

SG/E/2019/06

# **Banja Luka-Doboj Motorway (Bosnia and Herzegovina)**

## **Dispute Resolution Report**

9 March 2021



# Banja Luka-Doboj Motorway (Village of Hrvaćani, Republika Srpska)

9 March 2021

## **Complaint confidential**

No

## **External distribution**

Complainant  
Promoter

## **Internal distribution**

Secretary General  
Inspector General  
Relevant EIB services

## **Disclaimer**

This report is based on the information available to the EIB Group Complaints Mechanism up to 23 February 2021.

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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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<sup>1</sup> <https://www.eib.org/en/publications/complaints-mechanism-policy.htm>

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## GLOSSARY

EIB	European Investment Bank
EIB-CM	EIB Group Complaints Mechanism Division
Borrower	Bosnia and Herzegovina
Beneficiary	Republika Srpska
Project	Banja Luka-Doboj Motorway
Promoter	JP Autoputevi Republike Srpske

# 1 BACKGROUND

## 1.1 Object of the complaint

- 1.1.1 On 4 June 2013, the EIB Board of Directors approved financing of up to €207 million for the Banja Luka-Doboj Motorway in Bosnia and Herzegovina.<sup>2</sup> The project was developed by JP Autoputevi Republike Srpske (hereinafter the “promoter”), the public motorway company of Republika Srpska.
- 1.1.2 The project concerns the construction of a motorway between Banja Luka and Doboj in Republika Srpska. The EIB financed the western section of the motorway, i.e. the 35.3 kilometre-long section between Banja Luka (Mahovljani interchange) and Prnjavor, located in Prnjavor municipality. The section was completed and brought into use on 2 October 2018.

## 1.2 Complaint

- 1.2.1 In March 2019, the EIB Group Complaints Mechanism (EIB-CM) received a complaint from an individual living in Naseobina Hrvaćani, part of the village of Hrvaćani in Republika Srpska. The complainant stated that the motorway separates Naseobina Hrvaćani from Hrvaćani, which is home to a local school, a church and shops. In particular, the project allegedly has negative impacts on the community in terms of the following:

(i) Safety and access:

Pedestrians need to walk a longer way along main roads than before, without pavements or along unsatisfactory pavements, and have started to use a pipe culvert to cross the motorway. Both official means of crossing the motorway (an underpass and an overpass) are considered unsuitable for pedestrians due to safety concerns.

The complainant alleged that some construction work was not finished, for example missing railings on a bridge and leftover construction material, and that some roads could not always be used due to flooding.

(ii) Spatial planning:

The complainant alleged that an initially planned interchange in Kojin Han and an overpass had been removed from the sub-division plan, that the public had no access to this sub-division plan and that the public consultation had not been carried out properly.

(iii) Property rights:

The complainant alleged that the motorway was partially constructed on rented land and not on land owned by the promoter.

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<sup>2</sup> For more information on the project: <https://www.eib.org/en/projects/pipelines/all/20110622>

## 2 THE INITIAL ASSESSMENT

- 2.1.1 Following a site visit in October 2019, during which the EIB-CM met with the complainant, the promoter and the relevant national authorities (Ministry of Spatial Planning, Construction and Ecology of Republika Srpska and Attorney General of Republika Srpska), an Initial Assessment Report (IAR)<sup>3</sup> was issued on 31 March 2020. Based on its initial assessment of the concerns raised, the EIB-CM recommended that the parties engage in a problem-solving facilitation process. This was considered particularly appropriate for the issues of safety and access between the two parts of the village, in order to find concrete solutions to the issues raised by the complainant.
- 2.1.2 Upon the agreement of both parties, the facilitation process, focusing on safety and access concerns, started in May 2020.

