

Municipal and Regional Infrastructure Loan Serbia

Complaint SG/E/2012/02

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

CONCLUSIONS REPORT

05 May 2014

EIB Complaints Mechanism

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External Distribution

Complainants: Tamara Stoilkovic and Oliver Stoilkovic

Promoter: Ministry of Regional Development and Local Self Government

Internal Distribution

Management Committee

Secretary General

Inspector General

EIB services concerned

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).

Complainants that are not satisfied with the EIB-CM's reply have the opportunity to submit a confirmatory complaint within 15 days of the 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 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 violates human rights. Some examples, as set 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 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>

CONCLUSIONS REPORT

Complainant: Tamara Stoilkovic and Oliver Stoilkovic

Date received: 1 March 2012

Subject of complaint: failure to comply with the EIB social standards.

1. THE COMPLAINT

1.1 On 1 March 2012 Mrs Tamara Stoilkovic on behalf of her father Oliver Stoilkovic (hereinafter the Complainants) lodged a complaint (by email and complaint form) with the EIB Complaints Mechanism (hereinafter EIB-CM)¹. The complaint concerns the reconstruction of Block II of the Student Accommodation "Patris Lumumba" in Belgrade, a sub-project of the Municipal and Regional Infrastructure Loan in Serbia.

1.2 The Complainants alleged that the Serbian Ministry of Education and the [REDACTED] [REDACTED] [REDACTED] began substantial construction works in August 2011 without any prior notice to the complainants, who resided in one of the two apartments at the ground floor of the concerned building. The Complainants explained that a court decision (Decision n° 1-R-386-95 issued on February 2, 1996) had acknowledged Mr Stoilkovic's right of permanent lease of the apartment. Furthermore, the Complainants alleged that the construction works were causing significant damage to their health and safety and had already caused substantial damage to their belongings. The Complainants stated that, when applying for the funds, the beneficiary and the investor of the EIB financial assistance had concealed the fact that private tenants lived inside the building.

1.3 The Complainants also informed the EIB-CM that they had filed a complaint with the SCB in December 2011 and that, following the flooding in February 2012, they had also filed a case with the Building Inspection of the City of Belgrade. Finally, the Complainants stressed that, although they were aware that the problem was not caused by the EIB itself, they believed that it was also in the EIB best interest to protect its investment. The Complainants claimed that *"permanent resettlement to another apartment...would be of best interest for all parties involved"*.

1.4 On 15 March 2012 the EIB-CM acknowledged receipt of the complaint by informing the Complainant of the launch of an inquiry into the case as well as of the date by which the reply of the bank could be expected.

2. METHODOLOGY OF THE INQUIRY

2.1 The complaint was submitted following the first site visit of the EIB-CM to the concerned sub-project which took place on 27-28 February 2012. During the visit to his apartment, the complainants' neighbour, [REDACTED], who had already lodged a complaint with the EIB-CM, introduced the EIB team to Ms Tamara Stoilkovic, who, in that occasion, expressed the intention to submit a complaint with the Bank and illustrated the damages suffered because of the renovation works². The EIB-CM also liaised with Mr Oliver Stoilkovic; this could be only done by telephone, as Mr Stoilkovic was in Canada at that time.

¹ A first complaint from [REDACTED] concerning the adjacent flat in the same building was lodged on 27 October 2011. In February 2012, the EIB-CM was informed that [REDACTED] as well as his neighbours' flats had been considerably flooded due to the construction works performed in the upper floors; as a result, the EIB-CM considered appropriate to visit the project site, verify the impact of the flood and engage with the complainant, the Promoter and the competent national authorities as part of its initial assessment of the case.

² During the site visit the EIB-CM confirmed that apart from the student's premises, the building in question had two separate apartments on the ground floor with private tenants living therein. The EIB-CM further confirmed the extent of the damages to the complainants' flats due to the flooding and caused by the works performed in the building.

