

COMPLAINTS MECHANISM

SG/E/2020/11

OOSTERWEEL CONNECTION (BELGIUM)

CONCLUSIONS REPORT

18 November 2021





Oosterweel connection conclusions report

18 November 2021

Complaint confidential

No

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Complainant

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Management Committee
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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 11 October 2021. The conclusions are addressed solely to the EIB.

Based on the EIB-CM Policy, if not indicated otherwise, all complaints are treated as non-confidential for the sake of transparency¹.

¹ Paragraph 4.6.2 of the CM Policy (2018).

THE EIB GROUP COMPLAINTS MECHANISM

The EIB Group Complaints Mechanism (hereinafter EIB-CM) is a tool enabling resolution of disputes in case any member of the public feels that the European Investment Bank 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 judgment 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, with applicable law, or with the principles of good administration. Maladministration may relate to EIB's Group decisions, actions or omissions. This may include the environmental or social impacts of the EIB's projects and operations.

One of the main objectives of the EIB Group Complaints Mechanism is to ensure 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

AA	Appropriate assessment as required by the Habitats Directive 92/43/EEC
ANB	Agency for Nature and Forests of the Flemish Government
BAM	<i>Beheersmaatschappij Antwerpen Mobiel (2003-2019)</i>
Bn.	Billion
BoD	Board of Directors of the EIB
Borrower	Flemish Region (Flemish: <i>Vlaams Gewest</i>)
E&S	Environmental and social
EC	European Commission
EIA	Environmental impact assessment
EIB	European Investment Bank
EIB-CM	EIB Group Complaints Mechanism Division
EMP	Environmental Monitoring Plan
ESAP	Environmental and social action plans
ESDS	Environmental and Social Data Sheet
ESPS	EIB Statement of Environmental and Social Principles and Standards
EU	European Union
IAR	Initial assessment report
IEPA	Integrated environmental permit application
NL	Dutch language
NTS	Non-technical summary
NV	<i>Naamloze vennootschap (NL.)</i> — limited company
Project	Construction of the northern part of the ring road around Antwerp by means of a new tunnel under the river Scheldt
Promoter	Beheersmaatschappij Antwerpen Mobiel (BAM) NV, which adopted the trade name Lantis in 2019
GRUP	<i>Gewestelijk Ruimtelijk Uitvoeringsplan (NL)</i> — Regional Spatial Implementation Plan
SEA	Strategic environmental assessment
SPV	Special purpose vehicle
TEN-T	Trans-European transport network
WFD	Directive 2000/60/EC establishing a framework for Community action in the field of water policy (Water Framework Directive)

EXECUTIVE SUMMARY

In June 2020, a citizen from the Antwerp region (hereinafter “the complainant”) lodged a complaint with the EIB Complaints Mechanism (EIB-CM) concerning the Oosterweel connection project, which is co-financed by the EIB (Ref. 2016-0779).

Following the admissibility of the complaint, in line with section 2.2 of the EIB-CM procedures, the EIB-CM carried out an initial assessment. The initial assessment report (IAR) was issued on 26 March 2021 and established the following allegations:

- The project’s failures on transparency, access to information, public consultations, and stakeholder engagement: obstructed access to information, ineffective public consultation, resistance to requests to be heard or participate in meetings, and inappropriate behaviour towards the complainant in public consultation meetings.
- Non-compliance with EU law and the EIB’s environmental and social standards, specifically those that are related to the environmental impact assessment (EIA): an incomplete project permit application, failure to appropriately consider alternatives in the EIA, outdated or insufficient traffic data in the EIA, failure to comply with noise, air pollution and safety standards, and negative impacts of the project on individual housing.
- Outdated and poor quality of project cost and financing information, specifically the quality of financing plan and the social cost-benefit analysis and insufficient assessment of contractors’ liability in the integrated environmental permit application.

After conducting a review of available information, the EIB-CM closed the case finding all allegations ungrounded with respect to the project’s compliance with applicable standards and procedures. However, in terms of the EIB’s role and good administration, the EIB-CM makes three suggestions for improvement. The outcomes of the investigation are summarised in the table below.

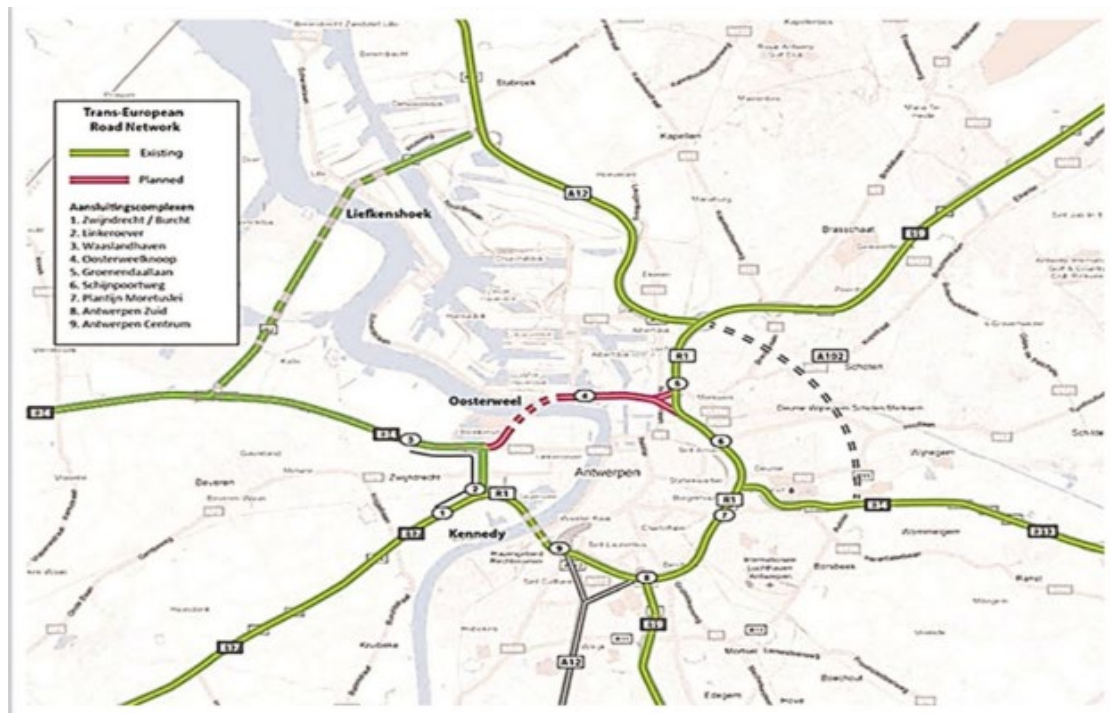
Allegation headline	Outcome	Suggestions for improvement
1: Public consultation and stakeholder engagement	Ungrounded	<ul style="list-style-type: none"> - Remove redundant and extraneous information from the project page on the EIB’s portal and organise information in a clear and readable manner. - Update the Environmental and Social Data Sheet (ESDS) with complete overview of the project permitting indicating the timeline of the project and correcting inaccuracies. The EIB services are advised to make sure that the ESDS is formulated using unambiguous terminology.
2: The environmental impact assessment	Ungrounded	<ul style="list-style-type: none"> - Strengthen the quality assurance of the drafting of ESDSs, to make sure that the terminology used is clear and unambiguous.
3: Project costs and financing	Ungrounded	n/a

1 BACKGROUND

1.1 Project overview

- 1.1.1 On 15 March 2018, the EIB's Board of Directors approved the financing of the Oosterweel connection project in Belgium for up to €1 billion². The project was initiated by Beheermaatschappij Antwerpen Mobiel N.V. ("BAM"), a public limited company created in 2003 by the Flemish Government. In 2019, BAM adopted the trade name Lantis³ (hereinafter: the promoter).
- 1.1.2 The project is located in the north-eastern part of Belgium, in the Antwerp region and the city of Antwerp itself (see Figure 1). Adding a new section of the motorway north of the city centre, passing through tunnels under the river Scheldt and the docks on the right bank and the Albert canal, will allow traffic to bypass the city of Antwerp from both sides.
- 1.1.3 The Antwerp ring road is part of two Trans-European Transport (TEN-T) Core Network Corridors: North Sea – Baltic and North Sea – Mediterranean. The project aims to improve road traffic conditions on a section of the TEN-T core road network. It is expected to significantly reduce the existing road traffic bottlenecks on the Antwerp ring road and provide more efficient access to the port by diverting heavy traffic from the city. It also offers substantial safety and environmental benefits.

Figure 1: Schematic presentation of Oosterweel connection project



Source: EIB project documentation

- 1.1.4 The project involves completing the northern part of the ring road around Antwerp (which is currently missing) by means of a new tunnel under the river Scheldt. It is a high priority project of the Antwerp Mobility Masterplan 2020⁴. To limit the negative traffic impact of heavy goods vehicles, the route was designed to use tunnels as much as possible. The Oosterweel connection (Oosterweelink), is located between the two existing tunnels and will provide for an alternative route to connect the E17 (Ghent) and the E34/N49 (Bruges) on the left bank

² See project's description on the EIB's website available here: <https://www.eib.org/en/projects/pipelines/all/20160779>

³ The link to the Lantis web-page is available here: <https://lantis.be/>

⁴ The description of the Masterplan 2020 can be found in the NTS of the SEA for the GRUP (2014)

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to the Antwerp ring R1 and with the main motorways E19/A12 towards the Netherlands and E34/E313 towards Liège, Germany and Luxembourg.