## 3 THE DISPUTE RESOLUTION PROCESS

### 3.1 Preparation

- 3.1.1 A collaborative resolution process aims to resolve the dispute by (i) achieving a better mutual understanding; (ii) improving the degree of trust between the parties; and (iii) seeking to identify a mutually agreed solution.
- 3.1.2 To prepare the grounds for such a process, separate calls with the complainant and the promoter were held between May and July 2020 to further clarify the exact issues and concerns to be addressed during the process. Over numerous virtual preparatory sessions as well as email exchanges, a list of concrete concerns was established with the complainant. Following exchanges with the promoter on these concerns, the EIB-CM identified general areas of agreement and disagreement between the parties.
- 3.1.3 The promoter started to work on a number of issues on which it had agreed that action was needed (e.g. removal of leftover construction material, closure of hazardous openings, etc.).
- 3.1.4 Following these improvement works, disagreement and doubts continued between the complainant and promoter concerning:
  - a) the completeness of the actions taken by the promoter;
  - b) the exact location of pending issues;
  - c) the areas of disagreement.
- 3.1.5 To reach a common understanding on the exact location and the extent of actions already taken by the promoter, the EIB-CM engaged an external facilitator for a joint fact-finding visit with the parties. Due to the COVID-19-related travel restrictions, the EIB-CM could not join the site visit.

### 3.2 Joint fact-finding site visit and dialogue facilitation

- 3.2.1 The site visit and meetings were initially planned for the end of November, but had to be postponed to 11 to 13 January due to health-related considerations.
- 3.2.2 The facilitator met separately with the parties on 11 January to prepare the ground for the joint site visit and dialogue facilitation, which took place on 12 January 2021. The participants were

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<sup>3</sup> <https://www.eib.org/attachments/complaints/sg-e-2019-06-iar-banja-luka-doboj-motorway-en.pdf>

the complainant, a representative of the promoter and the supervision engineer, the facilitator and a translator (both provided by the EIB-CM). The following information was gathered: the exact location and status of each area of concern with GPS data and photos, the concrete remedial action requested by the complainant and the promoter's views regarding this request. The resulting document specifying areas of agreement and remaining areas of disagreement can be consulted in Annex 1.

3.2.3 13 locations were visited to verify the issues listed in Annex 1 as areas of agreement, which mainly concern:

- measures to clear the area of leftover material (resulting from the motorway construction);
- safety concerns regarding openings that had not been properly closed;
- flood risks caused by a temporary construction.

3.2.4 The locations relating to ongoing areas of disagreement were visited and information was exchanged among the parties. However, no agreement could be reached on the following five issues:<sup>4</sup>

- 1) a bridge without railings;
- 2) the demand to improve the state of a local (gravel) road connecting the Stegići overpass with the Donjani underpass and the connecting road to the cemetery;
- 3) the alleged increased flooding risk on the access road to the Donjani underpass;
- 4) safety concerns regarding the Donjani underpass for pedestrians and vehicles;
- 5) the local community's continued use of an underground pipe culvert to cross the motorway, despite the fence built by the promoter in 2020 to block access.

3.2.5 Furthermore, the facilitator met with members of the community to listen to their concerns and provide general information about the EIB-CM and the complaints process.

## 4 OUTCOME AND FURTHER STEPS

Throughout the dispute resolution process, the parties engaged in a cooperative and open manner to find solutions to as many issues as possible, for which the EIB-CM would like to express its gratitude.

### 4.1 Areas of agreement: Implementation and monitoring

4.1.1 Regarding five of the locations<sup>5</sup> visited, it was established that the improvement works already carried out by the promoter were sufficient and no further action was needed. For a further five locations<sup>6</sup>, an agreement was reached between the parties on how to remedy the existing situation.

4.1.2 For three locations<sup>7</sup>, no agreement could be reached during the site visit.

4.1.3 For one of these locations, the promoter took action and confirmed on 28 January that three missing separator covers had been installed, which was equally confirmed by the complainant

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<sup>4</sup> For additional details, please refer to Annex 1.

