cases remained to be fully resolved through either administrative or court procedures²¹. As a condition for disbursement, the EIB included the Land Acquisition and Resettlement Plan (LARP), if found necessary by the EIB²². The promoter was required to complete the acquisition of the land in accordance with the LARP. The promoter was also required to provide the EIB with bi-annual project progress reports and to prepare a project completion report one year after the motorway is opened to traffic and the works are considered complete.
- 3.9 The EIB carried out its appraisal. The promoter provided bi-annual monitoring reports, including an overview of the grievances lodged concerning the project. Some of the grievances concern the cases encompassed by the complaint. Given that the construction of the motorway has been completed, the promoter has also provided the project completion report.
- 3.10 At this stage of the inquiry, the EIB-CM did not identify any indications of manifest non-compliance with the applicable regulatory framework, including the EIB's standards. However, the fact that the expropriation procedures have not been finalised in all cases, even after the completion of the project, raises some concerns.

4. WAY FORWARD

- 4.1 The EIB-CM proposes to proceed to the next phase of the process and to carry out an investigation/compliance review. Based on the information provided in § 3.3 of this Report, the EIB-CM does not see the possibility of mediation in this case.
- 4.2 The EIB-CM will not investigate cases 4, 5 and 6 considering that they are not located on EIB-financed motorway sections (see § 3.4).
- 4.3 Concerning cases 1, 2 and 3, the EIB-CM will assess the compliance of the contested project with the applicable regulatory framework with a view to ascertaining whether the claims of the complainant are justified. In this regard, the EIB-CM will analyse whether:
- There have been cases of non-compliance with the applicable regulatory framework, including the EIB's standards.
 - The EIB Group policies, procedures and standards have failed to provide an adequate level of protection and safeguards as part of the EIB appraisal and monitoring.
- 4.4 Concerning case 7, the EIB-CM will check whether this case should have been subject to the expropriation procedure.

¹⁵ Environmental and Social Data Sheet (ESDS), available at <https://www.eib.org/attachments/registers/48193482.pdf>, accessed on 9 December 2019.

¹⁶ Available at: <https://www.eib.org/attachments/registers/53220181.pdf>, accessed on 9 December 2019.

¹⁷ ESDS.

¹⁸ Available at: <https://www.eib.org/attachments/registers/53219471.pdf>, accessed on 9 December 2019.

¹⁹ ESDS.

²⁰ ESDS.

²¹ ESDS.

²² ESDS.

- 4.5 The outcome of the investigation/compliance review will be communicated to the complainants through the EIB-CM's conclusions report.

Complaints Mechanism

10.01.2020

LIST OF ABBREVIATIONS

BiH	Bosnia and Herzegovina
EIB	European Investment Bank
EIB-CM	EIB Complaints Mechanism
EO	European Ombudsman
ESDS	Environmental and Social Data Sheet
LARP	Land Acquisition and Resettlement Plan
RS	Republika Srpska