European Investment Bank

CM Complaints Mechanism

TAP TANAP

Complaint SG/E/2019/02

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

CONCLUSIONS REPORT

10 July 2020

Prepared by

Complaints Mechanism

External Distribution
Complainants

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EIB services concerned

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 a European Union (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

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EXECUTIVE SUMMARY

In February 2019, a group of civil society organisations (Bankwatch, Counter Balance, Friends of the Earth Europe and RE:Common, the "Complainants") lodged a complaint to the EIB-CM related to the Trans Adriatic Pipeline (TAP) and Trans Anatolian Pipeline (TANAP) projects (the "Projects"). The Complainants alleged that EIB failed in the assessment of the climate change impacts of the Projects.

The detailed allegations are listed here below:

- Allegation 1: The EIB failed to require project promoters to provide climate impact assessment for TAP and TANAP projects within their entire area of influence;
- Allegation 2: ESIAs failed to include fugitive Greenhouse gas (GHG) emissions;
- Allegation 3: The EIB failed to conduct an accurate greenhouse gasses emission assessment for its loans for the Southern Gas Corridor; and
- Allegation 4: TAP Project fails to comply with requirements under EIB's Environmental Standards in the EU and Enlargement Countries and with the provisions of United Nation Framework Convention on Climate Change.

In 2019, EIB-CM determined that the complaint met its eligibility criteria and conducted a compliance review, whose findings are summarized in this report. EIB-CM found evidence and concludes that

- For the first allegation, EIB complied with the applicable standards for a carbon footprint assessment of the Projects. In particular, the EIB ensured that gaps in the Promoters' climate impact assessment was correctly filled by a cumulative GHG emissions assessment as part of the EIB carbon footprint exercise;
- For the second allegation, at the time of the appraisal, the EIB followed the applicable EIB Methodologies for the assessment of GHG emissions and emission variations v.10.1, which was using outdated Global Warming Potential (GWP) values for CH4. The resulting underestimation of fugitive emissions for both projects is considered to be insignificant in the GHG emissions assessment;
- For the third allegation, the EIB's calculations for the carbon footprint assessment are aligned with project financing objectives for Phase 1. Any eventual financing opportunities (Phase 2 and further phases) will have to undergo a further dedicated appraisal by the EIB. On the case of the baseline scenario, the EIB carbon footprint assessments and outlined EIB baseline scenarios alternatives to SGC are acceptable in technical terms. "Regulatory requirements" for baselines imply checking that the baselines scenario would not violate any legal requirements. In the case of SGC, the baseline alternatives are considered acceptable since they are operational and legally recognized. The identified baseline scenario is thus project specific, realistic and correctly addresses the "without the project" scenario in regulatory terms.
- On the forth allegation, no evidence of breaching the requirements of the EIB's E&S standards, EIB policies and provisions of the UN Framework Convention on Climate Change (UNFCCC) were found. Furthermore, TAP's GHG management plan is intended to address the residual impacts and provide mitigation controls and safeguards.

As a result of its inquiry, the EIB-CM concludes that, the allegations are ungrounded.

LIST OF ACRONYMS

AOI: Area of Influence

BCM: Billion Cubic Meters

DD: Due diligence

GWP: Global Warming Potential value

E & S: Environment & Social

EIB: European Investment Bank

EIB-CM: European Investment Bank's Complaints Mechanism

ESAP: Environmental Social Action Plan

ESDS: Environmental and Social Data Sheet

ESIA: Environmental and Social Impact Assessment

ESMP: Environmental and Social Management Plan

EU: European Union

SCPX: South Caucasus Pipeline expansion Project

SD2: Shah Deniz 2

SGC: Southern Gas Corridor

NGO: Non-Governmental Organization

TAP: Trans Adriatic Natural Gas Pipeline

TANAP: Trans Anatolian Natural Gas Pipeline

CONCLUSIONS REPORT
TAP-TANAP PROJECTS

Complaint: SG/E/2019/02
Date received 7th February 2019
Confidential: **No**

1. THE COMPLAINT

1.1. On 7th February 2019, the EIB Complaints Mechanism ("EIB-CM") received a complaint concerning two EIB-financed Projects (TAP and TANAP) from a group of civil society organisations, (Bankwatch, Counter Balance, Friends of the Earth Europe and RE:Common) hereinafter referred as the Complainants. The complaint contains four allegations.

1.2. In the first allegation, the Complainants state that the Promoters of the TANAP and TAP projects (the Projects) have failed to undertake and include a comprehensive climate impact assessment as part of the ESIAs of the Projects.

1.3. More specifically, the Complainants pointed out that the EIB Environmental and Social Handbook (the Handbook) requires projects located in European Union and in Candidate and potential candidate countries to undergo an assessment of environmental impacts in line with the Directive 2011/92/EU (the EIA Directive). The Complainants also pointed out that the EIB Environmental and Social Handbook requires the promoters to undertake complementary studies under the ESIA umbrella, such as a climate change impact assessment. Therefore, the Complainants concluded that a climate impact assessment should have been part of the ESIAs of the Projects.

1.4. The Complainants also alleged that the Projects failed to include a cumulative assessment of climate impacts within the area of influence of the Projects. The Complainants affirmed that as the two pipelines are considered part of the Southern Gas Corridor (SGC), the assessment of climate impacts should have included the calculation of Greenhouse Gases (GHG) emissions of the entire corridor during all phases associated to extraction, transportation and combustion of natural gas.

