

Budapest Airport Concession (CAPEX plan)

Complaint SG/E/2020/03

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

INITIAL ASSESSMENT REPORT

23 October 2020

Complaints Mechanism

Prepared by

Complaints Mechanism

External distribution:

Complainant

Internal distribution:

Inspector General

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.

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: <https://www.eib.org/en/about/accountability/complaints/index.htm>

TABLE OF CONTENTS

GLOSSARY OF TERMS AND LIST OF ACRONYMS	5
EXECUTIVE SUMMARY.....	6
1. THE COMPLAINT.....	7
2. BACKGROUND INFORMATION	9
3. WORK PERFORMED.....	11
4. WAY FORWARD	12

GLOSSARY OF TERMS AND LIST OF ACRONYMS

CAPEX	Capital expenditure
CDVENPI	Central Danube Valley Environment and Nature Protection Inspectorate
dB	Decibel
DG ENV	Directorate General for Environment
EC	European Commission
EFSI	European Fund for Strategic Investments
EIA	Environmental Impact Assessment
EIB-CM	European Investment Bank Group Complaints Mechanism
ESDS	Environmental and Social Data Sheet
ESI	European Security Initiative
ESPS	EIB's Environmental and Social Practices and Standards
EU	European Union
GHG	Greenhouse gases
HUF	Hungarian forint
NGO	Non-governmental organisation
PM	Particulate matter
project	Budapest Airport Concession project (CAPEX plan)
promoter	Budapest Airport Zrt. is the project promoter, borrower and final beneficiary
OKTVF	Nature Conservation and Water Management Inspectorate

EXECUTIVE SUMMARY

In March 2020, the EIB Group Complaints Mechanism (EIB-CM) received a complaint from two Hungarian non-governmental organisations (NGOs)¹ concerning the Budapest Airport Concession (CAPEX plan) project (EIB Ref. 2016-0605) in Hungary. The complaint includes claims about:

- Significant impact on climate from the project, which contradicts the EIB's sustainability commitments as outlined in the EIB's Environmental and Social Practices and Standards (ESPS).
- Air pollution resulting from the anticipated increase in air and land traffic.
- Noise pollution and noise-induced social impacts, as well as non-compliance of the national law on noise pollution with EU law.
- Deficient stakeholder engagement.
- Inadequate information in the ESDS and on the EIB's webpage regarding the project.

The complainant calls for the EIB to suspend disbursement for the project until the environmental and social concerns are resolved, e.g. through a full Environmental Impact Assessment (EIA) procedure, and with proper public consultations including with civil society.

Following the admissibility of the complaint in line with Section 1.1 of the EIB-CM Procedures ("Standard Procedure"), the EIB-CM carried out an Initial Assessment. The objective of the Initial Assessment is to clarify the concerns raised and the position of the complainant, understand the validity of the concerns raised, and determine if further work by the EIB-CM is necessary and/or possible (compliance review or mediation between the parties) to address the allegation or resolve the issues raised.

The allegation concerning the increase in GHG emissions due to the project, allegedly violating the principles of the EU climate bank, is ungrounded as the project was appraised and the finance contract was signed before the November 2019 decision of the EIB Board of Directors. The EIB's enhanced commitment to climate action and environmental sustainability takes effect from 1 January 2021.

With regard to the alleged non-compliance of the national law and regulations on noise pollution with EU law, the EIB-CM is not in a position to address this allegation based on the admissibility criteria and the mandate of the EIB-CM to focus on maladministration by the EIB and/or the activities it finances.

Following its Initial Assessment, the EIB-CM deems it appropriate to carry out a compliance review regarding the following allegations:

- Failure to assess and mitigate the climate impact of the project through an EIA and alleged non-compliance with the EIB's climate-related standards (Standard 4);
- Failure to assess the impact of the 50% increase in air traffic and land transport on air pollution;
- Failure to assess and mitigate noise pollution and negative social impacts on the project-affected people;
- Lack of public consultations on the project and failure to involve local stakeholders from civil society; and
- Inadequate information on the social and environmental impacts of the project and its approval procedures in the ESDS and on the EIB's website.

¹ The complaint was lodged by the National Society of Conservationists – Friends of the Earth Hungary and the Hungarian NGO "Association for Civilized Air Transport"

1. THE COMPLAINT

1.1. On 2 March 2020, two Hungarian NGOs² (hereinafter, the complainant), lodged a complaint with the EIB-CM concerning the environmental and social impact of the Budapest Airport Concession (CAPEX plan) project (hereinafter, the project). The complainant did not request confidentiality.

