

Route E420 Frasnes-lez-Couvin - Brûly RTE Project

Complaint SG/E/2014/02

Belgium

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

CONCLUSIONS REPORT

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Confidentiality waived: Yes¹

¹ In his email sent on 19 August 2015, the complainant waived the right to confidentiality requested in the complaint submitted on 22 January 2014.

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 that are not satisfied with the EIB-CM's reply have the opportunity to submit a confirmatory complaint within 15 days of receipt of that reply. In addition, complainants who are not satisfied with the outcome of the procedure before the EIB-CM and who do not wish to make a confirmatory complaint 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 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/about/accountability/complaints/index.htm>

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EXECUTIVE SUMMARY

This report concerns a complaint regarding the EIB-financed motorway section between Frasnes-lez-Couvin and Brûly on motorway route E420 in Belgium (hereinafter: the project). The complaint consists of three allegations concerning the following:

- effectiveness of the project;
- studied alternatives;
- environmental impact.

After conducting the review, the EIB's Complaints Mechanism (EIB-CM) concludes that the project is in line with the project applicable standards with respect to the allegations made.

With respect to the role of the EIB, the EIB-CM concludes that the allegations are ungrounded. The EIB carried out a project appraisal in line with its procedures, covering the issues raised in the complaint. The EIB also formulated a number of specific conditions, such as (i) a written authorisation from the competent authority for nature conservation (Form A) and (ii) finalisation of all ongoing disputes, and checked the fulfilment of these conditions prior to the first disbursement of funds. The EIB continues to monitor whether the project has a significant impact on the environment in line with the contractual arrangements between the EIB and the promoter. Once collected, the EIB should also receive information on traffic flows, which should confirm whether the project is effective.

In light of the above, the EIB-CM concludes that its inquiry did not identify any instances of maladministration by the EIB. Therefore, the EIB-CM does not make any specific recommendations and considers the case closed.

1. COMPLAINT (ALLEGATIONS AND CLAIMS)

- 1.1 In January 2014, the EIB's Complaints Mechanism (EIB-CM) received a complaint from an individual (hereinafter: the complainant). The complaint concerns the motorway section between Frasnes-lez-Couvin and Brûly on route E420 in Belgium (hereinafter: the project)².

The complaint consists of three allegations concerning the project, which is financed by the EIB. The allegations, as submitted by the complainant, are presented in Table 1 below. The allegations presented in Table 1 are analysed in Section 5 of this report.

TABLE 1 – SUMMARY OF THE ALLEGATIONS

Allegation	Summary of the allegation received from the complainant
Effectiveness of the project	It is claimed that the project would not be an effective alternative to the existing North-South routes in Europe. By way of illustration, a trip between Rotterdam and Marseille would be longer by an hour using the E420 compared to the current route through Liège due to the following: Brussels Ring congestion; N5 road section between Charleroi and Fraire is lined with dwellings and, therefore, it is impossible to turn this section into a motorway. The lack of a study on the origin/destination of the traffic further contributes to the uncertainty of the project's effectiveness.
Studied alternatives	The Walloon Environmental Council for Sustainable Development (<i>Conseil wallon de l'environnement pour le développement durable</i>) (CWEDD) has issued unfavourable opinions because appropriate alternatives have not been studied.
Environmental impact	The full impact of the project on the environment is uncertain. For example, the works around the Ry de Rome will result in channelling of the river and destruction of the valley, therefore, destroying the priority habitat protected under the Habitats Directive. It would not be possible to compensate for this destruction.

- 1.2 In his complaint, the complainant calls for the cessation of further works and reconsideration of the project and its alternatives, taking into account cost, environmental and traffic issues.

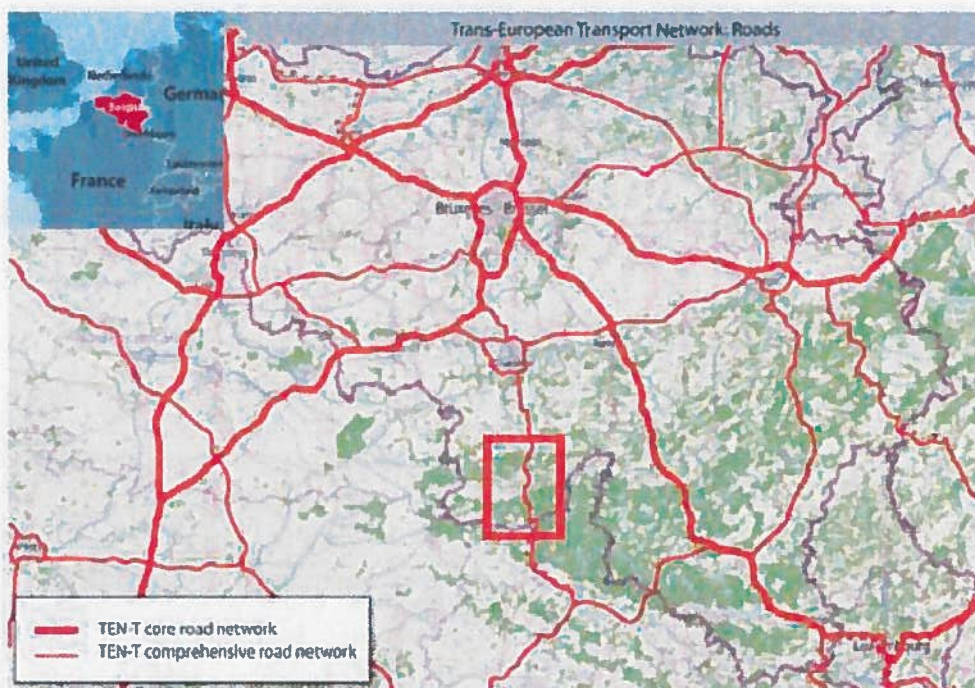
2. BACKGROUND INFORMATION

- 2.1 The project promoter is the Walloon Region's Company for Financing Infrastructure Projects (*Société régionale wallonne de financement complémentaire des infrastructures*) (SOFICO) (hereinafter: the promoter)³. The project consists of the construction of 13.8 km of new 2x2 motorway. The project is located between Frasnes-lez-Couvin and Brûly in the municipality of Couvin in the Walloon region of Belgium (see the red square superimposed on Picture 1).

