

## INITIAL ASSESSMENT REPORT

**Complaint SG/E/2013/02**  
**Belgrade By-Pass - Highway Interchange Petlovo Brdo**

*23 December 2013*

Prepared by

**Complaints Mechanism**

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*The EIB Complaints Mechanism wishes to thank all the project stakeholders that it met during its site visit in October 2013 - complainants, Roads of Serbia, the EIB Office in Belgrade, the EC Delegation in Belgrade and the national authorities- for their cooperation in discussing the issues raised by the present complaint.*

External Distribution

Complainant: NGO 'Green settlement – Rooster Hill', represented by its  
Project Promoter: Public Enterprise Roads of Serbia

Internal Distribution

EIB services concerned

## **1. THE COMPLAINT**

1.1 On 21 March 2013, the NGO 'Green settlement – Rooster Hill', represented by [redacted] lodged a complaint with the EIB Complaints Mechanism (EIB-CM) regarding the construction of the interchange Petlovo Brdo (the "Interchange"), as part of the EIB financed Project Belgrade By-pass (the "Project") in Belgrade, Serbia. The members of the NGO (the "complainants") are dwellers of the Petlovo Brdo settlement, situated in proximity to the location of the future interchange. In their initial complaint as well as in their further correspondence with the EIB-CM, they alleged that the construction of the interchange, as it is currently planned, will pass through the Borici forest, located next to their settlement and will have as effect the destruction of the forest. The complainants stated that Public Enterprise Roads of Serbia ("the Promoter") did not produce an environmental impact study for the specific component of the Project.

1.2 The complainants claim the intervention of the EIB in order to protect the forest, which they deem very important for their lives and well-being.

1.3 Furthermore, the complainants reported activities pertaining to corruption of the officials involved in the Project. In line with the EIB Policies, these allegations are being dealt with by the EIB Fraud Investigation Division.

## **2. THE PROJECT**

2.1 Belgrade By-Pass concerns the construction of 47 km of 2 lane bypass roads or 2 x 2 lane motorways located in the West and in the South of the city of Belgrade. It comprises two sections: A (10 km) and B (37 km). The Project aims at improving traffic safety and reducing congestion on the existing urban road network, in particular the E70/E75 highway crossing Belgrade. The loan is for up to EUR 185 Million for 25 years with the Republic of Serbia contributing EUR 119 Million for a total Project cost of EUR 361 Million.

2.2 The construction of the new Petlovo Brdo interchange is part of section B of the Project and is meant to improve the traffic flow in the area. The existing interchange is considered a "black spot" with recurrent traffic accidents.

## **3. THE EIB-CM FACT-FINDING MISSION**

3.1 On that basis, the EIB-CM launched a review of the case. As part of its initial assessment, the EIB-CM (Mr Roberto Rando and Ms Styliani Michi) went on mission to Belgrade from Friday 11 to Tuesday 15 October 2013. The purpose of the mission was to collect more information on the case, better understand the complainants' allegations, the Project Promoter and the national authorities' position, investigate the situation on the ground and determine if further work was necessary (investigation, compliance review or mediation between the parties). During its mission, the EIB-CM had long discussions with all the parties involved and was provided with extensive information and documentation on the case. For the purposes of the initial assessment, the presentation that follows is only indicative and not exhaustive of the main points that were discussed during the meetings.

### **3.2 List of meetings and visits**

#### Friday 11 October 2013

- Meeting with the Head of the EIB Office in Belgrade, Mr Andreas Beikos
- Meeting with the Head of the EC Delegation in Belgrade, Mr Dragan Lalic
- Meeting with the Municipality of Rakovica

#### Saturday 12 October 2013

- Meeting with the complainants
- Visit of the Petlovo Brdo forest and settlement

#### Monday 14 October 2013

- Meeting with the Promoter
- Meeting with the Ministry of Agriculture, Forestry and Water Management, Department of Forestry and the Public Utility Company "Greenery Belgrade"
- Meeting with the Ministry of Transport
- Meeting with the Ministry of Energy, Development and Environmental Protection
- Debriefing meeting with the Head of EC Delegation, Mr Dragan Lalic

