



## RESEAU FERROVIAIRE RAPIDE

*SG/E/2016/04*

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

# CONCLUSIONS REPORT

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### **The EIB Complaints Mechanism**

The EIB Complaints Mechanism is designed to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases in which members of the public feel that the EIB Group has done something wrong, i.e. if they consider that the EIB has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) – and one external – the European Ombudsman (EO).

Complainants who are not satisfied with the EIB-CM's reply have the right to lodge a complaint of maladministration against the EIB with the European Ombudsman. The EO was "created" by the Maastricht Treaty of 1992 as an EU institution to which any EU citizen or entity may appeal to investigate any EU institution or body on the grounds of maladministration.

Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as set out by the European Ombudsman, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities and to project cycle-related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism is designed not only to address non-compliance by the EIB with its policies and procedures but also to endeavour to solve the problem(s) raised by complainants such as those regarding the implementation of projects.

For further and more detailed information regarding the EIB Complaints Mechanism please visit our website: <http://www.eib.org/about/accountability/complaints/index.htm>

## ABBREVIATIONS

AFD	Agence Française de Développement
ANPE	Agence Nationale de Protection de l'Environnement
EIA	Environmental Impact Assessment
EIB	European Investment Bank
EIB-CM	European Investment Bank's Complaints Mechanism Division
EMP	Environmental Management Plan
EU	European Union
KfW	Kreditanstalt für Wiederaufbau
NIF	Neighbourhood Investment Facility
PAP	Project Affected Person
RAP	Resettlement Action Plan
RFR	<i>Réseau Ferroviaire Rapide</i>
SAGN	Social Assessment Guidance Note
SEP	Stakeholder Engagement Plan
TA	Technical Assistance
TMSP	Tunisian Ministry of State Property and Land Affairs

**TABLE OF CONTENTS**

<b>ABBREVIATIONS</b>	<b>4</b>
<b>EXECUTIVE SUMMARY</b>	<b>6</b>
<b>1. COMPLAINT</b>	<b>8</b>
<b>2. BACKGROUND INFORMATION</b>	<b>9</b>
<b>3. APPLICABLE REGULATORY FRAMEWORK</b>	<b>9</b>
<b>4. EIB PROJECT CYCLE</b>	<b>15</b>
<b>5. EIB-CM INQUIRY</b>	<b>24</b>
<b>6. FINDINGS &amp; CONCLUSIONS</b>	<b>25</b>
<b>7. RECOMMENDATIONS</b>	<b>29</b>

## **EXECUTIVE SUMMARY**

On 7 April 2016, the EIB Office in Tunis provided the EIB Complaints Mechanism (EIB-CM) with a copy of a complaint concerning a project in Tunisia co-financed by the EIB, AFD, KfW and NIF under a mutual reliance initiative. The Complainant, a local resident whose [REDACTED] property located in front of the Bardo square had been partially expropriated because of the project, alleged:

- i. irregularities in the expropriation, both in terms of insufficient compensation and unfair refusal to exchange the expropriated property,
- ii. failure to protect cultural heritage,
- iii. lack of stakeholder engagement, and
- iv. non-compliance of the operation with the EIB standard on the Assessment and Management of Environmental and Social Impacts and Risks.

The Project concerns the construction of the first sections of two lines of the new suburban railway network in Tunis as well as the acquisition of the necessary rolling stock. The Project is implemented by a public works company *Réseau Ferroviaire Rapide* ("The Promoter"), a special purpose company set up by the Tunisian government to design and build the new suburban railway network.

The EIB and the Promoter signed a finance contract in 2010. After acknowledging that the operation was not in compliance with EIB standards, in 2013 the EIB decided to exceptionally waive its social conditions for disbursement of the first tranche of funds and introduced new social conditions for the second and further disbursements.

## **FINDINGS AND CONCLUSIONS**

The present Project features a high degree of complexity. The inquiry of the EIB-CM has identified a number of factors that contributed to such complexity. These include (i) the complex socio-political context in Tunisia and the shift from the previous regime to the current one in a delicate moment for the project's implementation, (ii) the delays in the implementation of the Project and the poor information to the lenders, (iii) the high volatility of the institutional context, even after 2014, (iv) the fact that, although the operation was financed under the mutual reliance initiative and the EIB was not the lead financier, the EIB had to appraise and monitor the social impacts of the Project. In this context, the pragmatism and dedication of the EIB competent services are praiseworthy.

Regarding the **first allegation**, the EIB-CM notes that in 2013 the EIB decided to waive the condition for first disbursement requiring the Promoter to produce a satisfactory Resettlement Action Plan. This is within the discretion of EIB governing bodies. Under these circumstances, the allegation is **not grounded** in the context of EIB's obligations.

The inquiry of the EIB-CM also took note of:

- a. The time elapsed since the valuation of the expropriated parcels and the publication of the expropriation decree in 2014;
- b. The inflation rate and the land price rise in Tunisia since 2014
- c. The significant delays in the administration of expropriation proceedings by local judicial authorities and
- d. the Promoter's failure to implement EIB clear instructions aiming to address this shortcoming

If not addressed through a process of recalculation, these factors are likely to negatively affect the adequacy and fairness of the compensation offered in 2014. From the inquiry of the EIB-CM, it results that, regardless of the compliance of the operation with the applicable regulatory framework, the Project may have a negative impact on the complainant's right on the expropriated land.

Furthermore, based on its assessment of the EIB's due diligence of the project, the EIB-CM concludes that, in breach of SAGN1, the EIB failed to interrupt negotiations to finalise the investment until it had received a satisfactory resettlement plan/framework.

Concerning the allegedly *unfair refusal to expropriate the entire property or to compensate in kind*, the EIB-CM found that both allegations are **not grounded**, based on its assessment of the applicable regulatory framework.

Regarding the **second allegation**, the EIB-CM concludes that Bardo city square is not registered as a protected historic site and does not benefit from a “high level of protection”, which is required by the EIB standards for the Bank not to consider financing a project. As a result, the allegation related to the *failure to protect cultural heritage* is **not grounded**.

Concerning the **third allegation**, the EIB-CM found that there is a significant gap between national EIA law and EIB standards with regard to stakeholders’ engagement and that the public consultation on the 2010 complementary study on Bardo square lacked the engagement with civil society and the public at large.

While the EIB-CM concludes that the allegation about *lack of public consultation* is **grounded**, the EIB-CM also acknowledges the Promoter’s improvement in terms of stakeholders’ engagement due to the efforts made by the EIB following the 2013 waiver. Furthermore, the EIB-CM notes that the Promoter’s decision to launch a study on the feasibility of an alternative proposal by the Municipality of Bardo has the potential to address the shortcomings of the 2010 complementary study insofar as it foresees a public consultation and the integration of the remarks made during the latter. The inquiry of the EIB-CM also leads to conclude that the Promoter needs Technical Assistance to ensure that the necessary skills are in place and the process is managed to the satisfaction of the EIB.

Based on its assessment of the EIB’s due diligence of the project, the EIB-CM concludes that there is an **area of improvement** in terms of adequate mitigation of gaps between EIB and national standards with regard to public consultation.

Regarding the **fourth allegation**, the EIB-CM found that the Standard referred to by the Complainant did not exist at the time of the approval of the challenged operation. The EIB-CM trusts, however, that the complainant’s concerns about the assessment and management of environmental and social impacts and risks are addressed as part of the EIB-CM’s review of the other allegations.

Based on the above conclusions, the EIB-CM recommends that:

While the waiver limits the Bank’s contractual options to enforce a solution to the issue of indexation, within the next six months:

- Services should engage with the promoter with a view to identify the potential gap between the amount allocated in 2014 and the current indexed market price.
- Once this gap is clearly identified and documented, services should engage with the promoter with a view to achieve an agreeable solution on how to bridge such a gap.

The EIB should: (i) support the Promoter with reporting on social issues and (ii) support/monitor the public consultation process and the integration of its results in relation to the feasibility study. This could be done through the mobilisation of the necessary funds for an independent TA reporting to the EIB and operating at the Promoter’s headquarters. The TA could also be useful to support addressing the actions identified in the previous and following paragraph.

The EIB services should support/monitor the Promoter to ensure that a SEP clearly containing initiatives of stakeholders engagement with Bardo residents and businesses is established to the satisfaction of the Bank.

The EIB services should report on the outcome of the above actions to the Management Committee during 2020.

The EIB-CM will monitor the implementation of the above recommendations by the 1<sup>st</sup> quarter of 2021.

## CONCLUSIONS REPORT

**Project:** Reseau Ferroviaire Rapide

**Complainant:** Local resident

**Date received:** 7 April 2016

**Confidential:** No

### 1. COMPLAINT

1.1 On 7 April 2016, the EIB Office in Tunis provided the EIB-CM with a copy of a complaint from a local resident (hereinafter referred to as “the Complainant”), who owns a [REDACTED] property located in front of the Bardo square. His complaint concerned a suburban railway network project (“the Project”) co-financed by the EIB and other financial institutions. More precisely, the Complainant’s allegations were related to the future metropolitan Line D.

1.2 The Complainant firstly alleged irregularities in the expropriation of a part of his land parcel. According to the Complainant, the proposed compensation was insufficient and represented 1/8<sup>th</sup> of the real value. In addition, he explained that the remaining [REDACTED] of his land, which were not expropriated, were no longer suitable for construction. Furthermore, the promoter had rejected his request to exchange the expropriated property for another property of the same size.

1.3 Secondly, the Complainant alleged that the Line D would have a negative impact on the Bardo square, which, according to him, represents historical and cultural heritage of Tunisia. The Complainant alleged that the selected design for the Project, with the construction of a separating wall, four car tunnels and a tunnel for pedestrians, would completely transform the Bardo square area to the general detriment. He also complained about the refusal of the promoter to engage with the local stakeholders.<sup>1</sup>

1.4 Finally, the Complainant invoked non-compliance of the Project with the EIB’s Environmental and Social (E&S) Standards and in particular Standard 1 on Assessment and Management of Environmental and Social Impacts and Risks, Standard 5 (Cultural Heritage), Standard 6 (Involuntary Resettlement) and Standard 10 (Stakeholder Engagement).

1.5 As part of his correspondence with the EIB-CM, the Complainant:

- stated that the municipality had not authorized the works in Bardo square due to the refusal of the Promoter to engage with the local authorities;
- provided a plan of the expropriated property and a 2015 letter from the Tunisian Ministry of State Property and Land Affairs (TMSP) containing the latter’s reply to his request for compensation in kind and confirming that the compensation will be monetary;
- provided the Promoter’s reply of 5 April 2016 rejecting his request to acquire the remaining part of the expropriated property because it was not necessary for the project; and
- provided the Expropriation Decree of 7 January 2014 and the Court of First Instance’s judgment of 26 June 2014 dismissing the demand of the Public Prosecutor to take possession of the Complainant’s property<sup>2</sup>.

1.6 In June 2019, the EIB-CM liaised with the Complainant with a view to explaining its mandate, the EIB-CM’s work to date as well as the impact of confidentiality on the handling of the case. On 17 June 2019, the Complainant informed the EIB-CM that he did not wish his complaint to be dealt with in a confidential manner.

<sup>1</sup> In addition, the Complainant referred to the involvement of a criminal organisation in the Project. The EIB-CM transferred this information to the Bank’s competent services on 20 April 2016.