<sup>5</sup> Locations 1.1, 2, 3.4, 5 and 6.1 as described in Annex 1.

<sup>6</sup> Locations 1.3, 3.1, 3.2, 4 and 6.2 as described in Annex 1.

<sup>7</sup> Locations 1.2, 1.4 and 3.3 as described in Annex 1.



on 23 February. The EIB-CM therefore considers that while no agreement was found during the site visit, this point has been addressed satisfactorily.

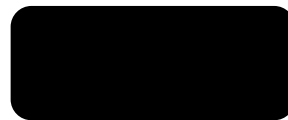
- 4.1.4 Following the site visit, the promoter presented a proposal for the two remaining locations. The promoter will reinspect the locations when there is better visibility to see potential leftover construction material (at the time of the site visit the ground was covered in snow). A decision on appropriate action will then be taken, which could either be the levelling or removal of the material. The promoter will carry out the works in agreement with the respective landowners at latest by end of May 2021.
- 4.1.5 Annex 1 outlines in more detail all the issues to be resolved and the agreed measures to be implemented, as well as the expected timeframe for completion. The EIB-CM will follow up on the implementation of each agreed measure with the promoter and the complainant and report on the progress. The measures must be fully implemented by May 2021.

## 4.2 Recommendation for investigation

In line with Art. 2.5.6 of the EIB-CM Procedures, the EIB-CM recommends a compliance review for those aspects of the complaint that are not covered by the areas of agreement described above and detailed in Annex 1.



09.03.2021



09.03.2021

Annex 1: Areas of agreement and disagreement

## ANNEX 1 – AREAS OF AGREEMENT AND DISAGREEMENT

### Areas of agreement

Issues	Description of agreement or disagreement	Findings from site visit on 13/01/2021
<p><b>1. Leftover construction material</b></p> <p>Construction material was still present at various project locations and should be cleaned up.</p>	<p>The parties agree that leftover construction material needs to be removed.</p>	<p><b>Location 1.1:</b> The construction material has been removed and the area has been cleaned up. No further action needed.</p> <p><b>Location 1.2 (under verification):</b> According to the complainant, leftover rubble and soil still need to be removed and the ground needs to be levelled. The promoter claims that there are no rubble or soil deposits from the project in the area.</p> <p><i>Following the site visit, the promoter proposed checking if there are soil deposits left at the location when visibility is better (without snow) and taking remedial action if required after consulting with the respective landowner.</i></p> <p><b>Location 1.3 :</b> The parties agree that there are soil deposits in the area immediately after the Crkvena underpass, on the right side of the M16.1 (all land, no constructions). The parties agreed that the complainant will check with the community members who own land in the area and will send the information to the project promoter, who will address the situation accordingly.</p> <p><b>Location 1.4 (under verification):</b> Same as point 1.2</p>
<p><b>2. Rubble from demolished house</b></p> <p>The rubble from a demolished house was still present and it was feared that there is water leakage under the house.</p>	<p>The parties agree that the rubble should be removed and any potential leakage must be adequately addressed.</p>	<p><b>Location 2:</b> The rubble from the demolished house has been removed and the leakage adequately addressed. No further action needed.</p>