2.2 Following the site visit, which also included meetings with the Promoter and the concerned national authorities, the parties accepted the EIB-CM's proposal to participate to a mediation process with the aim of finding an amicable solution. The EIB requested that all works on the [REDACTED] be suspended in order to avoid continued exposure of persons living in the flats to serious health and safety risks; however, works were discontinued only for few days. In March 2012, the Complainants rejected a first proposal of the Serbian authorities involving the temporary relocation of the Complainants; such rejection was motivated on the basis of the assumption that Serbian law would consider the abandonment of the flat as a cause for cessation of the right to lease. Therefore, the Complainants made a counter-proposal requesting permanent relocation to another building.

2.3 On 21 May 2012, the EIB-CM informed the Complainants that it appeared appropriate to extend the timeframe for the handling of the complaint also given the fact that the EIB was waiting for the reply of the competent national authorities concerning the Complainants' request of permanent resettlement. On 22 June 2012, Ms Stoilkovic informed the EIB-CM of new damages to the apartment caused by the renovation works on that day.

2.4 Following the elections in Serbia and the formation of a new government in the summer of 2012, the mediation process was re-launched by the EIB. In its letter to the Promoter of 10 September 2012 the EIB stressed its failure to fulfil project undertakings insofar as (i) information on the 'Patris Student Dorm' at the time of the Allocation Request was incorrectly provided to the Bank and (ii) the Project Management Unit (PMU) had not assured adequate monitoring of projects. The EIB further informed the Promoter of the suspension of any further disbursement until appropriate remedial actions would be taken.

2.5 The mediation process was restarted with a first proposal from the Serbian authorities for temporary relocation of the complainant. After negotiation with the parties, by letter of 5 February 2013, the Promoter proposed the permanent resettlement of the complainants and the coverage of the damages that had been incurred due to the project activities on the site. An alternative flat was proposed to the Ms Stoilkovic, who expressed concerns about the solution proposed, claiming that it would not be equivalent to the flat in the Student Dormitory "Patris Lumumba". However, in the meantime the Property Directorate of the Republic of Serbia had issued a negative opinion on the permanent resettlement (dated 4 April 2013); whereas such solution appeared to be unviable, on 23 April 2013 the Promoter addressed a letter to the EIB by which it reiterated its willingness to guarantee for the temporary relocation and renovation of the concerned apartments and proposed three possible solutions, in the light of the constraints resulting from the EIB's suspension of any financial assistance to the programme:

- (i) The contested scheme is carried out and finalised with the funds of the Republic of Serbia and the remaining schemes would still be financed by the EIB (partial withdrawal of EIB's financial assistance). In this case, the Promoter further added that as a guarantee that the project shall be realised completely and with no problems, the contested project would stay under the monitoring of the PMU until its finalisation;
- (ii) A final decision on the complaint is taken by the EIB, regardless of the ongoing mediation process or
- (iii) The Republic of Serbia takes over all the contractual obligations, i.e. the EIB withdraws its financial assistance to the entire programme.

2.6 Given that the complainants had not yet expressed their view on the new proposal of the Promoter (temporary resettlement for the period necessary for the completion of the renovation works in full security, the refurbishment/renovation of the two flats at stake and the compensation of the damages suffered by the Complainants), after the negative opinion of the Serbian Property Directorate, a new mediation mission was therefore organised on 8-9 May 2013 with a view to exploring the remaining opportunities for an amicable settlement of the dispute. The EIB team visited the project's site and noted that the renovation works had considerably advanced from the last visit. It once again engaged with Ms Stoilkovic in Belgrade and contacted Mr Stoilkovic, again by telephone as he was in Canada at the time of mission. The EIB-CM informed the Complainants of the Promoter's new proposal as well as of the opportunity to be temporarily relocated in the neighbouring flat, once it had been renovated, since after the positive outcome of the mediation process between the Promoter and [REDACTED], the latter had voluntarily freed his apartment. Against this proposal, in his correspondence as well as during the telephone conversation with the EIB delegation, Mr. Stoilkovic, required, as a condition for approval of the mediation proposal put forward by the Promoter, that the financial beneficiary offer him to purchase the leased flat and expressed his dissatisfaction with the temporary resettlement proposed by the Promoter.

