



Terminal Contenedores Cádiz

Spain

Complaint SG/E/2011/18

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

CONCLUSIONS REPORT

2 October 2012



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The EIB Complaints Mechanism

The EIB Complaints Mechanism intends to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases whereby the public feels that the EIB Group did something wrong, i.e. if they consider that the EIB 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).

If complainants are unhappy with the reply they may, on a pure voluntary basis, within 15 days of the receipt of the EIB-CM's reply, submit a confirmatory complaint. Furthermore 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 may also lodge a complaint of maladministration against the EIB with the European Ombudsman.

The EO was "created" by the Maastricht Treaty of 1992 as an EU institution to which any EU citizen or entity may appeal to investigate any EU institution or 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 violated human rights. Some examples, as set by the European Ombudsman, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal of information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group activities and to project cycle related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism intends to not only address non-compliance by the EIB to its policies and procedures but 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/cr/governance/complaints/index.htm>

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CONCLUSIONS REPORT

Complainant:

Subject of complaint: Environmental and social impacts of the New Container Terminal project in Cádiz and in particular the selection of alternatives

1. COMPLAINT

- 1.1. On 27 December 2011 and (hereinafter called "the complainants") send a letter to the EIB Chief Compliance Officer. The allegations contained in this letter pertaining to the remit of the EIB Complaints Mechanism (EIB-CM) have been transferred to the mechanism on 04 January 2012.
- 1.2. On 18 January 2012, the EIB-CM acknowledged receipt of the complaint, and informed the complainant of the fact that a review of his case had been launched, as well as of the date by which they might expect an official reply from the EIB.
- 1.3. Before lodging a complaint with the EIB-CM the complainants send a citizens petition to the European Commission and the European Council on 12 December 2011.
- 1.4. The complainants raised concerns regarding the alleged environmental and social impacts and the selection process regarding alternatives in a project fully financed by EU funds, i.e. 50% by the EIB and the remainder by the European Regional Development Fund (ERDF or FEDER) facility of the European Commission.
- 1.5. On 13 March 2012 the EIB-CM informed the complainants that it was necessary to extend the timeframe for the handling of the complaint in order to form an informed opinion.
- 1.6. The complainants provided the EIB-CM with additional information on 6 February 2012, 13 April 2012 and 22 June 2012.
- 1.7. In their letter of 6 February 2012 to the EIB-CM the complainants, in addition to providing information on their case lodged with the European Commission¹, raised two questions for the EIB-CM to consider. Consequently these have been added to the allegations and are quoted in §2.2 of this report.
- 1.8. On 19 April 2012 the complainants contacted the EIB Chief Compliance Officer once again informing the latter of the latest developments.



Source: www.puertocadiz.com

¹ further explanations on the case lodged by the complainants with the EU Commission are given in § 9.4 and subs

2. **ALLEGATIONS**

2.1. The allegations from the complainants are as follows:

Text adapted from complaint

- The project clearly contradicts the EIB's core criteria and would be blatantly detrimental to the regional development of Cádiz;
- Because of the city's topographical characteristics the decision cements a long-term component that goes beyond the remit of the current decision-makers;
- The conceptual rationale for the project is based not on principles of economic and logistical efficiency but on the greed of local politicians;
- Although being informed by the complainants in September 2011 at the time of their first expression of concern of 18 September 2011 the EIB replied at the time that: *"Within this context, we have taken note of your concerns detailed on your messages and website regarding this project and we will inform the project promoter about them. However, please note that the issues that you raise fall outside the scope of the Bank's role and responsibilities and should therefore be raised directly with the corresponding authorities. We trust you will understand that the EIB cannot substitute itself to these authorities by questioning or commenting on their legitimate decisions regarding this project."* The complainants think that there seems that something is seriously amiss here if the EIB is unfortunately not in a position to do anything about it particularly as it is stated in the EIB documents that: *"9.2 Weak governance, corruption and lack of transparency are a major issue in some of the regions in which EIB operated and acts as a serious brake on economic and social development"*.²