- 1.1.5 The EIB's appraisal described the project as consisting of four segments (project components): (i) left bank, (ii) Scheldt tunnel and dry dock, (iii) Oosterweel port complex and canal tunnels, and (iv) northern ring R1. The 1.8 km long immersed tunnel under the river Scheldt will have two tubes for motorway traffic with three lanes in each direction and a separate tube for cyclists and pedestrians.
- 1.1.6 The borrower of the EIB loan is the Flemish Region (*Vlaams Gewest* (NL)). The EIB's Board of Directors approved the project financing in 2018 (see section 3.3 below).
- 1.1.7 At the time of the approval for financing, the project was expected to be implemented between 2017 and 2025. The EIB documentation noted that preparatory works had been ongoing since 2017 with implementation started in 2019 after the development consent was received for the left bank component (see Appendix 1).

1.2 Planning and decision making

Stakeholders

- 1.2.1 The key stakeholders in the decision making for the project are the Flemish Government and the Municipality of Antwerp in consultation with the public. The competent authority for strategic environmental assessment (SEA) and environmental impact assessment (EIA) is the Environment Department of the Flemish Government.

The first modification of the Regional Spatial Implementation Plan and the SEA

- 1.2.2 The project is in its third decade. The Oosterweel connection project was first proposed in 1996. The key decision-making steps of the project are outlined in Appendix 1.
- 1.2.3 In 2000, the Flemish Government approved a transport master plan for the city of Antwerp (not subject to an SEA). In 2003, a Regional Spatial Implementation Plan (GRUP)⁵ was launched⁶. In May 2003, the promoter launched an SEA notification. In May 2005, the competent Flemish authority⁷ approved the SEA for the GRUP. In 2006, the Flemish Government approved the GRUP covering a broad set of transport infrastructure around the city of Antwerp, including the Oosterweel connection.
- 1.2.4 Subsequently, the project design preparation and an EIA took place. In 2007, an EIA was completed and a permit issued by the competent authorities. Nevertheless, the project, as defined in the first GRUP (2006), with a completed EIA procedure (2007), continued to evolve.

The second modification of the GRUP and the SEA

- 1.2.5 In March 2010, after significant changes to the initial Oosterweel connection project, the Flemish Government adopted the "Masterplan 2020" (the authorities did not consider it subject to an SEA) and issued a decision to launch a new process of modification of the GRUP for the Oosterweel connection.⁸ While the original design was composed of bridges and viaducts connecting the river tunnel with the existing road network on the right bank of the Scheldt river, the latest design alternatives made use of a series of tunnels to reduce noise and impacts of the new and existing connecting infrastructure. This design alteration significantly changed the project's environmental and social (E&S) impacts and required a

⁵ Project Environmental and Social Data Sheet (ESDS) is available [here](#)

⁶ By changing the Regional Spatial Implementation Plan, the regional government modifies land uses in a certain area, if the implementation of a project requires a land use change. This change is subject to public consultations. In cases where significant environmental impacts are expected, an SEA is carried out.

⁷ Flemish Regional Environmental Authority: Administratie Milieu-, Natuur-, Land- en Waterbeheer (NL)

⁸ The master plan 2020 is broader than the GRUP for the Oosterweel connection; it was not subject to an SEA. The NTS of the SEA for the GRUP ([2014](#))

modification of the GRUP and consequently a new SEA under the new regulatory framework⁹.

- 1.2.6 In November 2011, the promoter prepared a new SEA report that was subject to a public consultation¹⁰. As part of the SEA procedure for the modification of the GRUP, an appropriate assessment (AA), as required by the Habitats Directive 92/43/EEC¹¹, was completed in January 2014. On 10 February 2014, the competent authority approved the SEA. The GRUP was subject to a separate public consultation (see Appendix 1).

Environmental impact assessment procedures

- 1.2.7 The project constitutes a complex of works undertaken to serve the main purpose of the project (as provided in paragraph 1.1.4), but also other activities (i.e. auxiliary works and projects). The promoter's website presents the Oosterweel connection project in five segments¹²: the left bank section, the Scheldt tunnel, the Oosterweel junction (Oosterweelknooppunt), the canal tunnels (Kanaaltunnels) and the R1-North section (R1-Noord). Among others, one auxiliary project is located in the port of Zeebrugge: construction of a dry dock¹³ at the corner of the Boudewijnkanaal and Verbindingsdok and eventual widening of the Boudewijnkanaal.

- 1.2.8 The project is covered by two EIA procedures as follows (see Appendix 1 for details):

- i. The EIA for the left bank section with notification in May 2015. Within the EIA for the left bank infrastructure, an appropriate assessment as required by Directive 92/43/EEC was performed. The authorities concluded on the lack of likelihood of significant negative impacts on the special protected areas and prescribed mitigating measures to limit temporary impact during construction by reorganising the construction site access road. The EIA decision was issued on 22 February 2019.
- ii. The EIA for the right bank section with notification issued in August 2015. In December 2019, the authorities declared the EIA report complete. The Agency for Nature and Forests issued a positive opinion with conditions regarding impacts on the Natura 2000 network. The EIA permit was granted on 20 November 2020.

- 1.2.9 The competent authority to organise public consultations was the City of Antwerp. The latter collected and processed citizens' comments, positions and objections. The complete EIA file was available for review during the public consultations¹⁴.

- 1.2.10 Public information on the EIA notification dossiers and consultations took place as follows:

- i. For the EIA of the left bank infrastructure, initial public access to notification documentation was provided from 1 June 2015 to 30 June 2015 in the city of Antwerp, from 1 June to 30 June 2015 in the municipalities of Beveren and Kruibeke and from 5 June to 4 July 2015 in Zwijndrecht. On 29 July 2015, a stakeholder meeting took place. A public meeting took place on 29 November 2016. Public consultations on the EIA report for the left bank took place between 9 November 2018 and 8 December 2018.

⁹ The Flemish SEA regulatory framework applicable to 2012-2013 procedures was Plan-MER Decree of 27 April 2007, information from ESDS.

¹⁰ The notification dossier is a collection of report(s) and map(s) prepared within an SEA or an EIA procedure and subject to consultation with the relevant authorities and the public.

¹¹ The project is situated near to or passes through the following Special Area of Conservation (SAC) BE2300006 (Schelde- en Durmeëstuarium van de Nederlandse grens tot Gent) and Special Protection Area (SPA) BE2300222 (Kuijeend en Blokkersdijk). ESDS also noted SAC BE2500002 (polders) and SPA BE25000932 relevant to Zeebrugge auxiliary project.

¹² The project website is available here: <https://www.oosterweelverbinding.be/algemeen/de-5-projectonderdelen>

¹³ The dry dock will be used to produce eight components of the Scheldt tunnel project. Once completed, the dock will be flooded, so that the tunnel elements can be drifted towards the construction site of the Scheldt tunnel in Antwerp.

¹⁴ The EIA files were made available online by the promoter on <https://nieuws.oosterweelverbinding.be> and on the environmental portal of Antwerp municipality: <https://www.antwerpen.be/nl/overzicht/vergunningen/omgevingsloket>

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- ii. For the EIA of the right bank, notification information to the public was provided between 1 September 2015 and 30 September 2015 in Antwerp. A public inquiry on the EIA report took place between 5 June 2020 and 4 July 2020 in the municipality of Beveren and in the city of Antwerp.

- 1.2.11 Other relevant EIA permits for auxiliary works in the project area include a permit for transformers, park and ride and other works (2017), a permit for expansion of a temporary purification station and the construction of an effluent pipeline (2020) and a permit in Zeebrugge for the broadening and deepening of the Boudewijnkanaal, building a quay wall approximately 900 m long and building a temporary dock (2019) (see Appendix 1).

Appropriate assessment as required by the Habitats Directive

- 1.2.12 The project crosses or is located in a Natura 2000 site and is likely to negatively impact the Natura 2000 network both in Antwerp and in Zeebrugge. The SEA and EIA procedures for the project included appropriate assessments as required by Article 6.3 of the Habitats Directive (with a conclusion on the lack of likelihood of significant negative impacts with mitigation measures).
- The SEA included appropriate assessment with the opinion of appropriate authority issued in February 2014.
 - The EIA for the left bank included the appropriate assessment resulting in conditions (mitigation measures) provided in a favourable opinion of the Agency for Nature and Forests (ANB) of 19 December 2018.
 - The EIA for the right bank included the appropriate assessment resulting in conditions (mitigation measures) provided in a favourable opinion of the ANB of 16 July 2020.
 - The Oosterweel connection's auxiliary project at the Port of Zeebrugge was subject to the appropriate assessment resulting in mitigation and compensatory measures, such as delisting a part of the area coinciding with the auxiliary project from protection under the Birds Directive.

1.3 The complaint

- 1.3.1 On 30 June 2020, the EIB-CM received a complaint from a citizen of the Antwerp region (the complainant) regarding the Oosterweel connection project, as described in section 1.1. Some of the allegations have not been included in the scope of the EIB-CM investigation, as they do not fall under its mandate (see paragraph 2.1.4 below). The EIB-CM review is limited to the project proposed for EIB financing and to alleged maladministration by the EIB.
- 1.3.2 Given the nature of the allegations, the EIB-CM discarded the option of mediation or dialogue facilitation at the stage of initial assessment report (IAR). In light of the initial assessment and due to the technical nature of the allegations, three allegations were dismissed or considered inadmissible at the stage of IAR¹⁵ (see section 2.1 of this report), while the EIB-CM decided to proceed with investigation of the three remaining allegations, as described in Table 1 below.

