

Banja Luka – Dobož Motorway

Complaint SG/E/2016/24

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

CONCLUSIONS REPORT

15 April 2019

[EIB Complaints Mechanism](#)

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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 that are not satisfied with the EIB-CM's reply have the opportunity to submit a confirmatory complaint within 15 days of receipt of that reply. In addition, complainants who are not satisfied with the outcome of the procedure before the EIB-CM and who do not wish to make a confirmatory complaint have the right to lodge a complaint of maladministration against the EIB with the EO.

The EO was "created" by the Maastricht Treaty of 1992 as an EU institution to which a citizen or an entity may appeal to investigate an EU institution or a 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 EO, 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 Group.

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>

Table of Contents

EXECUTIVE SUMMARY.....	5
1. THE COMPLAINT (ALLEGATIONS AND CLAIMS).....	6
2. BACKGROUND INFORMATION.....	6
3. REGULATORY FRAMEWORK.....	7
4. WORK PERFORMED BY THE EIB-CM.....	8
5. FINDINGS, CONCLUSIONS AND RECOMMENDATIONS.....	9
5.1 Spatial Planning.....	9
5.2 Construction Permit.....	12
5.3 Environmental Impact.....	16
5.4 Social and Safety Impacts.....	18
LIST OF ABBREVIATIONS.....	22

EXECUTIVE SUMMARY

This report concerns a complaint regarding a section of the Banja Luka – Doboј motorway in Republika Srpska (RS), Bosnia and Herzegovina, financed by the European Investment Bank (EIB). The complaint consists of four allegations concerning the following:

- Spatial planning
- Construction permit
- Environmental impact and
- Social and safety impacts.

With respect to the **compliance of the project with the applicable standards**, the inquiry shows that the project is in line with the standards in respect of two allegations (1 – Spatial planning; 3 – Environmental impact). For two allegations (2 – Construction permit; 4 – Social and safety impacts), at one point the project was not in line with the standards but these issues have since been resolved.

With respect to the **role of the EIB**, the inquiry shows that three allegations are ungrounded (1 – Spatial planning; 3 – Environmental impact; 4 – Social and safety impacts). However, one allegation (2 – Construction permit) is grounded.

More specifically, the EIB accepted the preliminary construction permit as a replacement for the construction permit, set as a condition for disbursement. By doing so, the EIB disbursed the funds for some works around Drugovići village at a time when the permit was not yet available. However, the promoter carried out these works in line with the main design, which was harmonised with the sub-division plan for the motorway, adopted by the RS Assembly. Therefore, these objects would have been built in the same manner in any case, albeit with a delay. Subsequently, the promoter obtained the permit for these works.

In addition, under the RS legal framework, the main design is included in the construction permit. As a result, the EIB's decision to set the construction permit as a condition for disbursement of the first tranche and the main design as a condition for disbursement of the second tranche is not consistent with the legal framework of the country of operation. The EIB-CM takes the view that the main design should have been part of the condition for disbursement of the first tranche.

Considering that the motorway around Drugovići village has already been built in the same manner as defined in the permit subsequently obtained by the promoter, it appears that the inconsistencies detected by the present inquiry are of a mere procedural nature. The EIB-CM, therefore, **recommends** that the EIB take into account applicable national law and procedures on permits before setting disbursement conditions and making disbursements.

Complaint received: 12 October 2016

Confidentiality waived: Yes

The allegations concern the following: 1 – Spatial planning; 2 – Construction permit; 3 – Environmental impact; 4 – Social and safety impacts.

1. THE COMPLAINT (ALLEGATIONS AND CLAIMS)

- 1.1 The complainant submitted a complaint to the European Investment Bank's (EIB's) Complaints Mechanism Division (EIB-CM) concerning a section of the Banja Luka – Doboj motorway in Republika Srpska (RS), Bosnia and Herzegovina (BiH). The complaint consists of six letters sent over the period October 2016 – December 2017¹. The complaint contains four allegations summarised in Table 1 below and analysed in Section 5 of this report.

TABLE 1 – SUMMARY OF ALLEGATIONS

Main points of allegations	Summary of allegations received from the complainant
1. Spatial planning	The complainant questions: (i) the route of the relocated M16.1 road near Drugovići village; (ii) the location of the Bundali motorway overpass; and (iii) the construction/location of the Drugovići motorway interchange.
2. Construction permit	The complainant alleges that the works on the construction of the motorway near Drugovići village carried out before the date of issuance of the construction permit for that section (18 August 2017) are illegal.
3. Environmental impact	The complainant alleges that the shortening of the natural watercourse of the Crkvena river near Drugovići village will impact water quality, flora and fauna.
4. Social and safety impacts	The complainant alleges that the relocation of M.16.1 road near Drugovići village will have social and safety impacts on the village. Pedestrians will not be able to use the relocated M.16.1 road, which will result in: (i) the separation of the eastern part of the village from the western part hosting the village shop and petrol station; and (ii) inability to access the village bus stops, situated on the relocated road.

- 1.2 The complainant asked the EIB to:
- stop the loan engagement with the promoter until the pending issues are resolved
 - take actions to enable safe use by pedestrians of the relocated M.16.1 road.

2. BACKGROUND INFORMATION

- 2.1 The complaint concerns construction of a motorway between Banja Luka and Doboj in RS, an entity within BiH. The EIB is financing the western section of the motorway, i.e. the 35.3 km long section between Banja Luka (Mahovljani interchange) and Prnjavor².

The complaint concerns the section of the motorway around Drugovići village. This section is located on the territory of the Laktaši municipality. A large part of the motorway around Drugovići village, the so-called Lot 1

¹ Letters from the complainant to the EIB dated: 3 October 2016; 3 November 2016; 19 December 2016; 24 July 2017; 17 October 2017 and 28 December 2017.

² For more information about the project, see: <http://www.eib.org/projects/pipelines/pipeline/20110622>, accessed on 4 February 2019.

of the western section of the motorway³, was opened for traffic on 1 October 2017⁴. The remaining part, the so-called Lot 2⁵, was opened for traffic on 2 October 2018⁶.

- 2.2 RS Motorways⁷ are implementing the project (hereinafter: the promoter)⁸. Two construction companies carried out the construction works (hereinafter: the contractor).

3. REGULATORY FRAMEWORK

Complaints Mechanism⁹

- 3.1 The EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (CMPTR) task the EIB-CM with addressing complaints concerning alleged maladministration by the EIB¹⁰. Maladministration means poor or failed administration. This occurs when the EIB fails to act in accordance with the applicable legislation and/or established policies, standards and procedures¹¹. Maladministration may also relate to the environmental or social impacts of EIB's activities¹².

The CMPTR specifies the role of the EIB-CM. The EIB-CM, inter alia, gathers and reviews existing information on the subject under complaint, conducts appropriate inquiries with a view to assessing whether the EIB Group's policies and procedures have been followed and promotes adherence to the EIB Group's policies¹³. The EIB-CM endeavours to resolve the problems that gave rise to the complaint during the complaints handling process¹⁴.

Project applicable standards

- 3.2 Project applicable standards are set in a number of the EIB's policies and procedures, such as: the EIB Transport Lending Policy¹⁵; the EIB Statement of Environmental and Social Principles and Standards (ESPS)¹⁶ and the Environmental and Social Practices Handbook¹⁷, further implementing the ESPS¹⁸.