2.7 Whereas neither the Promoter nor the final beneficiary of the EIB financial assistance intended to satisfy the new request of the complainant and on the other hand, the Complainants refused to move from the flat and thus allow to repair the damages to the flat caused by the renovation works performed in the building and perform the necessary renovation works in the flat to improve and adjust its comfort to the rest of the building, the EIB-CM acknowledged the negative outcome of the mediation initiative and proceeded to perform a review of the compliance of the contested operation with EIB standards, notably as regards the social impact of projects financed by the EIB. In this context, it reviewed the entire Project's documentation and the relevant legal framework. Finally, it relied on the expertise of the EIB competent services, which assisted the EIB-CM in its missions to Belgrade and were consulted throughout the procedure for the handling of the complaint.

3. THE PROJECT

3.1 The project concerns the financing of different investment schemes in several sectors on a local/regional level, mainly in the fields of transport and roads, education³, cultural and historical heritage, and public buildings rehabilitation throughout Serbia. The complaint concerns the sub-project regarding the reconstruction of the students' dormitory "Patris Lumumba" situated at Ljubice Lukovic Street 1 in Belgrade. The construction project consists of the complete reconstruction of the 8-floor building of the block II, as well as building of an additional floor and replacement of the façade and installations inside the facility.

3.2 The Borrower is the Republic of Serbia, represented by the Ministry of Finance. The Serbian Ministry of National Investment Plan (NIP), a ministry without portfolio, was initially in charge of selecting, financing and supervising the implementation of the plan, task which has been then attributed to the Ministry of Economy and Regional Development and finally the Ministry of Regional Development and Local Self-Government, which is the Promoter of the Project. The Final Beneficiaries of the contested sub-project are the Ministry of Education and the [REDACTED] "Belgrade". The total amount of the framework loan is € 75 million (i.e. 37.5% of the total project cost of € 200 million). The total cost of the contested sub-project is € 2.14 million.

4. APPLICABLE REGULATORY FRAMEWORK

4.1 *Scope of the EIB-CM*

4.1.1 The EIB-CM applies to complaints of maladministration lodged against the EIB Group (article 4.1 of Title II "Principles" of the EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure - CMPTR). Complaints may concern any alleged maladministration⁴ of the EIB Group in its actions and/or omissions (article 4.1 of Title IV "Rules of Procedure" of the EIB CMPTR). Pursuant to article 2.3 of Title IV "Rules of Procedure" – CMPTR, the EIB-CM is not competent to investigate complaints concerning International organisations, Community institutions and bodies, national, regional or local authorities.

4.2 *The EIB Environmental Statement 2004*

4.2.1 The EIB Environmental Statement was approved by the EIB Board of Directors in May 2004 (hereinafter, the EIB Statement). It develops the environmental (and social) requirements applied by the Bank to the projects it finances. The Preamble of the EIB Statement establishes that the EIB "...finances projects that protect and improve the natural and built environment and promote social well-being in the interests of sustainable development" and that "the Bank seeks to minimise any adverse environmental impact of any project it finances".

³ Sub-projects aimed at improving the quality and functionality of school buildings and other higher level education and research facilities (and the related additional infrastructures such as public sport facilities).

⁴ Maladministration 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.

4.2.2 In this context and as emphasised by the EIB Statement, it is worth recalling that at the time the EIB applied “a relatively broad definition of the term “environment” to cover the natural environment, the human living and working environment as well as a number of social aspects” with the idea that these factors together contribute to the sustainable development of the regions and countries in which the Bank operates.

4.2.3 According to the 2004 Environmental Statement, “the EIB...applies a number of core environmental and social safeguard measures that reflect international good practice to all its lending activities”. Firstly, the EIB’s lending activities are based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay enshrined in the Treaty. In addition to that, for regions outside the EU and Candidate Countries⁵, the EIB requires that “project should comply with the principles and standards set by EC law, subject to local conditions and law....in certain circumstances higher environmental standards may be introduced in stages...the EIB applies a presumption of legality, based on the necessary authorisations to construct and operate the project supported by other available evidence, its own assessment and loan covenants”. Finally, the EIB Statement stipulates that “the project should comply with any obligations and standards of multilateral environmental agreements to which the host country....is a party”.

