



European Investment Bank

Complaints Mechanism

CONCLUSIONS REPORT

Complaint SG/E/2010/15

Toruń bridge - Poland

29 July 2011

External Distribution

Complainant:

Internal Distribution

Vice President S. Brooks

Vice President A. Rop

Secretary General

Inspector General

EIB services concerned



CONCLUSIONS REPORT

Complainant:

Subject of complaint: Alleged non-compliance of project Toruń bridge Poland with EU law

Clarification: The EIB Complaints Mechanism Division (CM) has reviewed possible maladministration by the Bank in that it failed to exercise its due diligence duty in relation to this project:

1. Complaint

1.1 On 19 October 2010, (hereinafter the complainant) lodged a complaint with the EIB Secretary General concerning the Toruń city Bridge.

1.2 In essence, the complainant alleged that the project will be implemented in breach of EU law. In particular, the complainant alleged that the project has been divided into small parts in order to minimise the perceived impact of the project.

1.3 Moreover, the complainant mentioned that the environmental consent has been issued only for the first stage of the project (4.1 Km road including the bridge). In this regard, the complainant stated for the other parts of the project (14 Km), the environmental impact assessment has never been done.

1.4 In his message, the complainant stated that the selected location for the project was not part of the urban planning of the city of 1960 and that a different location for the bridge was selected. The complainant took the view that the old location is more feasible than the current one. In this context, the complainant elaborated explaining that the current location of the bridge would increase the traffic on the available old bridge of 2 lanes by 50%.

1.5 Moreover, the complainant stated that the length of the Bridge in the selected location in Trasa Wschodnia will be 1970 Meters with a total road of 4.1 Km and that the location in Trasa Nowomostowa would require 1130 Meters and a road of 3.0 Km. Therefore, the complainant took the view that the cost of the suburban bridge in Trasa Wschodnia will be 60-80% higher than the location in Trasa Nowomostowa.

1.6 In addition, the complainant argued that the cost of the bridge in Trasa Wschodnia is 753 Million PLN and the cost of the compensation for lands will be 100 Million PLN. On the other

hand the complainant takes the view that the cost of the bridge in Trasa Nowomostowa would be 400 Million PLN.

1.7 The complainant stated that the Polish Public Finance Act forbids the city debts to exceed 60% of the budget income. In this regard the complainant took the view that this loan will increase the city debt over the 70 %.

1.8 The complainant stated that most of Toruń citizens will not use the planned bridge and took the view that the implementation of the project in a different location would cost less and that consequently a loan from the EIB would not be required. Therefore the complainant stated that EIB is providing an unnecessary loan that would increase the debt of Toruń's population. In addition, the complainant stated that the society of Polish Town Planners has given a negative recommendation to the suburban bridge and that these concerns were also expressed by the Polish Association of Engineers and Technicians of Transportation.

1.9 Finally the complainant requested the EIB to cancel the loan for the contested project and informed that he has lodged a complaint with the European Commission (DG Regio) which is carrying a review of his complaint.

1.10 On 5 November 2010, the EIB acknowledged receipt of the complaint. The complainant was informed of the fact that the EIB CM was carrying out a review of his case as well as the date by which he may expect a formal reply from the CM. On 6 January 2011, the EIB Secretary General informed the complainant that due to the complexity of the inquiry, it was necessary to extend the time frame for the handling of the complaint in line with article 10.2 of the EIB Complaints Mechanism Policy. On 31 May the complainant was informed that he will be provided with the Conclusions Report within the shortest delays.

2. Background information

2.1 The project

2.1.1 The project consists of the construction of a bridge and its access roads on the Vistula River in the new course of National Road Nr. 1 in Toruń, which is part of the TEN-T network, joining it with National Roads Nr. 15 and Nr. 80. It should permit to alleviate the currently high traffic pressure on the only existing bridge and on the connected infrastructure on either side, together with the related externalities, i.e. traffic emissions, noise and safety. The total length of the new route is about 4.1 km, with 2 lanes per direction. The project includes also service roads connecting with the neighbouring area for over 2 km, plus some other main intersections in particular with Daszyńskiego Sq. at the northern end, and with Łódzka St. at the southern end.