The ESPS states that projects financed by the EIB in potential candidate countries, such as BiH, are also required to comply with applicable national and EU law¹⁹. Furthermore, specific project obligations are also included in the project finance contract²⁰.

More details on the project applicable standards are presented per each allegation in sections 5.1 – 5.4 below.

³ Section between Mahovljani interchange (km 00+000,00) and Drugovići interchange (km 9+875,00).

⁴ See: <https://www.nezavisne.com/novosti/bih/Svecano-otvarana-dionica-auto-puta-9-januar/445333>, accessed on 4 February 2019.

⁵ Section between Drugovići interchange (km 9+875,00) and Prnjavor interchange (km 35+300,00).

⁶ See: <https://autoputevirs.com/archives/3516>, accessed on 4 February 2019.

⁷ A public company with the purpose of managing motorways in RS.

⁸ Please note that a management consultant is assisting the promoter in project implementation, administration and supervision. In some cases, the information was provided by the consultants on behalf of the promoter (e.g. bi-annual progress reports). In such cases, the EIB-CM interpreted this as if the information was provided by the promoter.

⁹ In this case, the EIB-CM applied the EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure and the EIB Complaints Mechanism Operating Procedures, which were applicable when the complaint was lodged and registered.

¹⁰ Section II, § 3 and 4 and Section III, § 1.4 of the CMPTR.

¹¹ Section II, § 1.2 of the CMPTR.

¹² Section II, § 1.2 of the CMPTR.

¹³ Section III, § 4.2 of the CMPTR.

¹⁴ Section II, § 3.1, indent 3, Section II, § 3.2, Section III, § 4.2, item k) of the CMPTR; § 5.6.5 of the EIB Complaints Mechanism Operating Procedures.

¹⁵ Available at: http://www.eib.org/attachments/strategies/transport_lending_policy_en.pdf, accessed on 4 February 2019.

¹⁶ Available at: http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf, accessed on 4 February 2019.

¹⁷ E.g. EIB's 2010 v. Environmental and Social Practices Handbook.

¹⁸ Paragraph 12 of the Background section of the ESPS.

¹⁹ Paragraph 36 of the ESPS Statement.

²⁰ Paragraph 7 of the ESPS Statement.

Role of the EIB

- 3.3 In line with the ESPS the responsibility for compliance with the project applicable standards lies with the promoter²¹. According to national legislation, the competent national authorities are also responsible for ensuring the project's compliance with national legislation. However, according to the EIB Complaints Mechanism Operating Procedures (CMOP), the EIB has a due diligence to ensure such compliance²². The EIB exercises this due diligence during project appraisal and project monitoring.

The ESPS requires the EIB to appraise projects it finances²³. The appraisal takes place prior to signature of the finance contract²⁴. The appraisal aims at, inter alia, assessing the project's impact and whether the project complies with the project applicable standards (see § 3.2 above). Sometimes, the appraisal results in conditions for disbursement. The promoter must complete these conditions to the satisfaction of the EIB prior to the disbursement of the EIB financing²⁵.

Once the promoter and the EIB sign the finance contract, the EIB is required to monitor the project. The monitoring aims at ensuring compliance of the project with the EIB's approval conditions²⁶. The EIB monitors projects on the basis of reports provided by the promoter²⁷, as well as EIB visits, information provided by the local community, etc.²⁸

More details on the applicable standards setting out the role of the EIB are presented per each allegation in sections 5.1 – 5.4 below.

4. WORK PERFORMED BY THE EIB-CM

- 4.1 After review of the complaint, the EIB-CM concluded that some allegations concern fraud, and thus fall outside the mandate of the EIB-CM. Therefore, the EIB-CM forwarded this information to the EIB's Fraud Investigation Division.
- 4.2 The EIB-CM shared the summary of the allegations with the EIB's relevant operational services; met with the EIB's relevant operational services; and conducted a desk review of available documents²⁹. The EIB-CM requested additional documents and clarifications from the EIB's operational services and liaised with the promoter with the aim of acquiring these³⁰. Upon their receipt, the EIB-CM reviewed them and proceeded with the drafting of this conclusions report.
- 4.3 As part of the detailed review of the available documents, the EIB-CM also looked at the project grievance mechanism. The project grievance mechanism is set out in more detail in the Stakeholder Engagement Plan (SEP)³¹ and it requires the contractor to accept and respond to all the comments and complaints associated

²¹ Paragraph 2 of the ESPS Statement.

²² § 3 of the CMOP.

²³ Paragraph 17 of the ESPS Statement.

²⁴ <https://www.eib.org/en/projects/cycle/index.htm>

²⁵ Paragraph 243, indent 2 of the EIB's 2010 v. of the Environmental and Social Practices Handbook.

²⁶ Paragraph 258 of the EIB's 2010 v. of the Environmental and Social Practices Handbook.

²⁷ These reports include information concerning: changes to technical specifications; update on the cost of the project; a description of any major issue with an impact on the environment; etc.

²⁸ Paragraph 8 of the ESPS Statement.

²⁹ This included both EIB's internal documents as well as the documents in the public domain (e.g. project documents available on the EIB's website (<http://www.eib.org/projects/pipelines/pipeline/20110622>), accessed on 4 February 2019; relevant RS legislation and media articles).

³⁰ These documents include: Decision on Adoption of the Proposal of the Parcelling Plan for the Banja Luka-Doboj Motorway under the Shortened Procedure ("O.G. RS", No 56/16); Excerpt from the Parcelling Plan concerning Bundali overpass; Decision on Preparation of the Parcelling Plan for the Banja Luka-Doboj Motorway under the Shortened Procedure ("O.G. RS", No 87/15) Decision on Issuance of the Water Approval, dated 10 July 2017; Decision on Issuance of the Water Permit, dated 19 September 2017.

³¹ Section 1 of the SEP Banja Luka to Doboj Motorway: Section 1: Banja Luka to Prnjavor.

with the project. According to the Environmental and Social Data Sheet (ESDS), the promoter disclosed its grievance mechanism to the public³².

The lodged grievances concern a number of issues such as: impact on water; damage caused by floods; access to plots; damage compensation; expropriation. The promoter is keeping the EIB informed of the lodged grievances through its bi-annual reports.

TEXT BOX 1 – RELEVANT CASE BEFORE THE RS CONSTITUTIONAL COURT

The complainant informed the EIB-CM that it had submitted a case before the RS Constitutional Court concerning the constitutionality of a provision of the Act on Spatial Planning and Construction³³. In November 2017, the RS Constitutional Court rejected the complainant's request to institute the proceedings for the review of constitutionality of Article 51(2) of the Act as well as the constitutionality and legality of item VII(2) of the Decision on drafting of the sub-division plan for Banja Luka – Dobož motorway in a shortened procedure³⁴.

5. FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.1 Spatial Planning

Allegation

- 5.1.1. *The complainant questions: (i) the route of the relocated M16.1 road near Drugovići village; (ii) the location of the Bundali motorway overpass; and (iii) the construction/location of the Drugovići motorway interchange.*

Applicable standards

- 5.1.2 The RS legislation states that the project must comply with the relevant spatial documents³⁵. The RS spatial plan³⁶ and the result of the project alternatives assessment³⁷ determine the location of the motorway, and therefore affect the relocation of existing roads. The sub-division plan³⁸ for the motorway determines the project's specific components (e.g. (i) routes of the relocated roads; (ii) motorway overpasses; (iii) motorway interchanges).
- 5.1.3 The EIB's standards require the EIB to appraise projects presented to it for funding³⁹. For example, the EIB is required to check whether the motorway had been subject to assessment of project alternatives⁴⁰. As part of its project monitoring, the EIB is also required to review reports from the promoter on the implementation of the project⁴¹.