2.2. Specific questions asked by the complainants:

Text adapted from complainants' correspondence

- *"When the EIB carried out its assessment with a view to deciding whether to participate in the project, what information was this based on as regards the participation of the ERDF? Was it thought, as APBC³ stated, that this had already been secured, or was it known that the ERDF had not yet decided to participate, or did this play no role whatsoever in the assessment?"*
- *How exactly do the EIB and the ERDF cooperate if both are appraising the same project with a view to deciding whether to provide support? Are there two completely independent processes, or is there some exchange of information, or is it even the case that the work and conclusions of the one occasionally serve as the basis for the decision taken by the other?"*

2.3. Further allegations raised in additional correspondence:

Text adapted from complainants' correspondence

- The Cadiz Bay Port Authority (APBC) (the promoter) is providing the public with inaccurate information;
- APBC is circumventing and overriding a public democratic process;
- Any alternatives for the location of the project have been dismissed beforehand such as the predetermined and superior alternative location of Las Cabezuelas;
- Whilst the alternative location for the current port project, Las Cabezuelas, was still 80% unutilised a few years ago, [redacted] of APBC is trying to use all the means at his disposal to develop that alternative site as quickly as possible, in particular by expanding this harbour as a terminal specialising in "granular materials".

2.4. Further and detailed information regarding "El Caso Cádiz", as the complainants call it, can be found on their dedicated website: www.elcasocadiz.es

² EIB Transparency Policy

³ The Cadiz Bay Port Authority

3. CLAIM

- 3.1. The complainants request that *"in view of the obvious contradictions in the project the EIB to re-examine the decision that has been taken and, if, necessary, to revise it"*.
- 3.2. The complainants further request that the European Institutions participating financially in the reorganisation of the "Puerto de la Bahía de Cádiz" work to ensure that a granular materials terminal is not operated in the middle of the Bahía de Cádiz

4. PROJECT ELIGIBILITY

- 4.1. The EIB finances projects in most sectors. For projects inside the EU, the EIB checks compliance with Article 309 of the EU Treaty. Once reckoned eligible, projects must also be economically, technically, environmentally and financially viable and contribute to EU economic policy objectives:
- Promotion of economic and social cohesion (development of poorer regions) in the EU
 - Improvement of EU transport and telecommunications infrastructure (rail, air, road connections and bridges)
 - Secure energy supplies - production, transfer and distribution, more efficient energy use, alternative energy supplies
 - Development of a competitive, innovative and knowledge-based European economy (i2i)
 - Investment in human capital (schools, universities, laboratories, research centers, hospitals etc.)
 - Natural and urban environment schemes (water, waste, cleaner air, urban transport etc.)
 - Development of small and medium sized enterprises
 - Industrial projects improving EU competitiveness
 - Projects that support EU's external co-operation and development policies
- 4.2. As set out in the Bank's Statute, any undertaking or public or private entity may apply directly to the Bank for financing. Applications to the Bank may also be made either through the Commission or through the Member State in whose territory the investment will be carried out.
- 4.3. At the time of the project appraisal and approval, the 2007 Transport lending Policy applied. The EIB adopted a revised Transport Lending Policy on 13 December 2011 following a formal public consultation. http://www.eib.org/attachments/strategies/transport_lending_policy_en.pdf. The EIB transport lending policy sets the guiding principles and selection criteria that will reinforce the Bank's contribution to this sector, in particular taking into account climate change concerns. The policy fully takes into account the European Commission White Paper for transport "Roadmap to a Single European Transport Area –Towards a competitive and resource efficient transport system" that was adopted on 28 March 2011.

EIB Transport Lending Policy highlights the role of the Bank in favour of EU growth policies while at the same time responding to environmental and climate change goals. The policy recognises the need for efficient mobility infrastructure and services as an indispensable element for any viable long-term economic strategy, as sound mobility investments sustain aggregate demand in the short run while securing solid returns on investment in the long run. In line with EU policies, EIB believes that the construction of efficient and adapted transport systems in the 21st century requires a sophisticated combination of all available transport modes. The challenge for EIB support to the transport sector is therefore not to discard one or the other type of intervention, one or the other transport mode, but rather to seek to optimise the strategy for action and to assure an appropriate mix of interventions to serve the complex set of policy objectives.

The policy consolidates and strengthens the ability of the Bank's interventions to spark a revitalisation of the EU transport sector and by doing so, to support the overall economic revival policy of the EU in a long-term sustainable way.