1.5. Finally, the Complainants stated that the ESIA completed for the Italian section of TAP did not include GHG emission estimations, as impacts are considered insignificant. Therefore, the Complainants alleged that the Italian ESIA has failed to comply with the EIB's requirements for climate impact assessment.

1.6. In the second allegation, the Complainants alleged that Promoters underestimated the impact of fugitive emissions, by using an outdated Global Warming Potential (GWP) value for GH4

calculation. The Complainants also stated that fugitive emissions and variations should have been also part of the EIB carbon footprint assessment of the Projects.

1.7. In the third allegation, the Complainants state that EIB has underestimated the calculations of the climate impact within the SGC. According to the Complainants, the underestimation is caused by a) applying incorrect technical design parameters for both Projects and b) different parameters used by EIB in in the carbon footprint assessment from the ones includes in the ESIAs of the Projects.

1.8. The Complainants noted that the ESIAs of the Projects include the GHG emissions calculations for a pipeline of the capacity of 20 billion cubic meters per year (bcm/y) for TAP and 24 bcm/y for TANAP. However, the Complainants alleged that the EIB carbon footprint assessment is based on a design for a pipeline with lower volume capacity (respectively of 10 bcm/y for TAP and 16bcm/y for TANAP). Therefore, the Complainants concluded that EIB assessment underestimates the Projects' direct GHG emissions with the calculation in the respective ESIAs.

1.9. In the fourth allegation, the Complainants alleged that the impact of the GHG emissions of the Albanian section of TAP will be significant and mitigation measures are limited. As a consequence, this will undermine Albania's ability to achieve emission reductions objectives committed under the UNCCCF.

1.10. Based on these allegations, the Complainants requested the EIB to open an investigation and to ensure that a complete climate change assessment is undertaken for the Projects.

SUMMARY OF ALLEGATIONS

The Complainants raised concerns regarding the compliance of the Projects with the applicable environmental standards. In particular, the Complainants raised concerns regarding the climate impact assessment, the assessment of the GHGs and the carbon footprint of the Projects' pipelines. A summary of the key allegations is summarized here below:

- **Allegation 1: EIB's Failure to require project promoters to provide climate impact assessment for TAP and TANAP projects within their entire area of influence;**
- **Allegation 2: Project's failure to include fugitive emissions of greenhouse gases in the ESIAs for TAP and TANAP;**
- **Allegation 3: EIB's failure to conduct an accurate a GHG emission assessment for its loans for the Southern Gas Corridor;**
- **Allegation 4: Project's failure to comply with requirements under EIB's Environmental Standards in the EU and Enlargement Countries and with the provisions of the United Nation Framework Convention on Climate Change (UNFCCC).**

CLAIM

- The Complainants request the Bank to ensure that EIB will provide a comprehensive climate impact assessment for the Projects

2. BACKGROUND INFORMATION

2.1. *The Project – Trans Adriatic Pipeline (TAP)*

2.1.1. The Trans Adriatic Pipeline (TAP), the European part of the Southern Gas Corridor (SGC), is considered an important investment for diversifying EU's gas supply and reducing dependency upon Russian gas by creating an additional route for gas supply to Europe from a new source.

2.1.2. The different components of SGC are included in the list of Projects of Common Interest (PCI) of the European Union. These Projects are part of one of the priority corridors of the PCI list and are a cluster of infrastructure for the transportation of gas from the Caspian Region, crossing Azerbaijan, Georgia and Turkey and reaching European markets. The European Commission adopted the current PCI list in 2017. The European Union External Action (EEAS) is aware and supportive of the EIB's participation in the Project.

2.1.3. The TAP Project consists of the construction of a 878 km long gas pipeline starting near the Turkish Greek border near Kipoi, where it will connect with TANAP, crossing Northern Greece, Albania, and traversing the Adriatic Sea, to tie into the Italian gas transmission network near Lecce in Southern Italy. TAP will initially supply a minimum of 10 bcm/y to Europe (Phase 1). Arrangements have been considered in the design to allow for reverse flow and for future capacity expansion (Phase 2 and further) if additional demand for gas transportation is requested by the market. Commercial operations to start in 2020.

2.1.4. The Promoter is Trans Adriatic Pipeline AG (TAP AG), a special purpose company created to implement the Project. TAP AG is indirectly owned by BP (20 %), SGC CJSC (20 %), a company owned by the Republic of Azerbaijan, Snam (20 %), Fluxys (19 %), Enagas (16 %) and Axpo Trading (5 %).

2.1.5. EIB is committed to finance Phase 1 of the Project for a capacity of 10 bcm/y. Phase 2 of the Project could see up to double the capacity of the pipeline upon the construction of additional compressors and other required elements if additional demand for gas transportation is requested by the market.