<sup>2</sup> In particular, the Court filed the case as invalid because the first of the defendants, i.e. the first individual identified in the Expropriation Decree, was deceased. The decision to file the case was also based on the fact that, although the Court had requested the Public Prosecutor to limit the case to the heirs, the Public Prosecutor had failed to implement this action.



**TABLE 1 – SUMMARY OF ALLEGATIONS**

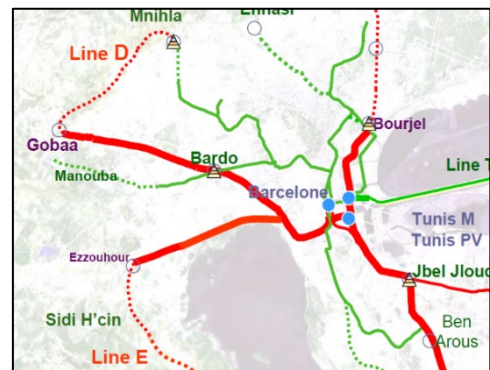
- 1. Alleged irregularities in expropriation procedure (Standard 6):**
  - i. Insufficient compensation
  - ii. Refusal to compensate in kind/to expropriate the remaining land
- 2. Alleged failure to protect cultural heritage (Standard 5)**
- 3. Alleged lack of stakeholder engagement (Standard 10)**
- 4. Alleged non-compliance with Standard 1 (Assessment and Management of E&S Impacts and Risks)**

## 2. BACKGROUND INFORMATION

### 2.1 Project

2.1.1 The RFR project (“the Project”) concerns the construction of the first sections of two lines of the new suburban railway network in Tunis as well as the acquisition of the necessary rolling stock.<sup>3</sup>

2.1.2 The Project is implemented by a public works company *Réseau Ferroviaire Rapide* (“The Promoter”), a special purpose company set up by the Tunisian government to design and build the new suburban railway network.



### 2.2 *Tunisian Revolution 2010 - 2011*

2.2.1 In December 2010, an intensive civil resistance campaign started in Tunisia. A series of street demonstrations led to the ousting of President Ben Ali in January 2011. Following the change of regime, a state of emergency was declared.

2.2.2 The protests constituted a wave of social and political unrest in Tunisia. A secure political environment, adequate for international cooperation, was only established in the second half of 2013. Following the change of regime in 2011 and the end of the state of emergency, Tunisia adopted a new constitution in 2014.

## 3. APPLICABLE REGULATORY FRAMEWORK

### 3.1 *EIB-CM's Policy and Scope*

3.1.1 The EIB-CM's mission is to provide the public with an alternative and pre-emptive resolution of disputes.<sup>4</sup> The EIB-CM handles complaints alleging maladministration by the EIB.<sup>5</sup> The EIB-CM is not competent to investigate complaints concerning international organisations, Community institutions and bodies, national, regional or local authorities.<sup>6</sup>

3.1.2 The EIB-CM handles the complaints received before 13 November 2018 in accordance to the EIB Complaints Mechanism - Principles, Terms of Reference and Rules of Procedure adopted in February 2010.

<sup>3</sup>EIB project number 2009-0154. For more information, please see: <http://www.eib.org/projects/pipelines/pipeline/20090154>, accessed on 9 September 2019.

<sup>4</sup> [Complaints Mechanism Principles, Terms of Reference and Rules of Procedure](#), Title III – Terms of Reference, article 1.1.

<sup>5</sup> *Ibid.*, Title II - Principles, article 4.1.

<sup>6</sup> *Ibid.*, Title IV – Rules of Procedure, art. 2.3.

### 3.2 The 2009 EIB Statement

3.2.1 The EIB requirements applying to the challenged operation are enshrined in the 2009 EIB Statement of Environmental and Social Principles and Standards (the “Statement”) and the 2007 EIB Environmental and Social Practices Handbook (the “Handbook”).<sup>7</sup> The latter translates the environmental and social principles and standards described in the Statement into the operational practices followed by the EIB staff. The Handbook describes the extent of the work of the Bank and the responsibilities and roles of the promoter, which is responsible for the application and enforcement of EIB requirements<sup>8</sup>. The obligations of the promoter deriving from EIB requirements are described in the Finance Contract signed between the EIB and the borrower.<sup>9</sup>

3.2.2 The EIB aims to add value by enhancing the environmental and social sustainability of all the projects that it is financing. All projects must comply with the EIB’s environmental and social requirements<sup>10</sup>, which may go beyond what is legally required<sup>11</sup>. As the social dimension is one of the pillars of sustainable development, by the time when the EIB was considering the challenged operation social considerations had come to play a bigger role in the project-related activities of the Bank, notably when operating outside the EU. Drawing on the Charter of Fundamental Rights of the European Union, the EIB pays particular attention to the impacts that a project might have on people in the local community<sup>12</sup>. By providing finance in a way that encourages transparency, participation and consultation, social inclusion, integrated planning and more equitable access to goods and services, the Bank aims to promote greater social well-being.<sup>13</sup>

3.2.3 With regard to environmental standards for projects outside the EU, the Bank requires that they comply with national legislation, including international conventions ratified by the host country, as well as EU standards. Where EU standards are more stringent than national standards, the higher EU standards are required, if practical and feasible. When for a particular project the immediate achievement of EU requirements may not be practical and in some case desirable, it is incumbent on the promoter to provide an acceptable justification to the Bank for a deviation from EU standards, within the framework of the principles and standards of the Statement. In such cases, provision should be made for a phased approach to higher standards.<sup>14</sup>

3.2.4 The Bank adopts a human rights-based approach and does not finance projects with significant residual social costs. For projects outside the EU, the approach of the EIB to social matters is based on the rights-based approach mainstreaming the principles of human rights law into practices through the application of the EIB’s Social Assessment Guidelines in the Handbook<sup>15</sup> (see §3.3 of this Report).

3.2.5 With regard to Involuntary Resettlement, the Statement stipulates that people whose livelihoods are negatively affected by a project should have their livelihoods improved or at minimum restored and/or adequately compensated for any losses incurred. Where physical or economic displacement is unavoidable, the Bank requires the promoter to develop an acceptable Resettlement Action Plan.<sup>16</sup>

3.2.6 With regard to Cultural Heritage, the EIB generally does not finance a project, which threatens the integrity of sites that have a high level of protection for reasons of cultural heritage, including UNESCO World Heritage Sites. A derogation may be granted only in the presence of strict conditions.<sup>17</sup>

3.2.7 The EIB recognizes the added value that interested and well-informed members of the public, especially the people affected by the Project (hereinafter, PAP), can bring to the project environmental assessment process. Consultation and participation of concerned stakeholders during project preparation are expected to enhance sustainability and contribute to project success. For all projects for which the EIB requires a formal EIA, the promoter should conduct a meaningful, transparent and culturally appropriate public consultation of affected

<sup>7</sup> In his letter, the Complainant referred to a more recent version of the Handbook containing standards that did not exist at the time of the approval of the challenged operation nor did they apply at the time of signature of the Finance Contract.

<sup>8</sup> [The EIB Statement](#), §12 – Background.

<sup>9</sup> *Ibid.*, §7 – Preamble.

<sup>10</sup> *Ibid.*, §3 – Background.

<sup>11</sup> *Ibid.*, §6 – Preamble.

<sup>12</sup> *Ibid.*, §8 – Background.

<sup>13</sup> *Ibid.*, §11 – Preamble.

<sup>14</sup> *Ibid.*, §§39–40 Standards, See also §19 – Background and §B1.1.70 of the Handbook.

<sup>15</sup> *Ibid.*, §30 – Principles and §49 - Standards.

<sup>16</sup> *Ibid.*, §51 – Standards.

<sup>17</sup> *Ibid.*, §58 – Standards.

communities and provide for a timely disclosure of appropriate information in a suitable form. There should be evidence that the views expressed have been considered. For all other projects, the Bank requires promoters to engage stakeholders in meaningful dialogue, as a citizens' right and to build support for efficient and timely project implementation. Outside the EU, national law sets the minimum disclosure, consultation and participation requirements of the Bank. Consultation and participation is essential for investment sustainability through increased local ownership and support through informed involvement. Moreover, meaningful dialogue and participation is crucial to promoting and supporting the rights of people affected by a project. As such, public consultation is a general requirement of the environmental and social safeguards of the Bank<sup>18</sup>.

3.2.8 Where insufficient capacity might prevent the promoter from meeting EIB requirements, the Bank requires that capacity be enhanced and it may provide technical assistance.<sup>19</sup> The EIB will work with promoters to identify and manage environmental and social opportunities and risks, where necessary. If required, the Bank will help to develop appropriate institutional capacity to support the project during implementation and operation; and, it will cooperate with third parties, including host country authorities, other financiers, other EU institutions, representatives of civil society, and various other bodies, to help ensure the successful implementation, operation and outcome of a project<sup>20</sup>.

3.2.9 The EIB monitors the environmental and social performance of the projects it finances, especially the fulfilment of any specific obligations described in the Finance Contract. The extent of monitoring is a function of the characteristics of the project, the capacity of the promoter and the country context. Monitoring by the Bank is based on reports from the promoter and may be supplemented by site visits by the Bank and other sources of information, including that provided by affected communities.<sup>21</sup>

3.2.10 Projects should be designed so as to avoid and, if this is not possible, reduce any significant adverse impact, and further design changes may be justified if the socio-economic benefits of the change exceed the costs. Any significant residual negative impact should be, in order of preference, mitigated, compensated or offset.<sup>22</sup> A breach of contract and/or poor project performance in other respects requires corrective action by the promoter, in agreement with the Bank. Failure by the promoter to agree such action with the Bank and to take appropriate action may have financial and legal consequences for the promoter, e.g. a halt to disbursements, and/or recovery of the finance outstanding, if the promoter does not fulfil the requirements of the Bank during a reasonable period of time<sup>23</sup>.

### 3.3 The 2007 EIB Handbook

3.3.1 §A.1 of the Handbook stipulates that, among the core environmental and social safeguard measures reflecting international good practice, the EIB requires all projects to comply with the EU environmental acquis on environmental assessment. The Bank shall satisfy itself that a project to be financed outside the EU is assessed on the basis of EU environmental principles, standards and practices, subject to all conditions and that it complies with related national and relevant international environmental legislations.<sup>24</sup> Furthermore, the project shall satisfy the social safeguards of the EIB; as such, social assessment is carried out for all projects outside the EU.

3.3.2 §A3.14 of the Handbook states that all investment projects financed by the EIB should be subject to *an environmental and social screening* as part of the pre-appraisal. In particular, §A4.2 stipulates that, at pre-appraisal stage, the EIB should record the main national, EU and international legal instruments that are relevant to the project and identify any other actual or foreseen legal issue. The same provision establishes that the EIA, which includes public consultation and is under the responsibility of the Promoter and the competent authorities, should

<sup>18</sup> Ibid., §§62-64 – Standards. See also §18 – Preamble.

<sup>19</sup> Ibid., §12 – Background. See also §15 – Preamble stating that the EIB provides technical assistance in different forms in its regions of operation to further its environmental and social policies and practices. Apart from making available its own in-house expertise, the Bank may finance consultants to carry out sector, market and other generic studies or to assist the promoter to carry out project-specific tasks, such as those related to "a formal Environmental Impact Assessment (EIA)", to strengthen environmental management capacity, and to address particular environmental issues. Technical Assistance is also referred to in §7 of the General Background Note – Social Assessment Guidance Notes.