³² ESDS is available under the following link: <http://www.eib.org/attachments/registers/48193482.pdf>, accessed on 4 February 2019.

³³ RS Act on Spatial Planning and Construction ("O.G. RS", No. 40/13, 106/15 and 3/16).

³⁴ Decision No. V-84/16, available under the following link: http://www.ustavnisud.org/database/pdf/U-84_16.pdf, accessed on 4 February 2019. The complainant submitted the motion through the NGO Savjest. The complainant is the founder and the president of the NGO (see: <https://www.savjest.org/o-nama/>, accessed on 4 February 2019).

³⁵ Article 26(a)(1) and (4) of the RS Act on Spatial Planning and Construction.

³⁶ The RS spatial plan is a spatial document that regulates the purpose and use of the space (Title 3 of the RS Act on Spatial Planning and Construction) and very generally sets long-term goals and special development measures in RS (Article 29 of the RS Act on Spatial Planning and Construction).

³⁷ Paragraph 18 of the ESPS Statement.

³⁸ The subdivision plan sets criteria for establishment of subdivisions, use of those subdivisions, construction on those subdivisions and is very detailed – Article 37(2) of the RS Act on Spatial Planning and Construction.

³⁹ Paragraph 28 of the EIB Transport Lending Policy.

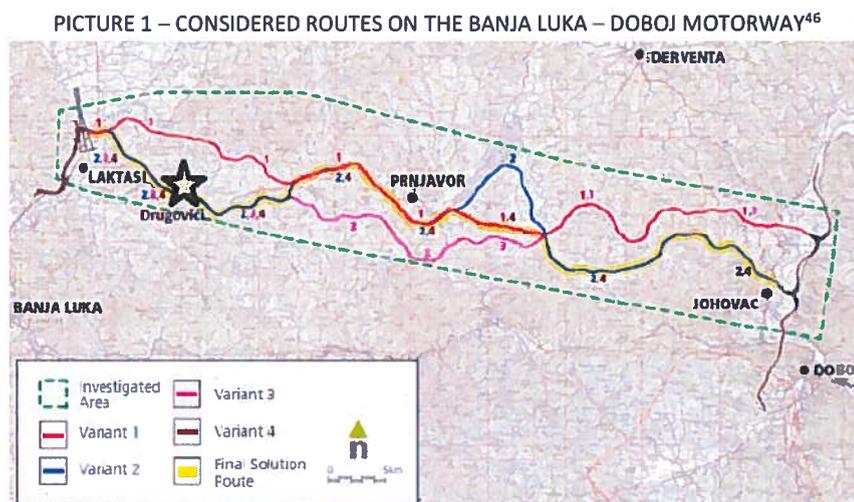
⁴⁰ Paragraph 128 of EIB's v. 2010 of the Environmental and Social Practices Handbook.

⁴¹ Paragraph 260 of EIB's v. 2010 of the Environmental and Social Practices Handbook.

Findings

Project applicable standards

- 5.1.4 The RS Spatial Plan sets out the Banja Luka Doboj motorway route⁴². The route of the motorway around Drugovići village was selected after assessment of a number of alternatives. The Laktaši Municipality⁴³ and the public⁴⁴ participated in the consideration of alternatives in the period June – October 2010. The variant around Drugovići village (see Picture 1 below) was identified as the favoured option with regard to environmental and social (spatial-urban) impacts⁴⁵ and was incorporated in the final route of the motorway. The final route of the motorway involved the relocation of existing roads.



- 5.1.5 The sub-division plan for the motorway, adopted by the RS Assembly in July 2016⁴⁷, specifies: (i) the route of the relocated M16.1 road near Drugovići village; (ii) the location of the Bundali overpass; (iii) the construction/location of the Drugovići interchange. Prior to its enactment, the draft plan was made publicly available for comments in Laktaši Municipality in February 2016. According to the promoter, the public consultation was carried out in line with the applicable legislation, which stipulates that: (i) relevant information must be provided at the premises of the local authority; (ii) the public may make comments and suggestions which must be taken into account; (iii) a public notice about the consultation must be published/disseminated on at least two occasions⁴⁸. According to the information provided by the promoter, the public, including the complainant, did not make comments on the presented sub-division plan.

During the public consultation, two options for the route of the relocated M.16.1 road, which also impacted the Crkvena river route and the local roads around the Drugovići village, were presented. According to the promoter, in the absence of comments received from the public, the opinion of RS Roads⁴⁹ was integrated into the sub-division plan for the motorway.

⁴² Section 3.2 of the Non-technical Summary of Banja Luka to Doboj Motorway: Section 1: Banja Luka to Prnjavor, available at: <http://www.eib.org/infocentre/register/all/53219056.pdf>, accessed on 4 February 2019.

⁴³ Section 3.3 of the Non-technical Summary of Banja Luka to Doboj Motorway: Section 1: Banja Luka to Prnjavor.

⁴⁴ Explanatory section of the EIA Decision. The ESDS describes the public attendance of the meeting that took place in Laktaši Municipality on 16 August 2010 as good.

⁴⁵ Section 3.3 of the Non-technical Summary of Banja Luka to Doboj Motorway: Section 1: Banja Luka to Prnjavor.

⁴⁶ Figure 7 in the Non-technical summary of Banja Luka to Doboj Motorway: Section 1: Banja Luka to Prnjavor, January 2013.

