

## OOSTERWHEEL CONNECTION

Complaint SG/E/2020/11

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

# INITIAL ASSESSMENT REPORT

26 March 2021

---

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 (EO).

Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as set out by the European Ombudsman, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities and to project cycle-related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism is designed not only to address non-compliance by the EIB with its policies and procedures but also to endeavour to solve the problem(s) raised by complainants such as those regarding the implementation of projects.

For further and more detailed information regarding the EIB Complaints Mechanism, please visit our website: <http://www.eib.org/en/about/accountability/complaints/index.htm>

## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	5
1. THE COMPLAINT .....	6
2. THE PROJECT .....	8
3. INITIAL ASSESSMENT AND WORK PERFORMED.....	9
4. WAY FORWARD .....	10

## EXECUTIVE SUMMARY

On 30 June 2020, a citizen in the Antwerp region (hereinafter “the Complainant”) lodged a complaint with the EIB-Complaints Mechanism (EIB-CM) concerning the Oosterweel Connection project (“the Project”).

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 objective of the Initial Assessment is to clarify the concerns raised by the Complainant, understand the Complainants’ position, understand the validity of the concerns raised and to 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.

In light of the Initial Assessment and due to the technical nature of the raised allegations, the EIB-CM deems it appropriate to carry out a compliance review regarding the following allegations identified in the Initial Assessment.

### **1. Allegations concerning the public consultation and stakeholder engagement**

- 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.
- Requested documents not received from the promoter.
- Requests to be heard or participate in meetings have been resisted.
- Inappropriate behaviour towards the Complainant in public consultation meetings.

### **2. Allegations concerning the EIA and compliance with EU and EIB environmental and social standards**

- The Project fails to comply with requirements under EIB policies, procedures and standards.
- The permit application is incomplete and adjustments may need to be made.
- Failure to appropriately consider alternatives in the EIA.
- The EIA is based on outdated or insufficient traffic data.
- The Project fails to comply with EU environmental standards on noise, air pollution and safety aspects.
- Negative impacts of the Project on individuals in relation to housing.

### **3. Allegations concerning the 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.

In light of the Initial Assessment, the EIB-CM will:

- Proceed with a compliance review in line with section 2.4 of the EIB-CM Procedures
- Discard mediation possibilities due to the nature of the allegations

## INITIAL ASSESSMENT REPORT

**Complainant:** citizen in the Antwerp region

**Date received:** 30 June 2020

### 1 THE COMPLAINT

- 1.1 On 30 June 2020, the Complainant lodged a complaint with the EIB-Complaints Mechanism (EIB-CM) concerning the Oosterweel Connection project (the “Project”).
- 1.2 The Complainant informed the EIB-CM that it has filed an objection to the integrated environmental permit application (the “IEPA”) submitted by the promoter of the Project with the city of Antwerp. The Complainant requested the EIB-CM to take into consideration the concerns raised in the objection filed with the city of Antwerp as part of his complaint to the EIB-CM.
- 1.3 The Complainant alleges that the objection period of 30 days for the IEPA was too short, given the size of the file deposited with the city of Antwerp.
- 1.4 In addition, the Complainant alleges that the IEPA is not complete. The Complainant argues that the IEPA may have to be re-opened due to a potential additional building permit, and that a number of items are missing, like a solid and up-to date financing plan and/or an up to date Social Cost Benefit Analysis (“SCBA”). The Complainant argues that the IEPA contains outdated data, that work is superfluous as changes to the IEPA are expected and that costs are disproportionate as a result of redundant studies and work.
- 1.5 The Complainant refers to a calculation by the Court of Accounts (*Rekenhof*) of 2017, which amounts to a total Project cost of approximately € 15 billion, when all the costs are taken into account, including for the full overhang of the entire ring road. The Complainant alleges that the public has not been well informed in this respect, which he considers contrary to good administration. In addition, the Complainant alleges that the costs of the Project have not been included in the Flemish budget.
- 1.6 The Complainant alleges that the IEPA does not sufficiently address the issue of liability of the contractors if the Project is split into five sub-projects.
- 1.7 The Complainant alleges that research into alternatives has not been carried out correctly and that the Environmental Impact Assessment (“EIA”) is of poor quality in this respect. In particular, the Complainant alleges that the alternative submitted by the Complainant has not been properly reviewed and that the Complainant has not been given the opportunity to present the alternative in person.
- 1.8 Furthermore, the Complainant states that the environmental analysis is of poor quality, in particular in relation to noise and air quality requirements. With regard to noise, the Complainant alleges that the IEPA is unclear on the use of “low-noise asphalt”, and that a noise study needs to be repeated. According to the Complainant the IEPA is also unclear