2.1.6. The EIB Board of Directors approved TAP in February 2018. The Finance Contract was signed on 30 November 2018.

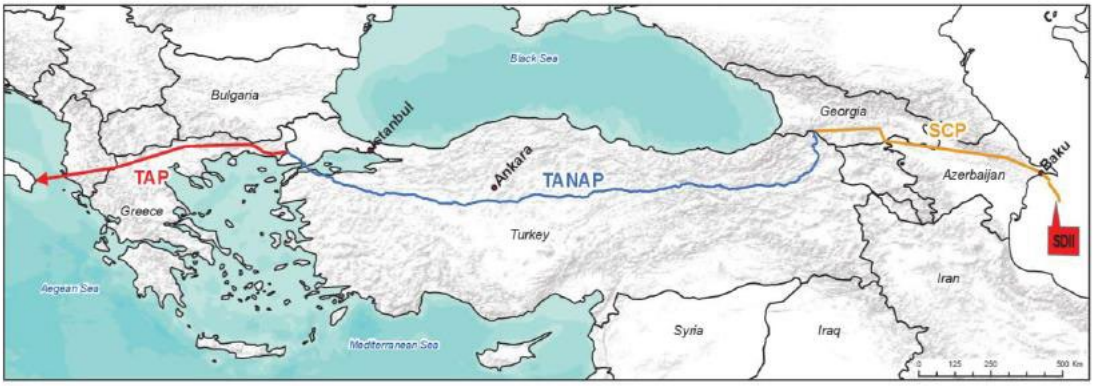
2.2. *THE PROJECT – TRANS ANATOLIAN PIPELINE (TANAP)*

2.2.1. The Trans Anatolian Pipeline (TANAP) Project entails the construction and operation of a natural gas pipeline in Turkey. TANAP links the Shah Deniz gas fields in Azerbaijan to Turkey via the South Caucasus Pipeline (SCP), and from Turkey to Europe via TAP). TANAP, TAP, SCP [and the Shah Deniz extraction sites] entail the entire Southern Gas Corridor (SGC).

2.2.2. TANAP is a 56-inch and 48-inch pipeline system of 1,850 km, and will transport natural gas in three Phases. EIB is financing Phase 1 of the Project which will allow to transport up to 16

billion cubic meters of gas per year (bcm/y). The pipeline is designed for its transport capacity to be potentially expanded (Phase 2 and further) through the construction of additional compressors and other equipment if additional demand for gas transportation is requested by the market.

Figure 1: infrastructures within the Southern Energy Corridor



2.2.3. The promoter of the project is TANAP Dogalgaz Iletim As (TANAP Co), owned by the Azeri's Southern Gas Corridor Closed Joint Stock Company (SGC) (58%), the Turkish state owned oil company BOTAS (30%) and British Petroleum (BP) (12%). SGC is 51% state-owned and 49% owned by the Azeri company SOCAR. The shareholders agreement for TANAP was signed in March 2015.

2.2.4. The EIB Board of Directors approved TANAP in March 2018. The Finance Contract was signed on 20 December 2018.

3. APPLICABLE REGULATORY FRAMEWORK

3.1. *THE EIB COMPLAINT MECHANISM*

3.1.1. The EIB is bound by European Treaties and its Statute as well as by the relevant legislative and regulatory framework of the European Union. The EIB Complaint Mechanism Policy applies to complaints regarding maladministration by the EIB Group in relation to its activities, in support of and for the implementation of the aforementioned policies and regulatory framework.

3.1.2 The following paragraphs illustrate the International and EU framework, followed by the EIB's own internal standards and requirements.

3.2. *UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC) AND THE KYOTO PROTOCOL*

3.2.1 The EIB's 2013 Environmental and Social Handbook (the Handbook) requires that all EIB's operations comply with the United Nations Framework Convention on Climate Change (UNFCCC). The Kyoto Protocol of the UNFCC requires that the Parties shall individually or

jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases do not exceed their assigned amounts. The target is to reduce the overall emissions of such gases by at least 5% below 1990 levels in the commitment period 2008 to 2012.

3.2.2 Albania became a Party to the Kyoto Protocol on 30 June 2005 and therefore is subject to the above-mentioned requirement. Accordingly, in 2016 Albania has submitted its Third National Communication (NC) on Climate Change under the UNFCCC to report on the commitments it made under the Kyoto Protocol. Although Albania has no legislation yet that defines reporting obligations for GHG emissions, under the Kyoto Protocol Albania needs to take Projects' carbon emissions into consideration in the NCs.

3.2.3 The TNC requires mandatory assessment and risk evaluation of climate change effects. Therefore, the carbon emissions of Projects that are mentioned in Annex I in the ESIAs need to be reported according to the EU Legislation.

3.3. ***EU LAW***

EIA DIRECTIVE (2011/92/EU)

3.3.1. The EIA Directive 2011/92/ EU (the EIA Directive) requires Member States to ensure that projects likely to have significant effects on the environment because of their nature, size or location are subject to an assessment of their environmental effects, before development consent is awarded. [1]

3.3.2. Member States are required to take the necessary measures to ensure that, if the developer so requests before submitting an application for development consent, the competent authority shall give an opinion on the information to be supplied by the developer [2]. Article 5 lists the required information, such as:

a. a description of the project comprising information on the site, design and size of the project;

b. a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;

c. the data required to identify and assess the main effects which the project is likely to have on the environment;

d. an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects;

[1] Art 2-4, EIA Directive.
[2] Art 5(2), ibid.

e. a non-technical summary of the information referred to in points a) and d)[3]

Article 3 and Annex IV contain a direct reference to climate/climatic factors and interactions with other factors to be assessed within the EIA.

GHG EMISSIONS DIRECTIVE (2003/87/EC)

3.3.3. This Directive requires that Member States should ensure that the operators of certain specified activities hold a GHG emissions permit and that they monitor and report their GHG emissions in relation to those activities.[4] This applies to all facilities performing the activities listed in Annex 1 of the Directive.