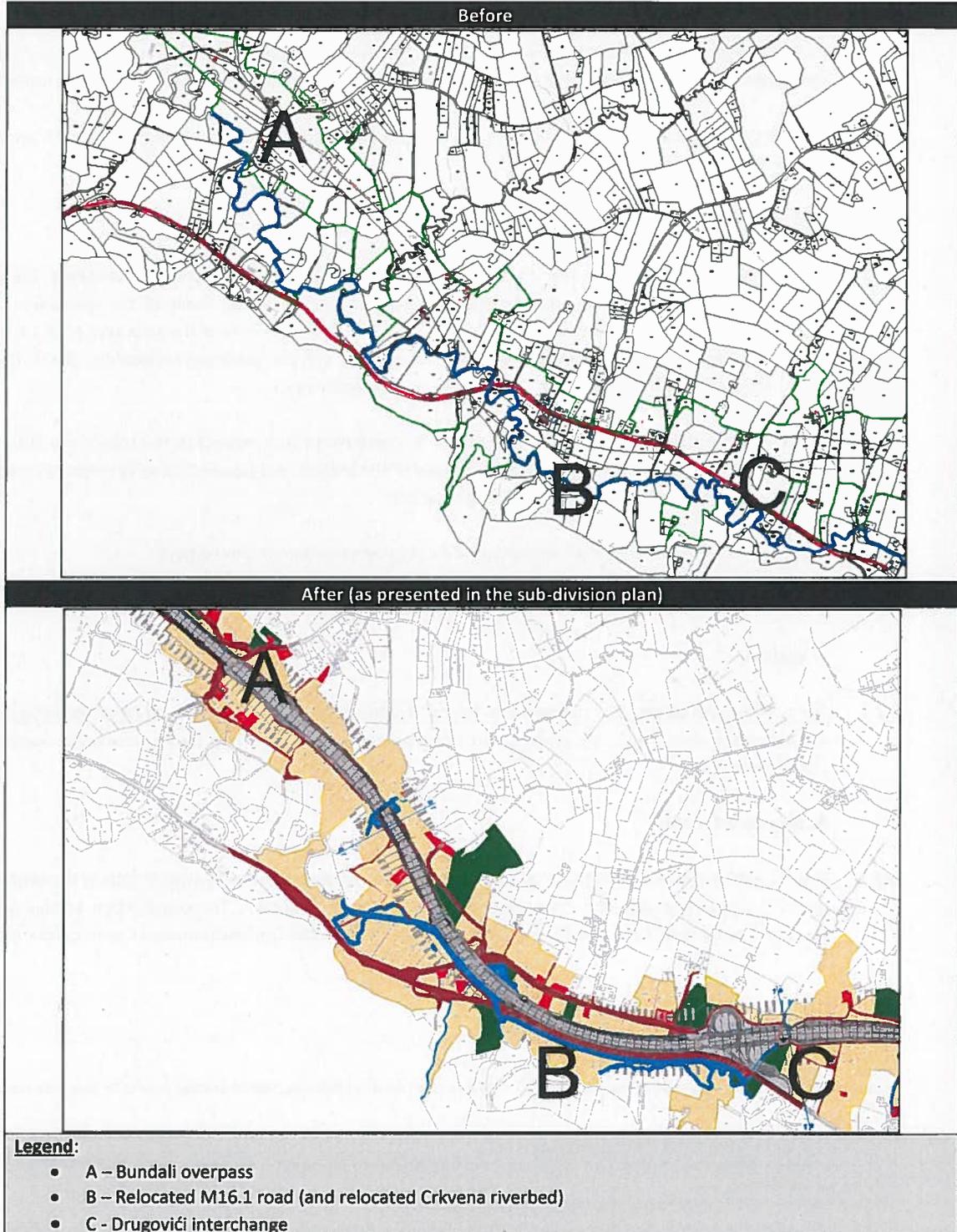
⁴⁷ Decision on Adoption of the Proposed Sub-division Plan for Banja Luka – Doboj Motorway under the Shortened Procedure (O.G. RS, No. 56/16). The sub-division plan must comply with the Act on Spatial Planning and Construction, Nature Protection Act, Environmental Protection Act, RS Spatial Plan for the period up to 2025.

⁴⁸ Articles 47 and 48 of the RS Act on Spatial Planning and Construction.

⁴⁹ A public company managing roads in RS.

According to the promoter, the situation after the construction of the motorway around Drugovići village is in line with the sub-division plan. Picture 2 presents the situation before and after the construction of the motorway around Drugovići village.

PICTURE 2 – THE SITUATION BEFORE AND AFTER THE CONSTRUCTION OF THE MOTORWAY AROUND DRUGOVIĆI VILLAGE



- 5.1.6 The complainant had already expressed dissatisfaction with the location of the Bundali overpass by lodging a grievance with the project grievance mechanism (see § 4.3). After reviewing the grievance, the contractor informed the complainant that the draft sub-division plan had been displayed in the Laktaši Municipality in February 2016 and closed this case.

Role of the EIB

- 5.1.7 During its project appraisal, the EIB reviewed the relevant documents. For example, the EIB was aware that the RS Spatial Plan foresees the motorway route⁵⁰. Also, the EIB noted that as part of the EIA process four alternatives were analysed and that the mix of all the variants was chosen as the final motorway route⁵¹.
- 5.1.8 The EIB carried out its project monitoring by taking note of the promoter's monitoring reports, which also include the lodged grievances.

Conclusions and recommendations

- 5.1.9 The reviewed evidence shows that the project is in line with the project applicable standards. The project complies with the relevant RS spatial documents and its location is the result of the assessment of the motorway alternatives. The project's specific components (e.g. (i) the route of the relocated M16.1 road near Drugovići village; (ii) the location of the Bundali overpass; (iii) the construction/location of the Drugovići interchange) are included in the sub-division plan for the motorway.
- 5.1.10 The reviewed evidence shows that the allegation is ungrounded with respect to the role of the EIB. The EIB fulfilled its function by: (i) carrying out the appraisal of the project; and (ii) conducting appropriate monitoring of the promoter's reports, including project grievances.
- 5.1.11 Therefore, the EIB-CM does not make any specific recommendations in this respect.

5.2 Construction Permit

Allegation

- 5.2.1 *The complainant alleges that the works on the construction of the motorway around Drugovići village carried out before the date of issuance of the construction permit for that section of the motorway (18 August 2017) are illegal.*

Applicable standards

- 5.2.2 The RS legislation states that the promoter may carry out construction works after it obtains the construction permit⁵² and in line with the main design⁵³, attached to the permit⁵⁴. The construction permit is always preceded by location conditions⁵⁵. The promoter can carry out the construction works even before it obtains

⁵⁰ This information is included in the Non-technical Summary of Banja Luka to Doboj Motorway, Section 1: Banja Luka to Prnjavor, referred to in the ESDS.

⁵¹ ESDS.

⁵² Article 124 of the RS Act on Spatial Planning and Construction.

⁵³ The main design provides a technical solution of the object and the placement of the object in the space - Article 100 of the RS Act on Spatial Planning and Construction.

⁵⁴ Articles 100(2) and 128(1) of the RS Act on Spatial Planning and Construction.

⁵⁵ Location conditions are technical documents setting conditions for design and construction and are prepared on the basis of spatial planning documents (e.g. sub-division plan for a motorway) – Article 59 of the RS Act on Spatial Planning and Construction.

the construction permit provided it obtains the preliminary construction permit⁵⁶ whose preliminary design⁵⁷, attached to the permit⁵⁸, meets certain technical requirements⁵⁹.

- 5.2.3 The EIB's standards require the EIB to appraise projects presented to it for funding⁶⁰. The EIB is also required to check specific project conditions⁶¹, such as whether the promoter provided the construction permit and the main design prior to the first and second disbursement, respectively⁶².

Findings

Project applicable standards

- 5.2.4 In December 2013, the RS Ministry of Spatial Planning, Construction and Ecology (RS MSPCE) issued the preliminary construction permit for the EIB-financed section of the motorway⁶³. The 2009 preliminary design⁶⁴ forms an integral part of the preliminary construction permit⁶⁵. The preliminary construction permit was preceded by the location conditions, issued in December 2011⁶⁶.

In August 2017, the RS MSPCE issued the construction permit for the EIB-financed section of the motorway. The construction permit includes the main design⁶⁷. According to the promoter, the main design was prepared in November 2015 and harmonised with the July 2016 sub-division plan (see § 5.1.5) in April 2017. According to the promoter, the construction permit was preceded by the amended location conditions, issued in April 2017.

As presented in Picture 3 below, the following were included in the preliminary design, included in the preliminary construction permit, but were not included in the main design, included in the construction permit:

- Stamelici overpass (B)⁶⁸ and
- Bojici overpass (D)⁶⁹.

Furthermore, as presented in Picture 3 below, the following were included in the main design but were not included in the preliminary design:

- Relocation of Crkvena riverbed (C)
- Bojici underpass (D) and
- Drugovici interchange (F)⁷⁰.