regarding air pollution. Furthermore, the Complainant alleges that the investigation into safety aspects, either related or unrelated to the transport of dangerous goods, is insufficient.

- 1.9 According to the Complainant the IEPA lacks clarity regarding the layout of the proposed route in a number of places (e.g. with respect to the number of lanes foreseen in the tunnels). The Complainant also argues that the traffic model is outdated and that it is not certain that the Project will reduce traffic congestion.
- 1.10 The Complainant alleges that the criteria for the modal shift are not sufficiently defined in the IEPA, and that the IEPA does not provide a clear method to compare the effects.
- 1.11 The Complainant alleges failure to respect European law on procurement of works, stating that the promoter avoided free competition in respect of a contract entered into in 2009.
- 1.12 The Complainant alleges unfair treatment during public consultation and states that he has not been allowed or invited to attend meetings that were organised in relation to the Project. In addition, he stated that his requests to present different project alternatives to the promoter and the government were rejected.
- 1.13 The Complainant alleges that his requests for meetings as well as several requests to disclose Project related information and documents (e.g. EIA, SCBA) were rejected by the promoter.
- 1.14 The Complainant alleges conflict of interest and, abuse of power and lack of objectivity by national authorities and entities. Among other things he took the view that *“there is no difference between judge and party”* amongst others in respect of the objection to the IEPA.
- 1.15 The Complainant alleges that there is a lack of transparency in the Project and its process. The Complainant is of the view that the Project contains a myriad of structures and task forces. According to the Complainant, public governance (*openbaarheid van bestuur*) has often been breached. Among other things, the Complainant refers to several working groups’ way of working. In addition, according to the Complainant contradictions between some studies make them open to different interpretations and in some cases, essential elements of studies have been omitted.
- 1.16 The Complainant claims certain prohibited conduct has occurred. In support of his allegation, as an example, the Complainant explained that he believes that certain action groups have obtained funds with fraudulent intent.
- 1.17 In support of his allegations of the negative impact of the Project, the Complainant refers in his complaint to an individual homeowner that has been negatively impacted by the Project and a newspaper article that refers to 11 houses cracking.
- 1.18 Finally, in October and November 2020 the Complainant sent further information and documents to the EIB-CM in support of his allegations. The correspondence included a copy of the advice of the college of the municipal council (*College van Burgemeester en Schepenen*) containing an assessment of the objection he lodged with the city of Antwerp. In addition, the EIB-CM understands that a ministerial decision (*ministerieel besluit*) on the permit application has been published, which also contains an assessment of the objection received by the City of Antwerp. In January and February 2021, the Complainant sent further information to the EIB-CM and informed the EIB-CM that he had submitted an objection to the Council for Consent Disputes (*Raad voor Vergunningsbetwistingen*).

- 1.19 Following the initial assessment of the complaint, the EIB-CM identified the following main allegations:

- 1. Allegations concerning the public consultation and stakeholder engagement**
  - 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.
  - Requested documents not received from the promoter.
  - Requests to be heard or participate in meetings have been resisted.
  - Inappropriate behaviour towards the Complainant in public consultation meetings.
- 2. Allegations concerning the EIA and compliance with EU and EIB environmental and social standards**
  - The Project fails to comply with requirements under EIB policies, procedures and standards.
  - The permit application is incomplete and adjustments may need to be made.
  - Failure to appropriately consider alternatives in the EIA.
  - The EIA is based on outdated or insufficient traffic data.
  - The Project fails to comply with EU environmental standards on noise, air pollution and safety aspects.
  - Negative impacts of the Project on individuals in relation to housing.
- 3. Allegations concerning the costs and financing**
  - The financing plan and the Social Cost Benefit Analysis is outdated and of poor quality.
  - The liability of contractors is not sufficiently addressed in the integrated environmental permit application.
- 4. The Project fails to comply with EU law on procurement of works in respect of the contract referred to in paragraph 1.11 of the report**
- 5. Allegations challenging national and international institutions and bodies**
  - The budget treatment by the Flemish government.
  - Lack of information on the Project cost.
  - Various conflicts of interest as referred to in paragraph 1.14 of the report.
- 6. Allegations on prohibited conduct as referred to in paragraph 1.16 of the report**

## 2 THE PROJECT

- 2.1 The EIB Project concerns closing 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 major high priority project of the Antwerp Mobility Master Plan 2020 made by the Flemish Government aimed to reduce traffic congestion in the Antwerp Region.

At the present time the Antwerp region has two motorway connections between the river Scheldt left and right bank: the Kennedy tunnel and the Liefkenshoektunnel. The envisaged third connection, Oosterweel link, will provide for an alternative route to connect the E17



(Ghent) and the E34/N49 (Bruges) on the left bank to the Antwerp Ring R1 and with the main motorways E19/A12 towards the Netherlands and E34/E313 towards Liege, Germany and Luxembourg.

The link will be constructed at a new location of river crossing and will consist of 4 segments: 1) Left bank, 2) Scheldt Tunnel and Dry Dock, 3) Oosterweel Port Complex and Canal Tunnels and 4) Northern Ring R1. To limit the negative impact from the traffic of heavy goods vehicles, the route is designed as much as possible in tunnels. The 1.8 km long immersed tunnel under river Scheldt will have two tubes for motorway traffic with 3 lanes in each direction and a separate tube for cyclists and pedestrians.

The Project is located in the north-eastern part of Belgium - in the Antwerp region and the city of Antwerp itself (NUTS BE21). 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 Albertcanal, will allow traffic to bypass the city of Antwerp from both sides.

The Project is split in different project components and environmental and social impacts are assessed in a SEA (Strategic Environmental Assessment) and 3 separate Project EIA's: the Project EIA Left Bank Infrastructure works, the Project EIA Oosterweelink (Right Bank & Scheldt tunnel) and the Project EIA Dry Dock.

- 2.2 The borrower of EIB's loan is the Flemish Community (*Vlaamse Gemeenschap*). The promoter and final beneficiary is Lantis, previously named Beheersmaatschappij Antwerpen Mobiel (BAM). BAM was founded in 2003 as a public company for the realization of the Antwerp Mobility Master Plan 2020 which aims to provide an answer to the problems of mobility, traffic safety and liveability to which the Antwerp region is currently confronted. In 2019 its name was changed to Lantis.

### 3 INITIAL ASSESSMENT AND WORK PERFORMED

- 3.1 Following receipt of the complaint, the EIB-CM had a telephone conversation with the Complainant with a view to explaining the remit of the EIB-CM and understanding the Complainant's concerns. 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 on the concerns raised by the Complainant. The objective of the Initial Assessment is to clarify the concerns raised by the Complainant, understand the Complainant's position, understand the validity of the concerns raised and to 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 Therefore, the EIB-CM held a meeting with the EIB services concerned in which it requested clarifications and further details regarding the EIB's due diligence on the Project. In addition, the EIB-CM in coordination with the EIB operational services requested clarifications from the promoter. The EIB-CM identified and gathered EIB environmental and social documentation of the Project as well as the relevant EIB standards and methodologies. At this stage and based on the raised allegations, the EIB standards that appear relevant are Standard 1 (Assessment and management of environmental and social impacts and risks), Standard 9 (Occupational and public health, safety and security) and Standard 10 (Stakeholder engagement).