Table 1: Outline of allegations

Allegation headline	Description
Allegation 1: Public consultation and stakeholder engagement	The complainant alleges that the way in which the promoter has shared information obstructs proper access to information and/or renders the public consultation ineffective. There is a lack of transparency in the project and its process. The complainant did not receive requested documents from the promoter. Requests to be heard or participate in meetings have been resisted. There was an inappropriate behaviour towards the complainant in public consultation meetings.

¹⁵ The EIB-CM Initial Assessment Report of the case is available here: <https://www.eib.org/en/about/accountability/complaints/cases/oosterweel-connection-sg-e-2020-11>

Allegation 2: The environmental impact assessment	The project fails to comply with requirements under EIB policies, procedures and standards. The permit application is incomplete and adjustments may be needed. The promoter failed to appropriately consider alternatives in the EIA. The EIA was based on outdated or insufficient traffic data. The project failed to comply with EU environmental standards on noise, air pollution and safety aspects. The project has negative impacts on individual housing.
Allegation 3: Project costs and financing	The financing plan and the social cost-benefit analysis are outdated and of poor quality. The liability of contractors is not sufficiently addressed in the integrated environmental permit application.

- 1.3.3 On the 26 March 2021, the EIB-CM issued the IAR and sent it to the complainant. The findings and conclusions regarding the allegations are presented below.

1.4 Work performed

- 1.4.1 Once it received the complaint, the EIB-CM conducted a kick-off meeting with the EIB services concerned during which it requested clarifications and further details regarding the EIB's project due diligence.
- 1.4.2 In March 2021, the EIB-CM issued the initial assessment report (IAR) for the complaint. Within the IAR, the EIB-CM established the allegations, which were followed up by a compliance review. At the same time, the IAR discarded a mediation possibility due to the nature of the allegations. Other concerns raised and allegations made by the complainant, such as challenged actions of national and public authorities and allegations of prohibited conduct, were beyond the mandate of the EIB-CM or inadmissible¹⁶. Notwithstanding the above, these allegations have been brought to the attention of the EIB operational services.¹⁷
- 1.4.3 The EIB-CM reviewed information provided by the complainant in support of his allegations sent via email on 7 October 2020, 26 October 2020, 6 November 2020, 9 November 2020, 20 January 2021 and 5 July 2021. The correspondence included a copy of the advice of the college of Mayor and Aldermen (*College van Burgemeester en Schepenen*) containing an assessment of the objection he lodged with the City of Antwerp, a ministerial decision (*ministerieel besluit*) on the publishing of the permit application, which also contains an assessment of the objection received by the City of Antwerp and an objection to the Council for permitting disputes (*Raad voor Vergunningsbetwistingen*). The EIB-CM contacted the complainant on several occasions to obtain further clarifications on the concerns raised and to keep the complainant informed on the process.
- 1.4.4 In coordination with the EIB operational services, the EIB-CM requested additional documentary evidence and some clarifications from the promoter via online tools.
- 1.4.5 The preparation of the conclusions report was restricted to a desk review without the possibility to visit the project site due to COVID travel restrictions and to meet with stakeholders other than the complainant and the promoter.
- 1.4.6 The EIB-CM prepared this conclusions report on the basis of the collected and analysed information.

2 REGULATORY FRAMEWORK

2.1 The EIB Group Complaints Mechanism

- 2.1.1 The EIB Group Complaints Mechanism Policy¹⁸ tasks the EIB-CM with handling complaints concerning alleged maladministration by the EIB¹⁹. Maladministration means poor or failed administration²⁰. Maladministration may also relate to the environmental or social impacts of

¹⁶ The alleged breach of EU law regarding procurement of works that took place in 2009.

¹⁷ The IAR (2021) is available [here](#).

¹⁸ Available at: https://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf.

¹⁹ § 5.1.3 of the EIB Group Complaints Mechanism Policy.

²⁰ § 3.1 of the EIB Group Complaints Mechanism Policy.

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the EIB Group's activities, to the project cycle-related and other applicable policies of the EIB.

- 2.1.2 The policy specifies that the EIB-CM analyses the EIB's activities with a view to determining whether maladministration attributed to the EIB has taken place²¹.
- 2.1.3 The EIB Group Complaints Mechanism Policy and Procedures²² regulate the work of the EIB-CM. The EIB-CM compliance review includes an investigation of compliance with existing policies, procedures and standards²³.
- 2.1.4 It is important to note that according to Article 4.3.2 of the EIB Group Complaints Mechanism Policy, *"Complaints against [...] national, regional or local authorities (e.g. government departments, state agencies and local councils) are not handled by the EIB-CM."*
- 2.1.5 As indicated below, the EIB Environmental and Social (hereinafter, E&S) Standards require compliance of the project with applicable national and EU law, which is the responsibility of the promoter and local authorities. Furthermore, Article 4.3.14 of the EIB-CM Policy states: *"However, the EIB Group has a duty to verify compliance with its applicable policies, procedures or standards."*
- 2.1.6 Finally, Article 1.4.5 of the EIB-CM procedures states: *"An EIB-CM review will not pass judgment on activities under the sole responsibility of third parties, notably those of the promoter or Borrower, or of authorities at local, regional or national level, of European institutions or international organisations. Unless an infringement of EU law is established by the European Commission (EC) or a competent judicial authority, an EIB-CM review will not call into question the correctness of the transposition of EU law into national law by EU Member States. The EIB-CM will refer the matter to the [EC] in case of serious concerns and inform the Management Committee accordingly."*
- 2.1.7 The EIB-CM records its findings and conclusions in the form of a conclusions report²⁴. If it issues certain recommendations in the conclusions report, the policy tasks the EIB-CM with monitoring the implementation of the recommendations²⁵.

2.2 Project applicable standards

- 2.2.1 The project must comply with the project applicable standards, which include, but are not limited to relevant environmental law and the EIB's standards²⁶.

Relevant EU and national environmental law

- 2.2.2 The Directive on the assessment of the effects of certain plans and programmes on the environment²⁷ (SEA Directive) provides the framework of environmental assessment for strategic documents.
- 2.2.3 The Directive on the assessment of the effects of certain public and private projects on the environment²⁸ (EIA Directive, as amended), requires the following of the authorities:
 - Where an environmental impact assessment (EIA) is required, the developer shall prepare and submit an EIA report. The information to be provided by the developer shall include at least a description of the reasonable alternatives studied by the developer, which are

²¹ § 5.3.3 of the EIB Group Complaints Mechanism Policy.

²² Available at: https://www.eib.org/attachments/strategies/complaints_mechanism_procedures_en.pdf.

²³ Section 4.3.14 and 5.3.3 of the EIB Group Complaints Mechanism Policy.

²⁴ § 6.2.5 of the EIB Group Complaints Mechanism Policy.

²⁵ § 5.3.1, indent 4 of the EIB Group Complaints Mechanism Policy.

²⁶ The EIB E&S standards are described in the EIB Statement of Environmental and Social Principles and Standards (ESPS, 2009); the EIB's Environmental and Social Handbook (2013, Volume II) and the EIB's Environmental and Social Standards (2018).

²⁷ 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.

²⁸ EIA Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (as amended by Directive 2014/52/EU). A consolidated version of the EIA Directive is available [here](#)

relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment.²⁹

- In order to ensure the effective participation of the public concerned in the decision-making procedures, the public shall be informed electronically and by public notices or by other appropriate means, early in the environmental decision-making procedures and, at the latest, as soon as information can reasonably be provided³⁰.
- Member States shall ensure that, within reasonable time frames, the following is made available to the public concerned: (a) any information gathered; (b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed; and (c) in accordance with the provisions of Directive on public access to environmental information³¹, information which only becomes available after the time the public concerned was informed on the EIA report³².
- The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken³³.
- The detailed arrangements for informing the public, for example by bill posting within a certain radius or publication in local newspapers, and for consulting the public concerned, for example by written submissions or by way of a public inquiry, shall be determined by the Member States. Member States shall take the necessary measures to ensure that the relevant information is electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level.³⁴
- Reasonable time frames for the different phases shall be provided for, allowing sufficient time for informing the public, to prepare and participate effectively in the environmental decision-making³⁵.
- The time frames for consulting the public concerned on the environmental impact assessment report shall not be shorter than 30 days.³⁶
- In accordance with the requirements referred to in paragraph 1(b), Member States shall ensure that the features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment are implemented by the developer, and shall determine the procedures regarding the monitoring of significant adverse effects on the environment.³⁷
- When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall promptly inform the public and the authorities referred to in Article 6(1) thereof, in accordance with the national procedures, and shall ensure that the following information is available to the public and to the authorities referred to in Article 6(1), taking into account, where appropriate, the cases referred to in Article 8a(3): (a) the content of the decision and any conditions attached thereto as referred to in Article 8a(1) and (2); (b) the main reasons and considerations on which the decision is based, including information about the public participation process. This also includes the summary of the results of the consultations and the information gathered pursuant to Articles 5 to 7 and how those results have been incorporated or otherwise addressed³⁸.

²⁹ Article 5(1)(d), EIA Directive (as amended).

³⁰ Article 6(2), EIA Directive (as amended).

