



Larnaca Sewerage and Drainage I
Cyprus
Complaint SG/E/2012/07

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

INITIAL ASSESSMENT REPORT

22 July 2013



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Promoter: Larnaca Sewerage and Drainage Board

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Table of Contents

1. The complaint	5
2. Background information	8
2.1 The Project	8
2.2 Complainant's correspondence with the Promoter and local authorities	9
3. Complaints with other institutions or bodies	11
3.1 Complaint with the European Commission	11
3.2 Complaint with the Council of Europe Development Bank (CEB)	12
4. Fact-finding mission	13
4.1 Meetings with the complainant	13
4.2 Meetings with the Promoter	14
4.3 Meeting with the Municipality of Larnaca	15
4.4 Meeting with other national authorities	15
5. The EIB due diligence of the contested Project	16
5.1 The Appraisal Report	16
5.2 The Board Report	17
5.3 The Finance Contract	17
6. Assessment of allegations	18
6.1 Alleged failure to comply with EIB standards related to the EIA	18
<i>Public consultation</i>	18
<i>Modification of the location</i>	18
6.2 Alleged failure to address the pumping station's negative environmental impact	19
<i>Noise hazard</i>	19
<i>Odour hazard</i>	20
<i>Ground complications</i>	21
<i>Zone Da2</i>	22
6.3 Alleged failure to obtain building and planning permits on time	22
6.4 Alleged devaluation of the complainant's property	23
7. Conclusions and Way forward	23

Legend of Acronyms

CEB	Council of Europe Development Bank
CMA	Cypriot Ministry of Agriculture, Natural Resources and Environment
CMOP	EIB-CM Operating Procedures
EC	European Commission
EIA	Environmental Impact Assessment
EIB	European Investment Bank
EIB-CM	European Investment Bank-Complaints Mechanism
EO	European Ombudsman
EU	European Union
IAR	Initial Assessment Report
LSDB	Larnaca Sewerage and Drainage Board
STP	Sewage Treatment Plant

INITIAL ASSESSMENT REPORT**Complainant:** [REDACTED]**Date:** 21 May 2012**Subject of complaint:** Construction of a sewage pumping station close to the complainant's house**1. The complaint**

- 1.1 On 21 May 2012, (hereinafter the complainant) lodged a complaint with the EIB Complaints Mechanism (hereinafter EIB-CM) concerning the construction of a sewage pumping station only few meters away from his house in Larnaca. The pumping station is sub-component of a project financed by the EIB and managed by the Larnaca Sewerage and Drainage Board (hereinafter the Promoter or LSDB). Such project consists of Phase B II (2007-2012) of the LSDB network expansion and wastewater treatment plant capacity increase in order to service the entire urban area of Larnaca and ensure full compliance with the requirements of EC Directive 91/271 on Urban Wastewater Treatment (as amended by Directive 98/15/EC) (the "Project"). The Project, more specifically, comprises, among other, of works on existing sewers, upgrading of connected processes, as well as construction of trunk sewers, pumping stations, smaller sewers and pressure mains.
- 1.2 In the complainant's view, the construction of the pumping station has significant hazardous environmental effects, which were disregarded in the Environmental Impact Assessment (hereinafter EIA) that was produced for the Project in question. In particular, the complainant raised the following points:
- The EIA did not make reference to the existence of a residential area around the pumping station. The EIA described the site as a relatively remote area and as being at a greater distance than the surrounding developments;
 - There was no mention in the EIA that the site is situated opposite to two listed historical buildings;
 - The EIA did not take into account the presence of a green area around the site marked by the presence of trees and indigenous plants;
 - The decision to exclude one of the three proposed sites was not based on the environmental impact of the pumping station but on the possible higher cost for the execution of the work in that location;
 - The plot ratio of the site being 1% of land coverage was not respected.
- 1.3 Finally, the complainant asked the EIB-CM to investigate whether the actions of the LSDB infringed EU legislation and to request the Promoter to stop any work on the site in question. The complainant claimed that the contested pumping station should be moved to another available and suitable site and the green area be repopulated with trees and brought back to its previous state. Attached to his email, the complainant provided a copy of his correspondence to LSDB of 10 and 15 May 2012; an assessment of the complainant's correspondence with the Promoter is provided in §2.2 of this Report.
- 1.4 On 6 June 2012, the EIB-CM acknowledged receipt of the complaint and of the additional information received on 25 and 29 May 2012. It informed the complainant that it was carrying out a review of his case as well as about the date (1st August 2012) by which he might expect a formal reply from the Bank.
- 1.5 On 12 June 2012, the complainant expressed his concern about a recent visit of the EIB to the pumping station site, during which, according to the Promoter, the EIB had dismissed his claims as irrelevant and commented that the noise impact of the wind moving the trees surrounding the complainant's house would be of more relevance than the nuisance caused by the sewage pumping station. The complainant wondered whether it was normal practice to visit the site and not to meet the complainant but only the

Promoter. On 19 June 2012, the EIB-CM contacted the complainant in order to explain the scope of the EIB-CM, clarify the misunderstanding about the visit of the EIB services to the site¹ and reiterate the engagement of the EIB-CM in the review of its case.

- 1.6 On 20 June 2012, the complainant addressed an email to the EIB-CM whereby he attached his correspondence with the Promoter and the national authorities to date. In his message, the complainant stated that any project financed by the EIB should be conducted with full transparency and in accordance with national/European law and regulations and that the Promoter had only recently confirmed to him that the site approved by the EIA for the pumping station was subsequently changed without a new assessment. Moreover, he argued that the whole Project interfered with other protected areas (salt lake). Finally, he admitted that, as he did not speak Greek, the fact that most of his enquiries and conversations with the Promoter were in English complicated the communication.
- 1.7 On 21 June 2012, the complainant informed the EIB that the Promoter had emphasised that any step of the Project was subject to the strict supervision of the EIB's delegates. The complainant informed the EIB that he intended to reject any compromise proposed by the Promoter other than the removal of the pumping station back to the original location chosen in the EIA. In addition to that, in this correspondence the complainant provided a list of questions grouped in eleven points, reiterating his concerns, but also requesting new clarifications or submitting brand new allegations pertaining to:
- the disclosure of the EIA, the EU regulatory framework, the EIB procedures concerning the due diligence of the environmental impact of EIB-financed projects;
 - the project cycle of EIB-financed projects and the criteria that the EIB must follow to approve financing;
 - the impact of the Project on the Salt Lake, area environmentally protected by the UNESCO patronage, and the actions taken by the EIB to avoid irreparable impact²;
 - the lack of information from the Promoter;
 - the location of the contested pumping station and the involvement of the EIB competent services in the decision to move the location;
 - the lack of public interest as to why the pumping station should be placed next to his house;
 - the lack of tenancy agreement for the selected site;
 - the regulatory framework concerning the noise hazard caused by the generator³;
 - the possible danger from the fuel tank;
 - the devaluation of his property, which he alleged could reach the 75% of the current value;
 - the risk of the proximity of the wet well to his house in case of overflow⁴.

Finally, the complainant asked that his complaint be copied to the EIB Fraud Investigation Division.

¹ The complaint was submitted when the EIB services were visiting the Promoter in Cyprus; as such, it appeared appropriate to inform them immediately of the complaint for them to be able to gather all necessary information from the Promoter to be reviewed by the EIB-CM as part of its inquiry.

