

COMPLAINTS MECHANISM

SG/E/2019/03

BANJA LUKA – DOBOJ MOTORWAY (BOSNIA AND HERZEGOVINA)

CONCLUSIONS REPORT

28 October 2021



Banja Luka Dobož Motorway Conclusions Report

28 October 2021

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Disclaimers

The conclusions presented in this report are based on the information available to the EIB Group Complaints Mechanism up to 18 October 2021. The conclusions are addressed solely to the EIB.

In the event of discrepancies between language versions, the English version prevails.

The EIB Group Complaints Mechanism

The EIB Group Complaints Mechanism is a tool enabling the resolution of disputes if any member of the public feels that the European Investment Bank (EIB) might have done something wrong, i.e. if it has committed an act of maladministration. The Complaints Mechanism is not a legal enforcement mechanism and will not substitute the judgement of competent judicial authorities.

Maladministration means poor or failed administration. It occurs when the EIB fails to act in accordance with a rule or principle that is binding upon it, including its own policies, standards and procedures. The concept of maladministration includes failure by the EIB to comply with human rights standards, applicable law, or the principles of good administration. Maladministration may relate to the EIB Group's decisions, actions or omissions, and may pertain to the environmental or social impact of the EIB's projects and operations.

One of the main objectives of the EIB Group Complaints Mechanism is to uphold the right to be heard and the right to complain. For more information on the EIB Group Complaints Mechanism please visit: <https://www.eib.org/en/about/accountability/complaints/index.htm>.

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GLOSSARY

EBRD	European Bank for Reconstruction and Development
EIB	European Investment Bank
EIB-CM	EIB Group Complaints Mechanism Division
ESPS	EIB Statement of Environmental and Social Principles and Standards
Ha	Hectares
O.G. RS	Official Gazette of Republika Srpska
Project	Banja Luka Doboj Motorway
Promoter	JP Autoputevi Republike Srpske
RS	Republika Srpska

EXECUTIVE SUMMARY

The project concerns the construction of a motorway between Banja Luka and Doboj in Republika Srpska (RS), an entity in Bosnia and Herzegovina. In March 2019, the EIB Complaints Mechanism Division (EIB-CM) received a complaint from lawyers representing four individuals and families during the expropriation process in RS. The complainant alleges that the promoter does not have a plan to resettle the project-affected people and does not want to (fully) expropriate their property.

The reviewed evidence shows that the project applicable standards are not fully complied with. The expropriation processes for cases 1-3 are still ongoing, five years after their initiation, although the RS's legislation considers the expropriation procedure urgent. Also, EIB standards require a resettlement action plan which: (i) provides a system for the eventual restoration of the complainants' livelihoods; and (ii) ensures their consultation during the process. This action plan has not been prepared. Expropriation for case 4 is not needed as there are suitable access roads to the Okolica settlement.

The reviewed evidence shows that the EIB has not carried out its role as required. The 2013 appraisal found no evidence that the EIB had performed a gap analysis between its standards and the legal framework for land acquisition in RS or the European Bank for Reconstruction and Development's (EBRD's) standard on Land Acquisition, Involuntary Resettlement and Economic Displacement. Also, the EIB's operational services never followed up on whether a land acquisition and resettlement plan was needed after the adoption of the 2016 subdivision programme. However, this land acquisition and resettlement plan was set as a possible condition for disbursement and the EIB services were aware of the ongoing issues with the expropriation process.

Allegation	Outcome
<p style="text-align: center;">Resettlement of the project-affected people/expropriation</p>	<p style="text-align: center;">Recommendation</p> <p>The EIB should:</p> <ul style="list-style-type: none"> • Ask the promoter to prepare a land acquisition and resettlement plan for the remaining expropriation cases within three months from the closure of this case, and • Monitor the implementation of the land acquisition and resettlement plan until the completion of the remaining expropriation cases.

1 BACKGROUND

1.1 Object of the complaint

- 1.1.1 The project concerns the construction of a motorway between Banja Luka and Doboj in RS, an entity in Bosnia and Herzegovina. The EIB financed the construction of the western section of the motorway, i.e. the 35.3 km long section between Banja Luka (Mahovljani interchange) and Prnjavor¹. The EIB-financed section has been completed and has been in use since October 2018². The EBRD financed the eastern section of the motorway between Prnjavor and Doboj (Johovac interchange), which has also been completed.
- 1.1.2 JP Autoputevi Republike Srpske (RS Motorway Company; hereinafter: the promoter)³ is implementing the project⁴. Two construction companies (hereinafter: the contractor) carried out the construction work. The total project costs stand at €565 million, of which €207 million is an EIB loan⁵.