1.2. The following issues were raised in the complaint:

1.2.1. *Alleged significant impact on climate.* The complainant considers that the project contradicts the EIB's sustainability commitments as outlined in the EIB's Environmental and Social Standards. According to the complainant, the fact that the project will increase GHG emissions, air pollution and the use of fossil fuels is not consistent with the image of the EIB as the EU's climate bank, which is aligning all its financing activities with the principles and goals of the Paris Agreement by the end of 2020. The complainant also stresses that, while the project assumes a 50% increase in air traffic (i.e. from 15 to 21 million passengers per year) by 2030, no EIA had been conducted. As a result, no mitigation and compensation measures were proposed regarding the estimated increase of GHG emissions.

1.2.2. *Air pollution resulting from the anticipated increase in air and land traffic.* The complainant alleges particulate matter (PM) pollution based on the Schiphol Airport (Netherlands) model applied to Budapest Airport on the basis of its 2018-2019 traffic data. The complainant alleges that while the average normal PM concentration is about 1 000-1 200 p/cm³, the PM concentration in the project-affected area ranges from 2 to 13 times the average normal level³. The complainant emphasises the fact that the increased air pollution and GHG emissions do not result from aviation only, but are also due to intensified landside traffic caused by the project⁴.

1.2.3. *Noise pollution and noise induced social impacts resulting from violation of national and EU regulations and standards.* The complainant alleges that the market value of neighbouring real estate has dropped drastically due to the unhealthy and noisy environment. According to the complainant, houses are being physically ruined by noise pollution (e.g. wall cracking, roof tiles falling). The complainant takes the view that the affected local communities are an especially vulnerable group, including families with children, with financial difficulties and which are unable to adapt or move away. Furthermore, the complainant points out that regulations on flight paths and the distances from the ground over inhabited territory are often violated and that this produces negative impacts on the project-affected people. While recognising that households located 300m from the runway were offered an extra window layer for their bedrooms by the promoter, the complainant alleges that this does not substantially decrease noise impact. In addition, for any further noise mitigation measures (full insulation, change of windows), the promoter requires a financial contribution from the affected inhabitants. Finally, the complainant alleges that there are discrepancies between national and EU limit values, resulting in inadequate noise protection measures,

² The complainant did not request confidentiality; the complaint was lodged by the National Society of Conservationists – Friends of the Earth Hungary and the Hungarian NGO “Association for Civilized Air Transport”

³ “In the red zone, covering a 19 km circle around the airport, [PM] concentration is likely to amount to 5 100 particles/cm³; in the blue zone (9 km), 12 700 p/cm³; while in the yellow zone (5 km) 16 510 p/cm³.”

⁴ The complainant highlights that the planned train connection, even if environmentally sound, would potentially further increase airport traffic and thus aggravate the health and environmental impacts of the project.

given that (i) EU law⁵ recommends stricter dB thresholds than those permitted under national law, and (ii) the joint ministerial decree (18/1997) enables assessment methods and indicators that differ from those required by EU law⁶.

1.2.4. *Deficient stakeholder engagement.* The complainant stresses that the concerns raised by local stakeholders remain unaddressed by Budapest City, Budapest Airport, Budapest Cluster and the EIB. In this regard, the complainant alleges that there has been no dedicated stakeholder forum on the project and its components. According to the complainant, none of the two general forums held to date⁷ served to consult on the project and to address the public concerns. In the complainant's view, local communities' concerns shall be heard, given that the project will impact *"approximately 1 million people indirectly and 0.5 million local people directly"*. Furthermore, the complainant alleges that the identity of the environmental authority in charge is not clear⁸ and that this has negative impacts on the adequacy of planning/monitoring and of the stakeholders' engagement (including project-level grievance mechanisms).