Main guiding principles are:

- Mobility is essential for the free movement of people and economic growth. In this context, the EIB will pursue an approach that strives for the most efficient, most economic and most sustainable way of satisfying transport demand. This will require a mix of transport solutions, covering all modes, though carefully planned to control the negative environmental impacts of transport.
- The EIB will continue its strong commitment to the funding of TENs. The long-term nature of these investments and their essential role in achieving an efficient and cohesive Community-wide transport system continue to make them the backbone of transport investment in the EU and essential for the functioning of the internal market. The relationship between the stock of infrastructure capital and greenhouse gas emissions is complex, but this does in itself not call into question this continued EU commitment to TENs.
- As with all other EIB projects, and in line with the Bank's priority objective to support the fight against climate change, the Bank will continue its work of mainstreaming climate change consideration into its projects.

- 4.4. In accordance with Article 19 of the EIB's Statute, the EIB must request the Opinion of the European Commission and the Opinion of the Member State concerned for operations inside the EU. The Commission's opinion is intended to give the Commission the opportunity to express its view on the conformity of EIB's operations with relevant European Union policies and legislation.

5. THE NEW CONTAINER TERMINAL PROJECT

- 5.1. The project consists of the construction of the first phase of a new container terminal at the port of Cádiz, Spain. The new terminal will replace the current container facilities, which are located next to the cruise terminal and near the city centre. The objective is to relocate the container terminal in order to segregate passenger and container traffic, increase capacity and improve maritime and land accessibility conditions for both categories of traffic as well as increase the competitiveness of the port. The location of the new terminal - which will be connected by its own road access to the national network – together with the construction of a second bridge over the Bay of Cádiz⁴, will allow the reduction of the urban section of the route used by the heavy traffic generated by the port.



Source: EIB project documents

⁴ Expected to enter into service in 2012, the new bridge (*Puente La Pepa*) will constitute the third access to the city, together with the existing bridge over the Bay (*Puente Carranza*) and the natural entry through the isthmus to San Fernando.

- 5.2. Additionally, the project will contribute to a better integration of the urban environment with the cruise terminal, strengthening the attractiveness of the port as a key call for many cruise Atlantic routes. Moreover, the new location of the container facilities will help to improve traffic conditions in the urban area of Cádiz, as all heavy traffic linked to this activity will be shifted away from the city centre.
- 5.3. The construction of the new container terminal, including the dredging of the access channel, falls under Annex II of the EU EIA Directive and has been the subject of an EIA procedure, concluded by an environmental authorisation issued on 13 October 2010. At the time of project appraisal the EIA screening by the competent authority was under way for the construction of the access road. The environmental authorisation or screen-out decision is a condition for disbursement of the loan tranche corresponding to this component.
- 5.4. The new container terminal will be constructed on the outer side of the *édique de levanteé*, where vessel degasification activities used to be undertaken. The closest Natura 2000 area is the 7 000 ha Site of Community Importance (SCI) "*Fondos Marinos de la Bahía de Cádiz*". The competent nature conservation authority has confirmed that the project is not expected to have any significant impact on protected areas.
- 5.5. The New Containers Terminal Project is intended to be co-financed by ERDF and the EIB Board of Directors approved the financing on 20 September 2011 and the Finance Contract for up to EUR 60 million of the estimated project cost of EUR 137.7 million was signed shortly thereafter.
- 5.6. The EIB and ERDF processes regarding appraisal and approval of a project are conducted independently. The Finance Contract between the Borrower and the EIB includes a condition that the EIB may only release funds for this project if the Borrower provides the EIB with a copy of the decision from the European Commission evidencing that the ERDF funds have been awarded to the project with an amount and terms that are satisfactory to the EIB.
- 5.7. With a total of 8000 km Spain is the European Union member state with the longest coastline. The geographical situation of most of its ports, close to the axis of major shipping routes, determines the country's status as a strategic area for international shipping and as a logistical platform.
- 5.8. Spain's regulations for the port system draw a distinction between smaller ports (fishing, sports marinas etc.) that depend on regional governments, and the "Ports of General Interest". The central government is constitutionally responsible for administering the 44 Ports of General Interest, which are managed by 28 Port Authorities. The activity of these Port Authorities is co-ordinated and controlled by the public entity *Organismo Público Puertos del Estado* ("OPPE"), which depends on the Spanish Ministry for Transport and Public Works.
- 5.9. The Ports of General Interest manage half of Spain's exports and two-thirds of its imports as well as 15% of the country's domestic trade. On European level, the Spanish Port System plays also an important role in respect of vessel supplies and specifically in the provision of bunkering services.
- 5.10. The Borrower is *Autoridad Portuaria de la Bahía de Cádiz* ("APBC"), which is one of the 28 autonomous port authorities in Spain under the aegis of the Spanish Ministry for Transport and Public Works through the above mentioned State holding company OPPE. APBC is responsible for the commercial operation as well as for planning, implementation and financing of the infrastructure development plan of the State ports in the Bay of Cádiz.