1.2 Complaint

- 1.2.1 In March 2019, the EIB Complaints Mechanism Division (EIB-CM) received a complaint from lawyers representing four individuals and families (hereinafter, the complainant)⁶ during the expropriation process in RS triggered by the construction of the EIB-financed section of the Banja Luka – Doboj motorway⁷.

Table 1 – Overview of the individual cases making up the complaint

Case	Location	Expropriation
Case 1	Village of Drugovići, Laktaši municipality	Ongoing
Case 2	Village of Drugovići, Laktaši municipality	Ongoing
Case 3	Village of Potočani, Prnjavor municipality	Ongoing
Case 4	Settlement of Okolica, Prnjavor municipality	Not included in the expropriation process

- 1.2.2 The complainant alleges that the promoter does not have a plan to resettle the project-affected people and does not want to (fully) expropriate their property⁸.
- 1.2.3 For cases 1–3, the complainant wishes to speed up and finalise the expropriation process⁹. For case 4, the complainant wishes to either resolve the case through expropriation or through the improvement of the access roads to the Okolica settlement¹⁰.

¹ [BANJA LUKA-DOBOJ MOTORWAY \(eib.org\)](https://www.eib.org/en/projects/banja-luka-doboj-motorway), accessed on 18 October 2021

² <http://opstinaprnjavor.net/danas-otvaranje-posljednje-dionice-autoputa-banjaluka-doboj/?script=lat>, accessed on 27 October 2021.

³ A public company with the purpose of managing motorways in RS.

⁴ 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. semi-annual progress reports). In such cases, the EIB-CM interpreted this information as being provided by the promoter.

⁵ [BANJA LUKA-DOBOJ MOTORWAY \(eib.org\)](https://www.eib.org/en/projects/banja-luka-doboj-motorway), accessed on 18 October 2021.

⁶ §§ 1.1, 4.3 and 4.4 of the Initial Assessment Report, available at: [2020-01-10-complaint-sg-e-2019-03-banja-luka-doboj-motorway-iar-en.pdf \(eib.org\)](https://www.eib.org/en/projects/banja-luka-doboj-motorway), accessed on 18 October 2021.

⁷ §§ 1.1, 4.3 and 4.4 of the Initial Assessment Report, available at: [2020-01-10-complaint-sg-e-2019-03-banja-luka-doboj-motorway-iar-en.pdf \(eib.org\)](https://www.eib.org/en/projects/banja-luka-doboj-motorway), accessed on 18 October 2021.

2 WORK PERFORMED

- 2.1.1 Once it received the complaint, the EIB-CM liaised with the EIB's operational services¹¹. The EIB-CM reviewed relevant documents from the EIB's operational services and the promoter.
- 2.1.2 In October 2019, the EIB-CM conducted a site visit during which it met with the complainant, promoter and relevant national authorities (e.g. the RS Public Attorney). In January 2020, the EIB-CM published the Initial Assessment Report for this case, containing relevant information about the complaint and the way forward¹².
- 2.1.3 Therein, the EIB-CM stated that it would analyse whether there were cases of non-compliance with the applicable regulatory framework, including the EIB's own standards, and whether the EIB Group policies, procedures and standards had failed to provide an adequate level of protection and safeguards during the EIB's appraisal and monitoring for cases 1–3¹³. Concerning case 4¹⁴, the EIB-CM stated that it would check whether this case should have been subject to the expropriation procedure¹⁵.
- 2.1.4 Based on the collected and analysed information, the EIB-CM prepared this conclusions report.

3 REGULATORY FRAMEWORK

3.1 The EIB Group Complaints Mechanism

- 3.1.1 The EIB Group Complaints Mechanism policy¹⁶ tasks the EIB-CM with handling complaints concerning alleged maladministration by the EIB¹⁷. Maladministration means poor or failed administration¹⁸. Examples of maladministration include: (i) failure by the EIB Group to comply with its own obligations in the appraisal and monitoring of projects; (ii) failure by the EIB Group to comply with applicable law or the principles of good administration; and (iii) negative environmental and social impacts of the EIB Group's activities.
- 3.1.2 The policy specifies that the EIB-CM review the EIB's activities with a view to determining whether maladministration, attributed to the EIB, has taken place¹⁹.