² <http://www.eib.org/en/projects/pipelines/pipeline/20120103>, accessed on 7 November 2018.

³ <http://www.sofico.org/fr/>

PICTURE 1 – LOCATION OF THE PROJECT



The project involves the upgrading of the existing Belgian National road N5, which stretches out from Brussels via Charleroi and passes through Couvin before reaching the Belgian/French border at Brûly. The project is part of the European route E420 that ends in Reims in France⁴.

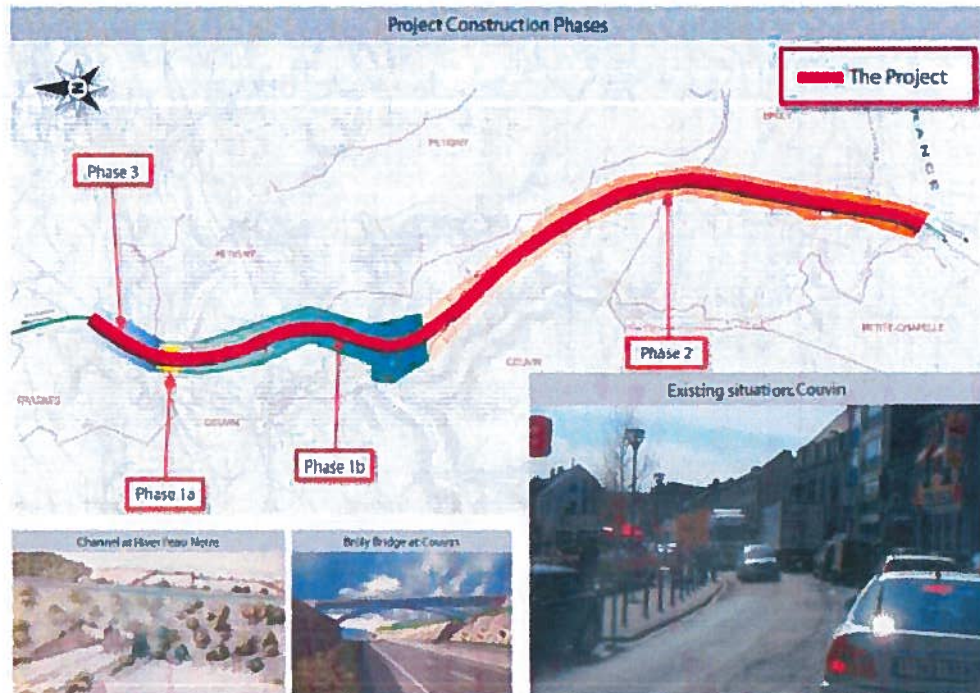
2.2 The project is being implemented in three phases (see Picture 2), namely:

- Phase 1 consisting of a 2x2 motorway bypass around the town of Couvin – works started in October 2011 and this section has been in operation since October 2017;
- Phase 2 consisting of a 2x2 motorway link between the Couvin bypass (Phase 1) and the Belgian/French border – works started in August 2015 and are expected to be completed by mid-2019;
- Phase 3 consisting of a 2x2 motorway link between the Couvin bypass (Phase 1) and Frasnes-lez-Couvin, situated just north of the town of Couvin – works started in October 2016 and should be completed by mid-2020⁵.

⁴ https://ipfs.io/ipfs/QmXoyvizW3WknFiJnKLwHCnL72vedxjQkDDP1mXWo6uco/wiki/European_route_E420.html, accessed on 7 November 2018; Environmental and Social Data Sheet (ESDS).

⁵ <http://www.sofico.org/fr/cha%C3%AEnons-manquants/contournement-autoroutier-de-couvin>, accessed on 7 November 2018.

PICTURE 2 – THE PROJECT CONSTRUCTION PHASES



- 2.3 The total cost of the project is EUR 161 million; the EIB is part-financing all three phases of the project with a loan of EUR 80 million. The EIB and the promoter signed the finance contract in March 2014. The Region of Wallonia is the guarantor for the project.

3. REGULATORY FRAMEWORK

Work of the EIB-CM

- 3.1 The EIB-CM is tasked with addressing complaints concerning alleged maladministration by the EIB⁶. 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. Maladministration may also relate to the environmental or social impacts of EIB's activities⁷. Any person or group who alleges that there may be a case of maladministration within the EIB can lodge a complaint⁸. For each admissible complaint, the EIB-CM prepares a conclusions report⁹.

⁶ Section II, § 3 and 4 and Section III, § 1.4 of the European Investment Bank Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (CMPTR).

⁷ Section II, § 1.2 of the CMPTR.

⁸ Section IV, § 2 of the CMPTR.

⁹ Section IV, § 7.11 of the CMPTR.

Project's applicable standards

3.2 The standards applicable to the project include the following:

- relevant EU law and policies – the project must comply with the applicable EU environmental legislation, such as the Environmental Impact Assessment (EIA) Directive¹⁰ and the Habitats Directive^{11,12};
- relevant national law – the EU directives are transposed into national legislation and implemented by the competent national authorities. The competent national authorities also implement other relevant national legislation such as legislation on spatial planning;
- relevant EIB policy and procedural documents – EIB-financed projects must also comply with the EIB's objectives as reflected in the relevant EIB policy documents¹³. In this case, the EIB 2009 Statement on Environmental and Social Principles and Standards¹⁴, the 2010 Environmental and Social Handbook and the EIB 2011 Transport Lending Policy¹⁵ are relevant.

Details of the applicable standards are presented under the analysis of each allegation in §§ 5.2.2, 5.3.2 and 5.4.2.

Allocation of responsibilities

3.3 While the overall enforcement tasks lie with the competent authorities¹⁶, the promoter has the primary responsibility for implementing and operating a project financed by the EIB¹⁷. The promoter is required to ensure that the project is implemented in accordance with the relevant legislation¹⁸, such as the relevant EU and national environmental regulations¹⁹, and that all the required permissions are obtained and maintained. The promoter is required to fulfil any additional EIB requirements²⁰.

This includes reporting. For example, the promoter is required to:

- provide annual project progress reports (PPR) presenting the requested information, such as the results of environmental/social monitoring²¹;
- inform the EIB without delay of any environmental disputes, any non-compliance with EU and national environmental law or EIB policy and guidelines on environment and social issues, or any change in relation to permissions concerning environmental protection²²;

¹⁰ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on assessment of the effects of certain public and private projects on the environment.