<sup>20</sup> Ibid., §3 – Preamble.

<sup>21</sup> Ibid., §8 – Preamble.

<sup>22</sup> Ibid., §17 – Preamble.

<sup>23</sup> Ibid., §9 – Preamble.

<sup>24</sup> See also the 2007 EIB Handbook §A5.37.

be completed and its findings and recommendations should satisfy the requirements of the Bank prior to disbursement.<sup>25</sup>

3.3.3 As part of the appraisal, all EIB-financed investment projects should be subject to an environmental and social assessment (§B1.3.77). In this regard, it is important to highlight that, pursuant to §B1.1 of the Handbook, the Environmental Assessment examines both environmental substance and environmental legal/procedural compliance. §B2 provides guidance on the assessment of EIA processes where these are **required either because of national legislation or EIB policy**. Among the aspects that help judging the quality of an EIA for EIB purposes, §B2.2.120 refers to the EIA process, including the public consultation and approvals/planning consent, and public disclosure, i.e. how were stakeholders informed about the consultation process.

3.3.4 All projects outside the EU are assessed against the social safeguards of the Bank (§B1.1). §B5 of the Handbook describes in more details the content of the EIB's social assessment while §B6 provides for the assessment of the environmental and social capacity of the Promoter<sup>26</sup>. In this regard, §B8.165 acknowledges that many environmental and social risks cannot be easily quantified and that mitigation efforts to address such risks must be focused on the development of effective consultation processes that bring the perspectives of different concerned stakeholders together.

3.3.5 With regard to Monitoring, §C1 of the Handbook defines it as aiming at ensuring compliance of the Project with the EIB's approval conditions and verifying that the expected value added is actually delivered throughout the project cycle, as required to respectively fulfil and meet EIB's obligations and objectives. The Handbook further states that close follow-up of environmental and social actions required as part of the Finance Contract is essential, since it is at this stage that the EIB can have most impact in ensuring that any outstanding environmental and social issues are thoroughly and correctly followed by the Promoter.

3.3.6 §C1.130 lists what the Promoter is expected to provide as part of EIB's monitoring, including (i) evidence that any specific environmental conditions/undertakings have been fulfilled and (ii) regular progress reports with general and specific information requested, e.g. on the implementation of mitigation/compensation measures.

3.3.7 Social Assessment Guidance Note 1 (SAGN1) concerns population movements and resettlement. One of the objectives of SAGN1 is to ensure that EIB investments mitigate negative social impacts of those losing assets, through the provision of appropriate compensation. In this regard, it is worth noting that Section 8 - "Basic 'must do' issues – mitigating adverse social impacts" of the General Background Note stipulates that it is expected that *compensation at replacement levels* will be paid to affected stakeholders and that *their livelihoods will be restored*.

3.3.8 SAGN1 establishes that, where there is an active land market based on private ownership of land and property, acquisition is not usually problematic; the local land and property market will normally determine purchase prices. As part of the initial screening process described by SAGN1, the Bank determines, *inter alia*, the promoter's commitment and capacity for implementation, the feasibility and appropriateness of proposed measures for restoring and preferably improving livelihoods and the availability of adequate resources to fund resettlement. Based on the initial screening, the EIB will determine in consultation with the Promoter the approach to be adopted. Finally, SAGN1 stipulates that, prior to approval, the EIB should receive a satisfactory resettlement plan/framework. If this is not available, then negotiations to finalise the investment will need to be interrupted until one is forthcoming. When received, the plan must be incorporated into the project agreement<sup>27</sup>. Progress on resettlement issues should be reported in the Project Progress Reports and evaluated in the Project Completion Report. It is important during the early phases of implementation to review progress and make early corrections if necessary.

<sup>25</sup> See also *ibid.*, §B2.1.114. In case where the EIB project cycle does not coincide with the EIA process and the EIA is not complete at the time of appraisal, the EIB must have sufficient information to carry out its own environmental assessment. The EIA should be completed to the satisfaction of the Bank and should be a condition of loan signature or disbursement. Examples of specific environmental or social disbursement conditions or undertakings include the completion of public consultation to the satisfaction of the Bank and the receipt of resettlement/compensation/land acquisition plans.

<sup>26</sup> For instance, table J "Examples of the actions that might be taken by the Promoter to demonstrate environmental and social capacity" contains as an example "undertaking an EIA, including appropriate consultation, where applicable".

<sup>27</sup> The 2010 Handbook, which was in force at the time of the signature of the Finance Contract by the Promoter, indicates the main steps for developing and implementing a RAP as such: 1. Carry out a census establishing the number of people to be displaced, livelihoods affected and property to be compensated. 2. Carry out an assessment of applicable legislation and requirements of EIB. Propose how to fill the gaps between the two, if any. 3. Develop a Rap in line with the EIB requirements, including consultation with PAPs.

3.3.9 SAGN5 concerns public consultation and participation in project preparation. Consultation is defined as a tool for managing culturally appropriate *two-way* communications between project sponsors and the public. This involvement increases a project's long-term viability and enhances its benefits to locally affected people and other stakeholders. Without meaningful stakeholder consultations, there is a risk that projects will meet public resistance and be subject to delays. The governing principles for dialogue must be the same for all parties to the dialogue: *openness, good faith and responsiveness*, i.e. explaining the rationale behind decisions taken.

3.3.10 Pursuant to SAGN5, outside the EU the Bank aims to promote public consultation and participation, according to EU standards, through appropriate discussions with the Promoter and other parties. It is the Bank's responsibility to ensure that the Promoter gives appropriate attention to the public consultation process during the earliest stages of project preparation. The EIB endeavours to be involved as early as possible in the decision-making processes associated with the planning of an investment project. When critical decisions about a particular investment have already been taken, the EIB evaluates the robustness of the assessment methodology and "the associated consultation process adopted by the Promoter and other co-investors. The Bank may wish to draw attention to any gaps that might need to be addressed to ensure appropriate standards." If significant gaps are identified, the Bank may wish to make sure that they are filled through particular provisions attached to the finance agreement.

3.3.11 The Bank verifies that the extent and form of consultation is appropriate for the project in question. The level of "intensity" of consultation depends on the nature of the project. SAGN5 identifies three consultation levels: information feedback (level 1), involvement and consultation (level 2), extended involvement (level 3). In order to judge the acceptability of consultation, the Bank may need to ascertain from the promoter information on the identification of stakeholders, dissemination of information about the project, time and resources committed to it as well as to what extent the findings of public consultation were built into project design.

#### 3.4 Tunisian Law

3.4.1 The Decree n° 1991 on the environmental impact study (the EIA Decree) defines the latter as the study assessing, evaluating and measuring the direct and indirect effects, in the short, medium and long term, of a project on the environment. The study must be submitted to the National Environmental Protection Agency (ANPE) for opinion before the project obtains any administrative authorization.<sup>28</sup> Article 5 of the EIA Decree stipulates that the competent national authority may issue the authorization for the project subject to the environmental impact assessment only after having noted that ANPE does not object to it. Article 6 of the EIA Decree describes the minimum requirements of an environmental impact study<sup>29</sup>.

3.4.2 Tunisian EIA legislation does not contain provisions about public consultation. Public consultation has taken place in some cases, notably for projects financed by International Financial Institutions and by some public promoters of major projects, particularly after 2011. At present, access to information and the participation of citizens and civil society in the preparation and monitoring of development projects are guaranteed by the 2014 Constitution; the ANPE has prepared an action plan for the upgrading of the national EIA system, the formalization of the public consultation and the revision of the EIA Decree.<sup>30</sup>

<sup>28</sup> See also article 5 of the [Law No 88-91 of 2 August 1998 portant création d'une Agence Nationale de Protection de l'Environnement \(ANPE\)](#) « Une étude d'impact sur l'environnement doit être présentée à l'agence avant la réalisation de toute unité industrielle agricole ou commerciale dont l'activité présente, de par sa nature ou en raison des moyens de production ou de transformation utilisés ou mis en œuvre, des risques de pollution ou de dégradation de l'environnement. »

<sup>29</sup> [Décret n° 2005-1991 du 11 juillet 2005 relatif à l'étude d'impact sur l'environnement](#) « Le contenu de l'étude d'impact sur l'environnement doit refléter l'incidence prévisible de l'unité sur l'environnement et doit comprendre [...] au minimum les éléments suivants :

1- Description détaillée de l'unité ;

2- Analyse de l'état initial du site et de son environnement portant, notamment sur les éléments et les ressources naturelles susceptibles d'être affectées par la réalisation de l'unité.

3- Une analyse des conséquences prévisibles, directes et indirectes, de l'unité sur l'environnement, et en particulier les ressources naturelles, les différentes espèces de la faune et de la flore et les zones bénéficiant d'une protection juridique, notamment les forêts, les zones et les paysages naturels ou historiques, les zones sensibles, les espaces protégés, les parcs nationaux, les parcs urbains.

4- Les mesures envisagées par le maître de l'unité ou le pétitionnaire pour éliminer ou réduire et, si possible, compenser les conséquences dommageables de l'unité sur l'environnement et l'estimation des coûts correspondants.

5- Un plan détaillé de gestion environnementale de l'unité. »

<sup>30</sup> See « [Le guide sur la consultation publique pour les collectivités locales](#) ». For an assessment of the differences between the Tunisian EIA system and international norms, see also "[Evaluation and future development of the EIA system in Tunisia](#)", a report prepared by Manchester University EIA Centre in cooperation and collaboration with the Rural Development, Water and Environment Department of the World Bank (Middle East and North Africa Region) and the METAP Regional Facility, Cairo.

3.4.3 The 1994 Code of Territorial Development and Town Planning<sup>31</sup> lays down rules for the organization/exploitation of space as well as for the planning, creation and development of urban agglomerations in order to, among others, protect natural and cultural sites, including archaeological sites and ensure a rational distribution between urban and rural areas with a view to guaranteeing sustainable development and the right of citizens to a healthy environment. Article 6 emphasises that urban development projects shall favour harmonization and aim to achieve economic and social integration of urban neighbourhoods.<sup>32</sup>

3.4.4 Pursuant to Article 11 of the 1994 Code, projects that may affect the natural environment shall be subject to a preliminary impact study to be approved by the national competent authorities, which, on the basis of the impact study, may propose any action or modification of the project, with a view to avoiding or limiting negative impacts.<sup>33</sup>

The 1994 Code refers to a procedure of public consultation for urban development plans; more precisely, it requires plans to be displayed at the headquarters of the municipality or governorate concerned in order to notify the public about the project. A notice should be published in the press, local media as well as the Official Journal. The public may submit comments in a public register during two months following the date of the publication.<sup>34</sup>

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3.4.5 The Tunisian law on expropriation applicable at the time of the Expropriation Decree is the Act n. 2003-26<sup>35</sup>. Expropriation for reasons of public utility is pronounced by decree, which must mention the project for which the expropriation occurs. Article 2 of the Expropriation law establishes that, for registered realties, the property is transferred to the expropriating party by the registration of the expropriation decree; in any case, the expropriating party may take possession of the expropriated realty only after payment or deposit of a fair indemnity.<sup>36</sup> Pursuant to Article 4, the indemnity is fixed according to the value of the realty assessed on the basis of its actual use on the date of publication of the expropriation decree and by comparison with the prices at that date for comparable properties in the same zone.<sup>37</sup> Finally, in case of a partial expropriation, article 7 establishes a depreciation allowance for the remainder of the realty. The value of the realty is settled either consensually or by judicial means.