4.2.4 The EIB Statement stresses that the EIB internal procedures require that work on the environment be undertaken, as appropriate, throughout the project cycle and that projects are screened at the identification stage for their potential to generate environmental benefits and to identify environmental risks, with a view to determining the nature and form of the environmental assessment to be carried out. The EIB assessment includes an assessment of the environmental impact of the project and the proposed mitigation and compensation measures. According to its appraisal findings, the EIB may apply specific environmental lending conditions to its loan agreement.

4.2.5 According to the EIB Statement, the EIB may decide not to support a project for environmental reasons. In fact the EIB Statement stipulates that “The Bank does not accept a project for financing that it judges likely to have a significant negative environmental impact and/or be of high risk for environment-related reasons”. The Bank can also provide technical assistance for environmental studies and other environment-related work and can contribute to design changes to improve the environmental impact of the project.

4.2.6 Once financed, the project is monitored. The monitoring includes verification of compliance with environmental covenants and agreed environmental mitigation and compensation measures. The EIB Statement clarifies that “at all stages, the EIB mainly works with information provided by the promoter”. This may be supported by information and analysis requested and even financed by the EIB and it could be supplemented by information/analysis obtained from third parties and complemented by during the site visits.

4.2.7 Finally, with regard to some types of indirect operations, the EIB Statement clarifies that the EIB entrusts the responsibility for one or a number of the tasks referred to in the Statement to an intermediary acting on behalf of the Bank. In such cases, the environmental assessment of the Bank focuses on the capacity and capability of the intermediary to apply an environmental approach equivalent to that applied in its direct operations.

4.3 The Environmental and Social Practices Handbook (September 2007)

4.3.1 The EIB Environmental and Social Practices Handbook (“the EIB Handbook”) translates the environmental and social principles and standards described in the EIB Statement into the operational practices of the EIB. Art. 13 of the Handbook describes the environmental and social screening carried out during the pre-appraisal of EIB-financed operations, including framework loans⁶ as the present operation.

⁵ The EIB Statement states that “In regions where EC and/or national social standards do not exist or are inappropriate, the EIB uses other guidelines of good international practice. In particular, the Bank takes into account the IFC Safeguard Policies on indigenous people, involuntary resettlement and cultural property as well as the core labour standards that apply to members of the International Labour Organisation (ILO). On such matters, the Bank coordinates its approach with those parts of the European Commission for external assistance to developing countries.”

⁶ The Handbook explains that the pre-appraisal of these operations starts with an assessment of the approach and capacity of the Promoter/intermediary and of the context in which it operates and that typically, at the time of the pre-appraisal there is only limited information, if any, on individual schemes.

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4.3.2 Article 74 stipulates that *"All projects outside the EU are assessed against the social safeguards of the Bank (albeit selectively in Candidate and Potential Candidate countries), which are defined in a number of guidelines covering Involuntary resettlement, ..., the treatment of potentially disadvantaged minorities, including...gender issues, occupational and community health and safety..."*. Articles 80-88 of the Handbook identify the specific environmental and social assessment requirements for framework loans⁷.

4.3.3 As regards the social assessment, article 142 of the Handbook establishes that *"In countries outside the EU, the Bank also aims to ensure that investments support and respect international conventions on human rights and that they are not complicit in human rights abuses."* Moreover, article 147 explains that the EIB due diligence of the social impact of the Project aims at ensuring that adequate arrangements are in place to mitigate adverse/negative impacts, and to guarantee minimum human rights standards and that *"Human rights concerns focus particularly on vulnerable groups, including women..."*.

4.3.4 Article 229 of the Handbook recalls the importance of close monitoring of environmental and social actions that are required as part of the Finance Contract (in particular those related to disbursement conditions) as this is where the EIB has most impact in ensuring that outstanding issues are thoroughly and correctly followed by the Promoter, in compliance with EIB requirements.

