

SG/E/2020/19

# **DIVAČA-KOPER Second Rail Track**

## **Initial Assessment Report**

30 April 2021



This report was prepared with information received up to 12 March 2021.

Confidential  
No

External distribution:  
Complainant  
Promoter

Internal distribution:  
Inspector General  
EIB services concerned

## The EIB Group Complaints Mechanism

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

Maladministration means poor or failed administration. It occurs when the EIB fails to act in accordance with a rule or principle that is binding upon it, including its own policies, standards and procedures. The concept of maladministration includes failure by the EIB to comply with human rights, with applicable law, or with the principles of good administration. Maladministration may relate to the EIB Group's 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. The EIB Group Complaints Mechanism is intended not only to address non-compliance by the EIB with its policies and procedures, but according to Article 5.3.2 of the EIB Group Complaints Mechanism Policy<sup>1</sup>, also to endeavour to solve the problem(s) raised by complainants through a consensual process and to follow up and report on efforts to take corrective actions whenever applicable. The separate mediation function of the EIB Group Complaints Mechanism is in charge of designing and carrying out such collaborative resolution process as an independent and impartial function within the EIB Group Complaints Mechanism.

The EIB Group Complaints Mechanism is independent from operational activities in order to ensure that each complaint is dealt with in the highest standards of objectiveness whilst safeguarding the interests of all the internal and external stakeholders of the EIB Group according to Article 5.1.4 of the EIB Group Complaints Mechanism Policy.

For more information on the EIB Group Complaints Mechanism please visit:

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

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

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**GLOSSARY OF TERMS AND LIST OF ACRONYMS**

2TIR	Code name for the second track of the investment programme
2TDK	Slovenian special purpose company implementing the Divača-Koper second rail track project (the developer)
d.o.o.	Limited Liability Company (Slovenian: <i>Družba z omejeno odgovornostjo</i> )
EC	European Commission
EIA	Environmental Impact Assessment
EIB	European Investment Bank
EIB-CM	EIB Group Complaints Mechanism Division
ESDS	Environmental and Social Data Sheet
EU	European Union
NSP	National Spatial Plan
Project	Divača-Koper second rail track
Promoter	Republic of Slovenia
RS	Republic of Slovenia
SEA	Strategic Environmental Assessment

## **EXECUTIVE SUMMARY**

In November 2020, the EIB Group Complaints Mechanism (EIB-CM) registered a complaint from a private individual. The case concerns the “Divača-Koper second rail track” project (2017-0183), which consists of the construction of 27 km of single-track rail line on a new alignment to increase rail capacity between the port of Koper and the rail junction in Divača in Slovenia.

The project promoter is the Republic of Slovenia. The developer is a Slovenian special purpose company called 2TDK (fully owned by the promoter). The EIB services completed the project appraisal process in March 2019. The project was approved for financing by the EIB’s Board of Directors that same year, while the finance contract is yet to be signed<sup>2</sup>.

Following the admissibility of the complaint, in line with section 2.2 of the EIB-CM Procedures<sup>3</sup>, the EIB-CM carried out an initial assessment of the information provided by the complainant over a period of several months by emails/letters addressed to the management and various services of the EIB. The objective of the initial assessment is to clarify the concerns raised by the complainant, understand the complainant’s position and the validity of the concerns raised, and determine if further work by the EIB-CM is necessary and/or possible to address the allegations or resolve the issues raised in the complaint. During the initial assessment, a collaborative resolution process was considered, but was deemed unsuitable to address the complainant’s concerns.