6. MAIN ENVIRONMENTAL IMPACTS AS IDENTIFIED DURING PROJECT APPRAISAL

- 6.1. The Port is located within the Bay of Cádiz, near the junction between the external bay and the “Estrecho de Puntales”, the strait which connects the internal and external bays together. The port is close to two Natura 2000 areas, the 7,000 ha Site of Community Importance (SCI) “Fondos Marinos de Bahía de Cádiz” and the 10,000 ha Site of Community Importance Bahía de Cádiz, which mostly coincides with the Natural Park of Cádiz.
- 6.2. The project will be implemented in the current port area, where vessel degasification activities were formerly carried out. Part of the dredging activities in the access channel will be carried out within the perimeter of the SCI “Fondos Marinos de la Bahía de Cádiz” covered at 87 % by the Habitat of Community Interest “Grande calas y bahías poco profundas” (HIC 1160). The project is also located within two archaeological servitude areas.
- 6.3. The main negative impact of the present project concerns increased water turbidity and disruption of marine fauna and flora during maritime works (dredging, land reclamation and quay construction). The negative impacts will be mitigated through adequate works methodology. Regular water quality control will be enforced, especially near the Playa de Valdelagrana. A comprehensive monitoring system will be put in place to measure the status of conservation of the HIC 1160
- 6.4. The impact on the archaeological heritage is likely to remain further limited to the preliminary investigation campaigns carried out. However, specific monitoring will be put in place including the involvement of archaeological experts during the dredging works.
- 6.5. The impact of works on coastal dynamics is expected to be light or inexistent. A video monitoring system will be put in place around the extremity of the Playa de Valdelagrana in order for the Port to monitor the impact and adopt any necessary corrective measures.
- 6.6. The Promoter has prepared a Plan de Vigilancia Ambiental (Environmental Management Plan) for the project and should ensure that the environmental mitigation measures are implemented in accordance with the project environmental authorisations. Semi-annual reports will be submitted to the Competent Authority and the Promoter should notify the EIB of any adverse environmental monitoring report.
- 6.7. The public consultation for the container terminal component was initiated through a publication on the Boletín Oficial Del Estado (BOE) on 14 December 2009; on the notice board of the city council on 21 December 2009 and in local media on 21 December 2009. The environmental authorisation was issued on 13 October 2010.



Source: www.puertocadiz.com

7. THE EIB-CM ASSESSMENT

- 7.1. After having reviewed the complaint received and all the elements provided by the complainants, the EIB-CM held internal consultation meetings with the relevant EIB competent services.
- 7.2. The EIB-CM reviewed all relevant documents available in the Bank's databases and provided by the relevant stakeholders.

8. PREVIOUS CORRESPONDENCE WITH THE EIB

- 8.1. On 14 and 18 September 2011 the complainants contacted various services within the EIB with a view to express their concerns regarding the project and the upcoming financing approval by the EIB.
- 8.2. The EIB Corporate Responsibility and Communication Department replied to the complainants on 23 September 2011 informing them that the project was approved by the EIB's Board of Directors on 16 September 2011 and that, as for all projects its finances, the EIB ensured that this project was in line with the relevant procedures and requirements of the EIB especially regarding the project's technical, economic and financial viability as well as its environmental and social impact and that the project complied with the relevant European Union (EU) and national legislation. In addition, the project was subject to a full Environmental Impact Assessment (EIA) which included environmental impact studies and public consultation, as well as an analysis of alternatives and which was duly completed and approved by the corresponding competent authorities. The reply further informed the complainants that the issues raised fall outside the scope of the EIB's role and responsibilities and should be raised directly with the corresponding authorities and that the EIB cannot substitute itself to these authorities by questioning or commenting on their legitimate decisions regarding this project.
- 8.3. In their complaint the complainants refer to this response and state that there seems something amiss if the EIB is not in a position to do anything. The complainants in particular refer to an EIB document *"9.2 Weak governance, corruption and lack of transparency are a major issue in some of the regions in which the EIB operates and acts as a serious brake on economic and social development"*.