³¹ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information.

³² Article 6(3), EIA Directive (as amended).

³³ Article 6(4), EIA Directive (as amended).

³⁴ Article 6(5), EIA Directive (as amended).

³⁵ Article 6(6), EIA Directive (as amended).

³⁶ Article 6(7), EIA Directive (as amended).

³⁷ Article 8(a)(4), EIA Directive (2014).

³⁸ Paragraph 1, Article 9, EIA Directive.

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- In December 2020, the European Commission sent a letter of formal notice (Ref. INF/20/2142) to Belgium regarding bad transposition of the EIA Directive in terms of not prescribing the use of electronic notice, not requiring the developer to provide all necessary information to the authorities or the authorities to share this information with the public.³⁹

2.2.4 National applicable law:

- Requirements of the SEA Directive are implemented by the Decree on environmental impact assessment of plans and programmes (SEA Decree)⁴⁰. The procedure for land use planning and SEA was been modified since, but the requirement is that the SEA report and the draft plan is available for public consultations for at least 60 days.
- EIA is carried out based the Decree on the Environmental Permit⁴¹ (hereinafter: EPD) and supporting acts.
- The EIA report, once considered complete by environmental authorities (EIA report approval), is consulted with relevant competent administrations, public institutions and public authorities, for their opinion within 30 days⁴². Consultations are carried out by the administration. During public consultations, any natural or legal person may submit his/her views, observations and objections⁴³. The public consultation shall last 30 days⁴⁴.
- The competent authority to organise public consultations is a municipality. The complete EIA file can be viewed during the public inquiry.
- Decree on minimum safety requirements for tunnels in the Trans-European road network (2007).⁴⁵

2.2.5 The EIB Statement of Environmental and Social Principles and Standards (ESPS, 2009).

- The EIB Statement of Environmental and Social Principles and Standards (Background, paragraph 4)⁴⁶ states that *“whereas the EIB finances projects for a number of EU policy reasons, among the priority lending priorities of the Bank in support of sustainable development is the protection and improvement of the natural environment and the promotion of sustainable communities”*.
- The ESPS (Background, paragraph 9) also states that “the Statement must be applied by the staff of the EIB in all its operations. It also informs promoters, the public, affected communities and other stakeholders, including other EU institutions, in particular, the EC, other Multilateral Financial Institutions (MFIs), financial and business partners, and representatives of civil society, including non-governmental organisations (NGOs), as to the requirements of the Bank”.

2.2.6 Standard 1 on Assessment and Management of E&S impacts and risks⁴⁷ includes the following:

- The overall objective of Standard 1 is to outline the promoter’s responsibilities in the process of assessing, managing and monitoring E&S impacts and risks associated with the operations, specifically stakeholder engagement. The promoter shall ensure that such stakeholders are appropriately engaged with on E&S issues that could potentially affect

³⁹ Information on the EC Letter of Formal Notice can be found [here](#).

⁴⁰ The link to the SEA Decree of 12 October 2007 is available [here](#) (in Flemish). It came into force as of 01 December 2007.

⁴¹ Decree on the Environmental Permit ([EPD](#)) of 25 April 2014.

⁴² Article 12 Decision of 17 February 2017 of the Flemish Government.

⁴³ Article 23 of the Decree on the environmental permit of 25 April 2014 (hereinafter, [EPD](#)).

⁴⁴ Article 16 of the Decision of the Flemish Government of 27 November 2015 implementing the Decree on the environmental permit of 25 April 2014 (hereinafter, [EPD Implementing Decision](#)).

⁴⁵ Decree on minimum safety requirements for tunnels in the trans-European road network (2007) can be found [here](#). [It transposed the EU Directive 2004/54/EC of the European Parliament and of the Council of 29 April 2004 on minimum safety requirements for tunnels in the Trans-European Road Network into the national law.](#)

⁴⁶ The EIB Statement of Environmental and Social Principles and Standards (2009) is available [here](#) (in English).

⁴⁷ The EIB Environmental and Social Standards (2018) is available [here](#) (in English).

them through a sustained public participation process comprising both information disclosure and meaningful consultation.

- The promoter shall carry out an E&S assessment for any project, which is likely to have significant E&S impacts and risks. The promoter shall be responsible for putting in place its own systems that will allow for a comprehensive and rigorous E&S assessment of impacts and risks, using an integrated approach in order to achieve a high level of protection of the environment taken as a whole.
- The promoter shall establish and maintain throughout the lifecycle of the project a process for identifying the E&S impacts and risks of the project. The process will consider all relevant E&S impacts and the stakeholders who are likely to be affected by the project.
- A comprehensive environmental and/or social assessment is carried out for projects classified under Annex I of the EU EIA Directive, and/or where an ESIA is required by national legislation or for projects where likely significant impacts and risks on the environment, population, human health and well-being have been determined. These projects require specific formalised and participatory assessment processes.

2.2.7 Standard 10 on Stakeholder Engagement includes:

- Specific objectives arising therefrom for the promoter amount to establishing and maintaining a constructive dialogue between the promoter, the affected communities and other interested parties throughout the project life cycle, ensuring that all stakeholders are properly identified and engaged and engagement of stakeholders in the disclosure process, engagement and consultations in an appropriate and effective manner throughout the project lifecycle, in line with the principles of public participation, non-discrimination and transparency.
- In terms of monitoring, the promoter will arrange for all necessary provisions to assure stakeholder engagement during the monitoring phase. Thereby, the promoter will endeavour to involve independent third parties (e.g. CSOs, NGOs, national human rights institutions) or to facilitate community-driven monitoring, where practical and acceptable by the communities concerned.
- In terms of reporting, the promoter will establish regular communication and reporting channels back to the communities and individuals impacted and concerned, whether through non-technical summaries of progress updates, engagement activities, public meetings or targeted issue-based hearings.

2.3 Responsibilities of the EIB

- 2.3.1 In line with the EIB Statement of Environmental and Social Principles and Standards (ESPS)⁴⁸, the responsibility for compliance with the project applicable standards lies with the promoter and local authorities. However, the EIB will not finance projects that do not meet project applicable standards. The EIB performs its due diligence during project appraisal and monitoring in order to establish whether the projects meet the project applicable standards (see also paragraph 2.2.1).
- 2.3.2 The ESPS requires the EIB to appraise projects it finances. The appraisal takes place prior to signature of the finance contract⁴⁹. The appraisal aims to, inter alia, assess the project's impact and whether the project complies with the project applicable standards. Sometimes, the appraisal results in conditions for disbursement. The promoter must complete these conditions to the satisfaction of the EIB prior to the disbursement of the EIB financing⁵⁰.
- 2.3.3 EIB's Environmental and Social Handbook (2013, Volume II) (hereinafter, the Handbook), describes the EIB's due diligence and monitoring procedures:

⁴⁸ Available at: https://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf.

⁴⁹ <https://www.eib.org/en/projects/cycle/index.htm>

⁵⁰ Paragraph 256, indent 2 of the EIB's 2013 Environmental and Social Practices Handbook.

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- The Handbook⁵¹ provides an overview of the EIB's E&S standards, documentation and information requirements from the promoter and internal due diligence. For all projects requiring an EIA, at least a non-technical summary (NTS) will be made public, either on the EIB's projects website or by a link to the promoter's website.
- The EIB's environmental and social experts support the EIB's appraisal teams in the E&S assessment of operations. Its level of intervention is determined by the level of E&S due diligence required, the significance and complexity of the potential impacts and risks identified at the pre-appraisal stage⁵².
- The Projects Directorate members of environmental assessment group (ENVAG) are specialists that work to ensure the quality and consistency of the environmental and social due diligence throughout the EIB project cycle and across sectors. The EIB's environmental and social experts will provide back-up support to individual members of ENVAG as required⁵³.
- Once the promoter signs the finance contract, the EIB is required to monitor the project. The monitoring aims to ensure compliance of the project with the EIB's approval conditions⁵⁴.

2.3.4 EIB's Transport Lending Policy⁵⁵ provides that:

- Transport project selection and appraisal at the EIB is performed via a multi-stage and multi-dimensional approach designed to maximise the value added of the Bank's lending so as to best contribute to furthering EU policy.
- The Bank's investments reflect one or more of these public policy goals, and the Bank finances transport projects to the extent that they contribute to meeting the objectives set in the Bank's Statute and Corporate Operational Plan. The project pipeline of the EIB reflects the investment needs of promoters, who generate and implement projects.
- The EIB conducts an extensive technical due diligence exercise on all of the projects presented to it for funding. This appraisal process has certain common aspects for all sectors. In addition, each sub-sector has a number of specific considerations.
- Lastly, the EIB will consider financing certain types of road improvement projects on the existing network that can be shown to be of common interest to several Member States even when such a project is not located on the TEN-T or in a convergence region. Such projects are limited to the following: either where the majority of benefits are expected to be realised as a result of improvements to road safety, security for heavy goods vehicles, or traffic management; or projects which anticipate adverse climate change impacts.⁵⁶

2.3.5 EIB Group Transparency Policy⁵⁷ states the following:

- The project summary on the EIB's portal includes a link to the EIB Public Register, which hosts the non-technical summary (NTS) of an EIA and other relevant documents pertaining to a project's E&S performance. EIB staff endeavour to meet any specific requests for information on particular EIA/EIS-related issues and documents. The EIB requires promoters to make EIA-related documents available to the public in an appropriate location and form, and also encourages them to make public any additional E&S information related to the project⁵⁸.
- If, for reasons of confidentiality, the Bank is unable to divulge the information requested, in full or partially, the reason(s) why such information cannot be provided shall be stated and

⁵¹ Paragraph 28, section A.5 Environmental and Social Assessment – Guiding Principles of the Handbook (2013).