2.2 Complainant's further correspondence

2.2.1 On 3 November 2010, the complainant sent an email to the CM reiterating his concerns regarding the location of the Bridge as well as on the high costs of its construction in this location. In addition, he attached an article prepared by him which he intended to send to a local news paper showing his concerns on the contested project.

2.2.2 On 8 November 2010, the complainant sent further correspondence addressed to the CMAs well as to the competent services of the European Commission. In his message the complainant reiterated his concerns and informed that the project has no environmental consent and that it has a negative impact on densely populated areas as well as on the UNESCO World Heritage Site in the Old Town.

2.2.3 Moreover, the complainant stated that he was accused of defamation and that he will be taken into the court due to two letters that he sent to the centre of EU Transport Projects in Warsaw by which he expressed his concerns regarding the project and requested the Cost and Benefit Analysis report (CBA) of the project and alleged discrepancy of the traffic forecasts information provided in the CBA.

2.2.4 In his message, the complainant argued that the location of the Bridge in Nowomostowa is economically and geographically more feasible than the selected location in Wschodnia and takes the view that this location will not solve the traffic problems. In this regard the complainant provided substantial explanation and possible negative impacts on the traffic.

2.2.5 On 6, 13, 23, 30 May 2011, the complainant sent further communication reiterating his concerns and providing further information with a view to supporting his allegations.

2.3 *Communication from Torun's Mayor*

2.3.1 On 25 November 2010, Torun's Mayor informed the EIB by letter that a mediation procedure ordered by the court regarding the dispute reported in §2.2.3 of this Report has reached conciliation. In this regard the Mayor provided a certified translation of the conciliation decision whereby it is stated that: "*_____ is apologising the president of Torun city _____ for his awkward expressions used in a letter to prezemyslaw Wrobel, the Department Manager of the center for the European Union transport Projects in Warsaw*" and that therefore the Mayer withdrew his petition for criminal prosecution against

3. **Applicable Regulatory Framework**

3.1 *The scope of the EIB Complaints Mechanism*

3.1.1 It is worth emphasising that article 2.3 of the EIB Complaints Mechanism stipulates that "the EIB Complaints Office is not competent to investigate complaints concerning International organisations, Community institutions and bodies, national regional or local authorities." This provision should be read in conjunction with the considerations on the allocation of responsibilities as regards the environmental impact assessment of projects, the presumption of legality established by the 2004 EIB Statement and the general principle of subsidiarity established by the EU Treaty.

3.2 Allocation of responsibilities

3.2.1 Pursuant to Article B.2.2 of the EIB Social and Environmental Practices Handbook 2007 (hereinafter the Handbook), the EIB is responsible for checking whether the Promoter has fulfilled the following requirements: a full EIA process (including the public consultation and approvals/planning consent), the identification of the impacts and appropriate measures to avoid, reduce or mitigate them, the consideration of alternatives, the proposed mitigation and compensation measures and associated mitigation plan and public disclosure, whilst carrying out a due diligence on the assessments carried out by the competent national authorities.

3.2.2 The EIB verifies that the latter have taken all necessary measures in order to ensure the compliance of the assessment with the EIB's environmental standards as well as with the relevant Community and national legislation. It results that, although for all projects for which the EIB's funding has been requested, the Promoter and the competent national authorities are responsible for the EIA and all related activities, nevertheless, the EIB's role is to ensure compliance with its (in the case at stake, environmental) requirements as well as with Community and national legislation.

3.2.3 In addition, it is worth emphasizing that the Finance Contract incorporates all the key elements forming the basis for the EIB's decision identified in discussions between the Bank and the Promoter during project preparation, appraisal and negotiation. In that regard, §§192 et seq. of the Handbook lay down the Environmental and Social conditions which may be applied to Finance Contracts stipulated by the EIB in order to ensure the environmental acceptability of the project during implementation and operation. Among those described in §193, it is worth highlighting the conditions for disbursement (e.g. environmental conditions which must be fulfilled to the satisfaction of the EIB prior to any fund being disbursed by the EIB on either the whole project or a part of the project). Non-compliance with these conditions might result in a halt to the disbursement of the EIB's loan.