#### Tuesday 15 October 2013

- Debriefing meeting with the Promoter
- Visit of the Petlovo Brdo forest with the Promoter
- Debriefing meeting with the complainants

### **4. POSITION OF THE PARTIES**

#### **4.1 The complainants**

4.1.1 On Saturday 12 October 2013, the EIB-CM met the President and the Vice-President of the NGO at the EIB Office in Belgrade. Following a presentation of the EIB-CM role and procedures, the complainants and the EIB-CM had an initial discussion on the merits of the case.

4.1.2 Later, the EIB-CM together with the complainants visited the forest of Petlovo Brdo. Dwellers from the settlement were gathered on-site. The EIB-CM gave a presentation of the role of the mechanism and the purpose of the site visit. The people gathered there had the chance to take the floor and present their views concerning the plans for the forest. They all stressed the importance of the forest in their everyday life not only as protection against pollution and noise but also as a recreational area for their children and themselves. It was reported that the local school of the settlement also used the green space for the students' outdoor activities.

4.1.3 The complainants alleged that they were never consulted and no alternatives for the interchange had ever been proposed. Moreover, they expressed their fears on the proximity of the future interchange to their houses and the pollution resulting from it. They also noted that most of them had chosen to leave the centre of the city and to move to Petlovo Brdo only for the purposes of being close to the forest. The complainants emphasised that the area where the interchange will be constructed lies over erosive land (hence the planting of the trees in the 1970s) and that the construction may have negative impact on the area and the neighbouring settlement. It is noted that works on site have not started yet and no cutting of the trees has taken place in relation to the interchange.

4.1.4 In the afternoon, the EIB-CM met the NGO, the Vice-President and their families, who provided further details on the case. The complainants alleged that the interchange was presented as part of the Belgrade Bypass Project regarding its financing and as a local project regarding the need for an Environmental Impact Assessment (EIA). The complainants also provided information on a stakeholders' engagement meeting organised by the Promoter in July 2013 as well as on the developments of the procurement procedure for the works foreseen on the contested interchange.



4.1.5 In the afternoon of Tuesday 15 October 2013, the EIB-CM had a debriefing meeting with the President of the NGO and one of its members. The complainants were briefly informed about the developments of the mission and the possible future actions.

#### **4.2 The Promoter**

4.2.1 On Monday 14 October 2013, the EIB-CM met the Project Promoter at the latter's premises. When asked about the relation between the interchange and the Belgrade Bypass, the Promoter stated that as regards its position the interchange did not form part of the Belgrade Bypass project but it was part of the planning of the Belgrade Bypass. The Promoter noted that there was no need for an EIA, since it is a local project with limited social and environmental impacts. The Promoter pointed out the importance of the construction of the new interchange and argued that the existing interchange is one of the most dangerous in Serbia, causing many accidents every year.

4.2.2 The Promoter also claimed that the dwellers of the settlement will not be affected by the noise and there will be no impact on their health since the Promoter will put in place mitigating measures and will monitor the noise and the pollution levels once the interchange is constructed. The Promoter provided extensive written material which will be reviewed by the EIB-CM in the next phase of the inquiry.

4.2.3 On Tuesday 15 October 2013, the EIB-CM went on a site-visit with the representatives of the Promote in order to understand better the exact location of the future construction, the possible adverse effects on the nearby community and the possibilities for mitigating measures.

#### **4.3 The national authorities**

4.3.1 As indicated above in the mission schedule, the EIB-CM engaged with several national authorities with a view to obtaining as much information as possible regarding the case.

- Meeting with the Municipality of Rakovica

4.3.2 The municipal officers noted that the area under question is a green corridor that separates the Petlovo community from the Highway and protects the residents from pollution. They stated that the complainants had failed to raise their concerns early enough.