3.4.6 Pursuant to article 9 of the Expropriation Law, if, within five years from the date of the expropriation decree, the expropriated realties were not used for the public utility works mentioned in the expropriation decree, the former owners or their rightful claimants may obtain a retrocession, provided that a request is made in writing to the expropriating party within two years after the expiry of the above-mentioned five years period. In case of refusal or silence of the expropriating party, it is up to the interested parties to seize the competent courts.

3.4.7 Article 3 of the Expropriation law<sup>38</sup> gives the expropriated person the right to request the expropriator to purchase the entire property if a part of it has been expropriated. The request shall be made with a formal

<sup>31</sup> [Loi n. 94-122 du 28 novembre 1994 portant promulgation du Code de l'aménagement du territoire et de l'urbanisme](#)

<sup>32</sup> « [...] il est impératif de créer des projets en vue de favoriser l'harmonisation et l'intégration du tissu urbain de ces agglomérations et de leurs quartiers, notamment sur le plan économique et social. »

<sup>33</sup> « Les projets d'aménagements, d'équipements et d'implantation d'ouvrages pouvant affecter l'environnement naturel par leur taille ou impacts, sont soumis à une étude préalable d'impact. [...] L'accord définitif concernant les projets [...] ne sera donné par les administrations concernées qu'après approbation de l'étude d'impact afférente à ces projets, par le Ministre chargé de l'Environnement et de l'Aménagement de Territoire. Le Ministre chargé de l'Environnement et de l'Aménagement du Territoire peut sur la base de l'étude d'impact, proposer toute action ou modification du projet susceptible d'éviter ou limiter les atteintes au milieu naturel, aux équilibres généraux de l'environnement et à l'organisation de l'utilisation de l'espace. »

<sup>34</sup> « Le projet est [...] soumis au conseil municipal ou régional, selon le cas, qui en ordonne l'affichage au siège de la municipalité, de la délégation ou du gouvernorat afin que le public en prenne connaissance. Un avis d'enquête le concernant sera communiqué dans la presse et sur les ondes et publié au Journal Officiel de la République Tunisienne.

Au cours des deux mois suivant cette procédure, tout intéressé peut consigner ses observations ou oppositions sur le registre d'enquête [...] »

<sup>35</sup> [Loi n. 2003-26 du 14 avril 2003](#) modifiant et complétant la [loi n. 76-85 du 11 août 1976](#) portant refonte de la législation relative à l'expropriation pour cause d'utilité publique. In 2016 a new Expropriation Law ([Loi n. 2016-53 du 11 juillet 2016 portant expropriation pour cause d'utilité publique](#)) entered into force.

<sup>36</sup> « L'expropriant ne peut prendre possession des immeubles expropriés que moyennant paiement ou consignation d'une juste et préalable indemnité. »

<sup>37</sup> « L'indemnité d'expropriation est fixée d'après la valeur d'immeuble appréciée selon sa consistance et l'usage effectif auquel il était affecté à la date de publication du décret d'expropriation et par comparaison avec les prix pratiqués à cette date pour des immeubles comparables situés dans la même zone. »

<sup>38</sup> « Les bâtiments dont une partie a été expropriée pour cause d'utilité publique seront achetés en entier si les propriétaires le requièrent par une déclaration formelle adressée par lettre recommandée avec accusé de réception à l'expropriant dans un délai de trente jours à compter de la réception des documents prévus à l'article 13 (nouveau) de la présente loi. Il en est de même pour toute propriété foncière que l'expropriation

declaration within a period of thirty days following the reception of the expropriation decree. This right exists also for land that the expropriation has reduced to one-quarter of the original area.

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3.4.8 With regard to the protection the cultural heritage in Tunisia, the National Heritage Commission submits proposals to list historical monuments and to protect them, together with cultural sites and archaeological movable property.<sup>39</sup> Article 88 of the Tunisian Code du patrimoine archéologique, historique et des arts traditionnels authorizes the State to expropriate listed historical monuments in the public interest.<sup>40</sup>

#### 4. EIB PROJECT CYCLE

4.1 In October 2009, the EIB Board of Directors approved a loan up to 177 million EUR for a project to be financed together with *Agence Française de Développement* (AFD, France) (leading institution), *Kreditanstalt für Wiederaufbau* (KfW, Germany) and the European Commission (NIF, Neighbourhood Investment Facility) (hereinafter, the co-lenders).

The Project was financed under the pilot phase of the Mutual Reliance Initiative, a cooperation arrangement between the European financial partners. Although this would have normally implied that the leading institution carries out the due diligence for the co-financed operation, in the case of the contested project, the due diligence prepared by the leading financial institution was **developed by the EIB in order to align it with its procedures.** The EIB and the Promoter signed the Finance Contract on 10 December 2010.

**TABLE 2 – EIB PROJECT CYCLE MILESTONES**

EIB ACTION	DATE
End of Appraisal	23/09/2009
Approval of the EIB Board of Directors	21/10/2009
Signature of the Finance Contract	10/12/2010
Action Plan of Corrective Measures (APCM)	03-04/2013
Waiver of the Social Condition to 1 <sup>st</sup> Disbursement	24/07/2013
Contract Modification - New 2 <sup>nd</sup> Disbursement Conditions	08/2013
1 <sup>st</sup> Disbursement	09/09/2013
2 <sup>nd</sup> Disbursement	14/10/2014
3 <sup>rd</sup> Disbursement	11/08/2017

##### 4.1 *Pre-appraisal*

4.1.1 At pre-appraisal stage, the EIB services took the view that typical risks of working in an urban context may not be completely excluded due to the difficult insertion of the infrastructure in a densely built environment and that the institutional framework of operations was not clear yet. Among the main risks/issues to be appraised, the EIB services indicated the Promoter's technical capability to manage the implementation of the Project and the related risks as well as the compliance with EIB requirements concerning environment prior to contract signature.

4.1.2 With specific emphasis on environment, the EIB took note of the fact that an EIA had already been carried out. Whereas the project had to meet the environmental and social requirements of the Bank based on EU policy, the EIB decided that the compliance with the substance of the EIA directive and social aspects of the project would be analysed during the appraisal. The EIB highlighted that, if it were in the EU, the project would fall under Annex II of EIA Directive: accordingly, an EIA would not be required but should be considered by the competent authority.

*réduit au quart de la superficie première à la double condition que la superficie de la parcelle non expropriée soit inférieure à dix ares et que l'exproprié ne possède aucun terrain contigu à cette parcelle et formant avec celle-ci une superficie du moins égale à dix ares. »*

<sup>39</sup> Article 6, [Loi n° 94-35 du 24 février 1994, relative au code du patrimoine archéologique, historique et des arts traditionnels.](#)

<sup>40</sup> « L'Etat a le droit d'exproprier pour cause d'utilité publique les monuments historiques classés. »



## 4.2 Appraisal, Approval and Finance Contract

4.2.1 The Bank's due diligence found that, although the project had some residual negative environmental/social impacts, adequate mitigation and compensation measures had been identified. The EIB took the view that the Project would eventually engender a positive overall effect on the environment and on society by helping in reducing air and noise pollution and increasing accessibility and mobility of local population, thus fostering social inclusion. The below paragraphs focus on the EIB's due diligence of the issues of expropriation and stakeholder engagement through the appraisal and approval of the operation as well as on the translation of the decisions of the EIB governing bodies into provisions of the Finance Contract.

### *Expropriation*

4.2.2 During appraisal, the EIB considered that Line D impacts would be limited due to the pre-existing rail right of way. The expropriation procedures were to take place according to national law. The monetary compensation would be based on market values and would include stakeholders that, although not expropriated, had incurred in a loss of property values or business turnovers.

4.2.3 As part of its appraisal, the EIB ascertained that the implementation of the compensation measures was not clear and that further details should be provided to the Bank. Therefore, to mitigate this risk, the EIB introduced a condition precedent, to be fulfilled prior to first disbursement, requiring the Promoter to *"provide an updated version of the Environmental Management Plan [EMP] including a resettlement plan to the Bank for approval."* The EIB Board of Directors confirmed the outcome of the EIB's appraisal including the above-mentioned condition.

4.2.4 The Finance Contract included a condition precedent to be fulfilled prior to first disbursement, requiring the Promoter to provide the Bank with an *"updated EMP"*, including a description of all the measures taken for the relocation and compensation of the expropriated populations.<sup>41</sup> Accordingly, as part of the information on the Project to be transmitted to the EIB, the Promoter was required to provide the EIB, prior to first disbursement, with an updated version of the EMP including a Resettlement Plan.

4.2.5 The Finance Contract included another condition precedent to be fulfilled prior to the disbursement of the last tranche of the loan, which required the Promoter to deliver the Bank a document attesting that the Tunisian state owns all the land on which the Project was to be built.<sup>42</sup>

### *Stakeholder Engagement*

4.2.6 During appraisal, the Bank noted that the EIA procedure should be completed by the formal approval of the competent authority (ANPE) and the Bank would require the Promoter to provide the related final decision. Although the Promoter had informed the Bank that consultations with the population and local authorities had already taken place, the EIB noted that information on public consultation was still limited.

4.2.7 The Bank concluded from its social assessment that the consultation and participation with the stakeholders was not acceptable at the time. Similarly, when assessing the *"Quality and Soundness of the Project"*, the Bank considered that public consultation was *"unsatisfactory"* and that the Promoter should demonstrate that it allowed all stakeholders to get informed about the project and its main impacts. The Bank therefore concluded that it would require that the public consultation complies with acceptable standards and that a further information campaign, if necessary, takes place prior to the first disbursement.

4.2.8 To mitigate the above-mentioned risk, the EIB stipulated the following conditions related only to the EIB's loan prior to the first disbursement:

<sup>41</sup> « la remise par l'Emprunteur à la Banque d'une version à jour du plan de gestion environnementale, comprenant un descriptif de l'ensemble des mesures prises pour le relogement et l'indemnisation des populations expropriées pour les besoins du Projet et une étude approfondie sur les mesures proposées pour l'atténuation de l'impact des travaux dans le centre de la ville de Bardo conformément aux stipulations de l'attestation délivrée par l'Agence Nationale de Protection de l'Environnement datée du 10 septembre 2009, l'ensemble de ces documents devant être approuvés par la Banque préalablement au premier versement; ».

<sup>42</sup> « la remise par l'Emprunteur d'un document signé par un représentant de l'État tunisien attestant que l'État tunisien est propriétaire de l'ensemble des terrains sur lesquels doit être construit le Projet. ».



- i. The Promoter has to provide formal evidence of the competent authority's approval of the Environmental Impact Study; and
- ii. The Promoter has to demonstrate that a public consultation has taken place which allowed all stakeholders to become informed about the project and its main impacts. The Promoter has to provide the final results of the public consultation.

The EIB Board of Directors confirmed the outcome of the EIB's appraisal including the above-mentioned conditions.