² Attached to his email, the complainant provided an article from the local press concerning the protests of the residents of Kamares on the pollution of the Larnaca Salt Lake allegedly caused by the failure of the sewerage system. It is worth noting that after presenting the view of the residents, the Mayor and the Promoter, the article contains an interview to a microbiologist who explains the risk of human waste and proposed "the creation of a similar system to that of Greece and the UK where the authorities use special filters to clean sewerage water and reuse it".

³ According to the complainant, "there is legislation (euro plan direction) about the degree of noise from generator that should not exceed the 40 db"

⁴ The complainant stated that technical experts had highlighted this risk, because the area had been overflowed a number of times during heavy rain in the last years and this would damage the pumping station resulting in disastrous consequences of overflowing water being mixed with sewage.

- 1.8 On 17 July 2012, the complainant wrote three emails to the EIB-CM, two of which were sent in copy to the Fraud Investigation Division. In the first email, he asked to be informed of any developments in his case and to be provided with all documents that these offices had gathered to date; in addition to that, the complainant expressed his concern that, although the EIB advocates the interaction with external stakeholders as one of the main tools of its investigation process and as a proof of openness to external complaints, this principle had been applied in an extremely weak manner. In his second message, he requested Project documents whilst in his third message he requested the EIB to block further financing of the Project, until a final report is produced by the services in charge of his case. On 24 July 2012 the EIB-CM transferred the request for documents to the EIB competent services. On 3 October 2012, the complainant forwarded his correspondence with the EIB InfoDesk to the EIB-CM.
- 1.9 On 1 August 2012, the EIB-CM informed the complainant that due to the complexity of the inquiry, it was appropriate to extend the time frame for the handling of the complaint by 27 December 2012, in line with article 10.2 of the Rules of Procedure of the EIB Complaints Mechanism Policy. In his reply of 2 August 2012, the complainant argued that the enquiry was not complex and that the extension of time seemed to him unreasonable. He requested a list of investigations and actions undertaken in relation to the case and the confirmation that the EIB would suspend any funding to the LSDB until the completion of the investigation. On 7 September 2012 the complainant sent a reminder of this message.
- 1.10 On 14 September 2012, the EIB-CM contacted the complainant to inform him that it would visit Larnaca for a fact-finding mission; on 18 September 2012, the complainant contacted the EIB-CM for the latter to confirm the date of the mission, which finally took place on 10-13 October 2012. Information on the fact-finding mission is provided in Section 4 of this Report. On 22 October 2012, the complainant requested a timetable of the actions of the EIB-CM following the fact-finding mission and when he could expect a reply from the EIB-CM; in addition, he informed the EIB-CM that he had not received any communication from the Promoter on suggested mitigation steps.
- 1.11 On 26 October 2012, the EIB-CM replied to the complainant by referring to the information about the timeframe of the inquiry already provided in its correspondence of 1st August 2012 as well as reiterating information, provided during the fact-finding mission, on the procedure for the publication of the Initial Assessment Report (IAR) of the EIB-CM. On the same day, the complainant reiterated his request for an update on further developments on the inquiries carried out by the EIB-CM as well as to know when he would receive a communication from the Bank. Finally, he informed the EIB-CM that on 25 October 2012 the Cypriot Ombudsman's services had informed him that his case was complex and was still under investigation.
- 1.12 On 19 November 2012, the complainant wrote a message addressed to the EIB-CM and the CEB whereby he requested confirmation that, as interim measure before the finalisation of the investigations on the case, the co-financing institutions had decided to discontinue the disbursement of the loans. On 28 November 2012, the complainant sent an email to the EIB-CM referring to the EIB's reply of 26 October 2012 and requesting to receive copy of the IAR.
- 1.13 On 21 December 2012, the EIB-CM informed the complainant that it was not able to provide him with a Conclusions Report by the expected date. The EIB-CM apologised for the delay and assured the complainant that it would do its best to provide him with the formal reply within the shortest delay. On 24 December 2012, the complainant wrote a message to the EIB-CM whereby he acknowledged that *"further to your e-mail of 6 June 2012 there has been considerable correspondence..."* and that *"in addition, I have been trying several times to call your office during last week without anybody in your department being there to take my calls"*. The complainant considered the delay not acceptable and requested to receive a copy of the IAR *"at whatever stage it may be"* and a new deadline by which the EIB-CM would issue the Conclusions Report. Finally, the complainant requested the EIB-CM to confirm that the EIB would not finance LSDB until the completion of the inquiry.

- 1.14 On 4 January 2013, the complainant lodged a complaint with the European Ombudsman (hereinafter EO) against the EIB. The EO decided to open an inquiry into the complainant's allegation that the EIB failed to respect its own deadlines in handling the case. On 8 January 2013, the complainant sent a reminder of his message of 24 December 2012.
- 1.15 On 4 February 2013, the EIB-CM sent an email to the complainant in copy to the EO Registry, stating that, as already explained during its mission to Larnaca and according to the EIB-CM Operating Procedures (EIB CMOP), his case should undergo a preliminary assessment which would be completed by an IAR, providing preliminary conclusions and setting an action plan in terms of methodology – full investigation/mediation - and concrete actions to be taken. The complainant was thus informed that, following the consultation of the EIB concerned services and governance, the draft IAR would be submitted to the complainant and the Borrower for comments. Finally the EIB-CM apologized for the delay, which was however justified by the complexity of the case (also in terms of information to be reviewed) as well as by the high workload of the EIB-CM.
- 1.16 In response to this email, on the same day the complainant stated that the current situation affects dramatically his family's life and further insisted on his request for interim measures to stop the works on the pumping station. He finally complained that he had not received any reply from the EIB Fraud Investigation Division.
- 1.17 On 4 March 2013, the EIB-CM informed the complainant that he may expect the IAR by no later than 26 April 2013. On 20 March 2013, the EO closed the case.
- 1.18 On 27 March 2013, the EIB Fraud Investigation Division informed the complainant that following its inquiry, it concluded that his allegations of fraud and corruption were not supported by evidence and were unfounded. The case was therefore closed.

2. Background information

2.1 *The Project*

- 2.1.1 The construction of the pumping station Q, contested in the present case, is part of a bigger Project that concerns the extension of sewerage and drainage facilities in order to service the entire urban area of Larnaca and comply with the EC Directive 91/271 for Urban Wastewater. The Project is co-financed by the EIB (45%), the Council of Europe Development Bank (44%) and the Promoter's own funds (13,3%). The EIB decided to provide a credit of EUR 75,000,000. Its latest disbursement was made on 30 July 2010.
- 2.1.2 Regarding the value added of the Project, the EIB Appraisal Report analysed the consistency of the Project with EU priority objectives (Pillar 1) as well as the quality and soundness of the investment (Pillar 2). The Report stated that it would add to the Bank's comprehensive portfolio in Cyprus' wastewater sector.
- 2.1.3 Pumping station Q1 is one of nine pumping stations to be constructed in the framework of the Project. Concerning its location, the relevant EIA extract reads as follows: "The pumping station Q1 is located in the area of Griva Digeni Avenue (map 3.9). The area is densely developed with mainly commercial buildings. As can be seen on the map, three alternative locations were identified. Site 1 is in the borders with the Avenue (plot 598). Site 2 is located south of the Avenue. This site is within the Forest Department's "government nursery" (plot 9). Site 3 is located north of the Avenue (plot 588). This site though is surrounded by buildings on three sides. The most preferable location is Site 2 (photo 4.3). The pumping station will collect wastewater on the sewer along Griva Digeni Avenue and then transfer it to pumping station PSBII-1(A1). The wastewater will be transferred by pressure from Leonida Kioupi Avenue

to Artemidos Avenue and then by gravity." (...) "In the proposed pumping station area there were three alternative sites available (map 3.9). Site 1 is surrounded by dense growth in three of its sides and is estimated that it will present increased impacts both at the construction as well as the operation phase. Site 2 is located inside the Government Nursery of the Forest Department. In this case the site has an advantage because it is located in a relatively remote area and in greater distance than the surrounding developments. Site 3 is located on a plot off of Griva Digeni Avenue, that is no longer available."