¹¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

¹² § 36 of the EIB Statement of Environmental and Social Principles and Standards (ESPS).

¹³ E.g. EIB Transport Lending Policy.

¹⁴ http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf.

¹⁵ http://www.eib.org/attachments/strategies/transport_lending_policy_en.pdf

¹⁶ Paragraph 60 of the 2010 Environmental and Social Practices Handbook.

¹⁷ § 2 of the ESPS.

¹⁸ Paragraph 60 of the 2010 Environmental and Social Practices Handbook.

¹⁹ Paragraph 56 of the 2010 Environmental and Social Practices Handbook.

²⁰ § 2 of the ESPS.

²¹ Paragraph 261 of the 2010 Environmental and Social Practices Handbook. This information also includes: a brief update on the Technical Description; an update on the date of completion of each of the main project's components; an update on the costs of the project; a description of any major issue with an impact on the environment; an update on the project's demand or usage; any significant issue that has occurred and any significant risk that may affect the project's operation; any legal action concerning the project that may be ongoing.

²² Paragraph 261 of the 2010 Environmental and Social Practices Handbook.

- provide a completion report 15 months after the completion of the project, including a description of any major problem affecting the environment and the results of the monitoring of mitigation/compensation measures²³.

- 3.4 The EIB is required to check that the financed projects comply with relevant project applicable standards (see § 3.2)²⁴. The EIB fulfils its due diligence duty during its project appraisal and monitoring.

The EIB conducts a technical appraisal of the projects submitted to it for funding²⁵. As a result, in addition to the general condition to comply with the applicable standards, the EIB may sometimes include specific conditions, such as conditions for disbursement. These conditions must be met to the satisfaction of the EIB prior to disbursement of funds²⁶.

The physical monitoring aims at verifying the actual implementation and initial operation of the project itself²⁷.

4. WORK PERFORMED

- 4.1 As part of the initial assessment, the EIB-CM summarised the allegations received from the complainant (see Table 1). Furthermore, the EIB-CM conducted an initial desk review of the available documents.
- 4.2 Following this, the EIB-CM collected relevant information and conducted an in-depth analysis. The EIB-CM contacted the EIB's services with a request for clarifications concerning certain identified issues. Based on the collected and analysed information, the EIB-CM prepared this conclusions report.

5. SPECIFIC ALLEGATIONS' FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.1 General overview of the appraisal and monitoring

- 5.1.1 The EIB carried out a project appraisal in line with its procedures (see § 3.4). As a result of its appraisal, the EIB formulated a number of conditions for disbursement. Hence, in order to receive the first tranche of the loan, the promoter was required to provide proof of the following:
- required permissions;
 - finalisation of all the ongoing disputes in a definitive and non-appealable manner²⁸;
 - written authorisation from the competent authority for nature conservation (Form A/B or equivalent)²⁹.

²³ Paragraph 261 of the 2010 Environmental and Social Practices Handbook.

²⁴ Paragraph 23 of the 2010 Environmental and Social Practices Handbook.

²⁵ § 28 of the EIB's Transport Lending Policy and § 17 of the ESPS.

²⁶ Paragraph 243 of the 2010 Environmental and Social Practices Handbook. Close monitoring of environmental and social actions related to disbursement conditions is essential, since it is at this stage that the EIB can have most impact in ensuring that any outstanding environmental and social issues are thoroughly and correctly followed up by the promoter – Paragraph 260 of the 2010 Environmental and Social Practices Handbook.

²⁷ Paragraph 258 of the 2010 Environmental and Social Practices Handbook.

²⁸ ESDS.

²⁹ ESDS.

Prior to the first disbursement, the EIB checked whether the disbursement conditions were fulfilled and concluded that they were.

- 5.1.2 For this project, the EIB designated Category A monitoring, whereby project monitoring is in general delegated to promoters and the EIB relies on the promoter's information for its own reporting on environmental and social matters³⁰. The promoter provided and continues to provide reports on the general state of the works for all three project phases. The promoter did not report any major issues with an impact on the environment or any legal actions concerning the project that may be ongoing. The promoter did, however, report on geological problems which led to delays in project implementation. The EIB is using these reports for its own reporting. The EIB also took note of the complaint received.

5.2 Effectiveness of the project

Allegation

- 5.2.1 *The effectiveness of the project is uncertain. For example, the project would not be an effective alternative to the existing North-South routes in Europe. By way of illustration, a trip between Rotterdam and Marseille would be longer by an hour using the E420 compared to the current route through Liège due to the following: Brussels Ring congestion; N5 road section between Charleroi and Fraire is lined with dwellings and, therefore, it is impossible to turn this section into a motorway. The lack of a study on the origin/destination of the traffic further contributes to the uncertainty of the project's effectiveness.*

Applicable standards

- 5.2.2 The EIB promotes EU policies through its financial support³¹. The EIB finances projects that:
- improve the quality of urban life (§ 10 of the EIB Statement of Environmental and Social Principles and Standards);
 - represent the common interests of several Member States (§ 6 of the EIB's Transport Lending Policy);
 - form part of the trans-European transport network (TEN-T) (§ 4 of the Preface Section, § 9, 22 and 66 of the EIB's Transport Lending Policy).

TEN-T projects are projects of common interest to several Member States³². The TEN-T's objective is to strengthen the social, economic and territorial cohesion of the EU and contribute to the creation of a single European transport area, which is efficient and sustainable and increases the benefits for its users and supports inclusive growth³³.

Findings

- 5.2.3 Whether the project is effective depends on the extent to which the project's objectives have been attained. According to the promoter, the objectives of the project are to:

³⁰ Paragraph 232 of the 2010 Environmental and Social Practices Handbook.

³¹ § 1 of the Background Section of the Environmental and Social Principles and Standards.

³² § 66 of the EIB's Transport Lending Policy.

³³ Article 4 of Regulation (EU) No 1315/2013. Cohesion is attained through: reduction of infrastructure quality gaps between Member States; interconnection between transport infrastructure for both long-distance and regional and local traffic (Article 4(a), items (ii) and (iii) of the Regulation). Efficiency is attained through: the removal of bottlenecks and the bridging of missing links, both within the transport infrastructures and at connecting points between these, within Member States' territories and between them (Article 4(b), item (i) of the Regulation). The benefits are increased through: meeting the mobility and transport needs of its users within the EU; ensuring safe, secure and high-quality standards (Article 4(d), items (i) and (ii) of the Regulation).