3.4. ***EIB STANDARDS, PROCEDURES AND GUIDING DOCUMENTS***

3.4.1. The applicable standards are identified in the Handbook. The latter requires the promoter to take into account impacts of the project on climate change, contribution of the project to improve resilience, and the impacts of climate change on the project. For the purposes of the ESIA, the project's area of assessment is defined considering the guidance in the Handbook, which should encompass at least one of the following criteria:

- The asset or facilities and or associated works directly owned or managed by the Promoter that can be considered as an integral part of the main project intervention, by virtue, inter alia, of their purpose, nature, characteristics or location;
- the supporting/enabling activities, assets or facilities owned or under the control of parties contracted for the operation of the promoter business or for the completion of the proposed project (such as sub-contractors);
- supporting/enabling activities, assets or facilities owned or under the control of parties contracted for the operation of the promoter business or for the completion of the proposed project (such as sub-contractors);
- supporting/enabling activities, assets or facilities owned or under the control of parties contracted for the operation of the promoter business or for the completion of the proposed project (such as sub-contractors);
- supporting/enabling activities, assets or facilities owned or under the control of parties contracted for the operation of the promoter business or for the completion of the proposed project (such as sub-contractors).[5]

3.4.2. As described in Standard 1, all operations located in the EU, Candidate and potential Candidate countries, which are likely to have significant effects on physical and human environment, will be subjected to an environmental and social impact assessment according to the EIA Directive.[6]

[3] Ibid.
[4] Art 1-3, GHG Emissions Directive
[5] Environmental and Social Handbook (2013), Standard 1, p. 16
[6] Ibid, p. 14

3.4.3. Projects outside of the EU will be subject to an environmental and social impact assessment (ESIA) procedure if they are likely to have significant and material impacts and risks. The ESIA must be consistent with the principles contained in the EIA Directive and Best International Practices. Based on the nature of the project and country context, the promoter may be required to carry out other supplementary assessments.[7] The EIB's role is to assist the promoter in developing measures to manage the E&S impacts and risks of the operation consistent with the EIB's standards. Subsequently, the EIB monitors that the project is implemented in accordance with the conditions attached to its financing.

3.4.4. The Handbook also requires the promoter to identify, describe and assess both adverse and positive, direct, indirect and induced environmental and social impacts, cumulative and in-combination impact/effects associated with the operation, its ancillary or associated facilities and the project area of influence.

3.4.5. If required for the project, the promoter shall ensure that the ESIA coordinates and integrates the other specific assessment procedures. Depending on the complexity of the project, the promoter may carry out different types of assessment, which may include biodiversity impact assessment and climate change impact assessment as part of the main ESIA.[8]

3.4.6. The Handbook refers to the *EIA Directive guidance report on Scoping* and the *Guidance on Integrating Climate Change and Biodiversity into Environmental Impact Assessment* (EC Guidance Report) as guidance for advice on the scoping of climate change effects[9]. The EC Guidance Report integrates climate change and biodiversity aspects as part of the EIA as follows: i) considering climate change scenarios and assessing alternatives, (ii) including a carbon footprint assessment, (iii) assessing actions to avoid climate change from the start and (iv) assessing climate change and biodiversity synergies and cumulative effects.

3.4.7. The EIB Climate Standard (Standard 4 - Climate Change) requires EIB to ensure that its financing as a whole is aligned with the EU Climate Policy. Among others, EIB shall assess and report the annual aggregate GHG emissions and saving as part of the carbon footprint for all EIB financed investment projects. The information shall also be published in the EIB's Annual Report for each years of finance contract signature.[10]

3.4.8. The Handbook also points out that EIB can request information on climate change risks from the Promoter covering project operations and associated systems such as impacts on supply chain, surrounding infrastructures, neighbouring communities and ecosystems. In this regard, Standard 4 encourages Promoters to provide information on expected absolute and relative GHG emissions from the project that EIB finances.[11] When significant risks are identified, the EIB could require the Promoter to identify and apply the necessary measures at planning, construction and implementation stage to mitigate these risks as well as to establish the appropriate monitoring system.

[7] Ibid, p. 15
[8] Ibid, p. 16
[9] Ibid, p. 11
[10] Ibid. p. 37
[11] Ibid., p. 46

3.4.9. Standard 4 requires EIB to undertake four different climate-related analysis selectively at all stage of the Project cycle, in particular during the pre-appraisal and the appraisal stage:

Type of assessment	Specification
Adjusted Economic and Financial Rates of Return	To be undertaken to appraise the economic case for a Project which results in a significant change in GHG emissions, as may be the case with energy, industry or transport Projects.
Carbon Footprint Assessment	For Investment Loans, an assessment of the GHG emissions is carried out and reported for Projects emitting more than 100,000 tons CO_2 equivalent (100ktCO2eq)/yin absolute terms (or leading to an emission variation of more than 20ktCO_2eq/y).
Climate Change Vulnerability Assessment	EIB has identified sectors expected to be most at risk from future climate change impacts. In this assessment, adverse consequences of Projects on the climate change vulnerability of natural ecosystems and human structures are addressed in SEA and EIA best practice
Carbon credit potential assessment	Assess the potential of a Project to generate tradeable carbon credit

EIB'S RESPONSIBILITY

3.4.10. Under EIB's approval process, a project's eligibility for EIB finance is assessed on the basis of the operation as well as its technical feasibility, economic rationale and environmental and social impact. If this information is considered satisfactory, an approval of the Project can be sought from the EIB Board of Directors.