Issues	Description of agreement or disagreement	Findings from site visit on 13/01/2021
<p><b>3. Hazardous openings</b></p> <p>Various openings (e.g. manholes) were not properly closed and posed a potential safety risk.</p>	<p>The parties agree that such hazardous openings linked to the project should be properly closed.</p>	<p><b>Location 3.1:</b></p> <p>There are two manholes from which protective plastic tubes come out at the intersection of the M16.1 and the Stegići overpass access road, right at the entrance of Hrváčani. Both parties agree that the manholes should be closed. The promoter will follow up with the respective operators responsible for properly closing the openings and will report on the progress made before May 2021.</p> <p>Following the site visit, the parties confirmed <i>on 28 January (promoter) and 23 February (complainant)</i> the closure of the manholes. No further action needed.</p> <p><b>Location 3.2</b></p> <p>A concrete opening was not properly closed and may pose a potential safety risk. The promoter will liaise with the relevant contractor in order to install an appropriate cover and close the opening before May 2021.</p> <p>Following the site visit, the parties confirmed <i>on 28 January (promoter) and 23 February (complainant)</i> the closure of the opening. No further action needed.</p> <p><b>Location 3.3</b></p> <p>According to the complainant, three separators without appropriate covers pose a risk for accidents for children that may be playing in the area. The promoter explained that the covers were installed but were stolen. Moreover, the area was not accessible to the public due to the surrounding fence.</p> <p><i>Following the site visit, the parties confirmed on 28 January (promoter) and 23 February (complainant) that three separator covers had been installed.</i> No further action needed.</p> <p><b>Location 3.4 :</b></p> <p>An appropriate cover was installed. No further action needed.</p>

Issues	Description of agreement or disagreement	Findings from site visit on 13/01/2021
<p><b>4. Temporary multi-pipe culvert</b> on the old riverbed on the road from the M16 to Gornji Hrvacani</p>	<p>The community is worried that a multi-pipe culvert is not adequate and increased the risk of flooding.</p> <p>The promoter explained that the multi-pipe culvert is only to be used temporarily until the relocation of the local and main roads is completed. The construction of a completely new concrete bridge across the newly regulated riverbed is underway on this local road.</p>	<p><b>Location 4:</b></p> <p>The parties agree that the multi-pipe culvert is a temporary solution that will be used until the riverbed has been regulated and the new bridge that will provide access to the M16.1 from the south-east has been built.</p> <p>Monitoring agreed for end of May 2021.</p>
<p><b>5. Removal of an old bridge</b></p> <p>An old bridge next to the foot of the motorway embankment located on an abandoned part of the Crkvena riverbed is no longer usable.</p>	<p>Both parties agree that this bridge should be demolished to avoid any safety risks (e.g. for children playing in the area).</p> <p>The bridge has been removed.</p>	<p><b>Location 5:</b></p> <p>The old bridge has been removed. No further action needed.</p>
<p><b>6. Permanent closure of the manholes for the water supply system</b></p> <p>In addition to the existing local water supply system, which had to be relocated due to the construction of the motorway, the contractor built another new local water supply system in Hrvacani, at the request of the local population. The respective manholes were only temporarily closed until the connection to another local water supply system was completed.</p>	<p>Both parties agree that the manholes need to be adequately and permanently closed.</p>	<p><b>Location 6.1:</b></p> <p>The promoter has adequately covered the manhole in the area of the demolished house (location no. 2). No further action needed.</p> <p><b>Location 6.2:</b></p> <p>The complainant shared concerns related to limited access to a water manhole that is closed with a heavy concrete cover and situated within the wire fence of the motorway. The promoter will try to identify the best possible solution and will share the appropriate information before May 2021.</p> <p><i>Following the site visit, on 28 January 2021 the promoter provided the following information:</i></p> <p>The promoter confirmed that the wire fence has been moved closer to the motorway and the heavy concrete cover has been replaced with an iron cover. These measures will enable free access to the water manhole in the future.</p>