- improve the traffic situation and, therefore, quality of life in Couvin;
- enhance cross-border cooperation between Belgium and France;
- establish another north-south route in Europe³⁴.

According to the EIB's documents and in terms of past traffic flow on the N5, there were 14 072 vehicles per day (VPD) on the northern section of the project (Couvin) and 2 997 VPD on the southern section of the project (Brûly) in 2010. A decrease of traffic flow in Couvin and an increase of traffic flow in Brûly can be taken as indicators of the project's effectiveness.

- 5.2.4 As indicated in § 2.2, the project includes a bypass around Couvin. According to the EIB's documents, the objective is to reduce congestion levels in the town centre by transferring traffic, especially freight, away from the urban area. The traffic in the centre of Couvin was expected to decrease by 20%³⁵. This would reduce the noise and improve air quality and safety³⁶. As of November 2018, the promoter reported on the reduction of traffic, especially of lorries, in the centre of Couvin in comparison to the levels before the opening of the bypass. According to the promoter, the traffic is expected to further decrease once the project is completed.
- 5.2.5 As indicated in § 2.1, the project links Belgium and France. The project is only a part of the overall north-south route E420 that links Charleroi in Belgium and Reims in France. The E420 in France consists of the A34 motorway, between Reims and Charleville-Mézières, and the A304 motorway, between Charleville-Mézières and the Belgian/French border. The EIB financed the construction of the A304³⁷, which opened up for traffic in July 2018³⁸. The project contributes to enhancing cross-border cooperation between Belgium and France due to improved mobility of people and goods, which should also provide for better services. Currently, there is no data on the traffic flow in Brûly.
- 5.2.6 The importance of the E420 route for medium and long distance traffic is clearly demonstrated by the fact that it has been included in the TEN-T comprehensive road network³⁹.

The project's February 2009 final planning permission took into account a study encompassing the origin/destination of traffic⁴⁰. The 2008 study⁴¹ states that the percentage of lorries on the N5 between Couvin and France is very high and that the origin/destination route is clearly Charleroi-Couvin-France⁴², i.e. medium and long-distance travel.

As mentioned in § 5.2.5, the project makes up only a part of the E420 route. While the E420 route has already been upgraded to a motorway standard on the French side (see § 5.2.5),

³⁴ 1.1 – 1.3 of the Contournement de Couvin, IR. Claude Warnon, Service Public de Wallonie, Département du Réseau de Namur et du Luxembourg, Direction des Routes de Namur – available at: <http://www.abr-bwv.be/sites/default/files/II.12..pdf>, accessed on 7 November 2018.

³⁵ Section 10.B of the planning permission.

³⁶ ESDS.

³⁷ <http://www.eib.org/en/infocentre/press/releases/all/2014/2014-112-100-meur-pour-la-construction-de-lautoroute-a-304-en-region-champagne-ardenne>, accessed on 7 November 2018.

³⁸ <http://www.sofico.org/fr/cha%C3%AEnons-maquants/contournement-autoroutier-de-couvin>, accessed on 7 November 2018.

³⁹ Article 9(1)(a) and Annex I, Section 4.4 of the Regulation (EU) No. 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No. 661/2010/EU).

⁴⁰ Section 10.B of the planning permission.

⁴¹ Prepared by the Directorate for Road Safety (*Direction de la Sécurité Routière*).

⁴² Section 10.B of the planning permission.

the E420 is currently not envisaged to be fully upgraded to a motorway standard on the Belgian side.

More specifically, according to the promoter, the road will be upgraded to provide two traffic lanes in each direction:

- the section between Brûly and Somzée will be turned into a 2x2 motorway standard road (approx. 77% of the route between Charleroi and the Belgian/French border);
- the section between Somzée and Bultia will be turned into a 2x2 road (approx. 11% of the route).
- the section between Bultia and Charleroi Ring (R3) will be split into two 2x1 roads connecting to the Ring in Marcinelle (A503) to the west and Couillet to the east (approx. 12% of the route)⁴³.

The EIB's documents state that various past proposals for implementation of a motorway connection in the Charleroi area have proved infeasible or unacceptable. According to the promoter, the EIA procedure for the remaining upgrade is ongoing.

According to the EIB's documents, the E420 provides an alternative to the Brussels-Paris-Beaune motorway and the Brussels-Luxembourg-Beaune motorway (see Picture 1 for the location of the project). The EIB documents state that once the upgrade of the E420 is finalised, it will be 45km shorter than the motorway route via Paris and 10 km shorter than the motorway route via Luxembourg.

The E420 is located on the north-south route linking Rotterdam and Marseille. Once the upgrade of E420 is finalised, it will be 30km shorter than the existing Rotterdam-Liege-Luxembourg-Marseille motorway route. Both Brussels and Luxembourg suffer from traffic congestion problems, which are partially caused by a large number of commuters from neighbouring regions. There are ongoing activities aimed at improving the traffic situation on the Brussels Ring⁴⁴.

According to the EIB's documents, although the long-distance transit traffic will very likely continue to prefer the marginally longer trunk motorway route via Luxembourg where they can benefit from lower fuel prices, it is assumed that some long distance traffic will switch to the E420 route following project completion. A study prepared for the promoter quantifies the effect and expects an additional 960 cars and 260 heavy vehicles.

EIB's role

- 5.2.7 The EIB carried out an appraisal in line with its procedures (see § 3.4). The EIB noted that the project serves local, regional and international traffic demand. The EIB noted that the project is on the TEN-T comprehensive road network⁴⁵ and, therefore, financing of the project is consistent with the EIB's Transport Lending Policy. This also contributed to the EIB's decision to finance the E420 section on the French side of the border, therefore, enhancing the cross-border cooperation between Belgium and France and contributing to the establishment of another north-south route. The EIB had access to the relevant traffic flow

⁴³ For a graphical depiction of the section between Bultia and Charleroi Ring see: <http://lampspw.wallonie.be/dgo4/tinymvc/apps/amenagement/views/documents/directions/dar/pds/rie/52011-MPS-0013-01-PLAN-01-01.pdf>, accessed on 7 November 2018.

⁴⁴ <https://ec.europa.eu/eipp/desktop/en/projects/project-90.html>, accessed on 7 November 2018.