3.2.4 Finally, §195 of the Handbook stipulates that the wording of specific conditions of the Finance Contract should be composed in order to target, inter alia, legislative compliance such as EIA Completion or Habitats Directive Assessments. In that regard, §197 of the Handbook stipulates that, should the Nature Conservation Forms A/B be outstanding at the time of the signature of the Finance Contract, a standard Finance Contract Condition will be used with a view to ensuring that the EIB receives the documentary evidence that the requirements of the Habitats Directive have been fulfilled prior to disbursement.

4 EIB due diligence

4.1 Under the EIB appraisal and due diligence, the EIB competent services, *inter alia*, identified that by improving the transport network, the project will give a relevant contribution to the general enhancement of conditions for economic growth in Toruń and for the improvement of the urban environment and that possible impacts have been mitigated during the choice of alternatives, the design and environmental analysis phase as well as by the adequate management measures.

4.2 The EIB competent services also identified that the high cost is due mainly to the bridge, to the necessity of constructing most of the access roads on viaducts as well, and to the interconnections with existing road network, given the urbanised characteristics of part of the crossed area. It was therefore possible to conclude that the cost, even if high, is justified by the typology of intervention and by the existing complex characteristics of the area. In addition, the carried analysis showed that the selected alternative is a solution that combines satisfactory economic and financial results with an acceptable environmental impact.

4.3 On the basis of the analyses and consultations carried out, the EIB competent services took note that a number of mitigating measures were taken into account when preparing the project and were incorporated in the project design, while others are proposed to be considered both for construction - mainly constraints related to the works time schedule, in particular seasonal schedules - and operation stages. All of them were included in the decision of RDEP of September 2009. In the light of the data and recommendations included in the report and all additional studies, it was stated that conducting additional compensatory measures in the course of the investment delivery is not required. In addition, the EIB required a road safety audit in line with the principles of the Directive 2008/96/EC for the financed parts of the project.

4.4 In summary, the EIB competent services took the view that the project has taken on board the recommendations from the EIA process, thus its design minimises potential impact on the environment. Moreover, as already foreseen, specific best-practice measures during construction, such as an accurate traffic management plan, adequate management of spoils, etc. were taken during construction. The project's overall residual impacts are reduced, considering its type and size, while on the other hand there is a positive effect on the environment, decreasing current traffic-related emissions in and around the only existing bridge due to high traffic congestion. The reduction in CO₂ emissions thanks to the project is estimated in the range of 5 000 tonnes of CO₂ per year. The project foresees also bicycle lanes for both directions, in order to provide a new important connection and therefore stimulate this typology of zero-emissions mobility.

5. Environmental Impact Assessment

According to Polish Law, the responsibility for environmental issues lies with the Regional Directorate for Environmental Protection (RDEP), within the Kujawsko-Pomorski Voivod (region to which Torun belongs). For city roads the competent authority for environmental issues is the Municipality.

By his decision of 27 June 2006, the Kuyavian and Pomeranian Governor requested an Environmental Impact Assessment Report for the project at stake in line with the applicable laws. Subsequently, the State Sanitary District Inspection Officer in Toruń, Department of Environment and Agriculture of the Kuyavian and Pomeranian Governor's Office issued an opinion in this respect as well as the decision for environmental conditions.

The project underwent a first EIA procedure, which was concluded in 2007. In June 2009, the Municipal Road Authority in Toruń filed a request to the Kujawsko-Pomorski Voivod to

repeat the environmental impact assessment for the project as part of the procedure to issue a building permit. The legal basis for such a request and for drawing up a new (dated June 2009) environmental impact assessment was given by the provisions of the Act of the 3rd of October 2008 on the accessibility to information about environment and its protection, participation of society in environment protection as well as in environmental impact assessments (EIA). On 9 October 2009, the Kujawsko-Pomorski Voivode issued a decision no DT/49/2009, ref: WI/DT.EW.71112-33/2009 approving the design and granting the construction permit.

5.1 Project Location and Alternatives

5.1.1 From the information provided in the abstract of the environmental impact assessment (stage of building design), it is explained that the purpose for building a new bridge is to improve the traffic between the left and right river banks of the City of Toruń, to remove the transit traffic (National Road No 1) away from the historical Old Town, (entered into the UNESCO list), to improve the traffic conditions and to economically activate the eastern part of the City of Toruń, to improve the road traffic with the neighbouring communes and to discharge the only existing road bridge the City which shall facilitate the conduct of its necessary repair.