4.3.5 In the light of the present case, it is worth stressing that the General Background Note (GBN), providing EIB staff with suggestions for screening and addressing social issues, indicates that *"in line with its own pursuit of greater transparency and accountability, the EIB seeks to encourage a culture of disclosure, reporting and communication amongst the promoters it supports..."* and that the Bank *"recognises that heightened managerial care may be necessary in areas where there are weak governance structures"*⁸. Such provision is complemented by the description of the role of the Promoter, especially in large and complex projects, made by the GBN and the stress on the importance to assure that Promoter have adequate capacity to handle the various social issues that may arise during project preparation and implementation. When deemed necessary, the Bank *"...may wish to support the provision of Technical Assistance (TA) or assist it in the search for appropriate resources"*.

4.3.6 Besides the GBN, key social safeguard issues identified in the Annex 12 to the Handbook and which are relevant to the present case are dealt with in Social Guidance Notes n. 1 on involuntary resettlement, n.2 concerning impact on vulnerable groups, including women, and n. 4 dealing with occupational and community health and safety. As regards Guidance Note 1 on population movements and resettlement (GN1), two of its objectives (avoid or minimise development-induced displacement of people; mitigate negative social impacts of those losing assets, through the provision of appropriate compensation...regardless of the legality of existing land tenure arrangements) seem to be relevant in the present case. As part of the screening process, the EIB should determine, *inter alia*, the Promoter's commitment to and capacity for implementation as well as the feasibility and appropriateness of proposed measures for restoring and preferably improving livelihoods. On the basis of the screening, *"the Bank will determine in consultation with the Promoter the approach to be adopted"*.

4.3.7 Guidance Note 4 on Occupational and Community Health and Safety (GN4) aims at avoiding or minimizing the risks and adverse impacts to the health and safety of communities in the vicinity of projects supported by Bank investments. In particular, GN4 establishes that the EIB *"should determine how the Promoter deals with the prevention of negative project impacts on the health and safety of communities within the project's sphere of influence..."*. GN4 also stipulates that the EIB *"should ensure that the Promoter is aware that the precautionary principle is the overriding principle guiding action to minimise environmental degradation and health impacts. This shifts the burden of proof from one of proving environmental harm to one of proving environmental safety"*.

⁷ For instance, art. 85 states that EIB finance contracts normally specify information duties on individual projects which are fulfilled, after the signature of the contract and prior to disbursement, in the forms specified in the loan agreement.

⁸ The GBN assumes that *"...Outside the EU the Bank tries wherever possible and relevant to support the standards expected of operations within the Union..."* and that these operations *"...are informed by the same principles, core values and good practices that govern operations within the Union"*. When promoters do not have the capacity, have not developed adequate standards or operate in weak institutional environments, *"the Bank will try to assist them in the development of appropriate capacity, measures and standards, wherever possible"*.

4.4 Serbian law on Housing

4.4.1 As part of its review of the applicable regulatory framework, the EIB-CM took also into account the Serbian Law on Housing (SLH)⁹ which was referred to by the complainants when refusing the Promoter's original proposal of temporary resettlement. Article 2 of the SLH lays down the principle pursuant to which the state shall take measures to create favourable housing conditions and provide conditions for resolving the housing needs of socially vulnerable persons in accordance with the law.

4.4.2 Article 12 of the SLH stipulates that proprietors of a residential building, dwellings and other separate parts of a building shall ensure the maintenance of a building, including installations, fixtures and fittings, as well as dwellings and separate parts of the building, to allow for use of the building and dwellings in manner which shall not put the lives or health of people or safety of the environment at risk (investment maintenance) and that such maintenance is in the public interest. Proprietors shall ensure that other building and dwelling maintenance is also carried out: painting, washing and cleaning of stairs, entrances and common areas, repairs and replacement of communal lights and other works to ensure the building is maintained to a satisfactory level of usability (day-to-day maintenance).