3.2 Project Applicable Standards

- 3.2.1 Full compliance with the project applicable standards is required. These standards include national law and the EIB's standards.

- 3.2.2 The RS Expropriation Act²⁰ regulates the conditions, methods and procedures for expropriating real estate with the aim of constructing objects of common interest²¹ in line with spatial planning

¹¹ The meeting took place on 15 April 2019.

¹² The Initial Assessment Report is available at: [2020-01-10-complaint-sg-e-2019-03-banja-luka-doboj-motorway-iar-en.pdf \(eib.org\)](https://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf), accessed on 18 October 2021.

¹³ § 4.3 of the Initial Assessment Report.

¹⁴ The Initial Assessment Report refers to case 4 as case 7.

¹⁵ § 4.4 of the Initial Assessment Report.

¹⁶ Available at: https://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf.

¹⁷ § 5.1.3 of the EIB Group Complaints Mechanism Policy.

¹⁸ § 3.1 of the EIB Group Complaints Mechanism Policy.

¹⁹ § 5.3.3 of the EIB Group Complaints Mechanism Policy.

²⁰ Official Gazette of RS (O.G. RS) No. 112/2006, 37/2007, 66/2008 – correction, 110/2008, 106/2010 – Constitutional Court decision, 121/2010 – Constitutional Court decision, 2/2015 – Constitutional Court decision and 79/2015

²¹ Article 1 of the RS Expropriation Act.

documents²². The expropriation process is urgent²³, and should be finalised as soon as possible.

- 3.2.3 The RS Public Attorney and the expropriated party need to reach an agreement about the expropriated property²⁴. If that is not possible, the municipal authorities²⁵ will notify the expropriated party about the proposal for expropriation²⁶, collect additional information from the expropriated party²⁷ and issue a decision about the expropriation²⁸. The expropriated party may submit an appeal against the expropriation decision to the RS's Administration for Geodetic and Property Affairs²⁹. Following the final decision on expropriation, the local authority will seek an agreement from the parties on the expropriation amount³⁰. If this is not possible, the competent regional court will decide on the expropriation price³¹.
- 3.2.4 The costs of the expropriation procedure are paid by the RS Public Attorney, apart from the costs of the appeal, if the appeal is rejected³². The expropriation amount cannot be lower than the market price³³. The personal, family and existential circumstances of the expropriated party are also taken into account when establishing the expropriation amount/compensation. For illegally constructed buildings, the expropriated party will be paid the amount invested if the appropriate legal permits for the building could have been secured at the time of its construction³⁴.
- 3.2.5 In the expropriation process, the remaining real estate will be expropriated if it is established that: (i) the owner has no commercial interest in using the remaining real estate; (ii) the conditions for using the remaining real estate have significantly worsened or he is not able to stay any longer in the remaining real estate; and (iii) the owner is not able to use the remaining real estate³⁵.

- 3.2.6 The EIB standards require that people whose livelihoods are negatively affected by a project should have their livelihoods improved or, as a minimum, restored and/or they should be adequately compensated for any losses incurred³⁶. The standards also require that resettlement measures are implemented with the meaningful consultation and informed participation of the affected people³⁷.
- 3.2.7 One way of attaining these objectives is to implement a resettlement action plan. The EIB standards require these plans to, as a minimum: (1) state the resettlement objectives; (2) describe the project's effects, identify all people to be displaced and pay special attention to vulnerable groups; (3) describe the legal framework for land acquisition, compensation, the resolution of conflicts and the appeal procedures; (4) describe the institutional setup and responsibilities; (5) establish the eligibility criteria and describe the entitlements for all categories of displaced people; (6) describe the process for consulting affected people and integrating with

²² Articles 5(2) and 14(1) of the RS Expropriation Act.

²³ Article 40 of the RS Expropriation Act.

²⁴ Articles 23 and 25, item (v) of the RS Expropriation Act

²⁵ Article 28(1) of the RS Expropriation Act.

²⁶ Article 26(1) of the RS Expropriation Act.

²⁷ Article 28(2) and (3) of the RS Expropriation Act.