2.2 *Complainant's correspondence with the Promoter and local authorities*

- 2.2.1 In the present case, the complainant attached his correspondence with the Promoter and the local authorities to his correspondence to the EIB-CM when not directly putting the EIB-CM in copy of his messages to the Promoter or the local authorities. The correspondence reviewed by the EIB-CM starts on 10 May 2012 when the complainant contacted the Promoter – and copied the municipality- concerning the contested pumping station and expressed his concerns about its impact on the environment as well as on the livelihood of his household (noise, odour, devaluation of property)⁵. On 15 May 2012, the complainant asked the Promoter to provide explanations on the EIA process and on the impact of the pumping station on his household's livelihood, to stop works on the site and to move the pumping station to another location. Later on the same day, the complainant wrote to the Promoter to express his concerns about the fact that works had not been discontinued. The complainant addressed a list of questions to the Promoter mainly pertaining to the choice of the specific location compared to the others suggested in the EIA, the existence of residential houses and the proximity of the pumping station to his house.
- 2.2.2 It appears from an email of 16 May 2012 sent by the complainant to the Promoter that a site meeting to the building site of the current pumping station and later on within the grounds of a pumping station located on the back of the Larnaca Armenian Church took place the same day. The complainant alleges that the Promoter reassured him that the building was legal and all regulations were respected. The complainant, who was not satisfied with the explanations and documents provided/shown by the Promoter, asked for a copy of the planning permits related to the pumping station as well as a written declaration reassuring that the pumping station under construction would cause no odour or noise pollution to his family. On 17 May the complainant informed the LSDB that he had contacted the Municipality of Larnaca and that he had agreed with the Mayor of Larnaca that *"we will appoint an independent surveyor to assess the issue and see what can be done"*; he thus reiterated his request to halt the works on the site⁶.
- 2.2.3 From the correspondence provided by the complainant, it appears that on 23 May 2012 the Promoter replied to his message by providing a document which was not attached in the correspondence forwarded to the EIB-CM⁷. On 24 May 2012, the complainant sent a message to the LSDB, in copy to the Municipality of Larnaca, stating that the building of Pumping Station Q had started and was proceeding without authorisations and building permissions and reiterating the request for the disclosure of the permits.
- 2.2.4 In an e-mail to the Mayor of Larnaca dated 25 May 2012, the complainant requested to stop the works for the contested pumping station stating that the building had not the necessary building and construction permits and therefore it was illegal. He asked the Mayor to suggest an independent surveyor since those contacted by the complainant, once informed on the nature of the dispute, had refused to undertake the work. On the same day, the Promoter provided the complainant with the map and satellite pictures of all proposed pumping stations under phase B and explained that the location of pumping stations is chosen to serve all plots by a gravity sewerage network. In his reply (few minutes later), the complainant, not

⁵ On 14 May 2012, he solicited an acknowledgment of receipt of his messages.

⁶ On 18, 21, 22, 23 May, the complainant sent reminders of his request for a copy of the permits.

⁷ According to the complainant, there were several requests to halt the works (Tue 15/05/2012 14:15, Thu 17/05/2012 10:17, Thu 17/05/2012 14:12)

satisfied with the provided information, restated his concerns about the EIA process and the devaluation of nearby plots and insisted that the Promoter should stop the works and move the construction site of the pumping station.

2.2.5 From the correspondence reviewed, it appears that the Promoter had a telephone conversation with the complainant on 28 May 2012, and that in an email addressed to the complainant on the following day the Promoter clarified that it had followed all procedures required by law in the construction of the pumping station. According to the Promoter, the EIA evaluated all options and proposed the environmentally most advantageous ones. The Promoter specified that the noise levels inside the pumping station yard would not exceed 65dB and that the station would be odour free. Finally, the Promoter noted that the size of the station is small to medium and will serve a limited area close by. The same day, the complainant replied by alleging that the Promoter had provided him with documents *"that had little to do with"* the requested Building and Planning permits and that he had discovered that planning permits were never issued whilst building permits were issued too late, namely on 28 May 2012.

2.2.6 On 30 May 2012, the complainant asked the Mayor of Larnaca to take action to halt the works of the construction of the pumping station for failure to obtain the necessary permits; in his message, the complainant pointed out at the fact that a Building permit had been issued on 28 May 2012, i.e. 18 days after his complaint to the Promoter and three days after his previous message to the Mayor referred to in §2.2.4 of this Report. On 6 June 2012, the complainant contacted the Mayor of Larnaca with regard to a possible meeting; in his message he referred to the fact that works on the site had restarted *"with people working on an additional extension of the existing structure"*. To his message, the complainant attached a picture of the above-ground structures of the contested pumping station. On 9 June 2012 a meeting between the complainant and the Promoter took place. The complainant alleges that during the meeting the municipality and the LSDB undertook to demolish all above-ground structures and to leave only the wet well in the current location. An on-site meeting was set to consider where to locate the generators (possibly within one of the two listed buildings owned by the Larnaca Municipality). According to the complainant, during the on-site meeting the Promoter retracted the offer, which was not feasible any longer following internal consultations, and proposed some changes to the current project. The Mayor did not attend the on-site meeting.

2.2.7 Following that, on 11 June 2012, the Promoter presented a written proposal which reads as follows:

Revisions relating to Pumping Station Q

"...the Larnaca Sewerage and Drainage Board (LSDB) proposes the following revisions to the design and construction of the pumping station as a compromising attempt between the initial LSDB design and the worries of the nearby inhabitants with regards to nuisance and visual degradation of the neighbourhood:

- *The active carbon odour control system to be installed not above the wet-well as originally designed but at the furthest away corner of the pumping station plot which is approximately 20m further away from the nearest residence to the pumping station.*
- *In an effort to reduce the visual impact of the pumping station, the kiosk will have a sloping red tiled roof and an architecture that matches the colonial building opposite the pumping station.*
- *The pumping station area will not be fenced as originally designed for security reasons, i.e. with a concrete and aluminium high wall fence but will be allowed to have an open plan with the minimum fencing necessary made of trees and shrubs matching the natural surroundings.*
- *The yard of the pumping station will be planted with shrubs, flowers and trees to look like an extension of the surrounding natural garden.*
- *The emergency generator will remain housed in the kiosk to reduce noise levels during operation, to protect the generator from weather conditions and to satisfy the health and safety requirements.*

- *The electric panel will be installed either inside the kiosk next to the generator or outside, enclosed in an external weatherproof electric panel cabinet and will be installed at a location close to the pumping station. In the first case (which is the preferred option by LSDB), the kiosk will be totally enclosed ie. roof and walls on 4 sides. In the second case the kiosk will be partly enclosed, to house only the generator (approximately half of the surface area) and partly open (roof and columns only).*
- *The LSDB guarantees the no nuisance operation of the pumping station.*
- *The works at the pumping station will be temporarily suspended for a maximum of 3 weeks and a decision should be reached as soon as possible due to the cost impact created as a result of the suspension of works.*

On 18 June 2012, the complainant rejected the Promoter's proposal. The Mayor allegedly proposed to remove the above ground structures of the pumping station. The complainant rejected this proposal too. In his correspondence, he listed his main concerns:

- The fact that the pumping station had been built without the necessary building and planning permits and with no rental agreement with the owner of the land.
- The fact that the pumping station site had been moved from its initial location, the latter only having been presented and evaluated by the EIA.
- The failure by the Promoter to implement measures suggested by the EIA to address the odour problems, the aesthetic impact and the devaluation of the nearby plots.
- The negative impact of the pumping station on the physical environment as well as on the livelihood of nearby inhabitants including pupils of a school adjacent to his place.
- The high risk of floods due to winter rains which might cause damages to the pumping station with the consequent problems for the livelihood of the neighbourhood.