4.4.3 Article 16 of the SLH establishes the duty of title holders/owners of a dwelling under social/state ownership to allow a lessee who has acquired the capacity before the entry into force of the law, on his/her written application, to purchase the dwelling that the lessee is using, under the terms and conditions prescribed by the SLH. If the title holder refuses the application to purchase such dwelling or fails to conclude a purchase agreement within a deadline, the lessee may file a motion to the competent court to adopt a ruling which will replace the purchase agreement in an extrajudicial proceeding. Article 31 of the SLH states that if an occupant, who acquired his/her occupancy right before the entry into force of the SLH, failed to conclude a purchase agreement by 31 December 1995, s/he shall continue to use the dwelling as a lessee for an indefinite duration and that the lessee may purchase that dwelling pursuant to the provisions of the SLH.

4.4.4 Article 27 of the SLH requires that, unless otherwise stipulated by the law, the proceeds from the sale of dwellings may be used only for housing loans to persons who through the purchase of a dwelling or construction of a family residential building solve their and that of their household's housing needs, as well as for improving housing conditions. Article 28 further specifies that the revenues from the sale of dwellings owned by local or central authorities shall be used in particular to resolve the housing needs of persons who are moved from buildings/dwellings which are unhygienic or may collapse.

4.4.5 Article 33 of the SLH stipulates that lease expires, *inter alia*, in case of eviction¹⁰ of the lessee, destruction of the dwelling as well as if the lessee, including his/her household members¹¹, does not use the dwelling for longer than four years. In addition, article 35 establishes that the lessor may terminate the lease if the lessee or his/her household members do not use the dwelling for longer than one, up to a maximum of four years, and the lessee fails to reach agreement with the lessor concerning the use of the dwelling during that time.

⁹ Official Gazette of the Republic of Serbia 50/92, 76/92, 33/93, 46/94 and 44/95.

¹⁰ Article 41 of the SLH sets the conditions under which the dwelling owner may seek the eviction of an occupant and the handover of the dwelling, i.e. through the eviction another dwelling for the occupant shall be procured. SLH establishes that the dwelling for eviction must, in terms of size and comfort, match the dwelling from which the occupant was evicted, i.e. his/her conditions do not deteriorate significantly.

¹¹ Article 36 lays down the principle according to which household members of a lessee of a socially-owned dwelling are entitled to permanently use that dwelling, under the terms of the SLH.

5. THE EIB DUE DILIGENCE OF THE SOCIAL IMPACT OF THE CONTESTED PROJECT

5.1 In 2008, following the completion of the appraisal of the Project¹², the latter was approved by the EIB Board of Directors. Throughout the appraisal process, the EIB identified risks¹³ and mitigants¹⁴ and established the disbursement conditions which would have been then replicated in the two finance contracts which were signed for the present operation, respectively (FC1) for an amount of 50 M EUR on 12 December 2008 and (FC2) for an amount of 25 M EUR on 12 June 2009, i.e. for a total amount of 75 M EUR. The contested sub-project concerns an allocation request governed by FC1.

5.2 Article 1.01 of the FC1 stipulates that *"...the Borrower may submit for approval of the Bank one or more allocation requests..., one for each sub-project or group of sub-projects for which it demands financing hereunder...Each Allocation Request shall be supported by a fiche..."* and that *"The Bank shall have a discretion whether or not to approve any Allocation so submitted by the Borrower following such examination as it deems necessary. In order to qualify for financing hereunder, each sub-project has to meet the Bank's eligibility criteria and comply with the Technical Description"*.¹⁵

5.3 Article 1.04 of the FC1 establish that the disbursement of the first Tranche shall be subject to the Bank having received, *inter alia*, *"... evidence that the Promoter has, to the Bank's satisfaction, established a Project Management Unit or an organisation with equivalent function ("PMU") within its organisation, adequately staffed with qualified and dedicated personnel, and entrusted it, during the full implementation period of the Project, with the coordination of the Project. The PMU shall act as the Bank's counterpart in all technical and administrative matters."* In that sense, article 6.07 of the FC1 stipulates that the Borrower shall ensure that *"the Promoter maintains the PMU within its organisation and to ensure that it is adequately staffed"*.