²⁸ Article 30 of the RS Expropriation Act.

²⁹ Article 31 of the RS Expropriation Act.

³⁰ Articles 68 and 69 of the RS Expropriation Act.

³¹ Article 70 of the RS Expropriation Act.

³² Article 32 of the RS Expropriation Act.

³³ Articles 2, 12(1) and 54 of the RS Expropriation Act.

³⁴ Article 53(2) of the RS Expropriation Act.

³⁵ Article 11(1) of the RS Expropriation Act.

³⁶ § 51 of the Statement Section of the 2009 EIB Statement of Environmental and Social Principles and Standards (ESPS).

³⁷ Annex 13, Guidance Note 1 on Involuntary Resettlement of the 2010 v. of the EIB Environmental and Social Practices Handbook.

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host populations; (7) include a valuation of and compensation for lost assets and demonstrate that these rates are adequate, i.e. at least equal to the replacement cost of the lost assets; (8) provide details of sustainable arrangements for improving the standards of living of displaced persons; (9) provide details of sustainable arrangements for improving or, as a minimum, restoring livelihoods; and, (10) include an implementation schedule, budgets and arrangements for monitoring and evaluation³⁸.

3.3 Responsibilities of the EIB (and other relevant stakeholders)

- 3.3.1 The EIB standards give the responsibility for legal compliance and the fulfilment of EIB requirements to the project promoter³⁹. This responsibility includes the adoption of social standards regarding involuntary resettlement⁴⁰. The regulatory and enforcement tasks lie with the competent authorities⁴¹.
- 3.3.2 The EIB standards require the EIB to appraise the projects it finances⁴². The appraisal takes place prior to the signature of the finance contract⁴³. The appraisal's aims include assessing the project's impact and whether the project applicable standards are complied with.
- 3.3.3 The EIB standards require the EIB to carry out a social assessment as part of its project appraisal⁴⁴ to satisfy itself that the projects it finances comply with its social safeguards⁴⁵. The EIB will not finance projects that do not meet its social requirements⁴⁶ (for example, projects that do not comply with appropriate national social legislation or which result in a violation of human rights)⁴⁷.
- 3.3.4 In co-financed projects, the EIB is prepared to accept a common approach based on the relevant requirements of one of its financial partners, for reasons of consistency and harmonisation, and to avoid duplication⁴⁸. Most international financial institutions have developed policies for handling resettlement and relocation issues and when the EIB works in partnership with them, ensuring that those policies are adequate and being implemented may be enough⁴⁹.
- 3.3.5 The EIB requires that all projects likely to have a significant adverse social impact should be subject to a social impact assessment, which is to be carried out as part of the environmental impact assessment⁵⁰. The environmental and social impact assessment should address the scope and scale of social risks⁵¹ and its findings and recommendations should satisfy the requirements of the EIB prior to disbursement⁵². In co-financed projects, the EIB is prepared to accept a common approach based on the relevant requirements of one of its financial partners, for reasons of consistency and harmonisation, and to avoid duplication⁵³.

³⁸ Annex 13, Guidance Note 1 on Involuntary Resettlement of the 2010 v. of the EIB Environmental and Social Practices Handbook.

³⁹ § 2 of the Statement Section of the ESPS.

⁴⁰ § 50 of the Statement Section of the ESPS.

⁴¹ Section 60 of the 2010 v. of the EIB Environmental and Social Practices Handbook.

⁴² §17 of the Statement Section of the ESPS.

⁴³ <https://www.eib.org/en/projects/cycle/index.htm>

⁴⁴ Section 102 of the 2010 v. of the EIB Environmental and Social Practices Handbook.

⁴⁵ Section 23, item 3 of the 2010 v. of the EIB Environmental and Social Practices Handbook.

⁴⁶ § 6 of the Statement Section of the ESPS.

⁴⁷ § 6 of the Statement Section of the ESPS.

⁴⁸ § 23 of the Background Section of the ESPS

⁴⁹ Annex 13, Guidance Note 1 on Involuntary Resettlement of the 2010 v. of the EIB Environmental and Social Practices Handbook.

⁵⁰ Section 54 of the 2010 v. of the EIB Environmental and Social Practices Handbook.

⁵¹ Section 54 of the 2010 v. of the EIB Environmental and Social Practices Handbook.