## Areas of continued disagreement

Issues	Perspectives of the parties
<p><b>7. Bridge railings</b></p> <p>A bridge between the M16 and the Donjani underpass lacks railings.</p>	<p>The complainant has raised safety concerns regarding the lack of railings. According to the promoter, the installation of railings on this road does not form part of the project and is under the municipality's responsibility. The bridge comes under uncategorised roads that should be handed over to the local government, and as such would be categorised in accordance with local law. The level of road equipment would be determined based on such categorisation.</p>
<p><b>8. Improving local roads</b></p> <p>The newly built local road 117 A-N was planned and constructed to be 475 metres long. At the request of the local population, the road was extended by 450 metres in order to connect it to the Donjani underpass. The road is made of macadam (gravel).</p> <p>The local road from the Donjani underpass to the cemetery was widened and filled with sub-base material at the request of the local population.</p>	<p>The community wants these roads to be covered by asphalt in order to ease driving and improve the safety of the roads.</p> <p>The promoter needs to approach such questions from a cost-benefit perspective. It argues that the 117 A-N road is used by only a few locals as an alternative, shorter access route to a few houses and asphaltting it would therefore not be justified from an economic perspective.</p> <p>Regarding the local road to the cemetery, the promoter similarly argues that it is a road on a steep slope and only one of three access roads to the cemetery. In the promoter's view, the local population mostly use an asphalt road that goes directly from the main road to access the cemetery.</p> <p>The promoter points out that in addition to the above, some other local roads in Hrvacani and in neighbouring villages have been improved, at the request of the locals.</p> <p>The promoter is not willing to make further improvements at this point since the Municipality of Prnjavor is in charge of the improvement, construction and maintenance of local roads. The promoter therefore recommends that the community contacts the municipality to request further improvements.</p>
<p><b>9. Flooding risk</b></p> <p>On the access road to the underpass from the M16.</p>	<p>The complainant fears that the current access road to the underpass from the M16 is prone to flooding.</p> <p>The promoter notes that since the beginning of construction, there has been no flooding and the Crkvena river has not overflowed at this location. The promoter agrees that the Crkvena river occasionally bursts its banks during heavy torrential rain both upstream and downstream from this location. During the project, partial regulation of the riverbed was planned and partially completed. The promoter further highlights the importance of regular cleaning and maintenance of the riverbed, which will greatly increase the flow and avoid flooding risks. The promoter explains that these activities are not under the remit of the promoter but within the remit of the municipality and the public water company of Republika Srpska.</p>

Issues	Perspectives of the parties
<p><b>10. Donjani underpass</b></p> <p>The Donjani underpass was built under the motorway to connect the 117 A-N local road to the M16-1 state road.</p>	<p>The complainant relayed the community's concerns regarding the lack of safety for drivers and pedestrians due to the lack of lighting and narrow access. Counteractions such as the installation of traffic mirrors or lighting to increase visibility were proposed.</p> <p>According to the promoter, the underpass was constructed in accordance with the design specifications and guidelines for design, construction, maintenance and supervision on roads. The clear/daylight width of the underpass is 855 cm, which meets the technical requirements defined by these guidelines.</p>
<p><b>11. Pedestrian crossing on the motorway</b></p> <p>The alignment of the motorway runs between the larger village Hrvaćani and the smaller settlement of Naseobina Hrvaćani.</p>	<p>The complainant highlighted a major community concern, which is the lack of an accessible means of crossing the motorway for pedestrians (including children going to and coming back from school). In order to get from one side to the other, local residents can use the Stegići overpass or the Donjani underpass. The complainant argues that in order to shorten the walking distance, members of the community use an underground pipe culvert (despite the fence which was built in 2020 to block access) in order to reach the bus station, the school or other destinations on the other side of the motorway.</p> <p>With respect to the pipe culvert, the promoter agrees that the use of the pipe culvert is dangerous. In 2020, access was blocked with a fence to prevent further usage.</p> <p>The promoter states that the decision to build underpasses, overpasses or pedestrian crossings was part of the main design developed in 2012, which was based on relevant data (i.e. number of people) and was subject to consultation.</p> <p>Nonetheless, the promoter has assessed the possibility of a pedestrian crossing at the location of the pipe culvert. The promoter argues that due to the configuration of the terrain, the width of the motorway and other conditions, a pedestrian crossing would need to span over 50 metres (in one range) and have access ramps, bringing it to a total of at least 80 metres long. Such a large structure would be very expensive and is, according to the promoter, not economically justified given the absence of significant pedestrian use.</p>