⁴⁵ ESDS.

data⁴⁶ and concluded that despite the relatively low traffic loads, the project investment is justified also due to traffic and noise level reduction, and air quality and safety improvements in Couvin, as a result of the new Couvin bypass⁴⁷. Once the project is completed, the EIB will review traffic flow information to establish whether the objectives of the project are attained. The promoter is committed to providing this information to the EIB.

Conclusions and recommendations

5.2.8 The EIB-CM concludes that the project is in line with the applicable standards with respect to this allegation. So far the project has been effective since it has already contributed to a reduction in the number of vehicles in Couvin (see § 5.2.4). The effectiveness of the project will be more evident once the project is completed; and, as planned, the entire E420 between Charleroi and Brûly is upgraded to a road with two traffic lanes in each direction, with approx.. 77% of the route being upgraded to a 2x2 motorway standard road; and the traffic situation on the Brussels Ring improves (see § 5.2.6). Finally, the planning permission for the project took into account a study encompassing the origin/destination of traffic (see § 5.2.6).

5.2.9 With respect to the role of the EIB, the EIB-CM concludes that the allegation is ungrounded. The EIB has carried out a project appraisal in line with its procedures and has noted the traffic flow levels before the project implementation. The EIB will review traffic flow information once the project is completed. The EIB noted that the project serves local, regional and international traffic demand and approved the project taking into account relevant EIB and EU policies.

5.2.10 Therefore, the EIB-CM does not make any specific recommendations in this respect.

5.3 Studied alternatives

Allegation

5.3.1 *The CWEDD has issued unfavourable opinions because appropriate alternatives have not been studied.*

Applicable standards

5.3.2 For all projects financed by the EIB, the promoter must demonstrate that a range of alternatives has been studied⁴⁸. The alternatives are studied as part of the project's environmental impact assessment (EIA)⁴⁹. Also, infrastructure projects must be in line with the relevant spatial plans.

The EIB does not finance projects where alternatives have not been duly considered, unless there is an overriding public interest⁵⁰.

⁴⁶ E.g. the EIB was aware that the traffic in Brûly is 12.5% of what it is north and around the centre of Couvin - Part 1, Section 3.4 of the 2001 Non-technical summary, available to the EIB.

⁴⁷ ESDS.

⁴⁸ § 70 of the ESPS.

⁴⁹ Article 5(1) and (3) and Annex IV of the old EIA Directive in force during the project's EIA (Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment and Article 5(1)(d) and Annex IV of the new EIA Directive in force since 2012.

⁵⁰ § 22 of the ESPS.

Findings

5.3.3 The 1996 preliminary EIA study identified 12 alternatives for the project route. The study concluded that the eastern bypass around Couvin is the preferred alternative⁵¹. In October 1998, the Walloon Government included the selected project route in the relevant spatial plan⁵².

5.3.4 In February 2009, the competent authority⁵³ issued the final planning permission⁵⁴ for the project⁵⁵. The planning permission notes that the project route was set out in the spatial plan⁵⁶. The permission also took into account CWEDD's opinions concerning the project⁵⁷.

The CWEDD is a consultative body, the opinion of which is sought in the procedure for obtaining planning permission. During the planning permission process, CWEDD issued, overall, three unfavourable opinions concerning the project⁵⁸, one for each of the three phases of the carried out EIA procedure (see §§ 5.4.4 - 5.4.6).

In its last opinion, issued in 2008, CWEDD stated that there were alternative project routes, including the western bypass of Couvin, which were not subject to the EIA. According to CWEDD, there are elements to suggest that the western bypass might have less impact than the proposed route.

In this respect, the permission states that the preliminary EIA study concluded that the western bypass is not an alternative to the eastern bypass due to a number of reasons, such as environmental impact⁵⁹.

5.3.5 A number of appellants challenged the February 2009 final planning permission. By 2013, there were still two outstanding disputes before the State Council with requests for cancellation of the permission⁶⁰. These disputes have been resolved and as of October 2018, there are no pending disputes concerning the planning permission, according to the promoter.

The planning permission had been extended on several occasions in the past⁶¹ and remains valid as of October 2018⁶².

⁵¹ Section 2.1 of the February 2008 Non-Technical Summary.

⁵² The Government included the project in a revised sector plan for Philippeville-Couvin (*Plan de secteur de Philippeville-Couvin*) by its decision of 29 October 1998 (*L'arrêté royal du 24 avril 1980 et l'arrêté du Gouvernement wallon du 29 octobre 1998*) - ESDS; Section 2.1 of the February 2008 Non-Technical Summary.

⁵³ Directorate General for Housing, Transport and Territorial Development (*Direction Générale du Logement, des Transports et du Développement Territorial*).

⁵⁴ *Permis d'urbanisme*.

⁵⁵ The Wallonia Parliament ratified the final planning permission on 12 February 2009 and published it on 20 February 2009 – ESDS.

⁵⁶ Preamble of the planning permission.

⁵⁷ E.g. see inventory of annexes to the planning permission.

⁵⁸ 2001 opinion - reference number CWEDD/01/AV.516, issued on 9 April 2001; 2005 opinion - reference number CWEDD/05/AV.674, issued on 23 May 2005; 2008 opinion - reference number CWEDD/08/AV.1167, issued on 7 July 2008 and available under the following link: <http://www.abr-bwv.be/sites/default/files/II.12..pdf>, accessed on 7 November 2018.

⁵⁹ Section 3 of the planning permission.

⁶⁰ ESDS.

⁶¹ E.g. until 15 September 2016 for Phase 1 - ESDS; November 2017 for Phase 2 - ESDS.

⁶² According to information provided by the promoter, the new Territorial Development Code (*Code du développement territorial*), which entered into force in Wallonia on 1 June 2017, stipulates an automatic extension of the validity of the permission, subject to specific conditions which have been fulfilled in this case.

EIB's role

- 5.3.6 The EIB carried out an appraisal in line with its procedures (see § 3.4). At the time of the appraisal, the EIB noted that the project was included in the relevant spatial plan⁶³ and that it had been prepared over a number of years with regard to the applicable national planning legislation. The EIB noted that the competent authority issued the final planning permission in February 2009 following the successful completion of an EIA procedure, during which different alternatives were studied⁶⁴.