⁵² Section 54 of the 2010 v. of the EIB Environmental and Social Practices Handbook.

⁵³ § 23 of the Background Section of the ESPS.

- 3.3.6 Where physical or economic displacement is unavoidable, the EIB requires the promoter to develop an acceptable resettlement action plan⁵⁴ prior to a disbursement⁵⁵ and to comply with it. The EIB standards stipulate that to develop the resettlement action plan, the promoter should: (i) carry out a census to establish the number of people to be displaced, the livelihoods affected, and the property to be compensated; (ii) carry out an assessment of applicable national legislation and the requirements of the EIB; (iii) develop a resettlement action plan in line with EIB requirements, including consultation with project-affected people; (iv) agree on the plan with the EIB; and (v) ensure the implementation and monitoring of the plan⁵⁶. The standard states that progress on resettlement issues should be detailed in the project progress report and evaluated in the project completion report⁵⁷.
- 3.3.7 At the time of appraisal, the EIB records the social assessment and the finance contract conditions in the environmental and social data sheet⁵⁸.
- 3.3.8 Once the promoter and the EIB sign the finance contract, the EIB is required to monitor the project. Monitoring aims to ensure the project complies with the EIB's approval conditions⁵⁹. The EIB monitors projects based on reports provided by the promoter, as well as its own site visits, information provided by the local community, etc.⁶⁰.

4 FINDINGS/OBSERVATIONS/ANALYSIS

4.1 Compliance with the Project Applicable Standards

- 4.1.1 The expropriation process commenced in 2009. This is the year that the first request for expropriation was made⁶¹. By 2013, approximately 600 ha of land had been acquired based on the RS Expropriation Act⁶². At that time, the expropriation was carried out on the basis of the land acquisition study⁶³. By 2013, approximately 98% of the land had been fully acquired⁶⁴. The majority of the people involved did not oppose expropriation and consented to the beneficiary of the expropriation (the municipality) taking possession of their properties⁶⁵. The affected owners who were not satisfied with the level of compensation availed themselves of the appeal procedures⁶⁶. In 2013, a total of 10 remaining cases were still to be fully resolved through either administrative or court procedures.

⁵⁴ § 51 of the Statement Section of the ESPS. Annex 13, Guidance Note 1 on Involuntary Resettlement of the 2010 v. of the EIB Environmental and Social Practices Handbook.

⁵⁵ Section 174 of the 2010 v. of the EIB Environmental and Social Practices Handbook.

⁵⁶ Annex 13, Guidance Note 1 on Involuntary Resettlement of the 2010 v. of the EIB Environmental and Social Practices Handbook.

⁵⁷ Annex 13, Guidance Note 1 on Involuntary Resettlement of the 2010 v. of the EIB Environmental and Social Practices Handbook.

⁵⁸ Section 101, items 10, 19 and 20 of the 2010 v. of the EIB Environmental and Social Practices Handbook.

⁵⁹ Paragraph 258 of the EIB's 2010 Environmental and Social Practices Handbook.

⁶⁰ § 8 of the Statement Section of the ESPS.

⁶¹ Preliminary design – setting the route – first expropriation call.

⁶² Section 5.3 of the January 2013 Non-Technical Summary for the Banja Luka – Dobož Motorway, Section 1: Banja Luka – Prnjavor, available at: [ENVIRONMENTAL ASSESSMENT \(eib.org\)](https://www.eib.org/en/projects/banja-luka-doboz-motorway/section-1-banja-luka-prnjavor), accessed on 18 October 2021.

⁶³ Section 5.3 of the January 2013 Non-Technical Summary for the Banja Luka – Dobož Motorway, Section 1: Banja Luka – Prnjavor, available at: [ENVIRONMENTAL ASSESSMENT \(eib.org\)](https://www.eib.org/en/projects/banja-luka-doboz-motorway/section-1-banja-luka-prnjavor), accessed on 18 October 2021.

⁶⁴ Section 5.3 of the January 2013 Non-Technical Summary for the Banja Luka – Dobož Motorway, Section 1: Banja Luka – Prnjavor, available at: [ENVIRONMENTAL ASSESSMENT \(eib.org\)](https://www.eib.org/en/projects/banja-luka-doboz-motorway/section-1-banja-luka-prnjavor), accessed on 18 October 2021.