3.4.11. While the EIB itself does not carry out an ESIA, all projects undergo an environmental and social assessment performed by the EIB, based on information provided by the promoter and other stakeholders ("EIB's Assessment"). The EIB's Assessment is an iterative process taking place throughout the project cycle (identification, appraisal, implementation, monitoring and evaluation) and it focuses on key aspects[12]:

- the E&S impacts, risks and issues associated with the project, its ancillary/associated facilities/infrastructure and its area of influence;
- the capacity of the promoter to address and manage these in an adequate manner in accordance with the EIB's standards and requirements; and
- the role of third parties in achieving alignment with the E&S principles and standards (e.g. competent authorities, government agencies, etc.).

3.4.12. The EIB also determines the increase or reduction of GHG emissions resulting from the project (if above the thresholds) and identifies any specific effects on, or risks to, the project from predicted climate change impacts[13].

3.4.13. The EIB project cycle may not coincide with the ESIA process. At appraisal, the project is rated at four categories for E&S acceptability and screened against the requirements of the EIA Directive. The EIB assumes that for projects in Europe, the EU environmental and social

[12] Ibid., p. 103
[13] Ibid., p.117

legislation has been correctly transposed into national law and that national law is being enforced by the responsible authorities. EIB's due diligence therefore focuses particularly on countries and/or specific laws where there is evidence to suggest these assumptions cannot be made.

EIB METHODOLOGIES FOR THE ASSESSMENT OF PROJECT GHG EMISSIONS AND EMISSION VARIATIONS, V.10.1

3.4.14. The EIB Methodologies for the assessment of Project GHG Emissions and Emission Variations (the EIB Methodologies) define three scopes of assessments:

- Scope 1 (direct emissions) for emissions directly occurring from sources that are operated by the project and within the project boundaries,
- Scope 2 (indirect emissions) for emissions from the generation of electricity consumed by the project and that, even if produced outside the project boundaries, can be controlled by the project.
- Scope 3 for emissions which are a consequence of the activities of the project but that occur from sources not operated by the project.

3.4.15. Only Scope 1 and 2 emissions are normally included in the GHG footprint exercise. As the projects to be financed by EIB need to be assessed for direct and indirect emissions, all extensions or upgrades of the project in the future will be subject to further assessments as well as updates of the carbon footprint assessments. In this regard, it is worth highlighting that extensions or upgrades of the project in the future are not considered part of the project and therefore are not part of the current carbon footprint assessment. However, they will be subject to a new/upgraded EIA and a new carbon footprint assessment, if financed by the EIB.

3.4.16. On the assessment of the baseline scenario, the EIB Methodologies also define the project baseline scenario (or ''without project'' scenario) as 'the expected alternative means to meet the output supplied by the proposed project. The baseline scenario must therefore propose the likely alternative to the proposed project which (i) in technical terms can meet required output; and (ii) is credible in terms of economic and regulatory requirements. The choice of baseline should normally be approached in the same way as the expected alternative scenario is determined for the project economic analysis.' 14

[14] EIB Methodologies, 2014, p. 14

4. METHODOLOGY OF THE ENQUIRY

4.1 The EIB-CM has reviewed the relevant Projects documentation and the applicable regulatory framework. In addition, the EIB-CM contacted the Complainants before the issuance of the Initial Assessment report to update the Complainants on the development of the inquiry.

4.2 In June 2019, the EIB-CM submitted its Initial Assessment Report to the Complainants to inform that a compliance review on the allegations had been launched. The allegations were assessed in the context of potential EIB's maladministration, including potential non-compliance with the applicable regulatory framework and/or failure to exercise adequate due diligence. In particular, the EIB-CM has assessed the due diligence carried out by the Bank in the areas related to the Complainants' concerns.

5. FINDINGS AND CONCLUSIONS

5.1. *EIB'S FAILURE TO REQUIRE PROJECT PROMOTERS TO PROVIDE A CLIMATE IMPACT ASSESSMENT FOR TAP AND TANAP PROJECT WITHIN THEIR ENTIRE AREA OF INFLUENCE*

5.1.1 The first allegation concerns the Bank's duties to screen the projects against the EIA Directive and to require complementary studies under the umbrella of the ESIA, such as climate change impact assessments.

5.1.2 The EIB-CM noted that climate impact assessments were conducted by TAP and TANAP Promoters as part of the respective ESIAs. These include GHG emissions calculation estimates within the Projects' footprint, for construction and operation phases of the Projects. The significance of the impacts of GHG contributions per transit countries was also assessed in the ESIAs for both Projects[15].

5.1.3 The first allegation also concerns EIB's failure to require the Projects to include estimations of GHG emissions for the entire SGC. EIB requirements for an ESIA include the assessment of cumulative impacts and this should entail the project area of influence and its associated facilities. For the specific case of the carbon footprint assessment, the ESIAs of TAP and TANAP did not include cumulative GHG emissions from other SGC Projects (i.e. the production site Shah Deniz project - SD2 - and the South Caucasus Pipeline expansion project - SCPX).

5.1.4 Considering the definition of the project area of influence in §3.4.8, the EIB considered that additional assessment studies (other than the ESIAs), including the project area of influence and associated facilities, were required. Therefore, with regard to TAP, a Cumulative Impact Assessment (CIA) and an Associated Facilities Assessment was requested to the Promoter and published on TAP's website (International Financial Institutions Supplementary Information

[15] ESIA Italy 002 Non-technical Summary, Integrated ESIA Greece SECTION 0 – Non Technical Summary, ESIA Albania Section 0 – Non-Technical Summary, ESIA TANAP Chapter 8

Package)[16]. These studies provide GHG emissions estimates and climate change considerations for the remaining SGC projects (i.e. SD2, SCPX and TANAP).[17]

5.1.5 The ESIAs of the different sections of TAP identify actions/measures to avoid/reduce GHG emissions; cumulative and synergic effects measures are identified and measures are provided to minimize these effects[18]. The ESIAs for the Albanian and Greek sections assessed potential energy efficiency measures to minimize the energy use and GHG emissions from the compressors, as part of the general measures. In particular, the ESIA for the Greek section indicates that more comprehensive mitigation measures, such as installing a system using the excess heat from gas turbine driven compressors, to produce steam to operate one or more steam turbines are not feasible for stage 1, but its feasibility will be further investigated for stage 2. The same consideration is made in the ESIA for the Albanian section[19].