The EIB-CM deems it appropriate to carry out a compliance review regarding the following allegations identified in the initial assessment phase:

1. The project’s negative impacts on the environment and its non-compliance with the relevant EU regulatory framework:
  - Issues with the application of the Strategic Environmental Assessment (SEA) Directive in the project approval process with public consultations and transboundary consultations, faulty project justification in terms of its planned capacity, and unassessed significant negative cumulative impacts.
  - The project’s non-compliance with the Environmental Impact Assessment (EIA) Directive in the 2012-2014 EIA procedure leading to the EIA decision, including, but not limited to, the quality of environmental information prepared for the EIA and the assessment of negative environmental impacts (e.g. regarding negative transboundary impacts).
  - The project’s non-compliance with the Water Framework Directive and the quality of the 2012-2014 assessment in terms of hydrological impacts on groundwater and surface water.
  - The project’s non-compliance with the requirements of assessment as per the Habitats Directive.
2. The lack of impact assessment of tunnels in the approval process of the relevant National Spatial Plan, which disregarded the national Mining Law.

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 the possibility of a collaborative resolution process.

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<sup>2</sup> Status as at March 2021.

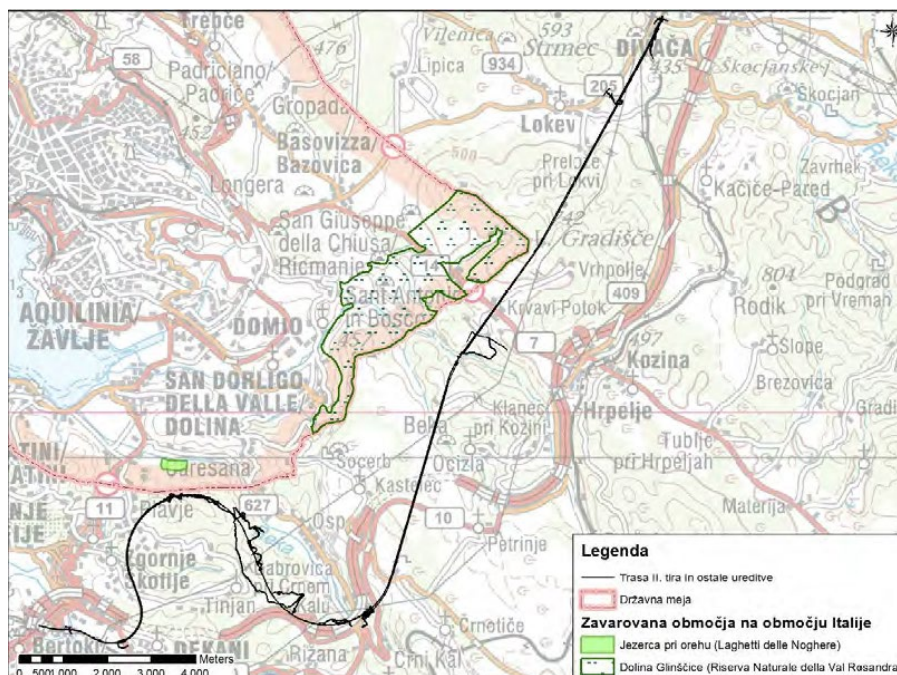
<sup>3</sup> [EIB Group Complaints Mechanism Procedures](#)

## 1. BACKGROUND INFORMATION

### Project description

- 1.1 The complaint concerns the “Divača-Koper second rail track” project (2017-0183) in Slovenia, as assessed between 2017 and 2019.
- 1.2 The project involves the construction of a new 27 km single-track electrified railway line (a second track, as it is commonly referred to in the documentation) located on a new alignment between the port of Koper and the rail junction in Divača (hereinafter the “project”, see Figure 1 below).
- 1.3 Due to difficult terrain and a 430-metre elevation difference over a short distance, the alignment includes eight tunnels with an aggregate length of 20.5 km and two viaducts with an aggregate length of 1 100 metres. For the longest three tunnels (6.7 km, 6 km and 3.8 km), the Republic of Slovenia (hereinafter the “promoter”) intends to build parallel service tunnels of the same diameter as the main tunnels for maintenance and evacuation purposes.
- 1.4 The project was approved for financing by the EIB’s Board of Directors in April 2019. The borrower is expected to be the Slovenian company 2TDK, which is fully owned by the Republic of Slovenia. The finance contract is yet to be signed<sup>4</sup>.
- 1.5 The project aims to improve freight rail access to Koper port and thereby support the maintenance and improvement of rail modal share. Koper is one of five ports in the North Adriatic Ports Association (NAPA) competing to serve the central and southeast European freight market. The project is identified as part of the corridor development plans for the core Baltic Adriatic and Mediterranean TEN-T rail corridors. Investment will be necessary in the coming years to address the potential capacity bottleneck on this short section of the corridors.