⁶⁵ Section 5.3 of the January 2013 Non-Technical Summary for the Banja Luka – Dobož Motorway, Section 1: Banja Luka – Prnjavor, available at: [ENVIRONMENTAL ASSESSMENT \(eib.org\)](https://www.eib.org/en/projects/banja-luka-doboz-motorway/section-1-banja-luka-prnjavor), accessed on 18 October 2021.

⁶⁶ Section 5.3 of the January 2013 Non-Technical Summary for the Banja Luka – Dobož Motorway, Section 1: Banja Luka – Prnjavor, available at: [ENVIRONMENTAL ASSESSMENT \(eib.org\)](https://www.eib.org/en/projects/banja-luka-doboz-motorway/section-1-banja-luka-prnjavor), accessed on 18 October 2021.

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- 4.1.2 Also in 2013, the promoter finalised the environmental and social action plan for the motorway⁶⁷. The plan describes the social mitigation and monitoring measures, the criteria for their successful implementation and the organisational measures to be implemented during the pre-construction, construction and operation of the motorway⁶⁸. This plan also includes land acquisition and involuntary resettlement issues.
- 4.1.3 Another request for expropriation was made in 2016, after the adoption of the project's 2016 subdivision plan⁶⁹. The subdivision plan⁷⁰ for the motorway determines the project's specific components. In 2019, expropriation issues remained. However, the outstanding instances of expropriation (e.g. to allow access to private plots) were in the process of resolution.

Case 1

- 4.1.4 There were two procedures concerning case 1. The RS Public Attorney initiated one procedure in 2009. The expropriated party requested the expropriation of additional property in 2016.
- 4.1.5 The 2009 procedure was finalised in 2019.
- 4.1.6 Concerning the 2016 procedure, the RS Public Attorney agreed to expropriate part of the property (approximately 30% of the requested agricultural land) for access roads. According to the promoter, the project's subdivision plan does not require further expropriation. The subdivision plan was prepared taking into account various aspects, such as spatial planning and the environment and the expropriated party had the possibility of commenting on the plan prior to its adoption. The expropriated party initiated the court proceedings. As of 2020, the 2016 procedure was still ongoing for part of the property.

Case 2

- 4.1.7 There were three expropriation procedures concerning case 2. The RS Public Attorney initiated two procedures in 2009 and 2017. The expropriated party requested the expropriation of additional property in 2016. The 2016 and 2017 procedures were triggered by the adoption of the subdivision plan.
- 4.1.8 The 2009 procedure was finalised in 2010.
- 4.1.9 The 2017 procedure was at one point merged with the 2016 procedure. The parties were in disagreement about the amount of property that should be expropriated, with the expropriated party requesting the expropriation of more property. The RS Public Attorney refused to expropriate additional property because there was another access road to the expropriated party's property and the expropriated party could still make economic use of the remaining property. As of 2020, the 2016 and 2017 procedures were still ongoing.
- 4.1.10 Three grievances related to the expropriated party were submitted to the project's grievance mechanism. Two cases concerned the access road to the expropriated party's property. Both cases were closed. The third concerned the expropriation due to dissatisfaction concerning the

⁶⁷ January 2013 Environmental & Social Action Plan for the Banja Luka – Doboje Motorway, Section 1: Banja Luka – Prnjavor, available at: [BANJA LUKA-DOBOJE MOTORWAY - Environmental & Social Action Plan Section 1 Banja Luka - Prnjavor \(eib.org\)](#), accessed on 18 October 2021.

⁶⁸ Section 1 of the January 2013 Environmental & Social Action Plan for the Banja Luka – Doboje Motorway, Section 1: Banja Luka – Prnjavor, available at: [BANJA LUKA-DOBOJE MOTORWAY - Environmental & Social Action Plan Section 1 Banja Luka - Prnjavor \(eib.org\)](#), accessed on 18 October 2021.

⁶⁹ Decision on Adoption of the Proposed Sub-division Plan for Banja Luka — Doboje Motorway under the Shortened Procedure (O.G. RS, No. 56/161).

⁷⁰ 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 (O.G. 40/2013, 2/2015 – Constitutional Court Decision, 106/2015, 3/2016 – correction and 104/2018 – Constitutional Court Decision).

access road. This grievance was not closed due to the ongoing court proceedings (see the paragraph above).