- Meeting with the Department of Forestry, Ministry of Agriculture, Forestry and Water Management and the Public Utility Company "Greenery Belgrade"

4.3.3 Asked about their role and mandate, the Department of Forestry explained that the Ministry is responsible for designing and implementing the regulations that pertain to forest issues. Concerning the present case, the officers interviewed noted that the land under question was qualified as forest land. However, following a request made by the Promoter, the Ministry of Finance decided that for the purposes of the public interest, the land could be used for the construction of the interchange. The Ministry of Forestry is not requested to provide its opinion on such requests. According to the staff interviewed, the forest in question consists of more than 1000 trees in good health and in the middle of their life cycle.

- Meeting with the Ministry of Transport

4.3.4 The representatives of the Ministry of Transport explained that the latter is responsible for the road safety and coordination as well as for the inspection of the roads. The Promoter functions administratively under the supervision of the Ministry of Transport. They confirmed having received a complaint by the same NGO regarding this case some months ago and just few days before the appointment of the new Minister of Transport following the government reshuffle in August 2013. They assured the EIB-CM that they are willing to discuss possible solutions in order to resolve the issues raised by the complainants.

- Meeting with the Ministry of Energy, Development and Environmental Protection

4.3.5 Asked about the legislation on the EIA, the officers explained that the current legislation is adjusted to the EU *acquis* as it distinguishes between projects that have environmental impacts and therefore require an EIA and projects for which the Ministry of Environment decides whether an EIA is required. Regarding the interchange Petlovo Brdo, the officers explained that it was presented by the Promoter as a local project. This, together with all the documentation provided by the Promoter led the Ministry to screen it out and consider it as falling in the second category (EIA not obligatory). At the time of the decision of the Ministry of Environment, no mitigating measures had been identified.

## 5. APPLICABLE REGULATORY FRAMEWORK

### 5.1 The scope of the EIB-CM

5.1.1 The EIB Complaints Mechanism enables any person or group, who alleges that there may be a case of maladministration of the EIB in its actions and/or omissions, to lodge a complaint with the EIB Secretary General. Article 4, Part II of the EIB Principles, Terms of Reference and Rules of Procedure (CMPTR) describes the scope of the mechanism as comprehending all complaints of maladministration lodged against the EIB Group.

5.1.2 Additionally, it is to be noted that Article 4.2, Part II of the CMPTR stipulates that *"the EIB Complaints Mechanism concerns any of the Group's activities with the exclusion of complaints concerning allegations of fraud or corruption, which fall within the mandate of the EIB Inspectorate General – Fraud Investigation Division as well as of complaints lodged by the EIB Group's staff."*

5.1.3 Pursuant to Article 2.3, part IV of the CMPTR, *"The EIB Complaints Mechanism Division is not competent to investigate complaints concerning International organisations, Community institutions and bodies, national, regional or local authorities (e.g. government departments, state agencies and local councils)"*.

### 5.2 Initial Assessment

5.2.1 Article 5.4 of the EIB-CM Operating Procedures sets the objectives of the Initial Assessment performed by the EIB-CM:

*"The objectives of such Initial Assessment are fact finding oriented:*

- *to clarify the concerns raised by the complainant(s), to better understand the complainants' allegations as well as other project stakeholders (project promoter, national authorities, ...) views, and to have view on the situation on the ground;*

- for those projects that raise substantial concerns regarding social or environmental outcomes and or seriously question governance of objects or vehicles of EIB financing, to understand the validity of the concerns raised;
- to assess whether and how the project stakeholders (e.g. Complainants, the Bank's operational services and the project Promoter) could seek resolution of the issues under complaint;
- to determine if further work is necessary and/or possible from the EIB CM (investigation, compliance review or mediation between the parties) to resolve the issues raised by the complainant(s)."