Figure 1. Location of the Divača-Koper second rail track project



Source: EIA report (2012)

<sup>4</sup> Status as at March 2021.

### **Project development background**

- 1.6 The EIB worked on the project preparation and performed the appraisal between 2017 and 2019.
- 1.7 According to the appraisal documents, the planning for the development of the project stretches back over 25 years. The current solution is the result of decisions taken in the past based on norms and expectations that were different from those prevailing today.
- 1.8 In June 2017, at the request of the Republic of Slovenia, the EIB issued a conditional letter of support for the Connecting Europe Facility (CEF) Blending Call. In May 2019, a €109 million CEF grant associated only with part of the project (see paragraph 1.2) was approved and signed. In 2019, this part of the project, as offered for the CEF funding, was valued at €545 million and required at least €109 million of matching debt as part of its financing structure, among other co-financing sources.
- 1.9 The project presented to the EIB by the promoter and as approved for financing by the EIB is part of the 2TIR investment programme<sup>5</sup>.
- 1.10 In September 2020, the European Commission announced that it had approved a grant of €80 million from the Cohesion Fund to build a tunnel and two viaducts as part of a wider scheme to provide a second railway track between the port of Koper and the village of Divača in Western Slovenia<sup>6</sup>.

## **2. THE COMPLAINT**

- 2.1. In November 2020, the EIB-CM registered a complaint submitted by a private individual<sup>7</sup> concerning the project described above. The complainant submitted different types of allegations in several emails addressed to various EIB staff and divisions in October 2020. The complainant shared further information between October 2020 and March 2021. The EIB-CM declared the complaint admissible on the basis of the environmental-related allegations made by the complainant. Therefore, the information provided in this section of the report only presents the environmental issues raised by the complainant in the various emails.
- 2.2. The complainant states that *“in the roll-out of the Second Railway project the promoter has circumvented (subsidiary) Slovenian law which is the derivative of EU Directive[s],”* specifically the EIA and SEA Directives. The complainant claims that since the responsible environmental authority in Slovenia did not provide him with appropriate evidence, *“essential European environmental law and Directive[s] have] not been properly applied.”* In addition, he states that the national Decree on SEA (ref. 73/05) has been violated in a number of articles.
- 2.3. The complainant believes that the reports prepared for the EIA procedure<sup>8</sup> in 2012 *“do not in any way fulfil the requirements of a comprehensive environmental impact assessment in accordance with the EIA Directive.”* Besides the issues linked with the requirements of directives such as the Water Framework Directive and the Habitats

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<sup>5</sup> See the announcement on the national web portal (January 2019) at <https://www.regionalobala.si/novica/vlada-potrdila-investicijski-program-za-drugi-tir-projekt-je-ekonomsko-upravicen> and the investment programme developed by Deloitte svetovanje d.o.o. available [here](#) (2019).

<sup>6</sup> The European Commission announcement is available [here](#).

<sup>7</sup> The complainant did not request confidentiality.

<sup>8</sup> At least two reports were prepared for the 2012-2014 EIA procedure: the main EIA report and an annex on the impact on protected areas.



Directive, he states, among other issues, that *“the human and environmental impact of stray currents has not been assessed in relation to the 2TDK project.”* The complainant also questions *“the content of the Pro-Loco and Aquarius reports<sup>9</sup>”* and asks to examine and assess the actual content of the reports.