1.2.5. *Inadequate information in the ESDS and on the EIB's website.* The complainant alleges that the ESDS (dated 9 October 2018) pertaining to the contested operation, as published on the EIB website together with the project summary sheet⁹, *"lacks core aspects, adequate measurements and methodology, and contains false information"*. In particular, the complainant notes that:

- Documents provided on the EIB website, referred to as "Environmental and Social Impact Assessment" (the Airport Rules Chapter VI – Noise and environmental protection; and the Energy and Carbon Management Policy) do not focus on the impacts of the CAPEX plan, but cover current airport operations¹⁰. The environmental operational permit, as referred to in the ESDS, has not been preceded by an environmental assessment in accordance with the EIA Directive. The complainant alleges that the ESDS does not set any requirements that would ensure a relevant EIA for the development of Terminal 3 (or 2C);
- The ESDS does not provide for solutions regarding increasing emissions from landside traffic; on the one hand, it anticipates accommodating *"the expected increase in landside traffic [...] by the existing road infrastructure and increase in car parking area, as well as by the increase of bus frequencies"* while, on the other hand, it does not mention the subproject of the planned train station from/to the airport, 85% of whose investment cost is funded by the European Union as part of its cohesion and regional development policy;

⁵ [Directive 2002/49/EC](#) of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise – Declaration by the Commission in the Conciliation Committee on the Directive relating to the assessment and management of environmental noise.

⁶ [Commission Directive \(EU\) 2015/996](#) of 19 May 2015 establishing common noise assessment methods according to Directive 2002/49/EC of the European Parliament and of the Council.

⁷ Forum of 14 June 2018 solely for the inhabitants of the 10th District (according to the complainant, CATA and many affected locals were not invited) and Forum "on airport-related problems" of 12 February 2019.

⁸ The complainant affirms that the Hungarian State considers that the District Office of Érd is the environmental authority in charge while, on the other hand, the Ministry of Agriculture considers that the Ministry for Innovation and Technology is the relevant environmental authority.

⁹ The ESDS is available [here](#) and the project summary sheet on the EIB website is available [here](#).

¹⁰ The complainant alleges that *"the quoted Airport Rules Chapter VI serves general requirements. Due to the lack of explicit rules it is impossible to measure whether the rules are followed (e.g. "If possible, biodegradable chemicals are to be used for the washing of aircraft and vehicles." - "If possible" is vague and easy to neglect.) There is no information about the monitoring system and its methods in Airport Rules, nor in the Environmental and Social Data Sheet"*.

- The ESDS declares that “(t)here are no significant adverse social impacts related to the project. The potential creation of additional permanent jobs will have a positive economic and social impact on the surrounding area”. At the same time, the ESDS notes that individuals and local municipalities had appealed against the operational permit due to the significant social impacts of the project, such as noise, pollution, damage to buildings, impact on health and depreciation of properties”;
- The ESDS wrongly claims that “public consultation has and is being undertaken in accordance with Hungarian and European legislation where relevant”;
- The ESDS indicates the Middle Danube Valley Inspectorate for Environmental Protection, which is currently part of the Ministry of Agriculture, as the Competent Authority. The complainant stresses that this institution has not existed since 2010 and indicated its legal successors¹¹.

1.3. Lastly, the complainant informed the EIB-CM of the announcement of further airport development projects worth at least HUF 279 billion and that Budapest Cargo City and a new passenger pier (with 14 gates of which six are ready) had already been built without a proper EIA. Several court cases launched by the complainant are ongoing¹².

1.4. Based on the above, the complainant calls for the EIB to:

- Put on hold the loan, the EFSI guarantee and all project development until the new terminal plan undergoes an EIA, including public consultation, in line with the relevant EU legislation, standards and limit values;
- Identify the competent authority for this project and share this information publicly;
- Request the promoter to determine noise mitigation zones according to the relevant EU directives and standards;
- Ensure fair project development by requiring the promoter to take further steps with regard to (i) the assessment of the project’s environmental and social impacts, and (ii) the design of mitigation and compensation measures addressing them, including the appropriate involvement of affected communities and civil society representatives.

2. BACKGROUND INFORMATION

Project Description

2.1 The project promoter is Budapest Airport Zrt. The Finance Contract¹³ between the EIB and the promoter was signed on 6 December 2018.

2.2 The project comprises a number of investments at Budapest Airport that are mainly aimed at accommodating future growth in traffic and ensuring the highest airport safety and security standards. The airport is located 16 kilometres south-east of the centre of Budapest. Project-related works started in 2017 and are expected to be completed in 2022.

¹¹ For the period between 2010-2015, the Middle Danube Valley Inspectorate for Environmental and Nature Protection and Water Conservation, subordinate to the Ministry of Rural Development, and as from 2015 the Directorate for Protection of Nature and the Environment of the Government Office for Pest County.