In the same email the complainant reiterated his allegations of non-compliance and highlighted allegedly potential risks, related mainly to noise and odour emissions as well as rain overflow. He also pointed out that, according to his information, the whole Larnaca Sewerage Project was under review, because it interfered with protected areas. He cited as an example, the construction of pumping station J in the Salt Lake area that had been halted due to several complaints lodged by the local residents.

- 2.2.8 On 30 August 2012, the complainant reminded the Promoter he had not received its reply and informed the latter of the extension of the timeframe for the handling of the complaint with the EIB Complaints Mechanism⁸. On 12 November 2012 the complainant sent a reminder whereby he acknowledged that there had been no work on the site but stated again that the LSDB and the Municipality of Larnaca had the duty to demolish the structure as the area was poorly enclosed and was a dangerous site for children⁹.
- 2.2.9 As part of the consultation on the IAR, the complainant alleged that there were numerous requests and reminders to the promoter, which were never replied. He mentioned that EIB-CM was always in copy of them.

3. Complaints with other institutions or bodies

3.1 Complaint with the European Commission

- 3.1.1 On 3 October 2012 and following previous discussion with the EIB-CM, the complainant forwarded exchange of correspondence with the European Commission as part of his complaint for infringement of

⁸ On 3 and 7 September 2012 the complainant sent reminders to the Promoter.

⁹ The EIB-CM was put in copy of three other reminders sent to the Promoter respectively on 28 November 2012, on 19 December 2012 and on 8 January 2013.

EU law. From the information gathered during the inquiry, it appears that on 18 May 2012, the complainant had lodged a complaint with the European Commission.

3.1.2 On 27 September 2012, the Commission replied that: *"(...)Directive 2011/92/EC (the "EIA Directive") obliges Member States to provide Environmental Impact Assessments (EIA's) for private and public projects but does not empower the Commission neither to influence the decisions of the national authorities (necessity to carry out a specific project, location of a project...), nor to control the observations of the environmental elements included in the report. These are regulated by the Member States and the Commission cannot intervene at this stage (a breach of EU environmental legislation could be established if the project was finalized and started functioning without respecting the relevant directives, i.e. on urban waste water treatment). Article 6(1) of directive 2011/92/EC mentions that Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the request for development consent. Member States shall designate the authorities to be consulted for this purpose in general terms or in each case when the request for consent is made. The information gathered pursuant to Article 5 shall be forwarded to these authorities. Detailed arrangements for consultation shall be laid down by Member States."* The Commission concluded that *".... as it appears from your complaint, such a procedure (which (sic) results are not binding on the national authorities) has been respected by the Cypriot authorities."*

3.1.3 The complainant did not provide the rest of the correspondence between him and the Commission. However, from EIB-CM's inquiry, it appears that the complainant replied to the Commission that public consultation should have not been limited to the Greek language, but should have been carried out also in Turkish and English language. Additionally, he contested the pumping station's impact on Natura 2000 areas and the "Da 2" zone characterisation of the plot in question. On 20 December 2012, the Commission informed the complainant of its intention to proceed with the closure of the dossier due to the impossibility to identify any breach of EU environmental legislation. In particular, the Commission noted that there was no indication that a significant impact on Natura2000 site existed. Regarding the language of the public consultation, the Commission stated that Directive 2011/92/EU does not oblige the Member States to conduct the public consultation process in all their official languages. On 8 January 2013, the complainant contested the Commission's reply.

3.1.4 On 10 January 2013, the Commission confirmed its reply of 20 December 2012 and advised the complainant to direct his claim concerning the language of the public consultation to the Cypriot authorities. The Commission added that there was no indication that the area at stake was part of the Natura 2000 network. The designation of the area as a Da2 protection zone was, according to the Commission, a classification of purely national character, falling under the competence of national authorities.

3.2 Complaint with the Council of Europe Development Bank (CEB)

3.2.1 On 26 October 2012, the complainant informed the EIB-CM that in July 2012 he had sent a complaint to the Council of Europe Development Bank (CEB) which co-finances the Project and provided the contact details of the CEB officer in charge of his case. On 3 December 2012, the EIB-CM contacted the CEB to exchange information about the respective inquiries. The CEB confirmed that it had received a complaint too but the inquiry had not advanced yet.

4. **Fact-finding mission**

The EIB-CM considered it necessary to visit Larnaca in order to gather information about the case, meet all the relevant stakeholders and visit the pumping station site. In that respect, the EIB-CM went on a fact-finding mission to Larnaca from 10 to 13 October 2012.

Table I – Mission Calendar

Wednesday 10 October 2012	Meeting with the complainant, 16:00-19:00
Thursday 11 October 2012	Meeting with the LSDB, 09:30-11:00 Meeting with the municipal engineer, 11:30-13:00 Second meeting with the LSDB, 15:00-17:30
Friday 12 October 2012	Meeting with the Cypriot Commissioner of Administration (Ombudsman), 10:00-11:00 Meeting with the Senior Sanitary Engineer of the Water Development Department, 11:15-12:00 Meeting with the Environment Officers of the Department of Environment, 12:30-14:00 Second meeting with the complainant and his lawyer, 15:30-18:30

4.1 ***Meetings with the complainant***

- 4.1.1 On 10 October 2012, the EIB-CM visited the complainant at his home in Larnaca. The purpose of this meeting was to explain the function of the EIB-CM, streamline the complainant's numerous allegations as well as to check the pumping station and particularly its location, key element of the present case.
- 4.1.2 The complainant took the view that the public consultation was not appropriate, since the invitation for it had been published only in one local Greek newspaper. With regard to the pumping station location, the complainant expressed his doubts about the reasons for which the two other alternative sites identified in the EIA had been rejected and emphasized that the current location was 100 meters away from the one approved by the EIA while this change was not subject to a supplementary EIA. He expressed his distress over its proximity to his house. The pumping station lies in an approximate distance of 11 meters from the house and was clearly visible from the family's bedrooms. The complainant feared that being too close to the sea level, the pumping station risked to be damaged by water floods during winter storms. He was also worried about possible ground vibrations caused by the pumping station during its operation. He pointed out that the plot on which lied the pumping station was classified as a protected zone Da2. He requested the EIB-CM to ask the Promoter to clarify this classification.
- 4.1.3 The complainant stressed that the construction works had started in April 2012. The building permit however had been issued one month later. No planning permit had been issued for the pumping station by the municipal services and according to the Promoter this was allegedly considered not necessary by the municipality, given the small size of the building. This was several times contested by the complainant. The complainant was also concerned by the possible devaluation of his property. Finally, he was

disappointed by the Promoter's attitude towards him and particularly, by the fact that he was not given access to all documents requested and that there was no reply to his messages; he felt that there had been a lack of communication between them.