⁵⁶ The full name of this permit is the Construction permit for preparatory works as well as other works included in the preliminary design - Article 133 of the RS Act on Spatial Planning and Construction. Please note that this permit is primarily intended for preparatory works such as: (i) construction of fences around the construction site; (ii) temporary structures to be used during construction (e.g. offices, warehouses); and (iii) preparation of roads to be used during construction - Article 133(4) of the RS Act on Spatial Planning and Construction.

⁵⁷ The preliminary design precedes the main design and sets the basic technical-technological concept of the project - Articles 99 and 102(1) of the RS Act on Spatial Planning and Construction.

⁵⁸ Article 133(2) of the RS Act on Spatial Planning and Construction.

⁵⁹ E.g. (i) technical documentation meeting the requirements of the main design; (ii) detailed conditions for their implementation; (iii) standards and other necessary information - Article 133 (6) of the RS Act on Spatial Planning and Construction.

⁶⁰ Paragraph 28 of the EIB Transport Lending Policy.

⁶¹ Paragraph 242 of EIB's v. 2010 of the Environmental and Social Practices Handbook.

⁶² ESDS.

⁶³ Section I of the preliminary construction permit.

⁶⁴ Preliminary design for the Banja Luka - Dobož motorway prepared by the Institute 'IGH' DOO Zagreb in September 2009.

⁶⁵ Section II of the preliminary construction permit.

⁶⁶ The location conditions replaced the spatial permit for the motorway, issued in May 2010 (Section 3.2 of the Non-technical Summary of Banja Luka to Dobož Motorway: Section 1: Banja Luka to Prnjavor), due to the expiration of the validity of the spatial permit and the change of the law (Section 3.2 of the Non-technical Summary of Banja Luka to Dobož Motorway: Section 1: Banja Luka to Prnjavor), and do not differ from the spatial permit; Explanatory section of the preliminary construction permit).

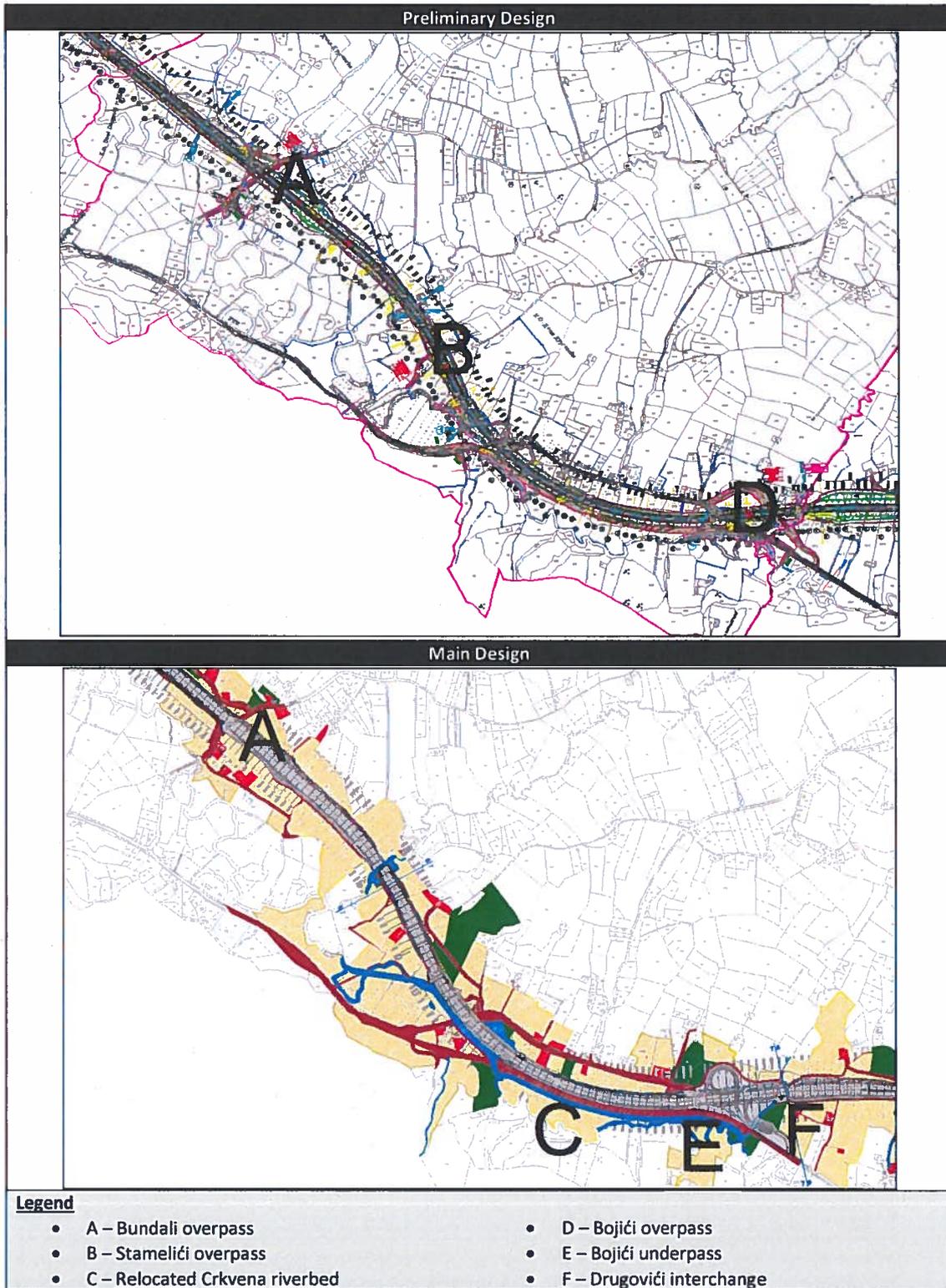
⁶⁷ Main design for the Banja Luka - Dobož motorway - Section III of the Construction permit.

⁶⁸ km 8+450.

⁶⁹ km 9+850.

⁷⁰ km 9+388 – km 10+170.

PICTURE 3 – THE COMPARISON BETWEEN THE PRELIMINARY DESIGN AND THE MAIN DESIGN



- 5.2.5 Until the issuance of the construction permit, the promoter carried out works based on the preliminary construction permit and in line with the preliminary design. By June 2017, the construction works around Drugovići were already at an advanced stage.

By then, the promoter had carried out the works for which it did not have a permit. More specifically, the promoter had carried out works on the objects included in the main design for which it received the permit two months later. These include the following:

- Relocation of Crkvena riverbed (C)⁷¹
- Construction of the Bojići underpass (E)⁷² and
- Drugovići interchange (F)⁷³.

Role of the EIB

- 5.2.6 During its project appraisal, the EIB reviewed the relevant project information and set a number of conditions for disbursement. These conditions included: (i) the construction permit⁷⁴ for the first disbursement and (ii) the main design for the second disbursement.

In May 2014, the promoter submitted a request for the first disbursement. Instead of the construction permit, the promoter provided the preliminary construction permit. The EIB enquired whether the preliminary construction permit constituted a construction permit. The promoter informed the EIB that: (i) it intended to carry out the preparatory works and other works included in the preliminary design on the basis of the preliminary construction permit; (ii) it would carry out the main works on the basis of the construction permit, once the main design was completed and it had obtained the construction permit. The EIB deemed this condition to be fulfilled and approved the first disbursement. There is no documented evidence that the EIB ever raised the issue of the construction permit again⁷⁵.