Considering that, in 2013, there were outstanding disputes concerning the permission, the EIB formulated a condition for disbursement (see § 5.1.1). The EIB required that all ongoing disputes at the date of signing of the contract be resolved in a definitive and non-appealable manner before the first disbursement of funds. In October 2013, the promoter provided the EIB with a statement that all the pending appeals against the planning permission were completed⁶⁵. The EIB checked the fulfilment of the condition before it disbursed the funds.

Conclusions and recommendations

- 5.3.7 The EIB-CM concludes that the project is in line with the applicable standards with respect to this allegation. Alternatives were examined as part of the 1996 preliminary EIA study. The spatial plan, used as a basis for the issuance of the planning permission for the project, contains the motorway route. The planning permission was challenged but all the disputes have since been resolved and the permission remains valid. The EIB-CM could not find evidence that additional alternatives to the motorway should have been studied.
- 5.3.8 With respect to the role of the EIB, the EIB-CM concludes that the allegation is ungrounded. The EIB carried out a project appraisal in line with its procedures and noted the relevant spatial plan, carried out an EIA process, encompassing studied alternatives, as well as the planning permission. Considering that there were some outstanding disputes concerning the permission, the EIB imposed a condition that these disputes be finalised before the disbursement of funds.
- 5.3.9 Therefore, the EIB-CM does not make any specific recommendations in this respect.

5.4 Environmental impact

Allegation

- 5.4.1 *The full impact of the project on the environment is uncertain. For example, the works around the Ry de Rome will result in channelling of the river and destruction of the valley, therefore, destroying the priority habitat protected under the Habitats Directive. It would not be possible to compensate for this destruction.*

Applicable standards

- 5.4.2 There are three relevant types of assessment with the objective of assessing the impact on the environment and, if needed, putting in place mitigation and/or compensation measures

⁶³ ESDS.

⁶⁴ ESDS.

⁶⁵ *Attestation quant à l'absence de recours pendants* (statement confirming the absence of ongoing appeals).

reducing the negative impact. These are the strategic environmental assessment (SEA), EIA and appropriate assessment (AA), as set out in the SEA Directive⁶⁶, EIA Directive and Habitats Directive, respectively, and the national transposing legislation.

The relevant spatial plan that includes the project did not have to undergo the SEA procedure⁶⁷. The project is, however, subject to the full EIA procedure⁶⁸, as set out in the EIA Directive and the transposing national legislation⁶⁹. The project is also subject to the AA procedure, as set out in the Habitats Directive and the transposing national legislation⁷⁰. Compliance of the project with the relevant legislation is confirmed by a planning permission⁷¹ and monitoring/inspections that are carried out.

The EIB does not finance projects where significant negative environmental impacts remain after mitigation and/or compensation, unless there is an overriding public interest⁷².

Findings

- 5.4.3. The EIA procedure, encompassing the appropriate assessment procedure, was carried out before the planning permission was issued⁷³. The EIB's documents state that the EIA procedure took place over three phases⁷⁴. The first EIA was completed in 2001; a supplementary EIA, including the AA, was completed during the period 2004-2007, and the EIA's Non-Technical Summary (NTS) was prepared in 2008. This all resulted in the project's February 2009 final planning permission⁷⁵.
- 5.4.4 The promoter prepared the first EIA study, including the feasibility study, in 2001⁷⁶. The first EIA study was subject to public consultation⁷⁷ and consultation with the relevant authorities⁷⁸. The first EIA study resulted in an EIA report in October 2001. The competent authority⁷⁹ recommended modifications to the project and additional studies⁸⁰, including further analysis of the project's environmental impact and the AA of the project's impact on the relevant protected areas (Natura 2000 sites)⁸¹.

⁶⁶ Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

⁶⁷ The Government of Wallonia accepted the project into the sector plan for Philippeville-Couvin in 1998. The spatial plan was not subject to the SEA Directive due to later entry into force of the Directive – ESDS; Article 13 of the SEA Directive.

⁶⁸ The project falls under Annex I of the EIA Directive, under which the EIA procedure is required. This is recognised in the Decision of the competent authority of the Walloon region of May 2000 – Preamble, Section 2 of the 2001 EIA Non-Technical Summary.

⁶⁹ In Wallonia, the EIA Directive is transposed, inter alia, in the Decree on environmental impact assessment in the Walloon Region (*Décret organisant l'évaluation des incidences sur l'environnement dans la Région wallonne*) and in the Order of Wallonia Regional Executive Council of 31 October 1991, which implements the decree of 11 September 1985 – ESDS.

⁷⁰ In Wallonia, the Habitats and Birds Directives (previously: Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds; currently: Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds) are transposed in the following acts: Environmental Code (*Code d'environnement*); Decree on environmental impact assessment in the Walloon Region (*Décret organisant l'évaluation des incidences sur l'environnement dans la Région wallonne*); Nature Conservation Law (*Loi sur la conservation de la nature*).

⁷¹ Recital of the planning permission.

⁷² § 22 of the ESPS.

⁷³ Section 2 of the 2001 Non-Technical Summary.

⁷⁴ ESDS.

⁷⁵ ESDS.

⁷⁶ ESDS.

⁷⁷ The public consultation took place in April and May 2000. This resulted in 191 complaints – ESDS.

⁷⁸ E.g. Regional Commission for Spatial Planning (*Commission Régionale de l'Aménagement du Territoire*), CWEDD and the Nature and Forest Department of the Walloon Region (*Département Nature et Forêt de la Région wallonne*) – ESDS.

⁷⁹ Directorate General for Spatial Planning, Housing and Heritage of the Walloon Region (*Direction Générale de l'aménagement du Territoire, du Logement et du Patrimoine*).

⁸⁰ ESDS.

⁸¹ ESDS.

- 5.4.5 In line with the request, the promoter prepared the additional EIA study, which included the AA⁸². The study noted that the most significant impacts include partial habitat loss⁸³ and recommended additional mitigation and compensation measures⁸⁴, including modifications to the parts of the project between the Ry de Rome and the Belgian/French border. The study was subject to public consultation⁸⁵ and consultation with the relevant authorities⁸⁶. The additional EIA procedure resulted in a new EIA report in October 2005⁸⁷.

Following further studies, amendments and public consultation for the project, the competent authority⁸⁸ issued the planning permission in March 2007⁸⁹. The permission included mitigation and compensation measures, including the measures related to the area around the Ry de Rome⁹⁰, as well as monitoring measures⁹¹.