- 4.1.4 On the last day of the fact-finding mission, the EIB-CM considered it useful to have one last meeting with the complainant and his lawyer in order to inform them of the further steps following the initial assessment and namely the possibility to carry out a mediation in order to find a concrete solution and/or a full compliance review to establish the conformity of the operation with the EIB standards. With respect to available legal remedies, the EIB-CM was informed that the deadline for the administrative recourse had lapsed and that, if not satisfied with EIB's reply, the complainant would bring the case before the civil and criminal courts.
- 4.1.5 The complainant stated that he was not interested in corrective measures and that he was only asking for the pumping station to be moved to its originally approved location; he complained that he was never consulted about the modification of the location as well as about the lack of communication with the respondent authorities and noted that the latter often used EIB's name to justify their actions, creating a reputational risk for the Bank.

4.2 *Meetings with the Promoter*

- 4.2.1 On 11 October 2012, the EIB-CM met the LSDB in its premises in order to inform the Promoter of the scope of the EIB-CM's inquiry as well as to listen to its version of the facts. During the discussion, the LSDB affirmed that this was the first time a complaint about the construction of a pumping station had been received, although there had been several similar projects in Cyprus. The Promoter stated that works had been stopped in August due to the pending complaint before the EIB-CM. The LSDB pointed out that the pumping station's site had been moved from its officially approved location because the Cypriot Ministry of Agriculture, Natural Resources and Environment (hereinafter CMA) had asked to use the spot in order to build ministerial premises. The new location within the same plot was chosen because it was on the lowest ground level and this was essential for a pumping station that would work with gravity.
- 4.2.2 According to the LSDB, a new EIA was not necessary in that case, as it was a posteriori also confirmed by the Department of Environment, because there was no significant change in the pumping station. In fact, the only major change concerned its size, which came down from a 200l/s to a 20l/s unit. The LSDB added that the plot borders were 11 meters away from the complaint's property and that in any case, the law does not provide for a minimum distance. Regarding the EIA, the LSDB explained the public consultation process as this is prescribed by national law and stressed that everything had been done accordingly. The EIB-CM was provided with a copy of the opinion of the Department of Environment dated 10 July 2012 and establishing that a supplement of the EIA was not required in the present case.
- 4.2.3 With respect to the building permit, the LSDB admitted that the works had started prior to the issuance of the permit. The Promoter however argued that this was not an uncommon practice in Cyprus since the procedure to obtain a building permit could last very long. It was also noted that a planning permit was not considered necessary by the municipal authorities given the small size of the area occupied by the pumping station. With a view to attempting a compromising proposal, the LSDB stated that they could construct decorative walls and plant bushes that would hide the pumping station and make the construction fit the surrounding environment. The LSDB concluded that despite the complaint, this Project was very important for the local community and would contribute greatly to improving peoples' lives.
- 4.2.4 In the afternoon of the same day, the EIB-CM met again with the Promoter in order to visit the site and be guided to it by the Promoter. The LSDB accompanied the EIB-CM also to several other pumping stations belonging to Phases A and B in Larnaca. The EIB-CM visited the following pumping stations:

- First pumping station; located in the centre of Larnaca. It was adjacent to a betting agency and very close to a restaurant, residential buildings and a church.
- Second pumping station; under construction; this station included a drainage system. It was very close to residential houses. The site was surrounded with a white fence.
- Third pumping station; the EIB-CM revisited the station close to the complainant's house this time with the Promoter, in order to listen to the latter's view.
- Fourth pumping station; this one was very close to a school. It was surrounded by fence, whose door was locked, and therefore the site was not approachable.
- Fifth pumping station; there were works going on in this station. It was located close to big warehouses. One could smell the odour when walking on the wet well.
- Sixth pumping station; located on the coast, only a few meters away from the sea.

In general, it can be concluded that there was no strong odour or noise coming from the pumping stations visited. Additionally, it can be said that most of them were located in residential areas. During the visits, the LSDB made a second proposal for a compromise, i.e. that instead of a permanent generator, a removable one could be put in pumping station Q; according to the LSDB, this would considerably reduce the noise.

4.3 *Meeting with the Municipality of Larnaca*

- 4.3.1 The EIB-CM met the municipal engineer in charge of the Larnaca Project. The discussion focused on the issue of the building and planning permits. The municipal engineer confirmed that according to the presidential decree no 859/2003, a building permit was required for all constructions and a planning permit was mandatory for all constructions above around 30m². He noted that, due to the workload of the municipal technical services and although in theory the permit process should last up to three months, in reality it lasts one year. He also confirmed that a planning permit had not been necessary in this case as the pumping station sized 37m².
- 4.3.2 Regarding the distance of 11 meters between the pumping station and the complainant's property, the municipal engineer indicated that it was compatible with the law requirements which provided for a minimum distance of 3 meters. He confirmed that the area was designated as a protection zone Da2 and maintained that the plot ratio for Da2 zones was respected in this case¹⁰.

4.4 *Meeting with other national authorities*

- 4.4.1 Given that the complainant had brought his case also before the national ombudsman, a brief meeting with the latter was held on 12 October 2012 in the Commissioner's office. On that occasion, the EIB-CM explained its role and the reasons of the visit whilst the Commissioner informed the EIB-CM that the case had been communicated to the respondent authority and that it was still under investigation. On 22 February 2013, the Cypriot Ombudsman concluded that there was no instance of maladministration and closed the case. The complainant has requested further clarifications from the Ombudsman.
- 4.4.2 On the same day, the EIB-CM also met the Senior Sanitary Engineer of the Water Development Department-CMA, who presented the advantages of the pumping station. The Engineer asserted that the selection of the location was made on a multi-criteria basis; the chosen location was therefore the most appropriate one for several reasons: it was technically appropriate, economically advantageous (the plot was already under public and not private ownership) and finally, it was suitable as far as gravity was concerned. Referring to the EIA, she informed the EIB-CM that there had been a public consultation and that the relevant invitation had been published both on a newspaper and on the internet.

¹⁰ For further information on designated zones in Larnaca, the municipal engineer indicated the following link:
<http://www.moi.gov.cy/moi/tph/tph.nsf/Ail/DF1F6EE1C3DF5AA1C22578370026802B?OpenDocument>

- 4.4.3 Finally, the EIB-CM met with the concerned services of the Department of Environment – CMA who illustrated the national legislation concerning EIAs and public participation process, including the Aarhus Convention. With reference to the present case, the Department of Environment presented the timeline of the public participation process and took the view that everything was done in accordance with the law.
- 4.4.4 With regard to the change of location of the pumping station, the EIB-CM asked to be informed whether a supplementary EIA was needed in this case; the Department of Environment explained that the Promoter had asked the same question in its letter of 5 July 2012. Following an on-site visit, the Department of Environment had concluded that there was no need for a new EIA, since the change in question had not been significant. To reach this conclusion, it had compared the characteristics of the two sites, i.e. the hydrology, the geology, their ownership status and their distance from residential houses. A supplement had not been required also due to the fact that the size of the pumping station would be considerably reduced, namely from 200l/s to 20 l/s. Concerning the status of a Da2 zone, the Department of Environment stated that this classification referred to protection zones, which have some limitations e.g. the plot ratio. It was stated though that protection zones are different from nature protected zones, where restrictions are more important.