5.4 With regard to the disbursement of each Tranche, including the first and last one, the Finance Contract establishes that this shall be subject to the Bank having received by the Borrower, *inter alia*, *"...details on projects, if any, involving third parties and/or generating revenues in their favour"*. In this context, it is also worth emphasising that article 1.04 (4) lays down the following general provision: *"If any part of the documents received pursuant to article 1.04 is not satisfactory to the Bank, the Bank may disburse....an amount equal to the amount being the subject of the relevant Disbursement Request less the amount corresponding to the undocumented Qualifying Expenditure"*.

5.5 Article 8.02 of the FC1 (on Information concerning the Borrower) stipulates that: *"the Borrower shall inform the Bank immediately of: [...] (f) any event listed in Article 10.01 having occurred or being threatened or anticipated"*. Pursuant to article 10.01 of the FC1, the EIB can exercise its right to demand repayment immediately *"if any material information or document given to the Bank by or on behalf of the Borrower in connection with the negotiation of this Contract or during its lifetime proves to have been incorrect in any material respect"*.

5.6 On 2 July 2010 the Promoter submitted an allocation request containing the contested sub-project. On 1st November 2010 the Promoter declared that a number of schemes, including the scheme concerned by the present complaint, *"...which are not new roads and other new major construction with potential impact on environment,...have been considered, assessed, planned and designed by the competent Authority, taking into consideration all potential nature conservation issues and threats providing consent to the implementation of the project."* On 6 December 2010, the Promoter issued a declaration that all the schemes allocated under the concerned allocation request did not generate revenue for third parties.

¹² The EIB Appraisal Report of 7 May 2008 contains a list of sub-projects identified at the time of appraisal which does not include the contested sub-project.

¹³ For instance, the lack of information on each sub-project's quality and compliance with EIB's eligibility criteria at that stage (given the multi-sector and multi-scheme nature of the investment programme) and the essential role played by effective project management structures and the relationship between the Promoter and the local authorities.

¹⁴ Additional check-up on sub-projects' compliance with EIB requirements at disbursement stage and close co-operation with the Promoter to verify project implementation status.

¹⁵ Article 6.05 of FC1 on the Continuing Project Undertakings stipulates that: *"So long as the Loan is outstanding, the Borrower shall: [...] (v) Environment: (a) implement and operate the Project in conformity with the Environmental Laws: "Environmental Laws" means EU law as well as any applicable international treaties, whose principal object is the preservation, protection or improvement of the Environment, to the extent such treaties have been implemented by the law of Republic of Serbia or as specified by the Bank prior to the date of this Contract and "Environment" means the following, in so far as they affect human well-being: (a) fauna and flora; (b) soil, water, air, climate and landscape; and (c) cultural heritage and the built environment."*

5.7 During the inquiry, the EIB-CM was provided with allocation-related information¹⁶ provided by the Promoter as part of the information requirements set in the finance contract. With regard to the concerned sub-project, the fiches described the works to be performed on the site (renovation of the existing building and construction of an extension) and the objectives of the project (increase capacity and improve students' living conditions). Concerning the social impact of the project, the fiche stated the following: "...

- *No resettlement foreseen;*
- *No land or asset acquisition required;*
- *Temporary jobs will be created during the implementation and upon completion of the facility permanent jobs will be established;*
- *Quality accommodation for students shall be provided in a building that presently is not in use"*

6. FINDINGS OF THE COMPLAINTS MECHANISM AND FURTHER DEVELOPMENTS

6.1 Following the negative outcome of the mediation process, the EIB-CM launched a review of the applicable regulatory framework as well as of the due diligence carried out by the EIB in order to make a complete and detailed review of the project documentation and to verify whether there was evidence of the issue well before the complaint was made. In addition, it sought to review the representations and statements made by the Promoter as part of the information duties established by the finance contract as well as the fulfilment of the conditions for disbursement on the basis of the information gathered during the inquiry.