4.2.9 With regard to the first condition, the Finance Contract requires the Promoter to provide an in-depth study on the proposed measures to mitigate the impact of the works in the center of the city of Bardo in accordance with the opinion issued by ANPE on 10 September 2009. With regard to the second condition, in November 2010 the EIB competent services considered it satisfied on the basis of information provided by the Promoter (see table 3). Therefore, the Finance Contract does not contain any reference to the second condition to first disbursement identified as part of the EIB's appraisal and confirmed by the EIB Board of Directors.

**Table 3 – The EIA process**

In September 2009, while the Bank was still carrying out the appraisal, ANPE issued a favourable opinion on the EIA. However, ANPE's favourable opinion was conditioned to the preparation of a complementary study to further assess impacts and related mitigation measures in the area of Bardo.<sup>43</sup> The EIA on Bardo was completed in September 2010.<sup>44</sup>

In November 2010, the Bank considered the condition precedent on public consultation satisfied on the basis of the information provided by RFR (i.e. evidence related to an informative public consultation such as minutes of meetings with the relevant ministries, mayors or governors - but not with representatives of civil society; evidence of media campaign; flyers about the project). The EIB observed that, for future projects, a formal public consultation would need to be part of the EIA procedure. Meanwhile, the EIB considered it important to receive adequate and satisfactory information on the social impacts of the project, with particular reference to the involvement of the public into the land acquisition process. From the information provided by the EIB services, the EIB considered that the public consultation in the resettlement process would have complemented the public consultation on the 2010 complementary study.

In March 2011 ANPE approved the complementary study on Bardo with a recommendation to carry out a broad public consultation including a variety of stakeholders and civil society members.<sup>45</sup> More precisely, ANPE referred to « **consultation élargie** avec les différents organismes concernés et la société civile ».

### 4.3 EIB monitoring prior to the submission of the complaint

4.3.1 Due to the Jasmine revolution and the subsequent social unrest, the EIB was not in a position to adequately communicate with the Promoter during 2011. When interactions restarted in 2012, monitoring missions showed that the information on social initiatives, including consultation with local stakeholders, carried out by the Promoter was insufficient. Whereas the resettlement process had not been completed yet and was on a critical path, the EIB aimed to advance with the social due diligence of the operation. For this reason, a Technical Assistance (TA) was established to:

- understand and assess the social impacts of the project;

<sup>43</sup> <https://www.eib.org/attachments/registers/75021422.pdf>, accessed on 10 September 2019.

<sup>44</sup> EIA on Bardo, September 2010, available online: <https://www.eib.org/attachments/registers/44516200.pdf>, accessed on 10 September 2019.

<sup>45</sup> See footnote 43 as well as ANPE approval of the EIA related to Bardo, 22 March 2011, « En conséquence, l'Agence Nationale de Protection de l' Environnement (ANPE) ne s'oppose pas, en principe, à la réalisation du projet tout en considérant nécessaire la mise à disposition des données exigées et l' exécution du plan de gestion de l' environnement [...]. Ceci, étant, il faut, avant le commencement de la réalisation du projet, accomplir les procédures relatives au changement du caractère des zones destinées à abriter le projet avec toutes ses composantes outre l'identification des dommages résultant de l'expropriation et des travaux d'aménagement conformément aux lois en vigueur, ainsi que l'adoption d'une consultation élargie avec les différents organismes concernés et la société civile, existants dans l'enceinte du projet.»

- confirm the resettlement procedures followed by the Promoter to date and assess the acceptability of mitigations and residual impacts;
- appraise the degree of the Promoter's compliance to date with relevant EIB standards, highlighting existing gaps between local legislation and resettlement practice to date in this operation and EIB standards; and
- suggest recommendations for any corrective measures, if deemed feasible and meaningful at that stage of the resettlement process.

It was agreed among the co-lenders that the EIB would assume the lead on social monitoring in this instance.

4.3.2 In January 2013, the TA confirmed that acquisition in Line D was relatively limited in terms of number of cases due to the design of the line parallel to an existing railway line. It also found that the Promoter's practices in terms of the compensation valuation were compliant with the Tunisian legal framework, granting owners full compensation as per the market price. The TA also observed that the valuation process was not made on the basis of a specific year index reference and that the Promoter and the competent national authorities referred to the "latest", "most recent" market price. Discussions with the Promoter and the competent national authorities revealed that the potential rise in properties/assets value was not reflected in the valuation process.

4.3.3 As a result, the TA concluded that the Promoter's approach in handling the involuntary resettlement issues related to the project could be qualified as fully compliant with the national legislation, and, to a large extent, compliant with EIB standards.

<b>Measures</b>
<b>1. Reinforcement of the social expertise of RFR</b>
<i>i. Team management: hiring of a Social Development Expert</i>
<i>ii. Consolidation of the team: hiring of additional personnel</i>
<i>iii. Technical Assistance: launching of consultancy contract by lenders</i>
<b>2. Action Plan</b>
<i>i. Activity A : creation of local communication units</i>
<i>ii. Activity B: identification of PAPs not eligible according to Tunisian law</i>
<i>iii. Activity C: complementary survey to assess efficacy of measures undertaken for PAPs already compensated and for those identified during Activity B.</i>
<i>iv. Activity D: generalised help for PAPs with administrative or financial difficulties</i>
<i>v. Activity E: update of compensations</i>
<b>3. Programming communication, follow-up and coordination activities</b>
<i>i. Communication Plan</i>
<i>ii. Coordination Plan</i>
<i>iii. Follow-up Plan</i>

4.3.4 In March 2013, based on the results of the TA, the EIB informed the Promoter that it should take additional measures to ensure the compliance of the operation with EIB standards (see Table 4). The aim of the Action Plan of Corrective Measures proposed was to address the gaps identified between the Promoter's resettlement principles and practice and the relevant EIB standards.

**TABLE 4 – SUMMARY OF THE CORRECTIVE MEASURES PROPOSED TO THE PROMOTER**

4.3.5 In April 2013, the Bank participated in a joint monitoring mission to discuss the implementation of the Action Plan of Corrective Measures. The Bank welcomed the hiring of three new lawyers for the legal team but warned the Promoter that the lack of social expertise (of the legal team specifically and of the Promoter in general) remained unaddressed. The Promoter agreed to reinforce its social team and prepare a communication plan. However, it did not

commit to all the proposed actions because of the delicate social context in Tunisia. The Promoter emphasized that it could not disregard the national legal procedure for the resettlement.

4.3.6 The Bank acknowledged that the Promoter's practices had breached the EIB standards on involuntary resettlement and public consultation/participation and that there was a risk related to negative social impacts arising from involuntary resettlement actions. The Bank observed that it could not assess this risk given the absence of a baseline socio-economic study and survey that should have established the number and profile of people to be displaced, livelihoods affected and property to be compensated.

4.3.7 In May 2013, the Promoter reiterated its refusal to elaborate a complementary survey to assess the efficacy of measures undertaken and to provide an update of compensations (measures 2.iii) and 2.v) - Table 4). Whereas the Promoter's practices, mainly regarding involuntary resettlement and public consultation and participation, were not fully compliant with the EIB standards, the Bank considered either to withdraw its financing or to waive partially the application of its social standards.

4.3.8 In July 2013, based on the agreement of all EIB services concerned, the EIB decided to conditionally waive the first disbursement condition, referred to in §4.2.4 of this Report. Furthermore, the EIB decided to add a new second disbursement condition requiring the Promoter to implement complementary measures and an additional disbursement condition for the third and subsequent tranches. In August 2013, the Bank amended the Finance Contract accordingly (see Table 5). On 9 September 2013, the Bank proceeded to the first disbursement.

**TABLE 5 – NEW SOCIAL CONTRACTUAL CONDITIONS**

**New second disbursement condition requiring the Promoter to:**

- hire a Social Development Expert (SDE);
- recruit additional personnel to be allocated to resettlement issues;
- create, staff and finance local communication units;
- draft and submit to the Bank for its approval a Communication and Stakeholder Engagement Plan, ensuring that public consultation and stakeholder engagement are meaningful and actions are carried out in a manner that is timely, accessible and culturally appropriate;
- draft and submit to the Bank for its approval a Coordination Plan with the governmental authorities and organisms involved in the resettlement activities;
- draft and submit to the Bank for its approval a Monitoring Plan;
- draft and submit to the Bank for its approval a report on the progress in the implementation of the abovementioned complementary measures.

**Additional disbursement condition for the third and subsequent tranches requiring the Promoter to:**

- implement the Communication and Stakeholder Engagement Plan to the satisfaction of the Bank in compliance with the timetable therein;
- implement the Coordination Plan to the satisfaction of the Bank in compliance with the timetable therein;
- implement the Monitoring Plan to the satisfaction of the Bank in compliance with the timetable therein;
- draft and submit to the Bank for its approval regular reports on the progress in the implementation of the abovementioned complementary measures.

4.3.9 In October 2013, the Bank participated in a joint monitoring mission to discuss, inter alia, the conditions to be fulfilled before the second disbursement. In particular, the EIB stressed that the Social Development Expert had to meet the criteria for the post of social expert and acknowledged that the development of the Bardo square remained critical. The EIB recognised that the lack of information about the project had resulted in a lack of awareness about its benefits and emphasised the importance of establishing a Promoter’s website as well as communication materials. The EIB urged the Promoter to find an appropriate solution for the Bardo square in coordination with the local residents and authorities and to launch a communication campaign when the works would start. Finally, the EIB welcomed the fact that specific parts of the progress report of the Promoter were dedicated to social and environmental aspects and wished to receive more details, eventually in a stand-alone document. In December 2013, the Promoter notified the Bank that it could not meet the second disbursement conditions by the contractual deadline and requested the Bank to extend the deadline.

4.3.10 In February 2014, the Bank participated in a joint monitoring mission with a focus on social matters. While the EIB observed some progress in the Promoter’s team dedicated to the fulfilment of the social conditions, it reiterated the need to receive more information on social matters (including the advancement of expropriations) in the Promoter’s reporting and explanations about the Promoter’s actions beyond strict compliance with domestic law. The EIB noted that the communication, stakeholders’ engagement and coordination plans were still under preparation and that the lack of certainty about the development of Bardo square remained a critical point.<sup>46</sup>

4.3.11 In June 2014, the EIB noted that there had been difficulties in the effective deployment of the short-term technical assistance hired by AFD to support the promoter’s team for social matters and that, besides the reinforcement of the social team and the creation of a “Social Aspects and Communication” Unit, none of the plans required for the second disbursement had been finalised. Furthermore, the EIB was informed that the Mayor

<sup>46</sup> The Promoter reinforced its team with regard to social matters, management of expropriation/land acquisition and communication. A short-term consultant on social questions hired by AFD was provided to train the Promoter and increase social expertise.

of Bardo had publicly announced his disapproval of the Project due to the alleged presence of an archaeological site along Line D. The EIB observed that the Jasmine Revolution and the subsequent political instability had led to its late intervention on social issues, that had not therefore been dealt with in a satisfactory way. The EIB considered as mitigating factors (i) the reinforcement of the Promoter's social team and (ii) the establishment of communication, coordination and monitoring plans related to social aspects and resettlements.

4.3.12 Meanwhile in July 2014, the EIB was informed that the Municipality of Bardo had refused to grant the necessary demolition permits for a building close to the Bardo station and had questioned the project design while proposing an alternative underground variant for the Line D. A review of the deliverables provided by the Promoter to date did not match the EIB's expectations but rather raised additional questions on the real status of expropriations and impacts on PAPs, which were in the process of clarification.