In July 2015, the promoter submitted a request for the second disbursement. The EIB noted that the request was not accompanied by the main design. The promoter provided an overview of the ongoing activities for the preparation of the main design. At that time, the contractor considered that the preliminary construction permit was sufficient for the construction works carried out. The EIB agreed to approve the second disbursement without the main design considering that the works ongoing at that time did not require the main design.

The EIB, therefore, required the main design for the third disbursement. In February 2016, the EIB reviewed the fulfilment of the conditions for the third disbursement. By then, the promoter had submitted the main design to the EIB, prepared in November 2015.

Conclusions and recommendations

- 5.2.7 The reviewed evidence shows that at one point the project was not in line with the project applicable standards but that this issue had since been resolved. For some of the works carried out until August 2017, the promoter did not have a permit (e.g. (i) relocation of Crkvena riverbed; (ii) construction of the Bojići underpass; and (iii) the Drugovići interchange). However, the promoter had carried out these works in line with the main design, which was harmonised with the sub-division plan for the motorway, adopted by the RS Assembly. Therefore,

⁷¹ <https://www.youtube.com/watch?v=DDgMSab6bNo&feature=youtu.be>, accessed on 4 February 2019.

⁷² <https://www.youtube.com/watch?v=H-6MRf7lrjo&feature=youtu.be>, accessed on 4 February 2019.

⁷³ https://eos.com/landviewer/?lat=44.87239&lng=17.40155&z=16&day=true&s=Sentinel2&id=S2A_tile_20170624_33TXK_0&b=Red,Green,Blue, accessed on 4 February 2019.

⁷⁴ ESDS

⁷⁵ Please note that in September 2017, the promoter informed the EIB that the RS MSPCE had issued the construction permit on 18 August 2017, and provided a copy.

these objects would have been built in the same manner in any case, albeit with a delay. Subsequently, the promoter obtained the permit for these works.

- 5.2.8 The reviewed evidence shows that the allegation is grounded with respect to the EIB's role. The EIB accepted the preliminary construction permit as a replacement for the construction permit, set as a condition for disbursement. By doing so, the EIB disbursed the funds for some works around Drugovići village at the time when the permit was not yet available (e.g. (i) relocation of Crkvena riverbed; (ii) construction of the Bojići underpass; and (iii) the Drugovići interchange).

In addition, under the RS legal framework, the main design is included in the construction permit. As a result, the EIB's decision to set the construction permit as a condition for disbursement of the first tranche and the main design as a condition for disbursement of the second tranche is not consistent with the legal framework of the country of operation. The EIB-CM takes the view that the main design should have been part of the condition for disbursement of the first tranche.

- 5.2.9 Considering that the motorway around Drugovići village has already been built in the same manner as defined in the permit subsequently obtained by the promoter, it appears that the inconsistencies detected by the present inquiry are of a mere procedural nature. The EIB-CM, therefore, recommends that the EIB take into account applicable national law and procedures on permits before setting disbursement conditions and making disbursements.

5.3 Environmental Impact

Allegation

- 5.3.1 *The complainant alleges that the shortening of the natural watercourse of the Crkvena river will impact the environment, namely: water quality, flora and fauna.*

Applicable standards

- 5.3.2 The EIB's standards require the project to comply with the Environmental Impact Assessment (EIA) Directive⁷⁶ and the Habitats Directive^{77,78}. The EIA Directive requires a motorway to undergo an EIA before receiving development consent⁷⁹. If the project is likely to have a significant effect on the environment, the EIA identifies appropriate prevention and mitigation measures⁸⁰. If the project is likely to have a significant effect on a protected area, the Habitats Directive requires the project to undergo an appropriate assessment⁸¹. In principle, a project that adversely affects the protected area cannot be implemented⁸². The RS legislation requires a project that undergoes an EIA, which may include an appropriate assessment, to obtain an environmental permit before its construction⁸³. Such permit also contains monitoring measures⁸⁴.

- 5.3.3 The EIB's standards require the EIB to appraise the environmental impact of the project⁸⁵. The EIB is required to take steps to ensure that the project complies with the EIA and Habitats directives in case of gaps between

⁷⁶ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.

⁷⁷ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

⁷⁸ Paragraph 36 of the ESPS.

⁷⁹ Article 1(1), Article 2(1), Article 4(1) and Annex I, item 7(b) of the EIA Directive.

⁸⁰ Articles 5(1)(c) and 8a(1)(b) of the EIA Directive.

⁸¹ Article 6(3) of the Habitats Directive.

⁸² Article 6(3) and (4) of the Habitats Directive.

⁸³ Article 81(1) of the Environmental Protection Act ("O.G. of RS", No. 71/12 and 79/15), Article 19 of the Nature Protection Act ("O.G. of RS", No. 20/14) and Article 2 of the Ordinance on installations which may be constructed and operated only if in possession of an environmental permit ("O.G. of RS", No. 124/12).

⁸⁴ Article 90(2)(g) of the Environmental Protection Act.

⁸⁵ Part C of EIB's v. 2010 of the Environmental and Social Practices Handbook.

the directives and the national legislation⁸⁶. The EIB is also required to check specific project conditions⁸⁷, such as whether the promoter provided the environmental permit and Form A⁸⁸ prior to the first disbursement⁸⁹. The EIB is also required to review reports from the promoter⁹⁰, which must report on any major issue having an impact on the environment.

Findings

Project applicable standards

- 5.3.4 The promoter carried out the EIA. Considering that the project is not located near current and future protected areas⁹¹, the appropriate assessment was not required.

The EIA led to a conclusion that the project may have a significant effect on the environment but that prevention/mitigation measures can reduce this to an acceptable level⁹². These measures include: prohibition of the deposit of materials in riverbeds or alongside the riverbanks⁹³; protection of riverbeds where the water flow is regulated⁹⁴; minimisation of impact on the water flow and flora when constructing bridges⁹⁵; preservation of flora and fauna⁹⁶.

- 5.3.5 The prevention/mitigation measures are reflected in the environmental permit⁹⁷. The environmental permit also contains monitoring measures for the Crkvena river⁹⁸. In line with the environmental permit⁹⁹, the promoter acquired the water permit¹⁰⁰. The water permit confirms that the Crkvena river bridge was built and that the Crkvena riverbed was regulated in three locations (for an overview of the course of Crkvena river before and after construction of the motorway, see Picture 2). The monitoring reports do not report that the shortening of the Crkvena river around Drugovići village significantly affected the environment, namely water quality, flora and fauna.

Role of the EIB

- 5.3.6 During its project appraisal, the EIB concluded that the project's environmental impact is limited and that there are no protected areas near the project¹⁰¹. The EIB noted that gaps between RS and the EIA Directive are minor and that missing aspects were included in the Non-Technical Summary, SEP and the Environmental and Social

⁸⁶ Paragraph 73 of EIB's v. 2010 of the Environmental and Social Practices Handbook.

⁸⁷ Paragraph 242 of EIB's v. 2010 of the Environmental and Social Practices Handbook.

⁸⁸ Form A is a declaration by the authority responsible for monitoring sites of nature conservation importance that the project is not likely to have a significant effects on such sites – Annex 8 of the of the EIB's 2010 v. of the Environmental and Social Practices Handbook.