5.1.2 In the analysis of alternatives, three alternatives for building the road with the bridge and access roads were studied:

Alternative (1) - Eastern Route (Trasa Wschodnia). Located in the eastern part of the City. Runs from Daszyński Square to Łódzka Street in the region of Lipnowska Street. Within this alternative a double lane road shall be built (G 2x2) 4,1 km long in the course of National Road No 1, a long bridge (flyover) in the course of Żółkiewskiego Street 300 m long, a tunnel in the course of Wschodnia Street under Daszyńskiego Square of a length of 120 m, long bridges on the right (600 m long) and on the left River Wisła banks (830 m long), a double spanned arch bridge on the River Wisła 540m long, a railway viaduct. A necessary remodelling and building of area development shall be carried out, service roads and cycle tracks shall be formed.

Alternative (2) - New-bridge Route (Trasa Nowomostowa) (Waryńskiego Street). Located in the region of Waryńskiego Street, near the Old Town in the section from Pokoju Toruńskiego Square to Łódzka Street. Within this alternative, a double lane road shall be built (GP 2x2) 3,0 km long, a tunnel on the right bank of the Wisła 334 m long, right and left bank long bridges (flyovers) (470 m long) an arch bridge on the River Wisła 660 m long, a railway viaduct and a necessary remodelling and building of area development.

Alternative (3) - Western Route (Trasa Zachodnia). Located in the western part of the City and in the area of the Commune of Wielka Nieszawka. It runs from the crossing of Okrężna Street with Broniewskiego Street up to the existing National Road No 15 on the left bank of the Wisła. Within this alternative, a single lane route shall be built (Z 1x2) 5,5 km long, long bridges on the right (650 m long) and left (500 m long) banks of the River Wisła, a multi-spanned bridge ('flat' of a complex construction) on the River Wisła 610 m long, a railway viaduct and a necessary remodelling and building of area development.

5.1.3 The selection of the alternatives was based on the following criteria:

- Traffic forecasts – the size of forecast vehicle traffic;
- Traffic conditions – connection with the existing system of roads;
- Environmental conflicts - interference with the natural reserves and NATURA 2000 areas;
- Urban conditions – the compliance with the local spatial plan and strategy for the City development;
- Navigability in the region of bridges – the possibility for boats to navigate freely underneath;
- Advanced decision process – the issuance of administrative decisions on environmental conditions, on the location, on the building permit;
- Possibilities of implementation – reviewing criterion to check if the obstacles allow to implement the project;
- Costs and deadlines for the implementation;
- Economic advantages in the road traffic.

5.1.4 As a result of the analysis and comparison of the alternatives vis-à-vis with the criteria above, it appeared that the implementation of the project in Alternative 2 (economically most advantaged alternative) would lead to the destruction of a big natural protected area - Kępa Bazarowa which is on the path of the road and the park in Jakubskie Housing Estate - and will also lead, in the next stage of implementation, to pass through the cemetery towards the north. In addition, the analysis showed that this alternative was in conflict with the buffer zone of the old town potentially harming many elements of historical values of the Old City that entered on the world list of culture heritage. Therefore, the Promoter concluded that these reasons would prevent from obtaining a positive decision on environmental conditions.

5.1.5 Moreover, the analysis concluded that the most advantaged alternative is the alternative 1, crossing at the level of Wschodnia Street i.e. Eastern Route (Trasa Wschodnia). Despite the economic cost of the alternative 1 when compared with the alternative 2, the analysis showed that the alternative 1 does not interfere in an adverse way with the natural environment and protected areas, contrary to the impact caused by alternative 2.

5.1.6 In addition, an analysis for the necessary preventive measures to reduce or compensate possible adverse environmental impact has been conducted. Such results are to be taken into consideration at construction stage.