4.3.13 The EIB extended the deadline for the request of the second disbursement based on its consideration that the social measures to be implemented were fairly new for the Tunisian institutional context. Nevertheless, since these measures had to be implemented before the beginning of works to deliver all their benefits to the population, the EIB refused to accept any future requests to delay the execution of the social measures. In August 2014, the Promoter provided the Bank with Communication, Coordination and Resettlement plans.<sup>47</sup>

4.3.14 During a joint monitoring mission in September 2014, the Bank observed that the Ministry of Transport had refused the Bardo Municipality's proposal to re-consider the underground variant and had decided to stick to the original project design. With regard to social aspects, the EIB noted that the Promoter was continuing its efforts for the improvement of the social dimension of the project, including the implementation of the corrective measures required by the Bank, and had already started the implementation of some communication measures. Whereas the Communication and Dialogue Plan, the Coordination Plan, the Monitoring Plan and the Progress Report on social matters had all been approved by the Bank by September 2014, the EIB considered that the Promoter had successfully fulfilled the social conditions to the second disbursement, which took place on 14 October 2014.

4.3.15 By the end of March 2015, the EIB carried out a monitoring mission with the purpose of checking the status of main critical aspects identified to date as the progress on social aspects and the Line D/Bardo station. The mission showed that there had been little progress on the issues identified in the joint monitoring mission of September 2014, including (i) the project design for Line D/Bardo square and (ii) the PAPs concerned by expropriations. On the latter, the EIB found that, while for the Resettlement Plan, the survey and set-up of the baseline had to be completed by January 2015 for all 95 pending files, the Promoter had reported about only 10 questionnaires and PAPs were asking to reassess the compensations fixed in 2011. The EIB asked the Promoter to take a position on these aspects and urged a more detailed and precise reporting on the status of each expropriation file (including compensations). During the mission, the Promoter explained that there was no need to carry out more than 10 questionnaires because only 10 files included PAPs. Most files related to plots of land that were not used for residential purposes: of the 95 pending files, 69 would refer to land that is not in use at all, 12 files to commercial activities, 9 files to buildings and 5 files to land and buildings. **Concerning Communication, the EIB noted that the Promoter had not reported on any action taken to communicate with PAPs or measures related to improvements in institutional coordination.**

4.3.16 In September 2015, a monitoring mission took place. While the issues related to the Bardo station appeared to be resolved and despite some progress on the social issues, the EIB found that the information on resettlement remained unclear and that **there was little documentation on social communication and coordination among the authorities**. The Bank required the Promoter to improve the quality of the reporting. Finally, the Bank assessed the implementation of the three social plans, whose satisfactory execution was a condition for further disbursement. Three main issues were identified, namely:

- lack of real implementation of the project-level grievance mechanism;
- **lack of effective communication with PAPs and the public at large;**
- lack of effective coordination among institutions.

4.3.17 In November 2015, the Bank reported that the development of the Bardo square continued to be a source of concern and that, for the local population to accept it, the Promoter had to continue its efforts to engage with

<sup>47</sup> *Plan de communication et de dialogue* (August 2014), see : <https://www.eib.org/attachments/registers/56609514.pdf>, *Plan de coordination* (August 2014), see : <https://www.eib.org/attachments/registers/56609514.pdf>, *Plan de suivi et de gestion des activités de réinstallation* (August 2014), see <https://www.eib.org/attachments/registers/56609623.pdf>, accessed 21 March 2019.

the locals. Furthermore, there was no formal coordination plan between different actors working on the resettlement. Despite the above as well as the difficulties encountered in the implementation of the social conditions by the Promoter with a risk of further blocking disbursements, the EIB considered that social issues were acceptable. In December 2015, the Bank received the Promoter's request for third disbursement. Whereas the Promoter had not yet fulfilled the third disbursement conditions to the satisfaction of the Bank, the EIB decided to put the third disbursement on hold.

#### 4.4 EIB monitoring following the submission of the complaint

4.4.1 The EIB carried out monitoring missions in May and September 2016. As a result of the former, the EIB urged the Promoter to establish an operational grievance mechanism as defined in the Communication Plan agreed with the Bank and to ensure the systematic participation of different stakeholders in the Project. The Bank stressed the **need to intensify and consolidate the dialogue and elaborate an action plan for the second half of 2016 on social communication and dialogue with social stakeholders, especially in Bardo.**

4.4.2 In this context, the EIB found that in January 2016 the public participation on the project of the Bardo square refurbishment had improved with the organisation of two focus groups with the presence of the Bardo Délégué, the Mayor of Bardo, members of municipality of Bardo, members of parliament of the Bardo region. A monitoring mission in September 2016 led to conclude that the implementation of the three social plans was globally satisfactory, although communication and coordination measures were to be maintained and strengthened to ensure better understanding and greater ownership of the project by local stakeholders. On the other hand, the mission confirmed that the expropriation processes had not evolved, since out of 31 expropriation procedures on line D, only three were in process of being executed. Furthermore, the expropriation files were to be decided by the national judicature in a rather complex regulatory framework<sup>48</sup> and the Promoter had no longer control on expropriation files.

4.4.3 The EIB carried out a monitoring mission in February 2017. Further information on its outcome is provided in table 6 below.

**Table 6 – Further information gathered in 2017**

<b>I. outcomes of EIB mission in February 2017</b>
<p><b>Resettlement plan:</b> The EIB mission found that there had been no developments on the formal resettlement. In order not to delay the works, the promoter had taken the initiative to discuss directly with the people affected with a view to finding compromises. The EIB mission also noted some progress on the informal resettlement both in terms of households and businesses affected.</p>
<p><b>Communication Plan:</b> Besides the meetings with the new delegate of Bardo and the members of the Municipality, whereby decisions regarding the traffic plan had been taken to ensure greater fluidity of pedestrian traffic and vehicles, the Promoter informed the EIB that in the coming weeks (date not specified), a meeting would be organized with the members of the parliament to present the traffic plan selected and the landscape model of the place of Bardo.</p>
<p>The EIB was also informed that the Promoter had opted for the suspension of the planned opinion poll in order to better establish its communication with the authorities and residents. A decision on the option to reprogram the survey would be made at a later stage.</p>
<p>Finally, the EIB was informed of awareness campaigns in two schools and sponsorship of sports and cultural events.</p>
<p>The EIB noted that, the above communication activities, although very positive for the project in terms of impact and visibility, were not in a coherent and structured plan. The EIB thus recommended that the Promoter update its communication plan and send the EIB the updated plan presenting the actions for 2017. This plan should take into account the new issues related to the progress of the work and the forthcoming operation of the two lines.</p>

<sup>48</sup> Such complexity stemmed from the changes in Tunisian expropriation law, which were not yet supported by transitory provisions, and the modifications in the institutional framework dealing with expropriation.



**Coordination Plan:** The EIB noted no significant change since the last mission. In particular, the EIB noted that its request, made during the last monitoring mission, that the coordination also include the internal functioning component of the Promoter had not been addressed. The EIB noted that the compartmentalization between the technical pole and the direction of communication and social aspects did not facilitate the good coordination of the work and the efficiency in the interventions.

### Conclusions

Based on the above as well as on the assessment of other actions taken by the Promoter, the EIB considered that the implementation of the plans was satisfactory even if certain points (notably for the communication component) were to be improved. The communication plan would have to be reviewed and adapted to the current challenges of the Project to better support its evolution and its local acceptance. This implied (i) defining **a real communication strategy** with sequential operation plans and (ii) releasing the budget and means to further support communication actions.

## II. Further developments with regard to the communication with PAPs and the public at large

On 19 May 2017, the Promoter organised a meeting involving the same stakeholders of the meeting referred to in §4.4.2; the meeting included a site visit throughout the bardo section, detailed technical presentation of the three sections and a debate. The Promoter also informed the Bank that on 15 September 2017, it organised a meeting as the above-mentioned one. According to the information provided by the Promoter, Bardo residents participated in the meeting. However, from the information available, the EIB was not informed of (i) the means of publication of the meeting, (ii) a list of attendees, (iii) the content of the meeting (e.g. whether a debate took place. No picture of the meeting were attached to the Promoter's report.

4.4.4 In May 2018, the EIB carried out a monitoring mission. With regard to the issue of expropriations in Bardo square, it resulted that three land plots to be expropriated were waiting for a solution with the other files that had not been dealt with yet. The EIB took the view that this block was due to the complex regulatory framework following the adoption of the new Tunisian Expropriation law in 2016 and the lack of transitory provisions. It was then concluded that there were still significant concerns pertaining to the expropriation procedures. Although the Promoter seemed to consider that this had no impact on the advancement of works, the EIB recommended the Promoter to prepare a matrix describing critical points, which could hinder the works as well as an Action Plan for the solutions and their timeframe, complementing the evaluation of the Resettlement Plan. Finally, the EIB recommended that the Promoter collaborate with national authorities, which had agreed to provide support with their experience on expropriation procedures.

4.4.5 **With regard to the communication plan**, the EIB noted that **its revision**, which was necessary to adjust it to the current context of the Project (as identified in the previous monitoring mission), **had not been carried out yet**. At the same time, public discontent with the Project was emerging<sup>49</sup>. The Bank reiterated the need to evaluate the communication plan and produce a Stakeholder Engagement Plan (SEP), merging the Communication and Coordination Plans. It was also considered that the Promoter would need the assistance of the Bank or another expert to assist in this process, given the slow progress in the implementation of the various recommendations of past missions.

4.4.6 During the joint monitoring mission of October 2018, it was found that the Promoter had not yet prepared the Terms of Reference for the evaluation of the three plans and the Action plan to deal with residual social impacts nor had it updated the joint communication plan RFR/SNCFT. Furthermore, the Promoter had not liaised with the national authorities referred to in §4.4.4, against the EIB's advice expressed in May's monitoring mission.

4.4.7 Following the mission, on 11 October 2018 the EIB expressed its concern for the implementation of the Project and informed the Promoter that the Bank would not reply to the Promoter's request for extension of the deadline for disbursement (31.12.2018) until the criticalities identified would be resolved. In November 2018, the EIB carried out another monitoring mission. As part of the mission, the EIB advised the Promoter on the expected content of the evaluation of the three plans, with a view to (i) enriching the future Stakeholder Engagement Plan

<sup>49</sup> Around 80% of the comments related to the Promoter on Facebook were negative (the page had 6600 followers). An example of the messages: "10 years to build 10 km".

(SEP) and (ii) establishing an action plan for the follow-up of the expropriation procedures. The EIB was informed that the SEP should be launched in early 2019.

4.4.8 With regard to expropriation, the EIB noted little progress since the last mission with 29 cases for Line D still awaiting a judgment. Given the slow progress of judiciary proceedings and in order to expedite the treatment of the cases awaiting the judicial decision, the Promoter considered useful to liaise with the Tunisian Ministry of Justice. However, it appeared that some cases could not be dealt with in the short/mid term for a number of reasons, including inheritance problems.