5.1.6 In the ESIA for the Italian section of TAP, GHG emissions are calculated mainly on offshore marine activities and vessels contribution during construction phase only. [20] GHG emissions during operations will only result from external and maintenance works and therefore are anticipated to be insignificant. As a result, the ESIA only considers very generic energy-efficiency measures. It is understood that the Environmental and Social Action Plan (ESAP) includes the preparation of a GHG specific management plan and commitments for such a plan are included in the Cumulative Impact Assessment Summary.

5.1.7 With regard to TANAP, the EIB-CM did not find any documentation accounting for cumulative GHG emissions from other projects in the SGC. Regarding mitigation measures for the TANAP project, the ESIA[21] includes the measure leak detection and repair programs (LDAR program) for the compressors, in order to minimize fugitive emissions.

5.1.8 EIB-CM also reviewed the EIB Climate change vulnerability assessment based on the Projects' ESIAs and ancillary studies. Given the nature of the projects and the fact that the pipelines will be underground, there is limited impact of the Projects on local or regional climatic conditions.[22]

5.1.9 When reviewing the project documentation, EIB-CM noted that the EIB performed a carbon footprint assessment for all projects of the SGC as part of the due diligence process of both Projects. More specifically, the EIB Carbon Footprint Assessment for TAP and TANAP provide the calculated GHG emissions for other SGC projects (i.e. SD2 and SCPX) including the phases of production, transportation and use of fossil fuels.

[16] https://www.tap-ag.com/assets/07.reference_documents/english/Project%20Finance%20Disclosure/International%20Financial%20Institutions%20Supplementary%20Information%20Package.pdf

[17] In particular, the Associated Facilities Assessment indicates that: "*for SD2 key project efficiency measures* [include] *flare reduction measures; offshore gas compression and offshore flaring chosen over offshore venting; direct drive gas turbines onshore selected in preference to electric drives; and waste heat recovery on onshore compression gas turbines result in approximately 103,700 kt of CO2 emissions across the operating period; SCPX operations which result in significant emissions of GHGs (primarily from the two compressor stations calculated to be approximately 603,500 t CO2eq/year*".

[18] TAP (n.d.) Project Overview and Cumulative Impact Assessment – Executive Summary.

[19] ESIA Greece, Section 8 p. 33 and ESIA Albania, Section 8, p. 131.

[20] ESIA Italy Section 8 page 27

[21] ESIA TANAP Section 8.1.1 page 9

22 ESIA TANAP, Section 7.3.3, TAP Associated Facilities Assessment p. 43

Conclusions

5.1.10 Based on its findings and considering the definitions of the area of influence referred to in §3.4.8 of this Report, the EIB-CM finds that additional studies, realised by the TAP Project, provide complimentary information on GHG emissions contributions from other SCG projects.

5.1.11 With regard to TANAP, the Promoter did not provide the EIB with supplementary information to assess cumulative GHG emissions. However, the EIB performed an assessment of the GHG emissions from other SGC projects during its due diligence process.

5.1.12 As illustrated in §§ 3.4.6-3.4.8, Standard 4 lists the need of a carbon footprint assessment among EIB's responsibilities when assessing new projects but does not impose a requirement on Promoters as identified in the first allegation. Whereas the EIB has performed and disclosed these assessment for both Projects, EIB-CM concludes that the allegation is ungrounded.

5.2. *PROJECT'S FAILURE TO INCLUDE FUGITIVE GHG EMISSIONS IN THE ESIAS FOR TAP AND TANAP*

5.2.1 In the second allegation, the Complainants state that the ESIAs for TAP and TANAP underestimated their climate change impacts, by not accounting for possible fugitive GHG emissions of the Projects and their area of interest.

5.2.2 The EIB-CM notes that at the time of the concerned ESIAs, there were no specific requirements outlining the methodology to be used for calculating fugitive GHG emissions in Projects. The calculations were conducted in accordance with best available techniques (BAT) and good practices at the time. In this regard, the most common techniques for estimations were provided by several international and research bodies such as the Intergovernmental Panel on Climate Change (IPCC), the World Resources Institute (WRI) and relevant host country agencies. The EIB reference document on the matter was represented by the EIB Methodologies, v. 10.1.

5.2.3 In the review of the Project's ESIAs, EIB-CM notes that TANAP's ESIA includes a calculation of fugitive and venting emissions; while only venting emissions from compression stations were calculated in TAP's ESIAs for Albania and Greece. The contribution of fugitive emissions in the Italian section of TAP Project is considered negligible by EIB-CM 23.

5.2.4 EIB CM noted that the Global Warming Potential (GWP) value for CH4 used in the calculation of fugitive and venting emissions in both TAP and TANAP projects equals to 21, which was lower than the recommended value at the time (25) by the IPCC 4th Assessment Report. The consequences of using a GWP= 21 instead of a GWP=25 are:

- For TANAP, the sum of fugitive and venting emissions amounts to 54.4kt/y instead of 64.8kt/y; and
- For TAP, the sum of Greece and Albania's venting emissions amounts to 20kt/y instead of 23.8kt/y.