⁵² Paragraph 11, section A.3 Roles and Responsibilities of the EIB's E&S Practices Handbook (2013).

⁵³ Paragraphs 13 and 16, section A.3 Roles and Responsibilities of the EIB's E&S Practices Handbook (2013).

⁵⁴ Paragraph 270 of the EIB's E&S Practices Handbook (2013).

⁵⁵ EIB's Transport Lending policy (2011) can be found [here](#)

⁵⁶ Paragraph 68, EIB's Transport Lending Policy (2011).

⁵⁷ EIB Group Transparency Policy (2015) can be found [here](#).

⁵⁸ Section 4.9 of the EIB Group Transparency Policy (2015).

the applicant will be informed of the right to make a voluntary confirmatory application or lodge a complaint⁵⁹.

- The primary responsibility for information and engagement with local stakeholders on a project basis lies with the project promoter and/or borrower in line with the Bank's Environmental and Social Handbook⁶⁰.

3 THE EIB'S PROJECT CYCLE

The EIB's project cycle consists of pre-appraisal, appraisal, decision for financing, signing of the finance contract and project monitoring⁶¹.

3.1 Pre-appraisal

- 3.1.1 At the stage of preparation of pre-appraisal in 2017 the project was described in four segments: 1) left bank, 2) Scheldt tunnel and dry dock, 3) Oosterweel port complex and canal tunnels and 4) northern ring R1. At the time of the pre-appraisal the final environmental decisions were still pending.
- 3.1.2 The pre-appraisal noted that an investigation of the Council of State regarding complaints filed by the non-governmental action groups had been ongoing. The pre-appraisal noted that the management of E&S impacts and risks shall be assessed in detail during the appraisal.

3.2 Appraisal

- 3.2.1 The EIB appraisal was completed in 2018. It presented the project as described during the pre-appraisal stage, but in more detail. It clarified that the construction of dry dock is in Zeebrugge (attached to the left bank element) and that the project also includes the reconstruction of the Royerslock (attached to the right bank element).
- 3.2.2 The appraisal team also prepared an Environmental and Social Data Sheet (ESDS)⁶², which noted the following environmental approval procedures:
 - SEA for GRUP and project EIA procedures, which took place between 2002 and 2007.
 - Renewed SEA procedure for GRUP between 2011 and 2014.
 - The EIA for the left bank section with notification issued on 27 May 2015 and an EIA approved on 7 July 2016, which also included an AA with mitigation measures.
 - The EIA procedure for the dry dock launched with notification on 19 December 2016, and an EIA approved on 30 August 2017 with an AA resulting in mitigation measures.
 - The EIA for the Oosterweel (right bank and Scheldt tunnel) with notification issued in August 2015. The appraisal finished in 2018, therefore before the decision was issued.
- 3.2.3 The appraisal noted that the project is situated near to or passes through the following Special Protection Areas (SPA): (1) Birds Directive area "Kuifeend en Blokkersdijk" (BE2300222) and (2) the Habitats Directive area "Schelde- en Durmeëstuarium van de Nederlandse grens tot Gent" (BE2300006). The Natura 2000 sites relevant to the auxiliary activity in Zeebrugge were the "Polders" (BE2500002 and BE25000932). The ESDS describes the key impacts on the Natura 2000 network and measures established within the AA procedures, where completed.

⁵⁹ Section 5.25 of the EIB Group Transparency Policy (2015).

⁶⁰ Section 7.6 of EIB Group Transparency Policy (2015).

⁶¹ More on the EIB's project cycle is available here: <https://www.eib.org/en/projects/cycle/index.htm>.

⁶² The ESDS is available [here](#)

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- 3.2.4 The appraisal noted that the promoter would be required to, as applicable, address the issues raised in the SEA and in the project EIAs and “make sure the prescribed mitigation measures are taken during construction and operation of the infrastructure”.
- 3.2.5 The appraisal stated that the “final project EIA for the Oosterweelink subcomponent (right bank & Scheldt tunnel) including the cumulative impacts of the different project components is to be completed, approved by the competent authorities and provided to the Bank as a condition for first disbursement”. Also prior to the first disbursement, the appraisal recommended the promoter provide the EIB with a copy of the opinion (Form A or similar) from the competent authorities confirming that there are no remaining significant impacts on Natura 2000 areas or biotopes to be expected from the dry dock project component in Zeebrugge.
- 3.2.6 The draft ESDS noted that the promoter shall be responsible for environmental management of the project under the supervision of the competent environmental authority, and as set out in the project’s environmental monitoring plan (EMP). Specific E&S monitoring arrangements and the potential identification of E&S performance indicators shall take place once such EMPs are developed by the promoter.
- 3.2.7 The appraisal also noted that in 2018 the AA was already executed at plan level (SEA), whereas Form A was still pending for Zeebrugge project activity and was set as a condition for disbursement.

3.3 Board approval

- 3.3.1 The EIB’s Board of Directors (BoD) approved the project financing for up to €1 billion in 2018. The project is financed through a number of finance contracts.
- 3.3.2 The project description in the BoD approval is very similar to the one provided during the pre-appraisal. Zeebrugge auxiliary works are noted in the ESDS, which is an annex to the BoD report.
- 3.3.3 The conditions for the first disbursement are provided in the ESDS, which is attached to the Board approval, and mirror the appraisal (see paragraph 3.2.5).

3.4 Finance contract

- 3.4.1 The project description in the finance contracts mirrors that in the appraisal. Conditions of disbursement in the first finance contract mirror the conditions of the EIB’s appraisal and approval (see paragraph 3.3.3). No disbursement has yet taken place. The finance contract requires, inter alia, the promoter to respect several project and environment-related information and reporting undertakings.

4 ANALYSIS OF THE PROJECT’S COMPLIANCE WITH APPLICABLE PROJECT STANDARDS AND THE EIB’S ROLE

4.1 Allegation 1: Public consultation and stakeholder engagement

- 4.1.1 The following is alleged:
 - The way in which the promoter has shared information obstructs proper access to information and/or renders the public consultation ineffective.
 - Lack of transparency in the project and its process and obstructed access to requested documents by promoter.

- The requests to be heard or participate in meetings have been resisted and there was inappropriate behaviour towards the complainant in public consultation meetings.

Findings on how the promoter has shared information rendering the public consultation ineffective

- 4.1.2 In conducting public consultations and stakeholder engagement, promoters are required to comply with the EIB's Standard 1 and, if applicable, Standard 10 (see section 2.2 above). During the project due diligence, the EIB is required to look at the procedures leading to development consent for the project it is financing. Other procedures, e.g. regarding the functioning of the public administration and or regional administration, fall outside of the scope of the EIB's review.
- 4.1.3 According to the EIB's E&S standards, the developer has to ensure the quality of environmental information provided for decision making within EIA or SEA procedures (see paragraph 2.2.6). This requirement extends to the preparation of the non-technical summary⁶³ (NTS) and making information available to the public in the format compliant with law. This is without prejudice to the infringement proceedings started by the European Commission against Belgium in terms of access to information in EIA proceedings (see paragraph 2.2.3).
- 4.1.4 During the project development within the latest (second) modification of the GRUP, the project's environmental impacts were assessed in three⁶⁴ environmental procedures: an SEA and two EIAs, as well as EIA procedures conducted for auxiliary works (see section 1.2 of this report). During the environmental appraisal procedures, the authorities responsible provided information to the public at notification stage, at the stage of completed SEA and EIA reports, and at the issue of the decisions, as required by national requirements and EU law.
- 4.1.5 The EIA documentation for such a complex project comprised a number of sections, reiterations and different formats: text, maps, data sets, analysis, etc. As required by the EIA Directive, for the purpose of the EIA procedure, the promoter complied with the requirement to provide the authorities with the NTS to facilitate public consultation procedure; however, all information prepared for the EIA was also provided to the public. For the EIA procedures, the promoter prepared complex EIA reports, which have been amended based on comments from environmental authorities, the public and other stakeholders. EIA reports, including NTSs as separate documents, were approved as complete and suitable for consultations by environmental authority and afterwards provided to the public on the internet portal of the municipality (see paragraph 1.2.9), in line with national requirements (see paragraphs 2.2.3 and 2.2.4).
- 4.1.6 The promoter prepared a dedicated project portal that it uses to keep the public informed about the preparation and execution of the project (see paragraph 1.2.9). Project environmental information was also shared on the EIB's website (see paragraph 4.4.6).
- 4.1.7 The timing for consultation as required by EU and national law is fixed for such a procedure (see paragraphs 2.2.3 and 2.2.4) and, to facilitate the consultations, NTSs are drafted in such a way as to break down relevant technical information to target non-specialists and non-technical readers. The NTSs for the left and the right bank project components were 199 and 185 pages, respectively (see Appendix 1). The authorities found them suitable for public consultations, which is demonstrated by the approvals of the SEA and EIA reports.
- 4.1.8 The complainant goes beyond the procedures noted above, which is outside of the scope of the due diligence by the EIB and outside of the scope of the EIB-CM procedures. The latter also state that the EIB-CM shall not pass judgment on activities under the sole responsibility of third parties, notably the promoter or borrower, etc. unless an infringement of EU law is

⁶³ Non-technical summary is a summary document of the environmental (and social) impact assessment or the strategic environmental assessment, written in non-technical language so that the public can easily understand it. Environmental and Social Handbook (Volume II).