4.4.9 Finally the EIB found that, before the commissioning of the works, an environmental and social impact statement should assess the risks related to the Project's impacts during the operation phase, notably the safety of residents and their dwellings, noise and vibrations, the mobility of residents and users. The assessment would be carried out by the Promoter and the Société Nationale des Chemins de Fer Tunisiens (SNCFT) with a view to taking all the appropriate measures before the operation phase.

4.4.10 In March 2019, the national press informed that the Council of the Municipality of Bardo had unanimously decided the temporary stop of the RFR works in Bardo. Members of the Council stressed that the decision was taken with a view to establishing a dialogue between the council and the parties involved in the Project and that it did not result from an opposition against the project but against the idea of splitting Bardo in two. The protest led to the resigning of 16 members of the Council by the end of the month.

4.4.11 Meanwhile, on 12 March 2019 the Promoter was informed of the growing concern about the Project and of the impossibility to provide a positive reply to its request for postponement of the deadline to disburse, given (among others):

- The failure to update the project implementation schedule
- The failure to evaluate the three social plans, to merge the communication and coordination plans into the SEP and to replace the resettlement plan with an action plan for the follow-up of residual cases of resettlement as well as the pending expropriation files.

The Promoter was warned that further delays would shift in time the provision of financial assistance and that, in case of postponement until 30 June 2021, this extension would be the last one and it would not be possible to further extend the deadline. The Promoter was requested to deal with the concerns raised and provide the information required.

4.4.12 In June 2019, the EIB was provided with draft Terms of Reference for the preparation of a study on the feasibility of the proposals of the Municipality of Bardo for the Project's crossing through the city. The study will concern a part of Line D and in particular the crossing of Bardo between the stations Erraoudha and Bortal. Given the reluctance of the Municipality of Bardo and civil society vis-à-vis the variant validated by national and regional authorities, the Promoter decided to carry out a feasibility study of the new proposals in order to contribute to the good cooperation of institutional beneficiaries of the project and to facilitate the implementation of the project in the best conditions possible. As part of the tasks foreseen by the Promoter, it is worth highlighting that Phase 3 of the Assignment includes the preparation of the feasibility study and of the public consultation while Phase 4 entails the preparation of the final report and the finalisation of documents integrating the remarks made during public consultation.

4.4.13 However, a review of the expertise required by the Promoter for the assignment (transport economist, civil engineer and urban architect) shows that the draft Terms of Reference did not include social expertise, which is necessary to carry out Phases 3 and 4. It is also worth noting that in the draft Terms of Reference the Promoter had not provided information about (i) the content of the new proposals of the Municipality and civil society or (ii) the context in which this proposal was formulated.

4.4.14 An EIB monitoring mission took place by the end of June 2019. In that context, it resulted that:

- the 'non-urgent' works on Line D (e.g. underground structures, passages for pedestrians) were grouped in an international tender launched on 12 August 2018. As of 21 June 2019, the Promoter had completed the technical and financial evaluation of the offers and intended to sign the relevant contract in September 2019.
- With regard to the implementation of the communication plan, the Promoter's activities carried out in 2019 were the presence at several national seminars and communication via radio and TV interviews.
- the Promoter was reminded that the beginning of the pre-operational phase implies an increase in dangers around the tracks. As a result, the Promoter should ensure a very wide campaign of public information

through all possible means (press, social networks, conferences in schools ...) as well as an efficient and maintained display of information at all access points of the site (e.g. level crossing and pedestrian access for line D). The provisional configuration of line D with a very partial fencing of the line and the level crossings requires more information and prevention.

- the ToR for joint approach to communication by the Promoter and SNCFT, which had been finalized by the end of year 2018, had not yet been submitted to the lenders for final validation.

4.4.15 As part of this monitoring mission, the EIB gathered additional information on the feasibility study referred to in §§ 4.4.12-4.4.13, on the content of the new proposal of the Municipality and the context in which it was formulated. From the above information, it resulted that in March 2019 the municipality of Bardo had a meeting with the Minister of Transport in order to modify a part of line D between Cité Erraoudha and Bortal stations into a semi-buried underground passage. The Ministry of Transport had given its agreement to study the change of the route, as well as its impact in terms of cost and project schedule.

## **5. EIB-CM INQUIRY**

5.1 In order to examine the compliance of the operation with the EIB standards, the EIB-CM has reviewed the correspondence received from the Complainant (§1), the applicable regulatory framework (§3) as well as the project documentation attesting the EIB's due diligence and monitoring (§4). The review of the EIB's due diligence and monitoring exclusively focuses on the issues raised by the Complainant.

5.2 During its inquiry, the EIB-CM engaged with the Complainant to better understand the issues raised in the complaint and to receive an update on his expropriation case. Furthermore, the EIB-CM liaised with the EIB competent services as well as with the Promoter to collect information about their response to the concerns raised by the complainant.

5.3 As part of its liaison with the EIB competent services, the EIB-CM was informed of the differences between expropriation procedures before and after the 2016 legislation and that, although the law prescribes fair compensation, in reality, the compensation amounts offered are very low and it is often necessary to go to court to obtain a fair compensation. Furthermore, a great deal of uncertainty affects expropriated PAPs because of (i) the workload of national judiciary authorities, in particular after the 2016 reform and (ii) the lack of clarity of the transitory provisions of the new law as well as of the institutional framework which should apply it. With regard to the specific case of the complainant, the EIB competent services highlighted that only half of the complainant's land was expropriated.

5.4 In May 2019, the EIB-CM also observed the work of the EIB competent services with regard to the evaluation of the Promoter's last report to the Bank. Among the comments raised by the EIB, it is worth noting the insufficient explanation of the delays and the failure to complete some actions of the plans (in particular, the resettlement plan), although, in order to validate the plans, the EIB needed more information on the gap between planned actions and actual ones. Furthermore, the EIB reiterated that gaps identified should be addressed by corrective actions in the form of an action plan to facilitate the follow-up.

5.5 In June 2019, the EIB services liaised with the EIB-CM in order to prepare the monitoring mission referred to in §4.4.14. During a meeting on 18 June and in a following exchange of correspondence on 23 June, the EIB-CM requested the EIB services to ask the Promoter for information on:

1. The expropriation procedure concerning the complainant;
2. The mitigation measures/compensation envisaged for the safety/mobility of pedestrians (e.g. in terms of access for people with reduced mobility) as well as the prevention of floods for the underground passages; and
3. The public consultation in Bardo.

In the same occasion, the EIB services were requested to inform the Promoter of the EIB-CM's intention to have a videoconference call as soon as possible. In the absence of feedback on the Promoter's reply to the request for information made during the monitoring mission, the EIB-CM reiterated the request for information to the Promoter when organising the videoconference call, which took place on 2 July 2019.

5.6 During the meeting, the EIB-CM explained the mandate and scope of the Complaints Mechanism and the objective of the meeting. The Promoter provided a chronology of events until the feasibility study submitted to



the EIB in June 2019 and explained that the measures concerning safety/mobility of pedestrians/vehicles were contained in the ANPE's authorisation. During the discussion, the Promoter highlighted the following:

- i. Two underground passages and two footbridges were planned and that the passages for pedestrians were six meter large, equipped with elevators/escalators for people with reduced mobility and placed at distance of max 150m from each other. The current design would not lead to a splitting of the town in two.
- ii. The square would double in terms of space (2000 m<sup>2</sup>) and that meeting spaces, as an amphitheater or a shopping area at the Bardo station, were part of the plan.
- iii. Parking problems in the area were to be resolved thanks to a land destined for a possible multistorey parking.
- iv. Besides a police station at the Bardo station, the area would be equipped with surveillance cameras.

5.7 With regard to expropriation, the Promoter explained that the Complainant's case fell under the 2014 Expropriation Decree and that the Complainant had challenged the decree due to the fact that the then owner was deceased. The initial compensation proposed was 250 dinars/m<sup>2</sup> and, after refusal, the compensation was raised to 400 dinars/m<sup>2</sup>. Whereas this proposal was also refused by the Complainant, the file was then transferred to judiciary proceedings. The Promoter explained that two separate proceedings should be distinguished:

1. The proceeding establishing the compensation amount
2. The proceeding leading to taking possession of the expropriated property

While for the former proceeding the Promoter did not have information to share with the EIB, for the latter the Promoter was awaiting the execution of the decision to take possession, after it had been unsuccessfully challenged. The Promoter provided a copy of the decision of the Court of First Instance in Tunis dated 23 October 2017<sup>50</sup>.

5.8 Finally, the EIB requested the Promoter to provide a copy of the Expropriation Decree, information on ongoing judicial proceedings concerning the expropriation procedure and a clear outline/chronology of all the stakeholders engagement initiatives taken with regard to Bardo square. Despite a further request on 19 September 2019, to date, the Promoter has not provided such information.

## **6. FINDINGS & CONCLUSIONS**

### *6.1 General Remarks*

6.1.1 The present project features a high degree of complexity. The inquiry of the EIB-CM has identified a number of factors that contributed to such complexity.

6.1.2 Firstly, it is worth recalling the complex socio-political context in Tunisia throughout the Project Cycle and the shift from the previous regime to the current one in a delicate moment for the project's implementation. The instability following the Jasmine revolution until the constitution of 2014 certainly contributed to the delays in the implementation of the Project, the poor information to the lenders and the impossibility of travelling to the ground to assess the situation. Another factor of complexity is the high volatility of the institutional context, even after 2014, as showed by the changes in the institutional support to the Project's design documented in this Report, in particular with regard to the inter-institutional coordination between central government and local authorities.

6.1.3 The long delay in the implementation of the project bears significant consequences in terms of (un)fairness of the compensation proposed. Far from being mitigated, it appears that this factor of complexity worsens with time, given the extremely slow pace of progress in project's implementation.

6.1.4 The inquiry also shows that non-EU operations to be financed under mutual reliance initiatives should be selected while taking into consideration their complexity as well as the EIB's experience with the potential client, including its track record in terms of satisfactory performance/compliance with EIB environmental and social

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<sup>50</sup> A review of the Court's decision showed that a case challenging the validity of the Order dated 17 May 2017 and ruling that possession of the expropriated parcel should be taken was submitted against the Ministry of Transport/the Promoter and the TMSP. In the case, the Claimants alleged that the Expropriation decree was issued in 2014 against a person deceased twenty years before. The Court found that the case put forward related to the expropriation decree itself and not the challenged Order. Whereas the Court did not have the power to decide on the validity of the expropriation procedures due to the lack of registration of the expropriation decree or its connection to a real property for which it becomes clear that the owner is deceased, it rejected the appeal against the Order on the merits.

standards. In this context, it is worth underlining that, when engaging in the challenged operation, the EIB had no previous experience with the Promoter (although it had previous experience with the Ministry of Transport). In this context, **the pragmatism and dedication of the EIB competent services**, which – regardless of the mutual reliance – appraised the Project and engaged with the Promoter in the attempt to resolve the issues identified throughout the project cycle<sup>51</sup>, even after the waiver of the condition for first disbursement, **are praiseworthy**. As a matter of fact, the improvement of the Promoter’s engagement with stakeholders is the result of the efforts made by the EIB competent services since the waiver.

6.1.5 In this context, the Promoter’s decision to launch a study on the feasibility of the proposal of the Municipality of Bardo referred to in § 4.4.12 has to be considered for its possible implications. On the one hand, the public consultation to be carried out as part of the new feasibility study will mitigate the shortcoming of the 2010 complementary study. On the other hand, if considered feasible, the alternative proposed by the Municipality of Bardo may have an impact on the land to be expropriated for the realisation of the refurbishment of Bardo square.