- 2.4. The complainant states that *“the 2012 report was prepared without taking any consideration of the impact of the 2TDK project on local hydrology and water systems (groundwater and surface water [as] per the Water Framework Directive).”* The complainant believes the official map used to show the project’s location vis-à-vis the water protection area (*vodno varstveno območje*) is wrong. He states that *“very limited geological and hydrological investigation was contracted”* in 2018-2019, and that the *“true dimensions of the archetypal mature karst hydrogeology impacted by 2TDK d.o.o. have yet to be assessed let alone explored.”* The said study allegedly indicates that the *“hydrological impacts of tunnelling will be substantial, and way beyond those envisaged in the 2012 Aquarius report.”* The complainant states that due to the project, *“the Glinščica stream and thus Italy’s Val Rosandra will be deprived of water”* and that *“their climate-cooling effects in summer [will] be permanently curtailed.”*
- 2.5. The complainant says that *“the Habitats Directive [...] still awaits appropriate application re the 2TDK project.”* He alleges that *“the 2012 report [...] did not deal with any estimate as to the impacts [of] the rail project”* on existing flora and fauna, *“nor did it consider the massive changes that tunnelling [will inflict] on karst hydrology and water systems.”* *“[...] This 2012 report does not address any actual impact arising from construction or use of the projected railway.”*
- 2.6. The complainant maintains that *“a Comprehensive Environmental Impact Assessment (known as the CPVO in Slovenia) has never been undertaken in relation to the various possible route variants; there was solely an assessment carried out in 2014 in relation to (some) ‘changes’ to the promoter-sponsored route. This in itself is an illegal circumvention of the EU SEA Directive (Directive 2001/42/EC).”* The complainant believes that by avoiding the SEA the Republic of Slovenia *“failed to consider reasonable alternatives to the meandering high-speed 2TDK freight line, of which there are many.”* The complaint gave an example of *“the far cheaper (ca. 5% the cost of 2TDK), easier (5 km of new line with a 1.8 km tunnel), non-environmentally destructive (re-laying old line) Istrian link [that] would provide a shorter route than 2TDK [for] Slovenia’s main Ljubljana-Venice line at Sežana; said solution is also a better and more cost-effective, non-tax-burdening solution to the Port of Koper’s rail freight needs.”* The complainant states that the linked 2TDK investment will require other investments that will have additional significant environmental impacts, which have not been assessed by any SEA: *“In this respect too, the estimate of 2TDK’s impact on the planned growth of transit freight according to the SEA Directive 2001/42/EC is entirely deficient.”* He named the Koper marshaling yard, the Luka Koper railway terminal, the Luka Koper’s planned extensions which will require extensive dredging, with likely significant negative impacts on the bay of Koper and the upstream bottlenecks in the capital Ljubljana (diverting rail passenger traffic to roads and spiralling road infrastructure investment needs), contrary to 2TDK’s stated ambition to reduce greenhouse gas emissions. The complainant also states that there was *“no implementation of Directive 2014/89/EU of 23 July 2014 establishing a framework for maritime spatial planning,”* which is linked to the lack of application of the SEA Directive 2001/42/EC. The complainant alleges that *“the entire impact of the 2TDK project has not been assessed in accordance with the SEA Directive, nor has there been the mandatory level of public consultation or consultation with the Italian Republic as an impacted neighbouring*

<sup>9</sup> Pro Loco d.o.o. prepared the environmental report for the modification of the NSP for 2TIR (2004, supplemented in 2005), and the EIA report (2012, amended in 2013); Aquarius d.o.o prepared the Annex to the EIA report on protected areas in 2012 as well as the report on the impacts on protected areas on the Italian side in 2013.