⁸⁹ ESDS.

⁹⁰ Paragraph 260 of EIB's v. 2010 of the Environmental and Social Practices Handbook.

⁹¹ ESDS; Extract from the RS Spatial Plan provided to the EIB: (<http://www.eib.org/infocentre/register/all/53218878.pdf>, accessed on 4 February 2019); map of the protected areas in RS (http://www.nasljedje.org/docs/pdf/zasticena_podrucja_VIII_2016.jpg, accessed on 4 February 2019); and the potential Natura 2000 areas in RS (http://www.nasljedje.org/docs/potencijalna_podrucja_ekoloske_mreze_rs.jpg, accessed on 4 February 2019).

⁹² Section 7.1 of the Non-technical Summary of Banja Luka to Doboј Motorway: Section 1: Banja Luka to Prnjavor, available at: <http://www.eib.org/infocentre/register/all/53219056.pdf>, accessed on 4 February 2019

⁹³ Section 2.1 paragraph 1, indent 2 and Section 2.2, paragraph 1, indent 15 of the Decision on the approval of the Environmental Impact Study (EIA Decision), issued by the RS MSPCE on 21 March 2011 (No: 16-96-135/10), available at: <http://www.eib.org/infocentre/register/all/53221242.pdf>, accessed on 4 February 2019.

⁹⁴ Section 2.2, paragraph 1, indent 23 of the EIA Decision.

⁹⁵ Section 2.6, paragraph 1, indents 4 and 5 of the EIA Decision.

⁹⁶ Section 2.6 of the EIA Decision.

⁹⁷ Section 3.2.3, paragraph 1, indent 2; Section 3.2.5, paragraph 1, indents 4-6 of the Environmental Permit, issued by the RS MSPCE on 18 February 2014 (No: 15.04-96-126/13), available at: <http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mgr/Documents/autoputevi%20bl-do%20ed.pdf>, accessed on 4 February 2019.

⁹⁸ Explanation section of the Environmental permit and Section M11 of Table 2 of ESAP Banja Luka to Doboј Motorway: Section 1: Banja Luka to Prnjavor.

⁹⁹ Section 2.2, paragraph 2, indent 10 of the Environmental Permit.

¹⁰⁰ Srpska Water issued water permit No. 12/8.04.4-4818-1/17 on 19 September 2017.

¹⁰¹ ESDS.

Action Plan (ESAP)^{102, 103}. The contractor was required to incorporate ESAP's findings in the main design and to ensure compliance with its content.

As required, prior to the first disbursement, the EIB checked that the promoter had provided the environmental permit and Form A. In Form A, the RS MSPCE stated that the motorway was not located near the protected and that appropriate assessment was not required.

The EIB carried out its project monitoring by taking note of the promoter's monitoring reports. The EIB did not identify any environmental issues. For example, the EIB noted that water quality was adequately monitored with no reported issues.

Conclusions and recommendations

5.3.7 The reviewed evidence shows that the project is in line with the project applicable standards. The prevention and mitigation measures put in place prevented and/or mitigated negative significant effects of the project on water quality and flora and fauna.

5.3.8 The reviewed evidence shows that the allegation is ungrounded with respect to the EIB's role. The EIB fulfilled its function by: (i) carrying out the appraisal of the project; (ii) disbursing the funds after receiving the environmental permit and Form A; and (iii) conducting appropriate monitoring of the environmental impact of the project.

5.3.9 Therefore, the EIB-CM does not make any specific recommendations in this respect.

5.4 Social and Safety Impacts

Allegation

5.4.1 *The complainant alleges that the relocation of M.16.1 road near Drugovići village will have social and safety impacts on the village. Pedestrians will not be able to use the relocated M.16.1 road, which will result in: (i) the separation of the eastern part of the village from the western part hosting the village shop and petrol station; and (ii) inability to access the village bus stops, situated on the relocated road.*

Applicable standards

5.4.2 The EIB's standards require the promoter to avoid or minimise the risks to and adverse impacts on the safety of the local population that may arise from project activities¹⁰⁴. The EIA Decision requires the promoter to return all roads to their previous conditions to enable undisturbed communication for local population¹⁰⁵. Finally, the main design also foresees pedestrian paths alongside the relocated M.16.1 road near Drugovići village.

The EIB's standards require the EIB to ensure that social aspects of the project, such as community health and safety, have been integrated into the project¹⁰⁶.

¹⁰² The ESAP describes the environmental & social mitigation and monitoring measures, the criteria for their successful implementation and organisational measures to be implemented during the pre-construction, construction and operation of the project - Section 1 of the ESAP Banja Luka to Doboj Motorway: Section 1: Banja Luka to Prnjavor, available at: <http://www.eib.org/infocentre/register/all/53220181.pdf>, accessed on 4 February 2019.

¹⁰³ ESDS.

¹⁰⁴ Guidance Note 4, Occupational and Community Health & Safety, EIB's 2010 v. of the Environmental and Social Practices Handbook.

¹⁰⁵ Section 2.9, indent 3 of the EIA Decision and Section 3.2.8, indent 3 of the Environmental permit.

¹⁰⁶ Paragraph 101, item 10 of the EIB's 2010 v. of the Environmental and Social Practices Handbook.

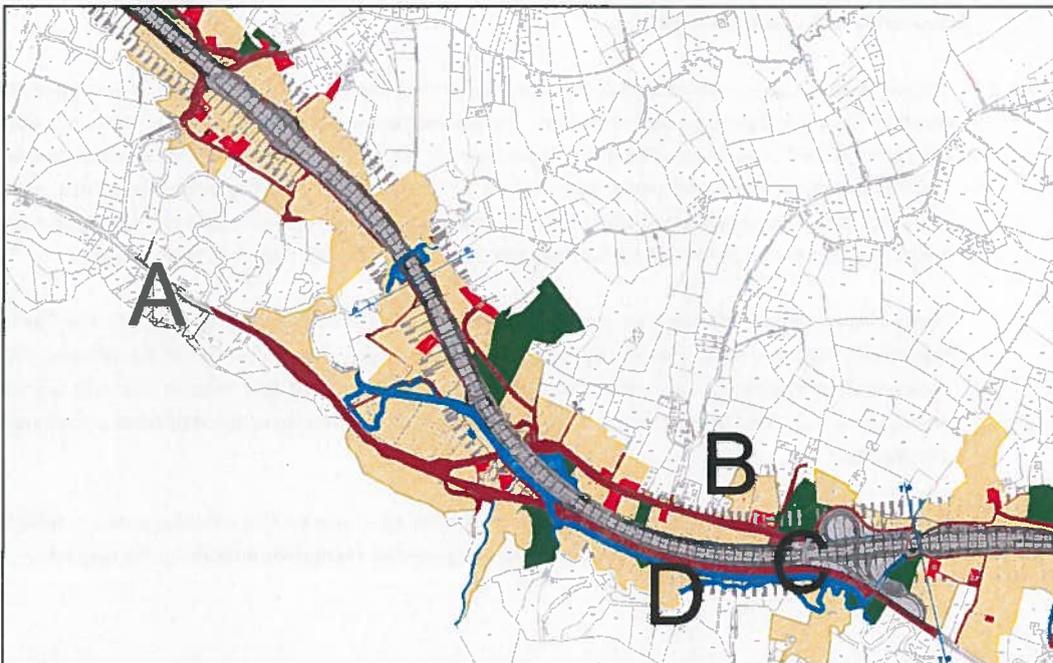
Findings

Project applicable standards

- 5.4.3 Prior to the construction of the motorway around Drugovići village, pedestrians from the eastern part of the village (see B on Picture 4) used the old M.16.1 road to reach the shop and petrol station situated in the western part of the village (see A on Picture 4). Pedestrians from both parts used the old road to reach the Drugovići village bus stops. Considering that the old M.16.1 road did not have pedestrian paths, the pedestrians walked alongside the road.