6.1.6 The below paragraphs assess in details the information gathered during the inquiry with a view to determining whether the complainant’s allegations are grounded and, if so, whether there are areas for improvement and lesson to learn for the EIB in light of the two EIB’s aims referred to in §3.2.2 of this Report, namely the enhancement of the environmental and social sustainability of projects and the promotion of greater social well-being.

## 6.2 Alleged Irregularities in Expropriation

6.2.1 The EIB-CM assessed whether the sub-allegations made by the complainant, i.e. (i) insufficient compensation, (ii) unfair refusal to expropriate the entire property and (iii) to compensate in kind were grounded.

### *i. Allegedly insufficient compensation*

6.2.2 **EIB standards** on involuntary resettlement clearly prescribe that compensation for losses incurred shall be adequate (§3.2.5). The Bank expects that compensation for unoccupied land (i.e. land which does not produce income/support the livelihood of the expropriated person) covers **market value of land** of equal size and use, with similar/improved public infrastructure facilities and services and located in the vicinity of the affected land. The review of **national law** (3.4.5) shows that the indemnity is fixed according to the **value** of the realty assessed on the basis of its actual use **on the date of publication of the expropriation decree** and by comparison with prices of comparable properties in the same zone at the time of the publication of the expropriation decree.

6.2.3 The information about (i) the lack of indexation in the valuation process, (ii) the lack of consideration of potential rise in assets value in the valuation process and (iii) the adequacy of the compensation gathered during the EIB-CM’s inquiry (§§ 4.3.2 and 5.3) raises concerns. Finally, it is unclear whether the depreciation allowance referred to in § 3.4.5 has been calculated for the part of land, which was not expropriated.

6.2.4 The EIB-CM notes that in 2013 the EIB decided to waive the condition for first disbursement requiring the Promoter to produce a satisfactory Resettlement Action Plan. This is within the discretion of EIB governing bodies. Under these circumstances, the EIB-CM concludes that the allegation is **not grounded** in the context of EIB’s obligations. From the information provided by the EIB competent services, the objective of a RAP agreed by the Bank was in fact to address possible concerns as those identified in §6.2.3.

6.2.5 The inquiry of the EIB-CM also took note of:

- a. The time elapsed since the valuation of the expropriated parcels and the publication of the expropriation decree in 2014;
- b. The inflation rate<sup>52</sup> and the land price rise<sup>53</sup> in Tunisia since 2014;
- c. The significant delays in the administration of expropriation proceedings by local judicial authorities (§ 4.4.8); and
- d. the Promoter’s failure to implement EIB clear instructions aiming to address this shortcoming (§§ 4.4.4 and 4.4.6).

<sup>51</sup> For instance by developing the due diligence performed by the leading financial institution in order to align it with its procedures (§ 4.1) or leading assignments concerning the social impact of the project (§ 4.3.1).

<sup>52</sup> <https://www.statista.com/statistics/524512/inflation-rate-in-tunisia/>

<sup>53</sup> <https://www.globalpropertyguide.com/Middle-East/Tunisia/Price-History>

If not addressed through a process of recalculation, these factors are likely to negatively affect the adequacy and fairness of the compensation offered in 2014. From the inquiry of the EIB-CM, it results that, regardless of the compliance of the operation with the applicable regulatory framework, the Project may have a negative impact on the complainant's right on the expropriated land.

6.2.6 The assessment of the EIB's due diligence of the project shows **the following area of improvement**:

*Failure to interrupt negotiations to finalise the investment until the EIB receives a satisfactory resettlement plan/framework in breach of SAGN1*

6.2.7 The EIB services decided to condition the first disbursement to the receipt of a satisfactory Resettlement Action Plan. This approach was not compliant with SAGN1. As a matter of fact, it is unlikely that concerns on the determination of expropriation costs will be resolved in a satisfactory way without actively engaging with the client on this topic as soon as possible and integrating the results of this engagement in the finance contract. This is particularly important in light of the Statement provisions referred to in §3.2.2.

*ii. Allegedly unfair refusal to expropriate the entire property*

6.2.8 With regard to the Promoter's refusal to expropriate the remaining [REDACTED], the EIB-CM found that the complainant can ask the Promoter to expropriate the entire property only when the non-expropriated land is less than 25% (a quarter) of the original land (§ 3.4.7). The complainant's land was [REDACTED] of which [REDACTED] were expropriated (§§ 1.1, 1.2 and 5.3). Since the non-expropriated land [REDACTED] was more than [REDACTED] of the size of the initial parcel, the EIB-CM concludes that this allegation is **not grounded**.

*iii. Allegedly unfair refusal to compensate in kind*

6.2.9 With regard to the Promoter's refusal to compensate in kind, a review of EIB standards (§§ 3.2-3.3) and national law (§3.4) shows that there are no grounds for the Complainant to claim that compensation in kind should be granted. As a result, the EIB-CM concludes that this allegation is **not grounded**.

*iv. Further considerations*

6.2.10 Finally, the EIB-CM notes the possibility for the Complainant to demand the retrocession of the expropriated realty and to seize the competent judicial authority as outlined in §3.4.6.

### 6.3 Alleged Disregard of Cultural Heritage

6.3.1 According to the List of protected and classified historical and archaeological monuments in Tunisia<sup>54</sup>, Bardo city square is not registered as a protected historic site. Consequently, it does not benefit from a "high level of protection", which is required by the EIB standards for the Bank not to consider financing a project. As a result, the allegation related to "destruction" of the "historic" Bardo square is **not grounded**.

### 6.4 Alleged Lack of Stakeholder Engagement in the assessment of the environmental and social impacts of the project

6.4.1 In line with EIB standards concerning stakeholder engagement (§§3.3.3-3.3.4), the EIB considers the latter not only as a standard to which the project shall comply but as a key success factor for the mitigation of risks related to the project. Poor stakeholder engagement is often the cause of further shortcomings in the implementation of the Project. The assessment of the EIB standards applying to the challenged operation (§ 3.2.7) shows that the EIB considers stakeholders engagement as essential for investment sustainability through increased local ownership and support through informed involvement. For this reason, EIB's financial assistance requires that a formal EIA process is complemented by a meaningful, transparent and culturally appropriate public consultation of affected communities and that evidence that the views expressed have been considered is gathered. This requirement must be satisfied before disbursement (§ 3.3.2) and the quality of public consultation/disclosure helps EIB services to judge the quality of an EIA for EIB purposes (§ 3.3.3).

<sup>54</sup> The List of protected and classified historical and archaeological monuments in Tunisia is available at the following address: [http://www.inp.rnrt.tn/Monuments\\_classeses/monuments\\_classes.pdf](http://www.inp.rnrt.tn/Monuments_classeses/monuments_classes.pdf), accessed on 26 September 2019.

6.4.2 In line with the EIB's responsibility outlined in § 3.3.10 of this Report, the EIB appraised the project identifying the two conditions to disbursement referred to in §4.2.8, which were confirmed by the EIB Board of Directors when approving the operation. Despite the existence of a public consultation procedure for urban development plans, an analysis of the applicable regulatory framework shows that Tunisian EIA law does not contain provisions on public consultation, with the result that there is a significant gap between national law and EIB standards with regard to stakeholders' engagement. This gap was confirmed by the information provided by the Promoter in November 2010 (Table 3) which showed how the public consultation on the complementary study lacked a crucial component, i.e. the engagement with civil society and the public at large. ANPE confirmed this assessment by recommending, as part of the approval of the complementary study on Bardo, to carry out a broad public consultation including a variety of stakeholders and civil society members.

6.4.3 This shortcoming had a tangible negative impact on the local ownership of the Project. As a matter of fact, it can be argued that the Complainant's concerns about the impact of the selected design for the Project are, at least partially, the result of this shortcoming.

6.4.4 Based on the above, the EIB-CM concludes that the allegation is **grounded**.

6.4.5 The EIB-CM notes that the Promoter's decision to launch a study on the feasibility of the proposal of the Municipality of Bardo referred to in § 4.4.12 has the potential to address the shortcomings of the complementary study carried out in 2010, insofar as it foresees a public consultation and the integration of the remarks made during the latter. The information provided in § 4.4.13, however, leads to conclude that for this potential to materialise, the Promoter needs Technical Assistance to ensure that the necessary skills are in place and the process is managed to the satisfaction of the EIB.

6.4.6 The assessment of the EIB's due diligence of the project shows **the following area of improvement:**

*Adequate mitigation of gaps between EIB and national standards with regard to public consultation*

6.4.7 The assessment of the EIB's due diligence throughout the project cycle shows that the EIB's decision to consider the condition precedent concerning public consultation satisfied before signature of the Finance Contract was based on information showing a gap with EIB standards on stakeholders' engagement (Table 3). This decision has resulted in the EIB's decision not to translate the condition approved by the EIB Board of Director into the Finance Contract. One of the arguments raised by the EIB competent services was that the lack of engagement of civil society and the general public would be supplemented by the public consultation to be carried out on the RAP.

6.4.8 The EIB-CM acknowledges that after the waiver of the condition concerning the RAP, the EIB services made significant efforts to improve the Promoter's stakeholder engagement. However, the EIB-CM also notes:

- The lack of effective communication with PAPs and the public at large, even after long time since the waiver and the introduction of the new conditions for disbursement (§§ 4.3.16, 4.4.1, Table 6, 4.4.5, 4.4.11); and
- The significant area for improvement as regards the Promoter's capacity to fulfil its reporting duties (§§ 4.3.15, 4.4.11, 4.4.13).

*6.5 Alleged Poor Assessment and Management of Environmental and Social Impacts and Risks*

6.5.1 In line with the information provided in §3.2.1 and footnote 7 of this Report, the Standard referred to by the complainant did not exist at the time of the approval of the challenged operation or at the time of signature of the Finance Contract. However, the EIB-CM trusts that the complainant's concerns are addressed as part of the review of his other allegations. As a result, the allegation is **filed with no further conclusions**.

## **7. Recommendations**

- 7.1 Based on the above conclusions, the EIB-CM recommends that:
- 7.2 While the waiver limits the Bank's contractual options to enforce a solution to the issue of indexation, within the next six months:
- Services should engage with the promoter with a view to identifying the potential gap between the amount allocated in 2014 and the current indexed market price.
  - Once, this gap is clearly identified and documented, services should engage with the promoter with a view to achieving an agreeable solution on how to bridge such a gap.
- 7.3 The EIB should: (i) support the Promoter with reporting on social issues and (ii) support/monitor the public consultation process and the integration of its results in relation to the feasibility study. This could be done through the mobilisation of the necessary funds for an independent TA reporting to the EIB and operating at the Promoter's headquarters. The TA could also be useful to support addressing the actions identified in §§ 7.2 and 7.4.
- 7.4 Based on the considerable delay in merging the communication and coordination plans into the SEP, the EIB services should support/monitor the Promoter to ensure that a SEP clearly containing initiatives of stakeholders engagement with Bardo residents and businesses is established to the satisfaction of the Bank.
- 7.5 The EIB services should report on the outcome of the above actions to the Management Committee during 2020.
- 7.6 The EIB-CM will monitor the implementation of the above recommendations by the 1<sup>st</sup> quarter of 2021.

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