⁶⁴ The reference is made to the latest relevant procedures conducted after the relaunch of the Masterplan 2020 and the GRUP in 2010

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established by the European Commission or a competent judicial authority⁶⁵ and the EIB-CM is not a legal enforcement mechanism and shall not substitute for the judgment of competent judicial authorities⁶⁶.

- 4.1.9 The EIB-CM has no knowledge that development consent decisions issued by environmental authorities have been appealed against or contested in the national courts.

Findings on the lack of transparency in the project and its process and obstructed access to requested documents by the promoter

- 4.1.10 In terms of transparency in the project preparation, the promoter is required to make environmental (SEA and EIA-related) documents available to the public in line with the EIB's E&S standards and EIB Group Transparency Policy (see paragraph 2.3.5). Availability of other documents are subject to national law and the promoter's consideration.
- 4.1.11 The EIB posted a large number of project-related documents on its website dedicated to the project. Please see the analysis on this subject in section 4.4 of this report below.
- 4.1.12 The complainant pointed out that the minutes of the meeting regarding the project, which took place in Antwerp in June 2020, were not accessible to him. The EIB-CM found this document in the public domain and it was still available at the time of drafting this report⁶⁷.
- 4.1.13 The complainant requested the developer provide him with the project's EIA dossier before it was approved by environmental authorities for consultation (16 December 2019), and received it after the decision approving its suitability for consultation, which in itself does not constitute a breach of a public consultation procedure. An approval of the EIA report (dossier) is not an EIA decision (or development consent), but a step within the development consent procedure. Any consultation outside of the formal consultation periods are optional and can be conducted by the developer as suitable.

Findings regarding ignored requests to participate in meetings and inappropriate behaviour towards the complainant in public consultation meetings

- 4.1.14 For the project in question, relevant procedures with public participation were SEA and EIAs (also including for axillary projects), for which public consultations including public meetings were carried out based on national requirements, which transposed the EIA Directive (see section 1.2 and Appendix 1). The outcomes of the public meetings were summarised by local authorities in both EIA proceedings and provided information on how the comments, suggestions and objections from the public were taken into account with justification (see Appendix 1).
- 4.1.15 In 2020, the complainant submitted his objections⁶⁸ to the City of Antwerp and the Environmental Department of the Flemish Government, both of which responded to the objections in separate proceedings. The letters of objections included information regarding the complainant's ignored request to participate in meetings, which were held outside of the EIA or SEA procedure and were linked with policy and plan decision-making process prior to the SEA and/or EIA procedures for the project. Other meetings⁶⁹ outside of the formal procedures approving the project are outside of the EIB-CM investigation, as they are not governed by the "environmental law".
- 4.1.16 The complainant claims that he was inappropriately treated in the project-related meetings and was not allowed to present the alternative that he co-designed and is advocating for.
- 4.1.17 The EIA Directive states that the EIA procedure is carried out for the preferred alternative of the promoter and that the analysis shall include "at least a description of the reasonable

⁶⁵ Paragraph 1.4.5 of the EIB-CM Procedures.

⁶⁶ Paragraph 2.4.1 of the EIB-CM Procedures.

⁶⁷ The document Ref. OMV_2020034861 was located [here](#) (last accessed on 07/09/2021).

⁶⁸ The complainant informed the EIB that on 2 June 2020, he wrote a letter to the City of Antwerp complainant about the short EIA public consultation phase (30 days) and on 3 July 2020 he submitted a more detailed objection letter.

⁶⁹ The complainant noted various Oosterweel connection stakeholder meetings such as meetings of the parliamentary committees, "action committees", task forces or focus groups organised by the regional government or the City of Antwerp on the project.

alternatives studied by the developer” (see paragraph 2.2.3). The best place for choosing the preferred alternative is the strategic planning. In case of this project, the decision on the preferred alternative was done at the time of the second GRUP (see section 1.2 above). The environmental impacts of different alternatives were compared during the SEA (so-called plan-EIA), the procedure concluded by the Flemish Government issuing its decision on the GRUP in 2015 (see Appendix 1 to this report).

- 4.1.18 At the stage of the EIA, a change of the preferred alternative is not likely, unless additional environmental information becomes available establishing that the project is likely to significantly impact the Natura 2000 network, invoking an Article 6.4 AA procedure as per the Habitats Directive. This was not the case for this project.
- 4.1.19 For the project in question, a report describing the alternatives studied by the developer was prepared and included for the EIA decision making.⁷⁰

Conclusions

- 4.1.20 The promoter provided environmental information gathered for the SEA and EIA procedures of the project and relevant opinions and decision constituting development consents. The documents received by the EIB demonstrate the fulfilment of the requirements of environmental law (by the promoter and authorities) including consultations with relevant authorities and the public.
- 4.1.21 The promoter prepared information and shared it on its website in addition to information on a website of the authorities, as required by law, without prejudice to the infringement proceedings started by the European Commission in terms of access to information in EIA proceedings, as noted in paragraph 2.2.3.
- 4.1.22 The EIB-CM suggests that the complainant use information channels at the national level and the EIB's InfoDesk⁷¹ to request the project-related information, which, in the case of the EIB's InfoDesk, would be handled in line with the EIB Group Transparency Policy⁷².
- 4.1.23 No maladministration was established in terms of the project's compliance with the EIB's environmental and social standards. The EIB's compliance with its own standards for this allegation is described in section 4.4 below.

4.2 Allegation 2: Environmental impact assessment

- 4.2.1 The following is alleged:
- The permit application is incomplete and adjustments may be needed.
 - The project's failure to comply with EU environmental standards on noise, air pollution and safety aspects and to appropriately consider alternatives in the EIA.
 - The EIA was based on outdated or insufficient traffic data.

Findings regarding alleged incomplete permit application and adjustments needed

- 4.2.2 In line with the EIB's own policies, the responsibility for compliance with the project applicable standards lies with the promoter and local authorities (see section 2.2 above), which carried out an environmental project appraisal at the stage of the GRUP (SEA) and at the project design stage (EIA). All relevant EIA and construction permits have been issued to date with evidence provided to the EIB. The project proposed for the EIB's financing does not include other projects that may be considered auxiliary, such as trenching or the “overhang”, and therefore were not appraised by the EIB.
- 4.2.3 Any future adjustment of permits/approvals, if needed, is the responsibility of the promoter. Such developments may arise if new information or issues are encountered post-approval and during implementation. As established by contractual documentation with the EIB, the

⁷⁰ The Note on Alternatives for the EIA of Oosterweelverbinding is available [here](#)

⁷¹ EIB's InfoDesk page is available here: <https://www.eib.org/en/about/partners/cso/contacts/index.htm>

⁷² EIB Group Transparency Policy (2015) is available [here](#), last accessed on 28 July 2021.

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promoter is responsible for ensuring that the project is implemented in accordance with the technical description as may be modified from time to time with the approval of the Bank, and completed by the final date specified therein. The promoter is responsible for maintaining requisite environmental approvals of the project and for complying with any such approvals. The promoter is responsible for reporting to the EIB any material change to the project, or any suspension, revocation or modification of any environmental approval.

Findings regarding the project failed to comply with EU environmental standards on noise, air pollution and safety aspects and appropriately consider alternatives in the EIA

- 4.2.4 As demonstrated by the project preparation and decision making and described by the ESDS, the project was substantially redesigned a decade ago from an original concept devised at the beginning of the 21st century or even earlier. It is considered good practice to analyse alternatives early in the decision-making process and to engage all relevant stakeholders, which was evidenced by the project procedure and documentation (see section 1.2 and Appendix 1 of this report).
- 4.2.5 Oosterweel location and format alternatives were analysed in the process leading to the GRUP, which was subject to an SEA, as required by the SEA Directive and national law (see paragraphs 2.2.2 and 2.2.4). A separate report on project alternatives was prepared and was used in public and stakeholder consultations.
- 4.2.6 At the stage of environmental permitting for the project, it was subject to an EIA, carried out based on the EIA Directive and national law (see paragraphs 2.2.3 and 2.2.4). The EIA Directive requires analysis of the project, as proposed by the developer, for its significant negative impacts on the environment. It also requires the EIA information to describe the reasonable alternatives studied by the developer that are relevant to the project and its specific characteristics. The environmental authorities found EIA information provided by the developer to be sufficient and in line with national requirements, as evidenced by the approvals of EIA reports to be ready for consultations (see Appendix 1).
- 4.2.7 The noise management of the project was analysed in part 9 of the EIA report and noise during the construction of the project was analysed in part 17 of the EIA report. The promoter proposed a range of measures including walls and screens. In some places noise will increase because of the new infrastructure present where there was nothing before, however, overall, it is expected that the project will have a positive noise effect in the study area as compared to the baseline situation due to the measures imposed to mitigate negative effects, of which the project is one. It is to be noted that the project was approved with a monitoring plan that includes noise measurement.
- 4.2.8 Air pollution was analysed in part 17 of the EIA report and the conclusions with mitigation measures were optimised, also taking into account the comments received on the report. As explained in the EIA dossier and decisions, by providing a new traffic channel within the existing transport network it is likely that next to the road the air quality may deteriorate, but it is expected that a gradual improvement in air quality will take place due to the change of the vehicle fleet and advancing to non-fossil fuel-based traction power.
- 4.2.9 The Tunnel Safety Group is responsible for tunnel safety and issues/conditions. This authority was also consulted during the development consent procedures. Such approval may be integrated or separate from the EIA procedure in accordance with national law, but is considered a part of development consent. One of the applicable laws is the Decree on minimum safety requirements for tunnels in the trans-European road network (2007) (see section 2.2).
- 4.2.10 The promoter provided the EIB with information on project alternatives studied, compared and assessed during project strategic planning and SEA (Plan-SEA) as well as the description of alternative studies within the EIA documentation. Information prepared for EIA procedures for both left and right bank described environmental impacts of the main (preferred) alternative and described other alternatives studied. At the stage of the EIA, the promoter is required to describe the alternatives studied and the reasons for choosing the project proposed for development consent, but it is not required to compare alternatives in detail. Alternatives discussed during the EIA concern specific solutions for the project in question and were provided in the EIA dossier.