9. ADDITIONAL INFORMATION**Report from APBC to the Spanish authorities of 13 October 2011**

- 9.1. The Community Funds Department of the Ministry of Economy and Finance has asked the Bay of Cadiz Port Authority (APCB) for a report on the complaint submitted on 22 August 2011 by the complainants to the ERDF OP Monitoring Committee regarding the possible misappropriation of funds requested for the works on the Cadiz New Container Terminal. On 13 October 2011 APBC provided the report in which they upheld the correct application of the ERDF Funds for financing the project. In addition, APCB emphasised that the planned location was selected after a lengthy in-depth analysis of alternatives, and that building the New Container Terminal at the Eastern Dock is the ideal solution which has been corroborated by many technical and environmental reports and approvals.

Text from Report APBC

The complaint was based on the following arguments:

1. The location of the New Container Terminal (which the complainants refer to as PLANTA DELTA) is at the outer end of the city island of Cadiz, which complainants consider to be senseless and horrifying (sic) in view of the fact that the suitable port land of La Cabezueta lies opposite.
2. The selected location has the following drawbacks:
 - a. Absence of railway freight access
 - b. Phenomenal building work required, as 100% of the surface needs backfilling, a new bridge, and access via a 900 m tunnel.
 - c. The trucks will have to travel all the way across the city's residential areas, causing the concomitant levels of pollution.
 - d. Complicated drainage (sic) of industrial waste water and difficult access in emergencies.
3. The La Cabezueta alternative has been disregarded. The complainants consider this alternative to be ideal in terms of location, access, distance from urban areas, railway access option, dredged shipping channel and large area.

4. Complainants consider that the location selected for the Container Terminal is based on territorial ambitions in favour of the Port of Seville. This would require the expansion of Seville's river port and the dredging of the River Guadalquivir to convert it into an international port hub (which could affect the Doñana National Park).

The complainants consider that the study of the alternatives carried out by the Port Authority is "deceitful", as it conceals the real area and characteristics of La Cabezuela and omits the railway transport criterion.

In addition, the complaint contains a series of comments about the Mayoress of Cadiz and the Aznar Government, which have nothing to do with the substance of the complaint, finally requesting that the ERDF funds should be withdrawn from the works on the Cadiz New Container Terminal and proposing that they should be used to build a Terminal in La Cabezuela, an economically sound project, which is environmentally friendly and can be developed gradually.

- 9.2. In this report the APBC stated that *"the development of the Bay of Cadiz Port infrastructures is in line with a Strategic Plan which has been widely discussed and involving all the stakeholders. This Strategic Plan was started in the year 2000 and contained a set of strategic lines of action, including a decision to have specialist docks, which has been possible thanks to various investments which have had three key consequences for the layout of the port:*

- *The reinforcing of the La Cabezuela-Puerto Real wharfs for bulk traffic.*
- *The development of the El Puerto de Santa María dock as a national reference for the fisheries sector.*
- *The reorganisation of the Cadiz Dock wharfs (1st phase)."*

- 9.3. With regard to the environmental impact assessment of the project the report confirms that the alternative selected and subsequently developed had been subject to the procedures required by legislation. On the basis of the EIA, a document was prepared and submitted for information to the public authorities involved, the interested parties and for public information in general. As a result the Ministry of the Environment and the Rural and Marine Environment's Secretary of State for Climate Change issued an Environmental Impact Declaration for the Cadiz New Container Terminal on 13 October 2010.