¹² From the information provided by the complainant, these cases concern (a) the designation of the noise protection/mitigation zone; (b) the environmental operational permit; (c) the construction permit of the new passenger pier; and (d) the construction permit for Cargo City.

¹³ Finance Contract signed on 6 December 2018

- 2.3 Project works include the construction of the new Pier in Terminal 2 and a new Terminal 3, the construction of a new freight facility called Cargo City, the renewal of the airfield ground lighting and a range of other landside and airside enhancements.
- 2.4 The upgrade of the baggage handling system with the most recent Standard 3 machines is also included. The project will increase the handling capacity of the airport to accommodate the expected future demand, strengthen the airport's operational resilience and improve the passenger experience. Additionally, a state-of-the-art passenger and hand baggage security screening concept will be introduced.
- 2.5 The EIB has committed to financing the project to the tune of EUR 200 million. There is no EU grant envisaged for the project, but the project benefits from an EFSI guarantee from the European Union.

National Authorisation for the Project¹⁴

- 2.6 In 2006, the Central Danube Valley Inspectorate for Environmental and Nature Protection and Water Conservation (CDVENPI), the first-instance environmental authority, granted the promoter an environmental operating licence for the operation of the airport (Ref.: KTVF: 41608-2/2006). The promoter and a civil society organisation appealed against the decision of the first instance. On 1 June 2007, the National Inspectorate for the Environment, Nature Conservation and Water Management (OKTVF) granted an environmental operating licence Ref.14/0042-20/2007 partially amending the provisions of the first-instance decision, but maintaining its operative part.
- 2.7 In 2011, the promoter initiated an EIA to verify the requirements of the environmental operational licence with an EIA report, which was based on 5-year environmental data records (January 2008 and December 2012) with some additional information from 2013. Based on the EIA report (2013), the CDVENPI issued the decision Ref. 80-58/2014 on the environmental operating licence, which was challenged by appeals to the OKTVF. The latter concluded the appeal proceedings with the decision Ref. OKTF-KP/1788/2015 of 28 January 2015 annulling the decision Ref. 80-58/2014. The OKTVF also requested the CDVENPI to conduct a new procedure including newer environmental and operational data available also for the years 2013 and 2014. The first-instance authority (the CDVENPI) carried out a new EIA procedure issuing the decision Ref. 2167-57/2015 granting the promoter an environmental operating license, which was appealed again. On 15 September 2015, the OKTVF issued the decision Ref. OKTF-KP/2167-57/2015, which clarified the disputed clauses of the above-mentioned decision of the CDVENPI and authorised the current environmental operational licence.
- 2.8 According to the EIB services, the current authority responsible for the development consent (including the environmental permit) for Terminal 3 is Pest Megyei Kormányhivatal (PMK): Környezetvédelmi, Természetvédelmi és Bányafelügyelőség Főosztály (Pest County Government Office: Department of Environmental Protection, Nature Conservation, and Mining Inspectorate).
- 2.9 During the project appraisal, the EIB received the following information about authorisations, which were relevant to the project:
 - Reconstruction of Runway 13R-31L, the relevant exemptions and permits (exemption from

¹⁴ The information provided below has been compiled from information available at the EIB, as provided by the promoter.

the local plan and EIA screening) were granted by the Competent Authority;

- New Pier B in Terminal 2, the Competent Authority's clearance was granted prior to the start of works;
- Extension of the landside car park already had a valid construction permit;
- Aircraft parking apron and taxiway works (all) did not require permits as these types of works are authorised by the operational licence (renewal every five years);
- Regarding the future Terminal 3, the airport promoter will be seeking the relevant clearances prior to the start of works (still pending at the time of preparation of the Initial Assessment Report).

- 2.10 During the appraisal process and in the ESDS¹⁵, no information was provided on the appeals or complaints for the project components financed by the EIB.