- 5.4.6 In January 2008, the State Council annulled the March 2007 planning permission, due to the absence of the NTS of the revised EIA⁹². The promoter completed the NTS in February 2008. A new public consultation⁹³ and consultation with the relevant authorities took place. For example, as part of the consultation with the relevant authorities, the CWEDD noted that the project would inevitably have a negative environmental impact⁹⁴. Finally, the competent authority⁹⁵ granted the final planning permission for the project in February 2009 after giving due consideration to the CWEDD's opinion⁹⁶.

- 5.4.7 The permission takes into account the relevant environment-related legislation⁹⁷ and discusses relevant issues, such as protected species and sites⁹⁸. It lists specific measures for protecting species and habitats as well as other environmental protection-related measures⁹⁹. For example, the permission lists specific measures such as: crossing passages for large and small fauna (particularly amphibians and small mammals); appropriate animal fencing; bat habitats; storm basins, sluices and road drainage runoffs with pollution separators in sensitive areas, noise attenuation measures; and suitable planting of flora compensating for losses¹⁰⁰. Furthermore, the measures include the construction of 12 passageways for amphibians and small animals as well as two additional animal crossings. The project also includes a one-pipe opening for the Ry de Rome river.

⁸² The additional EIA Study (*Étude complémentaire des incidences sur l'environnement Contournement de Couvin et liaison Couvin – Brûly*) contained the appropriate assessment study (*Évaluation spécifique des incidences sur un site Natura 2000*) as an annex.

⁸³ Other impacts included: severance and potential impacts during construction and operation – ESDS.

⁸⁴ ESDS.

⁸⁵ The public consultation took place in May and June 2005. This resulted in 71 complaints or observations and 5 petitions – ESDS.

⁸⁶ E.g. Nature and Forest Department of the Walloon Region.

⁸⁷ ESDS.

⁸⁸ Directorate General for Housing, Transport and Territorial Development (*Direction Générale du Logement, des Transports et du Développement Territorial*).

⁸⁹ ESDS.

⁹⁰ The mitigation measures were incorporated in the design and included the following: provision of channels and culverts for migration of identified large and small fauna, storm basins, sluice and drainage systems in sensitive areas with pollution separators, and appropriate animal fencing. The project compensated for the loss of flora through replanting and habitat creation in affected areas – ESDS.

⁹¹ E.g. monitoring of the impact on biodiversity, flora and soil – ESDS.

⁹² ESDS.

⁹³ The public consultation took place between June and September 2008. This resulted in 91 complaints and 3 petitions – ESDS.

⁹⁴ Reference number: CWEDD/08/AV.1167, issued on 7 July 2008 and available under the following link: http://www.cwedd.be/uploads/Products/product_286/1_Contournement_Couvin.pdf, accessed on 7 November 2018.

⁹⁵ Directorate General for Housing, Transport and Territorial Development.

⁹⁶ ESDS.

⁹⁷ The relevant environmental legislation includes: Walloon Code for Spatial Planning, Housing and Heritage (*Code wallon de l'aménagement du territoire, du logement et du patrimoine*); Environmental Code (*Code d'environnement*); Decree on environmental impact assessment in the Walloon Region (*Décret organisant l'évaluation des incidences sur l'environnement dans la Région wallonne*); and the Nature Conservation Law (*Loi sur la conservation de la nature*) – Preamble of the planning permission.

⁹⁸ Section 2.g of the planning permission.

⁹⁹ Section 11 and Article 3, item 2.8 of the planning permission.

¹⁰⁰ E.g. Article 3 containing general conditions of the permit; sections 2.8.1 and 2.8.2 of the planning permission.

PICTURE 3 – PIPE OPENING FOR RY DE ROME RIVER¹⁰¹

Part of the Ry de Rome makes up a Natura 2000 site¹⁰². According to the permission, the project does not directly encroach on any Natura 2000 sites although it does pass close to three, including the one encompassing part of the Ry de Rome¹⁰³. The AA concluded that the project will not have a significant negative impact on the sites.

Finally, the permission requires monitoring of the environmental impact of the motorway works and use of the motorway¹⁰⁴.

- 5.4.8 According to the promoter, as of October 2018, apart from some minor environmental issues related to the works around Ry de Rome, which have been remedied, there are no other problems that may have a significant impact on the environment.

EIB's role

- 5.4.9 The EIB carried out an appraisal in line with its procedures (see § 3.4). The EIB sent a questionnaire and received answers from the promoter concerning the project's compliance with the SEA, EIA and Habitats directives.

As regards the SEA Directive, the EIB noted that the SEA was not required for the relevant spatial plan¹⁰⁵.

As regards the EIA and Habitats directives, the EIB noted all three phases of the carried out EIA procedure, which also included the AA (see §§ 5.4.4 – 5.4.6)¹⁰⁶. The EIB noted that the project will have some residual negative environmental impacts but that proper design and mitigation measures have largely reduced the impacts. The EIB noted that the project does not directly encroach on any identified Natura 2000 sites and that mitigation measures have been incorporated in the design and that some measures compensating for the loss of flora (replanting and habitat creation) were put in place¹⁰⁷.

¹⁰¹ Source: Google maps, accessed on 24 September 2018.

¹⁰² BE35031.

¹⁰³ Section 11.b of the planning permission; Section 1.3.1 of the appropriate assessment study annexed to the additional EIA study (see § 5.4.5). The project passes close to the following three Natura 2000 sites: BE35027 - Vallée de l'eau blanche entre Aublain et Mariembourg - Chimney, Couvin; BE35030 - La Caléstienne entre Frasnes et Doische - Couvin, Doische, Philippeville; BE35031 - Bassin Ardennais de l'eau Noire - Couvin, Viroinval - ESDS.

¹⁰⁴ Article 3, item 2.8.16 of the planning permission.

¹⁰⁵ ESDS.

¹⁰⁶ ESDS.

¹⁰⁷ ESDS.

The EIB noted that the competent authority issued the final planning permission in February 2009 and that monitoring of the works should ensure implementation of the project as planned, including the necessary environmental mitigation measures.