Case 3

- 4.1.11 There were two expropriation procedures concerning case 3. The RS Public Attorney initiated the first procedure in 2009 and the second in 2017.
- 4.1.12 The 2009 procedure was finalised in 2011.
- 4.1.13 In 2017, the RS Public Attorney initiated an expropriation procedure for the construction of an access road. As part of the 2017 procedure, the expropriated party requested the expropriation of additional property. According to the promoter, the complainant claimed that the expropriated party was not able to carry out agricultural activities due to a landslide. The RS Public Attorney refused to expropriate the additional property. The RS Public Attorney stated that the landslide issue had been resolved without any impact on the expropriation line and that access to the relevant property is provided. As of 2020, the 2017 procedure was still ongoing.
- 4.1.14 Three grievances related to the expropriated party were submitted to the project's grievance mechanism. The grievances concerned the access road and the landslide (2017 procedure). The access road could be used and the landslide issue was resolved. Therefore, all grievances were closed.

Case 4

- 4.1.15 Case 4 was not subject to the expropriation procedure. A previous link between the settlement and the town Prnjavor was cut by the motorway. Instead of expropriation, a new road was built to link the settlement with the centre of Prnjavor. According to the complainant, the new road is longer and is not suitable, especially during winter when trucks, ambulances and firefighters are prevented from accessing the settlement⁷¹. During its visit to the area, the EIB-CM confirmed that the road is longer, but not by much, and that it seems to be suitable for all weather conditions⁷².
- 4.1.16 The promoter states that: (i) the primary access road was built in line with the relevant spatial plans; (ii) the primary access road is a local road which is maintained and accessible during winter; and (iii) the secondary access road was also built for the residents⁷³.
- 4.1.17 A grievance related to the secondary access road was submitted to the project's grievance mechanism⁷⁴. In particular, the local residents asked for a secondary access road to their houses. Following the construction of the secondary road, the grievance was closed⁷⁵.

4.2 Responsibilities of the EIB

- 4.2.1 The EIB carried out its appraisal in 2013. The EIB noted that the project implementation entailed a need for private land acquisition and the resettlement of a certain amount of affected households. At that time, the EIB noted that approximately 98% of the land, mostly agricultural, had already been fully acquired. The EIB also noted that the majority of the people affected did not oppose expropriation and consented to the beneficiary of the expropriation (the municipality) taking possession of their properties. The affected owners who were not satisfied with the level of compensation availed themselves of the appeal procedure. As of 2013, 10 remaining cases

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- were still to be fully resolved through either administrative or judicial procedures. The RS authorities have taken possession of the properties in all cases⁷⁶.
- 4.2.2 The census of the project-affected people and the legal and policy framework for the land acquisition and resettlement has been prepared. The census is a brief document containing an overview of the RS expropriation process and general information on the people affected by the expropriation (e.g. numbers). The census does not contain detailed information about the expropriated parties or their properties.
- 4.2.3 In 2013, the EIB's operational services noted that the project's detailed design was not definitive. The services noted that it was uncertain whether additional land acquisition would be needed. The services concluded that when the subdivision plan (detailed design) was finalised, a land acquisition and resettlement plan should be developed and implemented⁷⁷ if the EIB assessed any additional effects of the land acquisition as significant, particularly if they included physical displacement.
- 4.2.4 At that time, given that land acquisition had already occurred, it was determined that neither a resettlement action plan nor a livelihood restoration framework was necessary⁷⁸. However, since the subdivision plan could result in additional land acquisition, it was noted that a resettlement action plan or livelihood restoration framework would have to be developed if the additional land acquisition was on a larger scale or the implementation of certain measures led to greater effects on the use of the land.
- 4.2.5 The environmental and social impact assessment contained an analysis of the expropriation act⁷⁹. The assessment concluded that the legal framework for land acquisition in RS met the main requirements contained in the EBRD's standard on Land Acquisition, Involuntary Resettlement and Economic Displacement^{80,81}. A gap analysis between the standards of the EIB and the co-financier seems to be needed to ensure that the purpose of this provision is achieved.
- 4.2.6 The EIB set the land acquisition and resettlement plan as a possible condition for the first disbursement if the EIB deemed the development of such a plan necessary when the detailed design (the subdivision plan) became available⁸². As an undertaking, the EIB required the promoter and RS to complete the acquisition of the land in accordance with the land acquisition and resettlement plan.
- 4.2.7 As part of the first disbursement in 2014, the promoter noted that the land acquisition and resettlement plan would be presented, if deemed necessary by the EIB, when the detailed design (the subdivision plan) became available. The EIB agreed to this, noting that it would request the land acquisition and resettlement plan at a later stage. From the information gathered as part of the inquiry, the EIB has never followed up on this issue, even after the subdivision plan was adopted in 2016.
- 4.2.8 As part of their monitoring in 2017, the EIB's operational services noted that some expropriation procedures had been partly closed or were awaiting court decisions.