- 4.2.11 The complainant expressed the most disappointment and dissatisfaction with the key alternative selected that goes back to the GRUP and the choice of the project in general. According to the EIB Transport Lending Policy, the EIB is required to appraise and decide on the alternative as proposed by the promoter. The EIB does not participate in the transport policy discussion on the national level, but rather enables financing assistance for projects contributing to the objectives of the European Union, as expressed in the EIB's Transport Lending Policy⁷³. During the appraisal, the EIB services found that the project complied with the above-mentioned policy, therefore the proposed project was found suitable for the financing decision.

Findings on the EIA allegedly using outdated or insufficient traffic data

- 4.2.12 Transport projects, which typically take over a decade to plan and prepare, use dynamic traffic data, therefore the projections are important in analysing expected environmental impacts, especially air pollution, noise and vibration. That said, the projections are a result of assumptions. Other considerations such as road safety requirements, traffic management and anticipated climate change effects should all be taken into account, alongside evolving applicable policy directions (see paragraph 2.3.4). The actual impacts of the project once it is constructed will be monitored by relevant monitoring systems. The EIB performs monitoring in order to establish whether the project meets the project applicable standards (see section 2.3 above). The promoter, as required by the finance contract, will provide the EIB with information during annual reporting, which also shall include any major environmental issue (see also paragraph 3.4.1 and section 4.4).
- 4.2.13 The EIA dossier (report) for the left bank was approved in 2016 while the EIA permit was issued in 2019. The EIA report provides information on the population growth up to 2015. 2014 was used as a base year with projections calculated for the reference year of 2020. The same baseline date and reference year for projections was used in the EIA dossier (report) for the right bank. The EIA dossier for the latter was found to be complete in December 2019, while the EIA decision was issued in 2020. As both EIAs were a part of decision making for the project as decided in the GRUP (2015), it would have been inappropriate to use a different traffic model and assumptions in the EIA for the right bank, especially that both EIAs were launched in 2015.
- 4.2.14 An allegation concerning negative impacts such as wall cracking in individual houses on the *Ten Eekhovellei* in Deurne, Antwerp was also raised by the complaint. An article was drawn to the attention of the EIB-CM with information that the cracks in 11 houses have appeared since 2017. The area may be affected by works performed on the right bank section for which preparatory works started in 2017. The EIB-CM was informed that in March 2021 the developer appointed an independent expert to determine the cause of the damage in the above location.
- 4.2.15 The complainant claimed that the project will result in the demolition of a family farmhouse. Based on the address of the farmhouse and the maps provided in the EIA dossier, the property is outside of the impact zone of this project. There is no evidence that the property has been demolished. Lastly, the EIB-CM was informed that because of the project, no forced expropriation was needed and that no civilians had to be resettled, though voluntary moving agreements were made with some companies and institutions located close to the project area.

Conclusion

- 4.2.16 The EIB-CM did not find the allegation, as described in paragraph 4.2.1, grounded with regards to the project's compliance with EIB standards and procedures related to development consent. The promoter noted the alleged project-related negative impacts on the properties and started an investigation. The EIB services are however advised to follow up on the topic during the annual reporting within the current financial contract. The EIB's compliance with its own standards for this allegation is described in section 4.4 below.

⁷³ The EIB's Transport Lending Policy (2011) is available [here](#).

4.3 Allegation 3: Project costs and financing

4.3.1 The following is alleged:

- The financing plan and the social cost-benefit analysis are outdated and of poor quality.
- The liability of contractors is not sufficiently addressed in the integrated environmental permit application.

Findings regarding financing plan and the social cost-benefit analysis being outdated and of poor quality

- 4.3.2 The project approval noted that the promoter is responsible for the project financing, the realisation and the management of transport infrastructure in the Antwerp region. BAM was created to implement the Antwerp Mobility Master Plan 2000 and therefore also to implement the Oosterweel link project. From a financing point of view, the EIB is one of the project financing sources, as it is mandated by the EU to meet the investment needs linked with various EU policies such as transport policy, which also includes TEN-T⁷⁴.
- 4.3.3 In appraising the project for proposed co-financing, the EIB reviews cost-benefit analyses (CBA), when such analyses are available from promoters. However, the EIB may also undertake its own cost-benefit analysis applying methods drawing on international best practice⁷⁵.
- 4.3.4 During project appraisal, the EIB services reviewed the promoter's CBA and concluded that while using a standard methodology, its analysis appeared robust. The appraisal also noted that the promoter's study had a higher ERR⁷⁶ as a result of higher benefits for the users, while the EIB's ERR was more conservative, but still came up as good.
- 4.3.5 While the CBA is a useful tool in establishing the economic indicators for the proposed development, it is a prognostic tool. While the EIB has the possibility to use the CBAs of a promoter, very often it carries its own analysis. In this case, the final result was found to be acceptable for the EIB to support the project and contribute to its financing.

Findings regarding liability of contractors not being sufficiently addressed in the integrated environmental permit application

- 4.3.6 The liability — which is linked with the construction of the project and covers many aspects such as environmental, design, construction liability, etc. — is expected to be handled by the promoter based on national law. The complex project will be implemented in five contracts supported by a risk management system established by the promoter⁷⁷.
- 4.3.7 Environmental risks are to be minimised via the implementation of development consent decisions, which include numerous conditions including environmental ones. The conditions will be transferred into the design documentation. Their implementation is with the promoter and will be monitored by various monitoring plans which can be found in permits (noise and vibration monitoring, air quality, etc.) stemming either from the EIA or from the consultation process. Inspections and audits will be carried out to oversee the implementation of the measures.

Conclusions

- 4.3.8 The EIB-CM did not find the allegation detailed in paragraph 4.3.1 grounded. The EIB's compliance with its own standards for this allegation is described in section 4.4 below.

⁷⁴ EIB's Transport Lending policy (2011).

⁷⁵ EIB's Transport Lending policy (2011).

⁷⁶ Economic rate of return.

⁷⁷ Board report, page 3.

4.4 Responsibilities of the EIB

- 4.4.1 The EIB performs its project due diligence during project appraisal and after the signature of the finance contract through monitoring (see paragraph 2.3.1).
- 4.4.2 The EIB services appraised the project before the EIB's decision to approve project financing taking into account EU law, the EIB's E&S standards (see section 2 of this report) and the EIB's Transport Lending Policy (see paragraph 2.3.4). Relevant extracts from the EIB's compliance check are described in section 3 of this report, as project information is typically complex.
- 4.4.3 During the investigation, the EIB-CM checked the project appraisal and monitoring processes. The EIB carried out its pre-approval due diligence in two stages: the pre-appraisal and appraisal. The EIB-CM established that the Services saw the project as being in line with the EIB's E&S standards, therefore no environmental undertakings were set in the financial contracts signed to date. The EIB received all information requested from the promoter.
- 4.4.4 Although covered by the Handbook (2013), the services did not engage with the EIB's environmental services, even though at pre-appraisal stage it was noted that the management of environmental and social impacts and risks would be assessed in detail during the appraisal, especially that "complaints filed by the non-governmental action groups have been ongoing". The appraisal did not provide information on social issues and or an attempt to initiate a referendum on the project⁷⁸ (see paragraph 3.2.2). However, the 2009 referendum was organised on the project, for which the Antwerp municipality issued a negative opinion and which the Flemish Government decided to redesign. In 2017, there was a risk of continued opposition of the action groups to the new project, but by the time of the EIB's project appraisal, the promoter and the action groups had agreed on a collaborative design, "Toekomstverbond", therefore the social aspects were not considered significant and the specific social experts were not engaged.
- 4.4.5 The ESDS prepared in 2018 noted that the AA was already done within the SEA, whereas Form A was still pending for the Zeebrugge auxiliary project activity and was set as a condition for disbursement. Another two AA procedures carried out within the EIAs for left bank (finished in 2019) and right bank (finished in 2020) were not subject to similar conditions, even if the procedures were still ongoing at the time of the approval of the financing by the EIB. In addition, at least two other procedures for auxiliary works were not noted by the ESDS (see paragraph 1.2.11), but are linked with the project. The above was not caused by non-compliance with the EIB's environmental and social standards, but was a result of inconsistencies in internal due diligence.
- 4.4.6 As the project underwent an EIA, as required by the procedures (see paragraphs 2.3.3 and 2.3.5), the EIB also provided project-related information on its internet portal. The EIB-CM analysed information provided by the EIB services and established that shared project-related information not fit for purpose. Besides available NTSS, information on the project webpage included guidance documents of the environmental authorities, approvals of the EIA reports rendering them complete and ready for public and stakeholder consultations, and other environmental information, which is enabled by the standards. In addition, there were also repetitive copies of the same documents and documents pertaining to EIA procedure of one auxiliary activity shared on its portal. In total, 64 documents were posted on the EIB's website which made the web page hard to navigate and difficult to understand. Besides a vast number of project-related documents, project information on the portal is unorganised, overwhelming with redundancies and including very large files (some documents were over 50 MB). The NTS for the EIA of the right bank could not be found on this page.