Table 1 Evaluation of the Comparison of alternatives

Criterion:	Bridges		
	Western	Waryńskiego St.	Wschodnia St.
Traffic forecast	1	4	5
Traffic conditions	3	5	4
Environmental conflicts	5	1	4
Urban conditions	1	3	4
Navigability in the region of Bridges	1	3	5
Advanced decision process	0	1	5
Possibility of implementation	4	1	5
Costs of implementation	4	5	3

Criterion:	Bridges		
	Western	Waryńskiego St.	Wschodnia St.
Economic advantages in the road traffic	2	5	4
Sum of points (max. 45 points):	21	28	39

Source: Municipal Road Board In Toruń

5.2 Public consultation

5.2.1 From the information provided by the Promoter, it appears that during 2003-2009 the Promoter held more than twenty meetings - with residents, with public organisations and with engineering associations that professionally deal with traffic and roads - and reached an majority agreement on the location of the bridge at the level of Wschodnia Street. In this context, the Promoter notes that during the public consultations the complainant did not provide any remarks regarding the location of the bridge. Moreover, during the public consultations in 2006, more than 3000 signatures were collected from the inhabitants of Toruń being in agreement with the selected location.

5.2.2 In addition, during the conducted consultations, members of public expressed their concerns regarding the path of the road in Waryńskiego St (alternative 2) in vicinity of historical areas registered as UNESCO world heritages sites that could be harmed by the project.

6. Findings

6.1.1 From the gathered information as well as the information provided in §5 of this Report it appears that an Environmental Impact Assessment as well as a public consultations were conducted in accordance with the applicable laws.

6.1.2 As regards the complainant's concerns regarding the selected alternative for the implementation of the project at stake, the CM takes note that 3 alternatives for the location of the project were evaluated, presented and discussed during the public consultations. In this context, it is to be noted that the comparison and the conducted analysis of alternatives proved that the Eastern Route in Trasa Wschodnia (Alternative 1) obtained the highest score among the other alternatives in terms of the defined criteria (table 1 of this Report).

6.1.3 As regards the complainant's concerns regarding reasons of the exclusion of the alternative 2, it is to be noted that beside the score presented in table 1, the analysis of alternatives showed that the alternative 2 through Waryńskiego is in conflict with the buffer zone of the old town and could affect in an adverse way the natural environment and protected areas.

6.1.4 As regards the complainant's concerns regarding the cost of the selected alternative, the gathered information showed that the high cost of the alternative 1 in comparison with the cost of the alternative 2 is justified by the complex characteristics of the area which will require access roads and interconnections.

6.1.5 In this context it is important to highlight that as indicated in § 5.1.3 of this Report, the implementation cost was not the only factor that was taken into consideration for the evaluation of alternatives. The selection of the alternative was based on many other factors combining, *inter alia*, satisfactory economic and financial results with an acceptable environmental impact.

6.1.6 As regards the complainant's allegation regarding the borrower's overcome the 60 % of the budget income of the city of Toruń and the alleged breach of the Polish Public Finance Act as well as the borrower's decision to request the loan, the EIB received a positive opinion from the Regional Accounting Chamber (Regionalna Izba Obrachunkowa) regarding the consistency of financial ratios related to the debt that occurred for financing the project with the legislation. However the CM deems important to underline that this allegation did not concern any action or omission of the EIB but rather challenged the actions of the borrower and that as indicated in § 3.1 of this Report the CM is not competent to investigate complaints concerning national bodies or institutions.

7. Conclusions

7.1 On the basis of the conducted inquiry, the CM failed to identify an instance of breach of EU environmental law. In this context, it is important to highlight that the European Commission is the EU competent institution to deal with alleged infringements of EC law. In this regard the CM takes note that the complainant has lodged a complaint with the European Commission that will inform the CM on the outcome of its inquiry.

7.2 With regard to the allegedly wrong decision in selecting the alternative for the location of the project, taking into consideration the allocation of responsibilities reported in §§ 3.2.1 3.2.2 of this report and in light of the findings reported in §6.1.2, 6.1.3, 6.1.4, 6.1.5 the CM concludes that there was no maladministration by the Bank on the issue at stake and proceeds the closing of the file.

7.3 Finally, the complainant should be provided with additional information on the EIB Complaints Mechanism through the relevant webpage of the EIB's website.

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29/07/2011

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