5. The EIB due diligence of the contested Project

5.1 *The Appraisal Report*

- 5.1.1 In the Appraisal Report of 15 November 2006, the EIB competent services proposed to finance the Project with conditions related to disbursements and particular undertakings of the Promoter. One of those conditions was the submission by the Promoter of the final design reports for works that duly incorporate mitigating measures, if any, as proposed and agreed upon on the basis of the respective EIA's and other environmental documents.
- 5.1.2 As far as environmental compliance is concerned, the services noted that the EIA procedure for the respective works included public consultation and resulted in a list of mitigating measures that would be incorporated into the final design of the works.
- 5.1.3 In respect of the environmental impact, the services indicated the mitigating measures as those listed in the EIA that concerned amongst others: the impacts during the construction period, both on population and on environment including Natura 2000 areas and odour nuisance.
- 5.1.4 Finally, regarding the economic justification, it was noted that the Project had been developed by international consultants to the standards required by EC Directive 91/271 for Urban Wastewater following Cyprus' recent accession to the EU. The studies had identified the proposed investment package as the most cost-effective and technically appropriate programme for LSDB to provide modern sewerage and drainage services for the entire urban area of Larnaca. Within this framework, the main components of the economic justification were summarised as follows:
- Safeguard the health and welfare of the city's residents.
 - Protect the tourism industry that is a key source of employment and income for the city.
 - Protect and conserve the local environment, especially the Larnaca Salt Lakes and the surrounding areas.
 - Reduce pollution in local watercourses.

- Protect local beaches that are important recreational assets for the local community and the tourist industry.
- Phase out the use of individual septic tanks and soakaway/absorption pits that do not operate properly in the local impervious soils; and are inappropriate for housing and population densities in most areas of the city.
- Promote more efficient use of scarce water resources through effective demand management, including: (i) full cost recovery charging; (ii) application of the polluter-pays principle; and (iii) re-use of treated effluent for irrigating parks, landscaped areas, and hotel gardens.
- Alleviate localised flooding in important urban areas, main roads and key road junctions, which can adversely impact on normal daily life and commercial activities.

5.2 The Board Report

5.2.1 The EIB Board Report of 6 February 2007 substantially reiterated information contained in the Appraisal Report with regard to value-added information, key issues, risks and mitigants. Concerning the environment, the Report stated that the assessment of impacts on the protected habitat had been incorporated in a comprehensive EIA including public consultation for all sewerage and treatment plant construction activities.

5.2.2 In the Value Added Sheet attached to the Board Report as Annex 3, the overall environmental rating of the Project is marked as *"acceptable with minor reservation(s)"*.

5.3 The Finance Contract

5.3.1 On 25 May 2007, the EIB signed the Finance Contract with LSDB. The total cost of the Project was estimated to be equal to EUR 167,800,000 with 75,000,000 to be financed by the EIB.

5.3.2 Among the provisions of the Finance Contract which are relevant to the present inquiry, it is worth recalling article 6.05 *"Borrower undertakings"* laying down the continuing Project undertakings of the Borrower. With regard to rights and permits, the article in question stipulates that the Borrower shall maintain in force all rights of way or use and all permits necessary for the execution and operation of the Project.

5.3.3 With regard to the Environment, the Finance Contract states that the Borrower shall implement and operate the Project in conformity with Environmental Laws. Environmental laws are defined as comprising the applicable laws of the European Union and the Republic of Cyprus as well as applicable international treaties, of which a principal objective is the preservation, protection or improvement of the Environment. The definition of "Environment" comprises, insofar as they affect human well-being, fauna, flora, soil, water, air, climate and the landscape as well as the built environment and cultural heritage. The Borrower is obligated to report to the Bank on these and other project related issues in line with detailed reporting obligations set out in the Finance Contract, including the delivery of Project Progress Reports and, upon completion, a Project Completion Report (each as defined and having the characteristics set out in the Finance Contract).

5.3.4 Article 8 on *"Information"* stipulates that the Borrower shall promptly inform the Bank of (i) any significant action or significant protest initiated or any material objection raised by any third party or any complaint received by the Borrower or any material litigation that is commenced against it with regard to environmental or other matters affecting the Project; and (ii) any fact or event known to the Borrower, which may substantially prejudice or affect the conditions of execution or operation of the Project.

6. Assessment of allegations

- Alleged failure to comply with EIB standards related to the EIA
 - a) Public consultation
 - b) Modification of the location
- Alleged failure to address the pumping station's negative environmental impact
 - a) Noise
 - b) Odour
 - c) Ground
 - d) Zone Da2
- Alleged failure to obtain building and planning permits on time
- Alleged devaluation of the complainant's property

6.1 *Alleged failure to comply with EIB standards related to the EIA*

Public consultation

6.1.1 The complainant alleged that the invitation for a public consultation regarding the EIA was published only in one Cypriot newspaper and therefore, his access was limited as he does not speak Greek. The Promoter argued that the invitation had been published in one newspaper and on the internet. They also provided copies of two public invitations: the first one concerned the public presentation of the EIA in a hotel in Larnaca on 11 April 2006. It was published in the Cypriot newspaper "Fileleftheros" dated 7 April 2006. The second invitation informed the public that the EIA was submitted to the Environment Committee and that any person could submit their comments within 30 days. It was published on "Fileleftheros" of 28 August 2006.

6.1.2 Concerning the publication of the invitation to the EIA public consultation, it appears from the preliminary assessment of the EIB-CM that the two invitations published by the Cypriot authorities fulfil the requirements of the Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (EIA Directive) as amended by the Directive 2003/35/EC (applicable at the time of the EIA). The Directive gives a large margin of appreciation to the national authorities to implement the practical arrangements of the public consultation. Finally, the EIB-CM notes that the European Commission confirmed that there was no breach of EU environmental legislation in the context of the infringement referred to in § 3.1 of the present report.

Modification of the location

6.1.3 The complainant stressed that the pumping station's location was different from the one approved by the LSDB and that the new location was 100 meters away from the initial site and much closer to the complainant's house. No supplementary EIA had been conducted for this modification. The LSDB stated that the change of site was requested by the CMA on the basis of its verbal communication with the latter, which wanted to use the specific location in order to build ministerial premises. By letter of 5 July 2012, the LSDB asked the Department of Environment about the need to conduct a supplementary EIA. On 10 July 2012, the Department of Environment replied that there was no such need, since the change in question was not significant and the pumping station was considerably downsized. During the fact-finding

mission, the LSDB also took the view that the new location was meant to improve the exploitation of gravity in the system's operation.

- 6.1.4 The EIB-CM notes that the Department of Environment, competent to assess requests related to environmental issues, took into account the size of the pumping station and the nature of the modification and considered that there was no need for a new EIA. Unless confronted with a flagrantly arbitrary decision, the EIB-CM cannot contest the interpretation of the national law performed by the environmental authorities neither can substitute them in reassessing the promoter's request.
- 6.1.5 Notwithstanding the above conclusion, the EIB-CM notes that the LSDB asked for the opinion of the Department of Environment concerning a supplementary EIA after the construction works had started and the complaint had been lodged. The EIB-CM considers that the ex-post evaluation performed by the Department of Environment, although valid, should have been asked earlier by the Promoter, namely before the beginning of works.