⁷⁸ According to the complainant, some 75 000 signatures were collected against the project between 2016 and 2017, but the petition (a call for referendum) was ignored.

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- 4.4.7 The ESDS used the term “EIA approval” to describe the EIA procedure. The EIB-CM notes that the “EIA approval” endorsed the EIA report for the consultation process, but it is not the EIA decision, as required by the EIA Directive. Unsuitable terminology also may have led to the posting of so-called “EIA approvals” on the EIB’s website.
- 4.4.8 Another term used in the ESDS is “public consultation of the notification dossier”, which is a step in the EIA procedure in Belgium before the preparation of the EIA dossier or the full EIA report. This step takes place shortly after the application for the EIA decision and does not provide an indication of how long the EIA procedure may last. These early consultations are not the only consultations expected during the procedure, which for the project in question lasted several years each (see Appendix 1). In addition, no other social issue was mentioned though despite opposition to the project, which was portrayed as an overwhelmingly supported development.
- 4.4.9 The EIB services presented the project’s EIA procedures at an early stage, which was a result the timing of the ESDS drafting. However, the promoter has now received all relevant EIA and construction permits (see Appendix 1).

Conclusions

- 4.4.10 The EIB-CM established issues with the application of the EIB’s transparency standards, as unorganised project-related information was provided on the EIB’s portal, which may have led to inefficiencies in reviewing the information. Overwhelming project information on the EIB’s website with numerous duplications caused ineffective public information.
- 4.4.11 As established above, the use of open-ended terminology such as “EIA approvals” led to confusion within the EIB itself about the stage of the project development and preparation, at least in terms of environmental permitting. The EIB services deemed the project approved by environmental authorities, while it still had no EIA decisions.
- 4.4.12 The ESDS does not have a clear overview of the project permitting with a timeline ending with “EIA approvals”. Other inaccuracies include the “dry dock” permit, which belongs to auxiliary facilities of the project and not to the “Scheldt tunnel” section of the project. In addition, information on the AA, which was carried out at all stages of project assessment and for all of its components (SEA, EIA for the left bank, EIA for the right bank and EIA for the auxiliary facility in Zeebrugge) is not clear. The issues highlighted in this section of the report, such as the presentation of the AA in the ESDS, do not reflect on the project’s decision-making process, but rather show internal inconsistency in the EIB’s due diligence.

5 CONCLUSIONS AND RECOMMENDATIONS

5.1 The project’s compliance with applicable standards

- 5.1.1 The EIB-CM considers that the project is in line with the EIB’s project applicable standards in terms of the allegations submitted by the complainant.
- 5.1.2 Information was prepared as required by the EIA Directive and shared on the promoter’s website in addition to information on the website of the authorities, as required by law, without prejudice to the infringement proceedings started by the European Commission in terms of access to information in EIA proceedings, as noted in paragraph 2.2.3.

5.2 The EIB’s compliance with applicable standards

- 5.2.1 While not stemming from the complaint, in terms of the project’s due diligence by the EIB and project presentation on the EIB’s project website, the EIB-CM deemed it necessary to issue the following suggestions for improvement:
- Remove redundant and extraneous information from the project page of the EIB’s website and organise information in a clear and readable manner.

- Update the ESDS with a complete overview of the project permitting indicating the timeline of the project and correcting inaccuracies The EIB services are advised to make sure that the ESDS is formulated using unambiguous terminology.
- Strengthen the quality assurance of the drafting of ESDSs, to make sure that the terminology used is clear and unambiguous.

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 Ombudsman⁷⁹.

⁷⁹ Available at: <https://www.ombudsman.europa.eu/en/home>.

APPENDIX 1: PROJECT DEVELOPMENT AND DECISION MAKING

a. SEA for the GRUP

Procedural step	Ref. No.	Origin	Date
Master Plan	Re. Masterplan for the city of Antwerp	Flemish Government	15 December 2000
Initial GRUP with SEA ⁸⁰	Preparation of GRUP and adoption	Flemish Government	2003-2006 16 June 2006
Completion of the 1 st EIA procedure for the project ¹			2007
Decision	Re. Masterplan 2020	Flemish Government ⁸¹	30 March 2010
Decision	Re. closing of the Antwerp ring road with 2 tunnels	Flemish Government	24 September 2010
SEA report		BAM	November 2011
Public information at the SEA Notification stage			16 November and 16 December 2011
SEA Guidelines	PL-MER-0111-RL	Flemish Government	27 April 2012
Additional Guidelines	PLMER-0111-RL2	Flemish Government	26 July 2012
SEA report	Phase 3	Antea Group	30 May 2013
Additional Guidelines	PLMER-0111-RL3	Flemish Government	30 May 2013
Additional Guidelines	PLMER-0111-RL4	Flemish Government	30 August 2013
Additional Guidelines	PLMER-0111-RL5	Flemish Government	28 October 2013
Appropriate Assessment		Agency for Nature and Forests (ANB)	6 February 2014
SEA report approval	PL-0111-GK	Flemish Government	10 February 2014
Principal Decision	VR 2014 1402 Doc.0203-1	Flemish Government	14 February 2014
<i>Decision on mitigation measures</i>	<i>VR 2014 0404 DOC.0489/1</i>	Flemish Government	<i>4 April 2014</i>
GRUP public consultations			16 June to 14 August 2014
Regional governmental decision		Flemish Government	20 March 2015

b. EIA for the Left bank infrastructure works

Procedural step	Ref. No.	Origin	Date
Notification			27 May 2015
Public information	Re. EIA Notification	In Antwerp	1 June to 30 June 2015
Public information	Re. EIA Notification	In Zwijndrecht	5 June to 5 July 2015
EIA Guidelines	PRMER-2211-RL		16 September 2015
EIA Additional Guidelines	PRMER-2211-RL		21 March 2016
Opinion of the municipal council on the EIA		College of Mayors and Shipmen issued	29 April 2016
Final EIA report submitted for approval			7 June 2016
Approval of the EIA report	PRMER-2211-GK	Flemish Government ⁸²	7 July 2016
Opinion on the EIA	20162260	College Mayors and Aldermen	13 January 2017
Note	VR 2017 0812 DOC.1274/1BIS	Flemish Government	12 August 2017
Planning permit (land use)	20162260		15 December 2017

⁸⁰ Information based on ESDS

⁸¹ Minister for the Environment, Nature and Agriculture, Flemish Government

⁸² Department for the Environment, Nature & Energy, Flemish Government

Public consultation	Re. EIA dossier	18-216829	9 November 2018 to 8 December 2018
Favourable opinion with conditions		Agency for Nature and Forests (ANB)	19 December 2018
Favourable opinion with conditions		Regional Environmental Licensing Committee	8 January 2019
EIA permit for the LB	OMV/2018100299	Flemish Government ⁴	22 February 2019

Note: Works started in March 2019.

c. EIA for the Right bank (including the Scheldt tunnel)

Procedural step	Ref. No.	Originator	Date
Notification			20 August 2015
Public information	Re. EIA Notification	in Antwerp	1 September to 30 September 2015
EIA Guidelines	PRMER-2236-RL	Flemish Government ⁸³	22 December 2015
EIA Guidelines	PRMER-2236-RL	Flemish Government	10 February 2017
EIA Guidelines, part II	PRMER-2236-RL	Flemish Government	14 July 2017
Approval of the EIA report	PRMER-2236-GK	Flemish Government	18 December 2019
Application for the EIA decision		Promoter	April 2020
Public consultations	Re. EIA dossier	In the municipality of Beveren	5 June 2020 to 4 July 2020
Public consultations	Re. EIA dossier	In the city of Antwerp	5 June 2020 to 4 July 2020
Public consultations	Re. EIA dossier	Web-based	10 June 2020
Positive opinion with conditions		Agency for Nature and Forests (ANB)	16 July 2020
Pre-approval and advice of the Municipality of Antwerp	OMV/2020034861	College of Mayor and Aldermen	4 September 2020
EIA Decision	OMV/2020034861	Flemish Government	20 November 2020

d. EIA for Auxiliary works

Procedural step	Ref. No.	Originator	Date
EIA permit for the transformers, the operation of emergency power supply and batteries, the removal of groundwater leak-flow at Knoop North and the Park & Ride	MLAV1-2016-0320/SAPI/nak a	Environmental Department of Environmental Licensing Authority, Antwerp	2 February 2017
EIA permit for broadening and deepening the Boudewijn Canal; building a quay wall of approximately 900 m and building a temporary dock	OMV/2018044 615	Flemish government	4 July 2019
EIA Permit for the expansion of a temporary purification station and the construction of an effluent pipeline	OMV/2019077 748	Flemish government	10 January 2020

⁸³ Department for the Environment, Nature & Energy, Flemish Government