3. **WORK PERFORMED**

Applicable Regulatory Framework

- 3.1 Following the admissibility decision on the complaint, the EIB-CM carried out an Initial Assessment. The objective of the Initial Assessment is to clarify and understand the concerns raised by the complainant, understand the complainant's position, and determine if further work by the EIB-CM is necessary and/or possible (investigation, compliance review or mediation between the parties) to address the allegation or resolve the issues raised by the complainant.
- 3.2 Based on the EIB-CM's Initial Assessment, the following EU and national regulatory framework is relevant to the present case:
- The EU law on Strategic Environmental Assessment (SEA)¹⁶, EIA¹⁷, Directive 2002/49/EC¹⁸ and Regulation No.598/2014 on Noise¹⁹ as well as the relevant case law of the Court of Justice of the European Union.
 - National law and regulations concerning SEA, EIA and Noise as well as the relevant domestic case law.
- 3.3 As part of its Initial Assessment, the EIB-CM also identified EIB policies, procedures and standards which are relevant in the present case:
- The EIB's ESPS²⁰ (2018) and its Handbook (2013):
 - Standard 1: Assessment and management of environmental and social impacts and risks.
 - Standard 2: Pollution prevention and abatement.
 - Standard 4: EIB climate-related standards
 - Standard 10: Stakeholder engagement.

¹⁵ The ESDS is available [here \(EIB's website\)](#)

¹⁶ [Directive 2001/42/EC](#) of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment

¹⁷ [Directive 2011/92/EU](#) of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification)

¹⁸ [Directive 2002/49/EC](#) of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise – Declaration by the Commission in the Conciliation Committee on the Directive relating to the assessment and management of environmental noise

¹⁹ Regulation (EU) [No.598/2014](#) on Noise.

²⁰ EIB's Environmental and Social Practices and Standards ([2018](#))

- the EIB's transport lending policy (2011)²¹.

Project documentation reviewed and work performed

- 3.4 The EIB-CM also reviewed EIB key project documentation, the ESDS²² summarising the EIB's environmental and social appraisal, and project information provided on the EIB's website.
- 3.5 The EIB-CM liaised with the EIB competent services to obtain clarifications and further details regarding the project and the EIB's due diligence and monitoring.

4. WAY FORWARD

- 4.1 As a result of its Initial Assessment, the EIB-CM identified the following allegations:

1. Failure to assess and mitigate the climate impact of the project through an EIA and alleged non-compliance with the EIB's climate-related standards (Standard 4);
2. Failure to assess the impact of the 50% increase in air traffic and land transport on air pollution;
3. Failure to assess and mitigate noise pollution and negative social impacts on the project-affected people as well as non-compliance of national law and regulations with EU law concerning noise pollution;
4. Lack of public consultations on the project and failure to involve local stakeholders from civil society; and
5. Inadequate information on the social and environmental impacts of the project and its approval procedures in the ESDS and related information on the EIB's website.

- 4.2 With regard to the alleged non-compliance of the operation with the EIB's sustainability and climate-related commitments, the EIB-CM notes that in November 2019 the EIB's Board of Directors decided on the EIB's transition to become the EU climate bank and the preparation of the Climate Bank Roadmap and the Paris Alignment Framework in order to ensure that all new projects are aligned with the Paris Agreement. The EIB Group's enhanced commitment to climate action and environmental sustainability takes effect as of 1 January 2021. The project was appraised and the finance contract for the project was signed before the EIB's commitments; therefore, the EIB-CM considers the alleged inconsistency of the EIB's involvement in the operation with the image of the EIB as the EU's climate bank as ungrounded.
- 4.3 With regard to the alleged non-compliance of national law and regulations on noise pollution with EU law, in line with the EIB-CM Policy²³ it is worth noting that complaints against national authorities are not handled by the EIB-CM. As a result, the EIB-CM is not in a position to deal with this allegation. Should the complainant wish to pursue the matter further, it may consider the opportunity to liaise with the European Commission, which is competent to deal with concerns about compliance of national legislation with EU law²⁴.
- 4.4 In light of the Initial Assessment and due to the nature of the allegations and claims, the EIB-CM

²¹ EIB's transport lending policy ([2011](#))

²² The ESDS is available [here](#).

²³ Section 4.3.2, Page 9, EIB-CM Policy ([link](#))

²⁴ The link to the complaint form to the European Commission ([Hungarian](#))

deems it appropriate to carry out a compliance review regarding the allegations identified under Section 4.1, except for those on which the EIB-CM's conclusions are provided in Sections 4.2 and 4.3 of this report.

- 4.5 The compliance review will assess the complainant's allegations in the context of potential EIB maladministration, including whether the Bank complied with the applicable regulatory framework. With the support of specialised expertise, the review will assess the project documentation and the due diligence carried out by the Bank in the areas related to the complainant's concerns as identified in this Initial Assessment report. The outcome of the compliance review will be communicated to the complainant through the EIB-CM's Conclusions Report.