### **5.3 Mediation / Facilitation Function**

5.3.1 Article 5.1.7 of the EIB-CM Operating Procedures lays down the eligibility requirements for mediation as follows:

*"If there is a manifest opportunity for a collaborative resolution process, and before the issuance of Initial Assessment Report, the CM will obtain formal agreement from the relevant project stakeholders (complainants, affected communities, project promoter, national authorities and EIB operational services) to start a mediation process. Typically, the mediation will take place between the Complainants/Requestors, on one side, and the Bank's Management/Services and/or Project Promoter and/or national authorities, on the other side. Any of the parties may interrupt or call off the mediation process at any time."*

### **5.4 The EIB Statement of Environmental and Social Principles and Standards**

5.4.1 The EIB Statement of Environmental and Social Principles and Standards (the "Statement") sets the environmental and social requirements of the Bank applied to the projects it finances. According to the Section "Environmental Standards in the EU and Enlargement Countries":

*"The EIB requires that all projects that it finances comply at least with:*

- *Applicable national environmental law;*
- *Applicable EU environmental law, notably the EU EIA Directive and the nature conservation Directives, as well as sector-specific Directives<sup>34</sup> and "cross-cutting" Directives<sup>35</sup>,*
- *The principles and standards of relevant international environmental conventions incorporated into EU law.*

*With reference to the EIA Directive, the EIB requires that its provisions are respected, in particular:*

- *An EIA should be carried out if a project is likely to have a significant impact on the environment; for an Annex II project according to the EIA Directive, the decision not to carry out an EIA should be justified.*
- *The public concerned should be given early and effective opportunities to participate, to express comments on the project and to receive a response to those comments.*
- *Any residual impacts should be suitably mitigated, compensated and/or offset.*



## **6. CONCLUSIONS**

6.1 Based on the initial assessment, the EIB-CM considers that further inquiries are required. The present case raises concerns as regards indicatively but not exhaustively the following areas:

- i) The establishment of an EIA, in particular whether the screening out of the interchange was justified and the consideration of alternatives
- ii) The environmental impacts of the future construction of the interchange on the Borici forest;
- iii) The social impacts of the on the dwellers of the settlement, namely their well-being and everyday life;
- iv) The conduct of a public consultation in accordance with the requirements set by the Aarhus Convention and the EIB standards;
- v) The implementation of specific mitigating measures .

The EIB-CM will review all the documentation provided by the parties, the Project documents and will assess the compatibility of the interchange with the national law as well as with the EIB's policies and standards.

6.2 Apart from the compliance review, the EIB-CM proposes a mediation process with a view to facilitating the dialogue between the complainants and the Promoter and achieving a solution that would ensure the continuation of the Project, the protection of the environment and the well-being of the community.

## **7. WAY FORWARD**

7.1 As the parties are invited to submit their view on the proposal for mediation, the EIB-CM would like to take this opportunity to inform the parties on the nature of the mediation process.

- Mediation is a confidential process for all the parties. Every document and every discussion held during the mediation process is to remain confidential and should not be disclosed, unless otherwise required by the applicable regulatory framework. Mediation is a voluntary process and therefore the parties to the mediation, including the mediator, have the possibility to stop the mediation at any moment. Should one of the parties do this, this party will be asked to explain to the EIB representatives the reasons behind the decision.
- The EIB-CM expects that the parties attending the mediation do so in good faith and show openness during the process with the aim of finding solutions that are acceptable to all. The EIB also expects the parties to act in a respectful manner towards all individuals present
- Mediation is a process where the parties are expected to discuss and eventually find their own solutions. It is not a court procedure and should not be an exercise of finding who is right or wrong. The role of the mediator is to facilitate the discussion between the parties. The mediator is not expected to give advice or take decisions on behalf of the parties.

7.2 In case of affirmative answer by the parties, the EIB-CM will proceed with the arrangement of the mediation meeting's details. In case of a negative reply, the EIB-CM will carry out exclusively a full compliance review.



7.3 Given the above-mentioned, the EIB-CM invites the complainants and the Promoter to reply on whether they agree with the proposed mediation process by no later than 10 January 2014.

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23 December 2013

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23 December 2013