⁷⁶ ESDS, available at: [Environmental and Social Data Sheet \(eib.org\)](#), accessed on 18 October 2021.

⁷⁷ ESDS, available at: [Environmental and Social Data Sheet \(eib.org\)](#), accessed on 18 October 2021; Section 3 of Table 1 of the January 2013 Environmental & Social Action Plan for the Banja Luka – Dobož Motorway, Section 1: Banja Luka – Prnjavor, available at: [BANJA LUKA-DOBOŽ MOTORWAY - Environmental & Social Action Plan Section 1 Banja Luka - Prnjavor \(eib.org\)](#), accessed on 18 October 2021.

⁷⁸ Section 1 of the January 2013 Non-Technical Summary for the Banja Luka – Dobož Motorway, Section 1: Banja Luka – Prnjavor, available at: [ENVIRONMENTAL ASSESSMENT \(eib.org\)](#), accessed on 18 October 2021.

⁷⁹ Section 4.3 of the January 2013 Non-Technical Summary for the Banja Luka – Dobož Motorway, Section 1: Banja Luka – Prnjavor, available at: [ENVIRONMENTAL ASSESSMENT \(eib.org\)](#), accessed on 18 October 2021.

⁸⁰ EBRD Performance Requirement 5.

⁸¹ Section 4.3 of the January 2013 Non-Technical Summary for the Banja Luka – Dobož Motorway, Section 1: Banja Luka – Prnjavor, available at: [ENVIRONMENTAL ASSESSMENT \(eib.org\)](#), accessed on 18 October 2021.

⁸² ESDS, available at: [Environmental and Social Data Sheet \(eib.org\)](#), accessed on 18 October 2021.

5 CONCLUSIONS

- 5.1.1 There are two sets of conclusions. The conclusions presented in § 5.1.2 concern the project applicable standards set out in Section 3.2. The conclusions presented in § 5.1.3 concern the responsibilities of the EIB in respect to this project, set out in Section 3.3.
- 5.1.2 The reviewed evidence shows that the project applicable standards are not fully complied with. The expropriation processes for cases 1-3 are still ongoing, five years after their initiation, although RS legislation considers the expropriation procedure urgent. Also, EIB standards require a resettlement action plan which: (i) provides a system for the eventual restoration of the complainants' livelihoods; and (ii) ensures their consultation during the process. This action plan has never been prepared. Expropriation for case 4 is not needed as there are suitable access roads to the Okolica settlement.
- 5.1.3 The reviewed evidence shows that the EIB has not carried out its role as required. The 2013 appraisal found no evidence that the EIB had performed a gap analysis between its standards and the legal framework for land acquisition in RS or the EBRD's standard on Land Acquisition, Involuntary Resettlement and Economic Displacement. Also, the EIB's operational services never followed up on whether a land acquisition and resettlement plan was needed after the adoption of the 2016 subdivision plan. However, this land acquisition and resettlement plan was set as a possible condition for disbursement and the EIB services were aware of the ongoing issues with the expropriation process.

6 OUTCOMES

Table 2 - Summary of the allegation and the outcomes

Allegation	Outcome
<p>Resettlement of the project-affected people/expropriation</p>	<p style="text-align: center;">Recommendation</p> <p>The EIB should:</p> <ul style="list-style-type: none"> • Ask the promoter to prepare a land acquisition and resettlement plan for the remaining expropriation cases within three months from the closure of this case, and • Monitor the implementation of the land acquisition and resettlement plan until the completion of the remaining expropriation cases.

Complaints Mechanism

Available remedy:

Complainants that are not satisfied with the conclusions report may file a complaint of maladministration against the EIB Group with the European Ombudsman⁸³.

⁸³ Available at: <https://www.ombudsman.europa.eu/en/home>.