Complaint with EU Commission CHAP(2012)00197

- 9.4. On 12 December 2011 the complainants wrote a petition to the European Commission asking for the latter to *"renounce in its participation through ERDF funds in the "new Container Terminal in Cádiz" project, as well as to encourage a withdrawal of the respective EIB-loan".*
- 9.5. In this petition the complainants informed that they *"will also direct the subject to the newly elected Government, with the petition to abort the actual project, in favour of a new, feasible, much more efficient and rational solution, foremost accordingly to the principles of the European Union, outlined by the ERDF and the EIB".* In addition the complainants stated that the European Commission insists in the alternative project as presented in the petition. Furthermore they invited the European Commission *"to engage in an active role in the event of the Commemoration of the 1st Hispanic Constitution of 1812 in Cádiz, during the next year and beyond (Addendum, page 38). In fact there is no coincidence, in that this case occurs precisely where the slopped Spanish historic legacy of liberalism and democracy, aimed at an efficient economy and a fair society, encounters its legacy."*
- 9.6. On 6 February 2012, the complainants reacted to the EIB-CM acknowledgment of their complaint and enclosed a copy of the letter that they had sent to the European Commission REGIO 3 on 30 January 2012. In this letter the complainants asked for the letter to be added to their file of objections.
- 9.7. In their letter to the European Commission they stated the following: *"The AUTORIDAD PORTUARIA DE LA BAHÍA DE CÁDIZ (Cádiz Bay Port Authority – APBC), which is the promoter for the "New Container Terminal in*

Cádiz" project and has applied to the European Commission with a view to having the ERDF participate, has, for around THREE years, been repeatedly informing the general public, worldwide, that the ERDF has already decided to fund its project. However, I was told last week on phoning REGIO 3 that the Commission has NOT yet taken a decision on whether or not to participate in the project. The project was not actually submitted to the Commission until June 2011."

- 9.8. The complainants asked the European Commission to confirm that they had not yet decided to participate in the New Container Terminal project.
- 9.9. On 22 June 2012 the complainants provided the EIB-CM with a copy of their letter to the European Commission informing of the introduction of the citizens' petition which was sent to the Spanish Government on 30 May 2012.

10. **FINDINGS**

- 10.1. The port is located in a Convergence Region (Andalucía) and Cohesion country and with some 4 million tonnes handled in 2010, the port of Cádiz can be considered a Category A (international seaport) in the Trans-European Transport Network (TENs). The construction of the new container terminal will improve the competitiveness of the port and will release berth capacity for cruise traffic. Additionally, the project will contribute to a better integration of the urban environment with the cruise terminal, strengthening the attractiveness of the port as a key port of call for many Atlantic cruise routes. Moreover, the new location of the container facilities will help to improve traffic conditions in the urban area of Cádiz, as all heavy traffic linked to this activity will be shifted away from the city centre.
- 10.2. In accordance with the EU objectives the project is eligible under Article 309 point (a) projects for developing less-developed regions and point (c) transport projects of common interest (TENs and Sustainable Transport).
- 10.3. For all projects the EIB finances, it needs to ask for the formal opinion of both the European Commission and the Member State concerned. The favourable opinions on this project were received and are evidenced on file.
- 10.4. In addition, the project is in line with the Bank's transport lending policy. For more information please refer to the EIB website: <http://www.eib.org/infocentre/publications/all/eib-transport-lending-policy.htm>
- 10.5. Regarding the quality and soundness of the project, the EIB's due diligence rightly concluded "... that the construction of the new terminal is needed to segregate the operation of passenger and container traffic as well as to cope with expected traffic growth. The project appears technically sound and the promoter is expected to implement it effectively. The container terminal has been the subject of a full EIA. The environmental screening for the internal access road, still at design stage, is under way. The project environmental impacts are expected to be adequately monitored and mitigated. The project is expected to generate a satisfactory economic rate of return."
- 10.6. The complainants stated that there seems to be something seriously amiss if the EIB is not in a position to do anything in reference to the reply by the Communications Department of 23 September 2011, in which the complainants were informed that the issues raised fall outside the scope of the EIB's role and responsibilities and should be raised directly with the corresponding authorities and that the EIB cannot substitute itself to these authorities by questioning or commenting on their legitimate decisions regarding this project. In this respect, the EIB-CM notes that the EIB responsibility is limited to its due diligence, namely in the project appraisal and approval and thus the EIB is not in a position to substitute the competent authorities. However, it is within this due diligence that in case the EIB notes a deviation or an infringement of its policies or the EU acquis, to act in a way to ensure that the project is in line with said policies and acquis.
- 10.7. In addition, it is not the EIB but the European Commission who is responsible for infringement cases regarding Member States and in this particular case the inquiry into the complaint lodged by the same complainants has not yet been completed.