6.2 The inquiry of the EIB-CM ascertained that apart from the student's premises, the building in question had two separate apartments on the ground floor with private tenants living therein. The EIB delegations which have visited the project's site confirmed the extent of the damages suffered by the complaints' flats due to the flooding caused by the works performed by the contractor as part of the concerned sub-project. As referred to in §§5.5.-5.6 of this Report, when submitting the contested allocation and informing the EIB about the potential impact of the scheme, the Promoter declared that no resettlement was foreseen and did not mention any other potential impacts on people or assets, but indicated that the building concerned was not in use.

6.3 Based on the findings of the EIB-CM and besides the issue raised by the present complaint, the EIB operational services realised that the Project Management Unit (PMU) in charge of the implementation of the Municipal and Regional Infrastructure Loan was not equipped to adequately monitor the implementation of the sub-projects under the Framework Loan, as required by article 6.07 of FC1

7. CONCLUSIONS AND WAY FORWARD

7.1 From the inquiry carried out by the EIB-CM, it appears that risks and adverse impacts of the concerned sub-project had not been adequately identified and thus avoided/mitigated. Furthermore, the EIB-CM acknowledges that, following the exclusion of the option of permanent resettlement outside the concerned building, Mr Stojiljkovic manifested his intention to withdraw from the mediation process unless he would be offered to purchase the contested apartment. In this context, it is worth noting that, from the considerations made in § 4 of this Report, it appears that Serbian law imposes on title holders the duty to enable the purchase of socially-owned dwelling by the relevant lessees and that such duty can be enforced judicially, as the lessee may file a case before the competent court to adopt a ruling replacing the purchase agreement.

¹⁶ This included the allocation request with the related project list, specific individual Schedules attached to the finance contract and containing project information (the sub-project fiche).

7.2 On the other hand, it is also clear that the dispute about the purchase and the legal status of the apartment was not rooted in the renovation project financed by the EIB nor did it resolve any of the issues which justified the intervention of the EIB Complaints Mechanism, i.e. the alleged negative impact of the renovation works on the livelihood of the people occupying the flats and the need to promptly intervene to ensure the continuation of the works in a safe and healthy environment. On the contrary, it appeared that the Promoter's offer (temporary relocation under the explicit reassurance that the abandonment of the flat would not lead to the extinction of the right to lease, renovation of the apartment and compensation of suffered damages) was satisfactory in the light of the EIB social safeguards insofar as it would have fully restored the complainants' livelihood affected by the project whilst improving its comfort and safeguarding the Complainants' occupancy rights on the apartment.

7.3 The EIB-CM also notes that, with a view to improving the overall monitoring of sub-projects and ensuring that comprehensive information on the social impact of the projects financed by the EIB is handled by the Promoter and provided to the EIB in the other schemes financed by the Bank as part of the loan, the EIB services and the Promoter agreed to develop an action plan to strengthen the PMU and to ensure compliance with the contractual agreements, notably as far as operation, composition, scope and working methodology of the PMU are concerned, as well as coordination of the Technical Assistance by the PMU. A monitoring mission to Serbia took place in October 2013 has led the EIB to conclude that the PMU has been improved and that the new team has dedicated a lot of effort to evaluate new sub-projects and to ensure that the Bank's requirements are followed.

7.3 Taking into consideration that the non-compliance identified¹⁷ concerned only one of the sub projects of the Framework Loan, the importance and sensitivity of many other unchallenged sub-projects assisted by the EIB as part of the Municipal and Regional Infrastructure Loan and the Promoter's attempts to mitigate health and safety risks caused by the original non-compliance in a satisfactory manner, the EIB accepted the Promoter's proposal to withdraw the sub-project Reconstruction of the Students' Dormitory Patris from the list of projects financed under the Municipal and Regional Infrastructure Loan, as referred to in §2.5 of this Conclusions Report.



F. Alcarpe
Head of Division
Complaints Mechanism
05.05.2014



R. Rando
Complaints Officer

05.05.2014

¹⁷ Failure to fulfill the information requirements established by the Finance Contract and to comply with EIB social standards.