Following the construction of the motorway, pedestrians must use the relocated M.16.1 road (see D on Picture 4) and the Bojići 3 underpass (see C on Picture 4) to reach different parts of the village and to access the relocated village bus stops (situated on the relocated M.16.1 road (see D on Picture 4)). However, the relocated M.16.1 road is not suitable for pedestrians¹⁰⁷.

PICTURE 4 – THE SITUATION AFTER THE CONSTRUCTION OF THE MOTORWAY AROUND DRUGOVIĆI VILLAGE



Legend:

- A – Western part of Drugovići village where the shop and petrol station are situated
- B – Eastern part of Drugovići village
- C – Underpass Bojići 3 connecting the eastern part of the village with the relocated M.16.1 road and the western part of the village
- D – Part of the relocated M.16.1 road which, according to the complainant, is not suitable for pedestrians and on which the relocated bus stop is situated.

- 5.4.4 In August 2017, Drugovići village inhabitants lodged a grievance with the project grievance mechanism. Therein the inhabitants stated that they were having difficulties safely using the relocated Drugovići village bus stop. By October 2017, two new bus stops were installed. These bus stops are located alongside the relocated road. The pedestrian crosswalk situated near the bus stops was marked and some pedestrian paths were built, but not all.

¹⁰⁷ See: <http://www.rtvbn.com/3883030/drugovici-zalbe-zbog-autoputa>, accessed on 4 February 2019.

The contractor is yet to complete the pedestrian paths alongside the relocated road, which should contain appropriate safety barriers and guard rails in line with the main design. According to the promoter, these works were expected to be carried out in March 2019.

Role of the EIB

- 5.4.5 The EIB reviewed the relevant project documents, including the main design (see § 5.2.6). Furthermore, the EIB carried out its project monitoring by taking note of the promoter's monitoring reports. For example, the EIB was informed of the lodged grievance and its outcome.

Finally, once the EIB-CM informed the EIB's operational services that the relocated M.16.1 road was not suitable for pedestrians, the EIB's operational services followed up on this with the promoter. The promoter provided the EIB with a detailed analysis of the past and current situation and the planned activities to correct the problem. The EIB has confirmed that it will continue monitoring the implementation of the planned measures addressing the issue.

Conclusions and recommendations

- 5.4.6 The reviewed evidence shows that at one point the project was not in line with the project applicable standards but that this issue has since been resolved. The pedestrians in the Drugovići village were not able to use the relocated M.16.1, which resulted in: (i) separation of the eastern part of the village from the western part hosting the village shop and petrol station; and (ii) inability to access the village bus stops, situated on the relocated road. However, since then, the promoter has undertaken activities to remedy the situation. The relocated road was expected to be fully suitable for pedestrians from March 2019 onwards.

The reviewed evidence shows that the allegation is ungrounded with respect to the EIB's role. The EIB reviewed the main design and took note of the lodged grievances. Also, once informed of the pending issues, the EIB took action to enable the pedestrians to safely use the relocated M.16.1 road in line with the complainant's claim (see § 1.2). The EIB will continue monitoring the implementation of the measures undertaken to remedy the situation.

The EIB-CM considers that, in this case, the issue that gave rise to the complaint was resolved during the complaints handling process and does not make any specific recommendations in this respect.

TABLE 2 – SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Allegation	Conclusions (Project applicable standards)	Project in line with the standards	Conclusions (Role of the EIB)	Recommendations
1 Spatial planning	The project complies with the relevant RS spatial documents and its location is the result of the assessment of the motorway alternatives. The project's specific components (e.g. (i) the route of the relocated M16.1 road near Drugovici village; (ii) the location of the Bundali overpass; (iii) the construction/location of the Drugovici interchange) are included in the sub-division plan for the motorway.	Yes	The EIB fulfilled its function by: (i) carrying out the appraisal of the project; and (ii) conducting appropriate monitoring of the promoter's reports, including project grievances.	None
2 Construction permit	For some of the works carried out until August 2017, the promoter did not have a permit (e.g. (i) relocation of Crkvena riverbed; (ii) construction of the Bojici underpass; and (iii) the Drugovici interchange). However, the promoter carried out these works in line with the main design, which was harmonised with the sub-division plan for the motorway, adopted by the RS Assembly. Therefore, these objects would have been built in the same manner in any case, albeit with a delay. Subsequently, the promoter obtained the permit for these works.	Issues resolved	The EIB accepted the preliminary construction permit as a replacement for the construction permit, set as a condition for disbursement. By doing so, the EIB disbursed the funds for some works around Drugovici village at a time when the permit was not yet available (e.g. (i) relocation of Crkvena riverbed; (ii) construction of the Bojici underpass; and (iii) the Drugovici interchange). In addition, under the RS legal framework, the main design is included in the construction permit. As a result, the EIB's decision to set the construction permit as a condition for disbursement of the first tranche and the main design as a condition for disbursement of the second tranche was not consistent with the legal framework of the country of operation. The EIB-CM takes the view that the main design should have been part of the condition for disbursement of the first tranche.	The EIB should take into account national law and procedures on permits before setting disbursement conditions and making disbursements.
3 Environmental impact	The prevention and mitigation measures put in place prevented and/or mitigated negative significant effects of the project on water quality and flora and fauna. The pedestrians in the Drugovici village were not able to use the relocated M.16.1, which resulted in: (i) separation of the eastern part of the village from the western part hosting the village shop and petrol station; and (ii) inability to access the village bus stops, situated on the relocated road. However, since then, the promoter had undertaken activities to remedy the situation. The relocated road was expected to be fully suitable for pedestrians from March 2019 onwards.	Yes	The EIB fulfilled its function by: (i) carrying out the appraisal of the project; (ii) disbursing the funds after receiving the environmental permit and Form A; and (iii) conducting appropriate monitoring of the environmental impact of the project.	None
4 Social and safety impacts		Issues resolved	The EIB reviewed the main design and took note of the lodged grievances. Also, once informed of the pending issues, the EIB took action to enable the pedestrians to safely use the relocated M.16.1 road in line with the complainant's claim.	None

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LIST OF ABBREVIATIONS

BiH	Bosnia and Herzegovina
CMOP	EIB Complaints Mechanism Operating Procedures
CMPTR	EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure
EIA	Environmental Impact Assessment
EIB	European Investment Bank
EIB-CM	EIB Complaints Mechanism Division
EO	European Ombudsman
ESAP	Environmental and Social Action Plan
ESDS	Environmental and Social Data Sheet
ESPS	EIB Statement of Environmental and Social Principles and Standards
RS	Republika Srpska
RS MSPCE	RS Ministry of Spatial Planning, Construction and Ecology
SEP	Stakeholder Engagement Plan