[23] ESIA, Albania Section 8 (page130-131), ESIA Greece Section 8 (page 33-34), ESIA Italy Section 8 (page 26-29), ESIA TANAP Section 8

The impact of this GWP underestimation on the whole GHG project footprint emissions is 0,5 % for TANAP, 0,2% for the Greek section of TAP and 0.4% for the Albanian section of TAP.

5.2.5 When reviewing the EIB's due diligence, EIB-CM noted that EIB has carried out a carbon footprint assessment of both TAP and TANAP projects, according to the EIB Methodologies referred to in §§ 3.4.13-3.4.15. The EIB's carbon footprint assessments for TAP and TANAP also includes the contributions of fugitive emissions related to SD2 and SCPX projects, thus covering all the infrastructures of the SGC as required by the EIB Standard 4, as described in § 3.4.6-8.

Conclusions

5.2.6 The EIB-CM conclusions are that fugitive and venting emissions were included and calculated in the projects' ESIAs. The EIB-CM found evidence that calculation of all contributing GHG emissions for the whole SGC project was undertaken by EIB as part of the carbon footprint assessment.

5.2.7 The EIB-CM also notes that the EIB underestimated fugitive and venting GHG emissions. However, such underestimation is to be considered not material (< 1%) and these emissions are minor when compared to the total combustion emissions in the Projects. The EIB-CM also notes that, in line with the best practices set by the IPCC in the fifth assessment report in 2014, the new version of the EIB Methodologies (V 11, 2018) refers to a GWP value for CH4 of 28.

5.2.8 Based on its findings, the EIB-CM concludes that the allegation is ungrounded.

5.3. *EIB'S FAILURE TO CONDUCT AN ACCURATE A GHG EMISSION ASSESSMENT FOR ITS LOANS FOR THE SGC*

5.3.1 In the third allegation, the Complainants state that EIB underestimated the values of the overall GHG emissions calculation for the Projects due to:

- Marginal errors generated by the use of less conservative GWP values for fugitive emissions of CH4, as it was included in the EIB Methodologies.
- A wrong description of the pipelines maximum design capacity in the overall EIB carbon footprint assessment. The GHG assessment in the ESIAs of the Projects were undertaken based on a 20bcm scenario for TAP and 24 bcm for TANAP, while the EIB carbon footprint assessment considered a case of 10 bcm for TAP and 16 bcm for TANAP;
- The failure to establish a credible baseline emissions scenario in regulatory terms in compliance with the EIB Methodologies.

5.3.2 Whereas the EIB-CM concluded on the marginal errors generated by the use of less conservative GWP values in § 5.2 of this report, this section focuses on the two additional points raised in the Complainant's allegation.

5.3.3 As mentioned in §5.2.6 and based on Standard 4 (see § 3.4.6-8), the EIB has carried out a carbon footprint assessment taking into account Projects' direct (Scope 1) and indirect (Scope 2) emissions. However, when comparing the carbon footprint assessment of TAP and TANAP ESIAs on one hand and the EIB's footprint assessment, the latter presents lower direct GHG emissions.

5.3.4 EIB-CM notes that these discrepancies are due to the fact that the ESIA's GHG carbon footprint is based on a nominal or maximum volume capacity, respectively of 20 bcm/y case for TAP and 24 bcm/y case for TANAP, insofar as the two ESIAs cover Stage 2 of the Projects. However, the EIB carbon footprint assessment is limited to Stage 1 of the Projects covering a scenario of 10 bcm/y for TAP and 16 bcm/y for TANAP.

5.3.5 According to the EIB Methodologies (see §3.4.13), all Projects financed by EIB need to be assessed for direct and indirect emissions. If financed by EIB, all extensions or upgrades of the project in the future will be subject to further assessments as well as updates of carbon footprint assessments. Stages 1 of TAP and TANAP are defined as 'the Projects'. The potential increase, if the Promoters decide to implement it and request EIB's financial assistance for it, will constitute another project, subject to another appraisal. Therefore, the carbon footprint assessment carried out by the EIB on Stage 1 of the Projects complies with the EIB Standards and Methodologies.

5.3.6 The EIB Methodologies describe the baseline scenario as 'the alternative that meets the output supplied by the proposed project". 24 The EIB GHG footprint Assessment assumed that alternative to SGC would be the Russian Gas imports through Nord Stream 2, the Ukrainian transit pipelines or the US Liquified Natural Gas (LNG). There are technical, economic and regulatory criteria to be met in order to comply with the EIB Methodologies.

5.3.7 EIB-CM took note of the fact that the GHG emissions from the end use of the gas supplied by the SGC cannot be considered as entirely additional. Indeed, for the sections of the TAP located within the EU, the gas to be supplied via SGC is not intended to meet additional gas demand, but to diversify the source of gas supplies. SGC's deliveries to Turkey are expected to either replace other gas or displace more carbon intensive fuels such as coal.