6.2 *Alleged failure to address the pumping station's negative environmental impact*

Noise hazard

- 6.2.1 The complainant was concerned by the noise pollution allegedly produced by the operation of the pumping station. The Promoter stated that the sewage pumping stations under construction had been designed in the same way, with the aim of eliminating odour or noise nuisance to neighbours. All pumping stations would have submersible pumps which would be installed in a concrete wet well, 6-8 meters below ground level. The emergency generators which operate only in the emergency of an electricity failure would be installed inside brick buildings and were specified with attenuators and enclosures to ensure that the noise levels inside the pumping station yard would not exceed 65dB in total at any time. The odour control active carbon filter would also include a silencer to minimize noise to the surroundings to less than 65dB within one meter from the filter.
- 6.2.2 Concerning noise pollution, the EIA reads as follows: *"During operation no sources of noise that would constitute a danger for impacts to the acoustic environment were located. Along the sewerage network, no equipment exists that would create noise. At the same time, all the pumps in the pumping station are submersed and as a result the noise that create is not detectable at the perimeter of the pumping station plots. The only source of environmental noise constitutes the backup generator (when it functions) that is installed in the control building. According to the specifications of the Larnaca Sewerage Board, the generators used should not produce noise over 70 dB (A) in a 1m distance. In case where their installation creates more noise from vibrations then it can reach the 80 dB (A) noise levels in a 1m distance. Because the generators are enclosed in the control building, the noise created in the perimeter of each pumping station is not expected to exceed the 50 dB (A). As it has already been mentioned, these are backup generators and they are placed in operation only in case of electricity failures. The electricity supply is exceptionally reliable the last years and failures rarely exist. Consequently, it is expected that the generators will rarely operate for periods that will not exceed three hours. In addition, these generators are placed in test operation once a month for a period of 10 minutes, during working hours. The sewerage treatment station does not constitute a significant source of environmental noise."*
- 6.2.3 The EIB-CM recalls that during its mission to Larnaca, it visited several operational pumping stations. None of them seemed to operate on a high noise level. At this point, it is worth adding that during the visit the complainant seemed to refuse the proposal of the LSDB to use a removable generator instead of a permanent one in order to reduce the noise level as this might have exposed his livelihood to higher risks in case of electricity failure.

- 6.2.4 The Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise¹¹ does not prescribe maximum limits for noise level. The Night Noise Guidelines for Europe issued by the World Health Organisation (WHO)¹² set 40dB as maximum night noise level.
- 6.2.5 The EIB-CM considers that the limits set by the WHO should be respected or at least that the pumping station's noise emissions should not exceed the background noise at the nearest residential buildings. However, the level of noise emissions cannot be calculated before the pumping station becomes operational. Therefore, the EIB-CM recommends that a measurement test be performed once the pumping station starts working. In case, the pumping station produces noise beyond the acceptable limits, supplementary mitigation measures will be adopted.

Odour hazard

- 6.2.6 The complainant alleged that there would be odours emanating from the pumping station. The Promoter answered that there was an odour control filter in the pumping station, whose purpose was to filter the air within the pumping station wet well, ensuring the odour-free operation of the pumping station.
- 6.2.7 The EIB-CM notes that as provided for in the EIA and confirmed by the Promoter, the activated carbon filter that will be installed in the pumping station can eliminate the odour emissions. Additionally, the EIB-CM observed, during the visit to the pumping stations in Larnaca that none of the six pumping stations emitted any strong odour that could be smelled from distance.
- 6.2.8 The EIA addresses the Project's odour impacts and reads as follows: *"The Sewerage Board wanting to completely eliminate the problem of odour creation, installed in two of the pumping stations of phase A, C1 and B1, forced ventilation filters. In the remainder 15 pumping stations of Phase A they have installed self breathing activated carbon filters. In Phase B the measures for odour reduction will be taken from the beginning so that the creation of odour problems is avoided. If properly designed and operated, the measures proposed are generally very effective. These measures, as they are proposed by MWH&I include:*
- *Connect the regions upstream the pumping stations with such priorities so that the pumping stations with long gravity sewers will not operate for a long time with small flows.*
 - *Use twin pumping pipes (one pipe should be used at the first years of operation and as the flows increase then start using the second pipe) this action will provide adequate sewage speeds.*
 - *The length of the pressure mains should be reduced and longer gravity sewers should be used where possible.*

For the pumping stations with high septicity tendency the following are additionally proposed:

- *Install a dosing system for the addition of ferric chloride or similar chemical as a temporary solution until all the system connections are completed.*
- *Importing of air or oxygen in the sewages in order to maintain a dissolved oxygen concentration of 1mg/L – this solution is not proposed for small pumping stations*
- *Protection of the downstream gravity sewers, including the pump reservoirs, by selecting to use durable materials that are not corrosive.*
- *Use activated carbon filters.*

¹¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:189:0012:0025:EN:PDF>

For additional sources, see the report from the Commission to the European Parliament and the Council on the Directive's 2002/49/EC implementation and the Assessment and Management of Environmental Noise Cypriot Law no 224(I)/2004

¹² http://www.euro.who.int/_data/assets/pdf_file/0017/43316/E92845.pdf

The increase in sewage flows, which involves the reduction of time the sewages stay in the network, will contribute to the reduction of the concentration of odourous gases, while the additional control measures aim at solving odour problems when these arise. According to the above no significant odour problems are expected. It always remains however the danger of casual problems in cases of disfunction of the odour reduction system or in exceptional cases where the flows will happen to be much smaller than the expected.

Odour problems can also arise at the wastewater and sludge treatment processes at the sewage treatment station. It is noted that in the existing sewage treatment station a biofilter has been installed at the entrance of the station and the odours at the station's inlet have been reduced effectively. It is estimated that with the biofilter use a satisfactory odour control will exist at the station inlet for phase B also.

Finally, taking into consideration that the anaerobic sludge digestion method will be used, it is estimated that with this method no major odour problems will develop during the transport of the processed sludge.

- 6.2.9 The EIA makes reference to the monitoring of the sewerage system and in particular the odour control as follows: *"For minimizing the danger of odor releases, activated carbon filters have been installed in all phase A pumping stations, with very good results. The same filters will also be installed in all phase B pumping stations. The life of the activated carbon depends on the concentration of odorous compounds. The activated carbon's state can be checked by taking samples from two points located at the side of the filter. At the treatment station a biofilter has been installed next to the phase A inlet chamber which also functions with very good results and it is proposed that the biofilter operation is continued for phase B of the sewerage system. The operation of the biofilter is checked by checking the biofilter's pH."*
- 6.2.10 From a preliminary assessment, it can be argued that if the EIA mitigating measures are in place at the time of operation of the contested pumping station, it is not likely that an odour nuisance will be caused by the pumping station. However, in order to address the complainant's worries, the EIB-CM recommends the monitoring of the odour emissions. In case, the pumping station emits odours beyond the acceptable limits, supplementary mitigation measures will be adopted.