- 10.8. In their letter of 6 February 2012 the complainants state that they are free of any personal involvement in the project in question, nor are they commercially or politically involved, other than in terms of their general concern as citizens of Cádiz, based on the Spanish Constitution and the European Union. This seems to be in contradiction of their statement in the letter of 22 June 2012 in which they explain that one of them wants to start to establish himself in the tourist industry both privately as well as professionally.
- 10.9. In the correspondence and documents provided, the complainants refer to local and national political situations as well as to individuals such as the chairman of the promoter. In as far as the EIB-CM can evaluate the information provided by the complainants do not concern actions or omission by the EIB. Moreover and in accordance with the EIB Complaints Mechanism Art 2.3 of part IV, Rules of Procedure, the EIB-CM *"is not competent to investigate complaints concerning International organisations, Community institutions and bodies, national, regional or local authorities (e.g. government departments, state agencies and local councils)"*. Consequently, the EIB-CM therefore cannot provide the complainants with an opinion on this.
- 10.10. From the information reviewed by the EIB-CM it seems that the project was included in the Strategic Plan that was started in the 2000 and which was widely discussed and involving all stakeholders.
- 10.11. The "Study of Alternatives for the extension of the Bay of Cadiz Port", carried out under a cooperation agreement by the University of Granada (the Ports and Coasts Department and the Centro Andaluz de Medio Ambiente), concluded that the final selected Alternative (the Eastern Dock) was the more viable from both technical and environmental points of view.
- 10.12. From the information gathered it appears that the land area of the alternative location preferred by the complainants, La Cabezueta, measures 1.63 million m², of which 1.14 million are open to concessions and 820,000 m² (72%) had already been granted for concessions or have administrative approval. In other words, there seems to be a high level of occupancy and only around 200,000 m² of publicly-owned land is available in the area near the wharfs and 120,000 m² in the external area.

11. CONCLUSIONS

- 11.1. As a result of the EIB-CM investigation, it can be concluded that the project does not contradict the EIB's core criteria nor is it blatantly detrimental to the regional development of Cádiz as claimed by the complainants.
- 11.2. The EIB-CM reviewed the due diligence of the EIB services regarding the environmental approval process and as explained in § 10.6 concludes that there was no maladministration by the EIB whilst appraising and approving the project.
- 11.3. In reference to § 10.8, the EIB-CM cannot comment of the allegations regarding the scope and remit of the current (Spanish) decision-makers nor on the statement that the rationale for the project is based not on principles of economic and logistical efficiency but on the greed of local politicians.
- 11.4. Various studies were conducted regarding the environmental impact and alternatives performed and upon which the competent authorities based their subsequent approval of the EIA and the environmental permit.
- 11.5. In view of the above, the EIB-CM concludes that the EIB services did not commit an act of maladministration regarding their due diligence over the EIA process with regard to the selection of alternatives.

- 11.6. The financial and contractual conditions between the EIB and the project promoter include the precautionary measure that the EIB requires evidence and proof of the approval by the ERDF of funds for the New Container Terminal project before it can release funds. In this respect, the EIB-CM commends the EIB services for their prudence to include such a condition and consequently concludes that there is no maladministration on the part of the EIB.
- 11.7. Regarding the complaint lodged by the complainant with the European Commission (EC) the EIB-CM liaised with the latter and takes notes that to date the EC inquiry is not finalised. Moreover, after reviewing the content of the complaint to the EC, the EIB-CM considers that it has no bearing on the due diligence of the EIB and therefore cannot form an opinion on the matter.
- 11.8. Regarding the explanation in § 10 in relation to the land available in La Cabezueta, it seems that the claim from the complainants that this available land area is six times greater than the 380,000 m² under consideration for the New Container Terminal in the Eastern Dock is incorrect.
- 11.9. Finally, the complainant should be provided with the link to the webpage of the EIB's website providing additional information on the EIB Complaints Mechanism.

F. Alcarpe
Head of Division
Complaints Mechanism
2 October 2012

E. de Kruijff
Senior Complaints Officer
2 October 2012