Nevertheless, the EIB formulated three environment-related conditions for disbursement (see § 5.1.1), i.e. that all the necessary permissions must be obtained; that all disputes concerning the planning permission must be resolved; and that a copy of Form A from the competent authority for nature conservation must be submitted. The EIB checked that all these conditions were fulfilled prior to disbursement. For example, the competent authority for nature conservation¹⁰⁸ signed Form A in October 2013. Form A states that the AA which was implemented concludes that the project will not have significant negative effect on protected sites¹⁰⁹.

The EIB continues to review the promoter's PPRs in line with the contractual arrangements between the EIB and the promoter (see § 3.3 and 3.4). The promoter did not report on any major issues relating to impact on the environment, or any legal actions concerning the project that may be ongoing.

Conclusions and recommendations

5.4.10 The EIB-CM concludes that the project is in line with the applicable standards with respect to this allegation. An assessment of the project's impact on the environment was carried out in accordance with the relevant applicable standards. There are no indications that the project may have a significant negative environmental impact. For example, there are relevant measures in place to ensure that the project does not have a negative impact on the protected species and habitats, including the area around Ry de Rome. The promoter did not report on problems that may have a significant impact on the environment.

5.4.11 As regards the role of the EIB, the EIB-CM concludes that the allegation is ungrounded. The EIB has carried out a project appraisal in line with its procedures and has taken note of the developments related to the permission process. The EIB also imposed a number of conditions, such as written statement that the project will not have a significant negative effect on protected sites (e.g. area around Ry de Rome). The EIB is currently monitoring whether the project has a significant impact on the environment.

5.4.12 Therefore, the EIB-CM does not make any specific recommendations in this respect.

6. SUMMARY OF THE CONCLUSIONS AND RECOMMENDATIONS

6.1 After conducting the review, the EIB-CM concluded that the **project is in line with the applicable standards** with respect to the allegations made. The available information shows that:

- so far the project is effective since it contributes to the attainment of the set objectives;
- relevant alternatives were studied;

¹⁰⁸ Directorate General for Agriculture, Natural Resources and Environment (*Direction générale opérationnelle de l'Agriculture, des Ressources naturelles et de l'Environnement*).

¹⁰⁹ This includes sites protected as part of the Natura 2000 Network (including Special Areas of Conservation and Special Protection Areas), potential Natura 2000 sites, Ramsar sites, International Bird Areas, sites of the Emerald Network, or others as relevant.

- there are no indications that the project may have a significant negative environmental impact.

6.2 With respect to **the role of the EIB**, the EIB-CM concludes that the **allegations are ungrounded**. The EIB carried out a detailed project appraisal encompassing the issues raised in the complaint. The EIB noted that:

- the objectives of the project are in line with EIB and EU policies;
- alternatives were studied as part of the EIA process;
- the assessment of the project's impact on the environment required as part of the permission procedure was carried out.

The EIB also formulated a number of specific conditions, such as: (i) a written authorisation from the competent authority for nature conservation (Form A); and (ii) finalisation of all the ongoing disputes; and checked the fulfilment of these conditions prior to the first disbursement of funds. The EIB continues to monitor whether the project has a significant impact on the environment in line with the contractual arrangements between the EIB and the promoter. Once collected, the EIB should also receive information on the traffic flows, which should confirm whether the project is effective.

6.3 In light of the above, the EIB-CM concludes that its **inquiry did not identify any instances of maladministration by the EIB**. Therefore, the EIB-CM does not make any specific recommendations and considers the case closed.

6.4 For each specific allegation, Table 2 below presents a summary of conclusions pertaining to: (i) standards applicable to the project and (ii) responsibilities of the EIB, as well as specific associated recommendations, if applicable.

TABLE 2 – SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Allegation	Conclusions (project's applicable standards)	In line with the standards?	Conclusions (responsibility of the EIB)	Recommendations
Effectiveness of the project	So far the project has been effective since it has already contributed to a reduction in the number of vehicles in Couvin. The effectiveness of the project will be more evident once the project is completed; and, as planned, the entire E420 between Charleroi and Brûly is upgraded to a road with two traffic lanes in each direction and the traffic situation on the Brussels Ring improves. Finally, the planning permission for the project took into account a study encompassing origin/destination of traffic.	Yes	The EIB carried out a project appraisal in line with its procedures and noted the traffic flow levels before the project implementation. The EIB will review traffic flow information once the project is completed. The EIB noted that the project serves local, regional and international traffic demand and approved the project taking into account relevant EIB and EU policies.	None
Studied alternatives	Alternatives were examined as part of the 1996 preliminary EIA study. The spatial plan, used as a basis for the issuance of the planning permission for the project, contains the motorway route. The planning permission was challenged but all the disputes have since been resolved and the permission remains valid. The EIB-CM could not find evidence that additional alternatives to the motorway should have been studied.	Yes	The EIB carried out a project appraisal in line with its procedures and noted the relevant spatial plan, the implemented EIA procedure, including studied alternatives, as well as the planning permission. Given that there were some outstanding disputes concerning the permission, the EIB imposed a condition that these disputes be finalised before the disbursement of funds.	None
Environmental impact	An assessment of the project's impact on the environment was carried out in accordance with the relevant applicable standards. There are no indications that the project may have a significant negative environmental impact. For example, there are relevant measures in place to ensure that the project does not have a negative impact on protected species and habitats, including the area around Ry de Rome. The promoter did not report any problems that may have a significant impact on the environment.	Yes	The EIB has carried out a project appraisal in line with its procedures and has taken note of the developments relating to the permission process. The EIB also imposed a number of conditions, such as a written statement that the project will not have a significant negative effect on protected sites (e.g. area around Ry de Rome). The EIB is currently monitoring whether the project has a significant impact on the environment.	None

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LIST OF ABBREVIATIONS

AA	Appropriate assessment
CMPTR	European Investment Bank Complaints Mechanism Principles, Terms of Reference and Rules of Procedure
CWEDD	Walloon Environmental Council for Sustainable Development (<i>Conseil wallon de l'environnement pour le développement durable</i>)
EIA	Environmental impact assessment
EIB	European Investment Bank
EIB-CM	EIB's Complaints Mechanism Division
EO	European Ombudsman
ESDS	Environmental and Social Data Sheet
ESPS	EIB Statement of the Environmental and Social Principles and Standards
NTS	Non-Technical Summary
PPR	Project progress reports
SEA	Strategic environmental assessment
TEN-T	Trans-European transport network
VPD	Vehicles per day