5.3.8 EIB-CM found that the relative EIB emissions calculations (i.e. the difference between the absolute project emissions and the baseline scenario emissions) were based on the following assumptions and considerations:

- The most likely alternative gas source to Shah Deniz 2 would be Russia's gas fields, which would have higher upstream emissions due to the age and state of Russian fields;
- Pipeline imports from the Ukraine's system or Nord Stream 2 are alternatives to TANAP and SCPX, which have higher emissions;
- TAP is going to supply the existing demand for gas in the EU (80% of the initial 10 bcm TAP capacity is expected to be delivered in Italy). The alternative for the end use

[24] EIB Methodologies for the Assessment of GHG Emissions and Emissions Variations, 2010, p. 16

combustion of the 10 bcm will be combustion of the same amount of gas from other sources;

- The same emissions are accounted for the alternative and, in EIB approach, gas supply and demand worldwide will not be significantly affected. The pipeline will only change the sources of gas supply to Europe. Therefore, the relative emissions of the project are zero; and
- With or without the project, gas supply and demand worldwide will not be significantly affected.

5.3.9 Finally the key assumption is that the Projects will imply a simple replacement of new GHG emissions in several transit countries, thus avoiding emissions in other countries (in the EU or Ukraine), and that the outcome of these operations will be zero emissions.

5.3.10 The EIB-CM understands that the Complainants' conclusion that EIB's baseline scenario is not credible in terms of regulatory requirements is based on the fact that under the UNFCCC there is no mechanism allowing for swapping emissions inventory between SGC projects and baseline/alternative routes of gas.

5.3.11 From a review of the EIB Methodology, the "without the project" scenario indicates what would happen in the eventuality of the project not materializing. In the case of SGC, "without the project" means SGC is not built and the same amount of gas is imported through the existing routes. The existing routes of LNG and Ukraine would produce emissions and they would be reported under UNFCCC. The EIB methodology simply requires to compare what would happen to physical emissions under two different scenarios, while compliance with UNFCCC requirements remains a responsibility of its signatories. Whichever scenario materializes, carbon reporting will continue to be done by countries in line with UNFCCC.

5.3.12 "Regulatory requirements" for baselines in EIB Methodologies should be read in light of the above consideration on baselines. In essence, the EIB checks whether the baselines scenario would violate any legal requirements (as is outlined in the "legal requirement test" section of the EIB Methodologies). The objective of this requirement is to prevent comparison with the alternative to the project which is not realistic. In case of SGC, the baseline alternatives of LNG and Ukraine imports are realistic and clearly pass the "legal requirement test" since both routes are operational and legal.

Conclusions

5.3.13 As illustrated in §5.2, EIB-CM concludes that EIB underestimated fugitive GHG emissions for both Projects due to the use of outdated GWP values for methane included in the EIB Methodologies. This has an impact on the accuracy of GHG emissions assessments for both Projects. However, the EIB-CM considers that the overall impact on EIB GHG emissions

calculations for both Projects is below 1% and thus is not significant when compared to projects GHG combustion emissions. 25

5.3.14 Based on the information gathered as part of its inquiry, the EIB-CM concludes that EIB calculation for the carbon footprint assessment are aligned with project financing objectives for Stage 1. Any eventual financing opportunities (Stage 2 and further Stages) will have to undergo a dedicated appraisal by the EIB.

5.3.15 With regard to the baseline scenario, the EIB-CM concludes that the EIB carbon footprint assessments and the outlined EIB baseline scenarios alternatives to SGC projects are acceptable in technical terms (economic and regulatory terms criteria including socio-economic tests and economic rates of return, legal requirement tests and life-expired asset tests considerations).

5.3.16 Based on its findings, the EIB-CM concludes that the allegation is ungrounded.

5.4. *ALLEGED FAILURE TO COMPLY WITH REQUIREMENTS UNDER EIB'S ENVIRONMENTAL STANDARDS IN THE EU AND ENLARGEMENT COUNTRIES AND WITH THE PROVISIONS OF THE UNFCCC.*

5.4.1 In the fourth allegation, the Complainants stated that the impacts of TAP on the GHG balance of Albania will be significant, that EIB underestimated mitigation measures and that a detailed cost assessment has not been conducted. Furthermore, in accordance to the Kyoto Protocol, Albania needs to take these project's carbon emissions into consideration in the National Communication reports. The Complainants argue that the underestimation of the impacts and failure to provide mitigation measures will affect Albania's ability to achieve emissions reduction objectives committed under UNFCCC.

5.4.2 With regards to the UNFCC, as outlined in §3.2.2., Albania has no legislation defining reporting obligations for the GHG emissions but needs to take project carbon emissions into consideration when preparing the National Communication under the Kyoto Protocol. Moreover, when reviewing the ESIA of the Albanian section of the TAP, the EIB-CM noted that the impact on GHG emissions for Albania does not refer to installations envisaged as part of Stage 1 of the Project.

5.4.3 As referred to in §3.4.2, the EIB Standards require promoters in candidate countries to perform an environmental impact assessment in compliance with the EIA Directive. In this regard, the EIB-CM notes that, in addition to the ESIA for the Albanian section of TAP, the Promoter will develop an operational phase GHG management plan as part of the Project Environmental and Social Action Plan (ESAP) for Project Finance Disclosure.

[25] The underestimation in the emissions is approximately 14,000 tons CO2e/year which is equivalent to the annual emission of approximately 3000 passenger vehicles, corresponding to 0,02 % of the total vehicle fleet in Europe. For example Ref. https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator

Conclusions

5.4.4 Based on the information gathered during its inquiry, the EIB-CM did not detect the alleged failure to comply with the applicable requirements. Furthermore, the EIB-CM found that a GHG management plan is intended to address the residual impacts and provide mitigation controls and safeguards. As a result, the EIB-CM concludes that the allegation is ungrounded.