Ground complications

- 6.2.11 The complainant stated that the area had been flooded on many occasions during the last winters' rains. According to him, this would unavoidably damage the pumping station resulting in disastrous consequences of overflowing water being mixed with sewage and allegedly watery soil resulting from its proximity to the sea level.
- 6.2.12 The LSDB reassured the EIB-CM that the pumping station will not take in any storm water. On the slab, the openings for maintenance are sealed with air and water tight covers, at approximately 1.2 meters above the level of the surrounding fields. The vent of the odour control system is further two meters above the wet well slab. The Promoter noted that the quality of the soil had been taken into account. In the past extreme rainfalls, the surrounding fields used to collect water to a maximum of 30-40 cm which was shortly absorbed by the ground. On this point the complainant commented that that this statement is incorrect and that the water lasted for months. The Promoter added that the storm water in the area is being directed to a separate local storm water pumping station through the local drainage system which had recently been improved. Additional safety measures were put in place in order to cope with emergencies. The pumping station is equipped with a telemetry system which allows the LSDB operators to monitor and control the operations of the pumping station remotely 24 hours a day ie. from their mobile telephones, tablets, home computers and display board at the WWTP. In case the sewage within the wet well rises above the level of 2.30 meters (ie. 5.20m (7.50 – 2.30) below ground level), an alarm signal will inform the operators of the event, who will immediately go to the pumping station to check the fault and take further action if needed. The pumping station is equipped with a stand-by pump. In case of

failure of the operating pump, the stand-by pump will automatically be switched into operation and a signal will inform the LSDB operator of the event. The pumping station is equipped with a stand-by generator. In case of electricity failure the generator will automatically be switched on. When the electricity supply is recovered, the pump will automatically switch back to the mains supply. The generator may operate up to 36 continuous hours. The event will again send a signal to the LSDB operator.

6.2.13 The EIB-CM notes that one of the other pumping stations (see above § 4.2.4) was located on the coast, a few meters away from the sea and according to the LSDB, it had no operational problems until that day.

6.2.14 Based on the review of the EIB competent services and in the absence of evidence in support of the complainant's allegation, it results that there are no sufficient grounds to contest the adequacy of the above-mentioned measures to guarantee the safe operation of the pumping station.

Zone Da2

6.2.15 The complainant alleged that the plot on which the pumping station is located was classified as a protected zone Da2. The authorities confirmed this classification and specified that it is not a protected zone *stricto sensu* but rather a protection zone with certain restrictions such as the plot ratio which is 0.01: 1. The complainant argued that the main reason for the position change of the pumping station was the request of the CMA to build its ministerial premises on the plot. However, according to the complainant, this would not be possible with such a limited plot ratio. In this respect, the promoter informed the EIB-CM that ministries such as the CMA is exempted from applying for planning and building permits and it is therefore not bound by the Da2 or any other zone classification or limitations.

6.2.16 According to the urban zone plan of Larnaca, the areas designated as Protection Zones include sites of natural beauty, forests, parks, public recreation areas, archaeological sites and buffer zones. The zone designation concerns the plot and coverage ratio, the building coefficient, the maximum number of floors and the maximum height. Protection zones are classified as Da2, Da3 and Da5 with the associated construction provisions being more restrictive for Da2 areas, namely 1% land coverage and plot ratio, one floor maximum and five meters the maximum height of the construction.

6.2.17 The EIB-CM notes that the construction of the pumping station on the plot had the authorisation of both the municipal authorities and the environmental authorities who took into account the current legislation concerning the Da2 zone. Therefore, given that the competent authorities gave their (a posteriori) approval and the size of the pumping station is compatible with the plot ratio, the EIB-CM does not see any reason to contest this decision. Concerning the CMA premises, the EIB-CM notes that it is not in a position to assess the legality of a future construction on the plot that is not related to the Project. In EIB-CM's view, this issue falls within the competence of national authorities or eventually the national courts.

6.3 Alleged failure to obtain building and planning permits on time

6.3.1 The complainant alleged that the construction works had started without the mandatory planning and building permits. A building permit had been issued four days after he lodged the complaint with the EIB-CM, although he was told by the LSDB during their first meeting on site that they had already obtained it. The complainant contested also the use of land by the LSDB (alleging necessity for rental agreements for the purpose of lawful use). The LSDB admitted that the works had started prior to the issuance of the building permit and they argued that this is not an uncommon practice in Cyprus. A planning permit was not considered necessary by the municipal authorities (see § 4.3.1 above).

- 6.3.2 The EIB-CM considers unfortunate the lack of the building permit and condemns such practices, even when they appear as a result of national systemic deficiencies. However, it notes that this instance of non-compliance was subsequently rectified by the authorities. That being said, the EIB-CM would like to remind that according to Article 2.3 of the EIB Complaints Mechanism Rules of Procedure, it is not competent to investigate complaints concerning national, regional or local authorities (e.g. government departments, state agencies and local councils).

6.4 *Alleged devaluation of the complainant's property*

- 6.4.1 The complainant has repeatedly raised his concerns about the possible devaluation of his property. He estimates the value of his property at around 2 million euros. He estimated the percentage of the alleged devaluation at 75%.
- 6.4.2 The EIB-CM observes that the complainant's allegation is rather vague as he did not provide any evidence regarding the alleged devaluation of his property. In the absence of evidence proving the devaluation of the property as a result of the construction and operation of the pumping station, the EIB-CM is not in a position to assess the complainant's allegation.

7. Conclusions and Way forward

- 7.1 The present report shows that, in the course of its inquiry, the EIB-CM reviewed the initial complaint, the rest of the communication of the complainant with the EIB as well as the available correspondence with the Promoter and national authorities, the regulatory framework and the relevant project documentation. It organised a fact-finding mission to Cyprus, several meetings with the Bank's services and had contacts with all the stakeholders throughout its inquiry. The EIB-CM is therefore confident that its initial assessment as presented above and summarised below reflects accurately the elements of the case.
- 7.2 As regards the first two issues raised in the complaint, namely the EIA public consultation and the modification of the pumping station's location, the allegations of the complainant appear to be unfounded. As mentioned above, the European Commission has confirmed that there was no breach of EU environmental legislation concerning the EIA. With respect to the modification of the location, the EIB-CM criticized the timing of the ministerial decision (see §§ 6.1.3-6.1.5) but stated that it could not contest the merits of this decision, especially since it did not appear to be arbitrary.
- 7.3 Similarly, with reference to the building and planning permits, the EIB-CM concludes that these issues concern the actions or omissions of the national authorities, which are not in principle subject to the EIB-CM's control.
- 7.4 Regarding the allegations related to the Da2 zone, the ground complications and the devaluation of the complainant's property, the EIB-CM considers, based on the elements provided by the parties, that there are not enough grounds to justify further inquiry into these allegations.
- 7.5 Finally, the EIB-CM takes into account the complainant's concerns related to the noise and odour hazard and, although potential noise pollution and odour impacts have been correctly addressed in the project's EIA, it proposes the monitoring of the noise and odour levels within the first six months of the pumping station's operation.
- 7.6 It is worth highlighting that during the current assessment, both parties have demonstrated willingness to compromise with a view to finding an appropriate solution. The Promoter stated itself willing to

incorporate different mitigating measures that would address the complainant's concerns. The complainant made concrete proposals, such as to assume the cost of the relocation of the pumping station.

- 7.7 The EIB-CM takes into account all the involved parties' concerns as well as the need to find solutions acceptable to them. In that respect, it proposes to engage in a mediation process and invites the Promoter and the complainant to a first meeting facilitated by the EIB-CM. The meeting will give the involved parties the opportunity to discuss the way forward as well as new concerns raised by the parties during the inquiry. Once the EIB-CM receives the parties' positive reply to its invitation, it will proceed with the arrangement of the meeting's details.

F. Alcarpe
Head of Division
Complaints Mechanism
22 July 2013

/R. Rando
Complaints Officer

22 July 2013