- 3.3 In order to clarify the concerns raised in the complaint, the EIB-CM carried out a review of the arguments put forward by the Complainant in support of the allegations.
- 3.4 Among the allegations made, the Complainant raised concerns regarding parts of the Oosterweel Connection dossier that are not part of the EIB Project, in particular any preparatory and construction works of the overhang (capping) over the existing ring-road as well as any other project related to the modal shift and not referred to in paragraph 2.1 above.
- 3.5 With regard to the EIA, the EIB-CM takes note that the promoter conducted a SEA and three Project EIA's for the part of the Oosterweel project financed by the EIB, including assessments of noise and air pollution.
- 3.6 The EIB-CM had contact with the Complainant on several occasions to obtain further clarifications on the concerns raised and to keep the Complainant informed of the process.

#### **4 WAY FORWARD**

- 4.1 Given the nature of the allegations, the EIB-CM does not see a manifest opportunity for mediation or dialogue facilitation. Therefore, this option will be discarded.
- 4.2 The EIB-CM notes that some of the Complainant's concerns and allegations are not related to the EIB Project (see paragraph 3.4 of the Report). In this regard it is important to highlight that the EIB-CM review will be limited to the EIB Project.
- 4.3 In addition, the EIB-CM notes that among the concerns raised and allegations made, the Complainant challenged actions of national and public authorities (paragraph 1.19, section 5) such as the Complainant's concerns regarding alleged conflicts of interest with various national authorities and entities, the announced Project costs and budgetary matters of the national authorities. In this regard, the EIB-CM would like to highlight that in line with paragraph 4.3.2 of the EIB-CM Policy, complaints concerning actions of national authorities, fall outside the scope of the EIB-CM and should be addressed by the Complainant at the national level. Notwithstanding the above, these allegations have been brought to the attention of the EIB operational services.
- 4.4 The complaint contained allegations of prohibited conduct (paragraph 1.19, section 6). Paragraph 4.3.7 of the CM Policy provides that the EIB-CM cannot handle allegations of prohibited conduct as defined in the EIB Group Anti-Fraud Policies; these will be handled by the EIB Group's competent services. The relevant part of the complaint has been handed over to the EIB Group's competent services in accordance with the applicable EIB Group policies and procedures.
- 4.5 The complaint referred to an alleged breach of EU law regarding procurement of works that took place in 2009 (paragraph 1.19, section 4). According to paragraph 4.3.10 of the EIB-CM Policy, complaints must be submitted within one year from the date on which the facts upon which the allegation is based could reasonably be known by the Complainant. Therefore, this allegation is declared inadmissible.
- 4.6 In light of the Initial Assessment and due to the technical nature of the raised allegations, the EIB-CM deems it appropriate to carry out a compliance review regarding the following allegations identified in the Initial Assessment:

**1. Allegations concerning the public consultation and stakeholder engagement**

- 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.
- Requested documents not received from the promoter.
- Requests to be heard or participate in meetings have been resisted.
- Inappropriate behaviour towards the Complainant in public consultation meetings.

**2. Allegations concerning the EIA and compliance with EU and EIB environmental and social standards**

- The Project fails to comply with requirements under EIB policies, procedures and standards.
- The permit application is incomplete and adjustments may need to be made.
- Failure to appropriately consider alternatives in the EIA.
- The EIA is based on outdated or insufficient traffic data.
- The Project fails to comply with EU environmental standards on noise, air pollution and safety aspects.
- Negative impacts of the Project on individuals in relation to housing.

**3. Allegations concerning the 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.

- 4.7 The compliance review will assess the Complainants' allegations in the context of potential EIB's maladministration, including whether the EIB complied with the applicable regulatory framework. The review will assess the Project documentation and the due diligence carried out by the EIB in the areas related to the Complainants' concerns as identified in this Initial Assessment Report. The compliance review will consider whether the EIB's due diligence of the Project is in accordance with applicable EIB policies, procedures and standards.
- 4.8 The additional information and documents provided as referred to in paragraph 1.18 will be further assessed as part of the background information for the compliance review.
- 4.9 The outcome of the compliance review will be communicated to the Complainant through the EIB-CM's Conclusions Report in line with section 2.4 "Investigation Phase" of the EIB-CM Procedures.

Complaints Mechanism  
26 March 2021

Complaints Handling & Admissibility  
26 March 2021