*state.”*

- 2.7. The complainant states that *“other impacts, such as the tunnels (which account for more than 75% of the line’s total length) were not [...] considered an issue of spatial planning law; thus the aforementioned NSP [National Spatial Plan, Uradni list RS (Official Gazette of the Republic of Slovenia) No 43/05, 48/11, 59/14 and 88/15] dealt solely with the plots of land listed in the NSP; tunnels were considered as an issue that should instead be governed by the provisions of the Mining Law RS – ZRud-1 (Zakon o Rudarstvu – Uradni list RS, št. 14/14 – uradno prečiščeno besedilo in 61/17 – Gradbeni zakon), and thus, as a consequence, all 2TDK tunnels have entirely escaped [comprehensive] EIA address.”*
- 2.8. The complainant states that the project was drawn up disregarding Directive 2012/34/EU on establishing a single European railway area, *“specifically [...] Article 8 paras. 1, 3 and 4, as well as Article 10 paras. 3 and 4 of said Directive.”*
- 2.9. The complainant raises a number of significant negative transboundary impacts, which allegedly have not been taken seriously, namely that *“the process of tunnelling [will] cause Trieste’s only surface streams – the Ospo and Rosandra – to desiccate”* causing *“the 40-metre high Supet waterfall and the remnants of the Roman aqueduct [to] run dry,”* significantly impacting the *“flora and fauna of Trieste’s Riserva naturale della Val Rosandra,”*, *“destroy[ing] not only this resource but radically alter[ing] the entire natural hydrology of the southern Triestine Carso.”* The complaint states that *“the construction of 2TDK access roads has already destroyed a not insubstantial portion of the protected area.”* He goes on to say that *“Italy has not acceded to this intervention or a project which has not been addressed as it should under those procedures mandated under the EIA and SEA Directives”* and that *“a major portion of the railway appears to have been designed in such a way that any spill [will] drain towards Italy.”*
- 2.10. The complaint states that the project to be financed by the EIB will use an outdated *“3 kV DC electrical traction technology on a steeply inclined railway,”* which will require huge electric energy consumption and will also *“render impossible any application of regenerative braking technology.”* He alleges that the *“cheaper investment than the selected 3 kV AC traction for 2TDK, 25 kV AC, was not even assessed as an alternative for the 2TDK project.”*
- 2.11. The complainant claims that *“the building permit for the Second Railway was issued prior to the provision of the environmental report.”* In addition, he asserts that *“no proper building permit exists for the two-track solution now being engineered.”* The complainant questions whether *“the fact that the Second Railway has been furtively ‘upgraded’ from a single line to a double track without any further EIA”* is acceptable.
- 2.12. The complainant asks the EIB-CM to investigate the project issues he and another individual addressed to the European Commission’s DG Environment; however the content of those issues has not been sent to the EIB-CM. The allegations of fraudulent activities, corruption and access to information have been forwarded to the competent EIB services with the mandate to deal with these types of allegations.
- 2.13. The complainant requests the EIB to reconsider financing the project and to reassess the project’s compliance with the national and EU legal framework given the numerous issues with the project, including those presented above.

### 3. **REGULATORY FRAMEWORK**

#### **The role of the EIB-CM**

- 3.1 The EIB Group Complaints Mechanism Policy<sup>10</sup> tasks the EIB-CM with addressing complaints concerning alleged maladministration by the EIB Group<sup>11</sup>. The description of maladministration is provided in the EIB-CM Policy<sup>12</sup> and in the introduction on the EIB Group Complaints Mechanism (above).
- 3.2 The EIB Group Complaints Mechanism Policy and Procedures<sup>13</sup> regulate the work of the EIB-CM. The EIB-CM compliance review includes an investigation of compliance with existing policies, procedures and standards of the EIB<sup>14</sup>.
- 3.3 It is important to note that according to section 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.”*
- 3.4 As indicated below, the EIB environmental and social standards require compliance of the project with applicable national and EU law, which is the responsibility of the promoter and local authorities. Furthermore, section 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.”*
- 3.5 It is important to highlight section 6.1.4 of the EIB-CM Policy stating that *“Complaints submitted to the EIB-CM do not have a suspensive effect on the actions/omissions and decisions challenged.”*
- 3.6 Finally, section 1.4.5 of the EIB-CM Procedures states: *“An EIB-CM review will not pass judgement 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 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 European Commission in case of serious concerns and inform the Management Committee accordingly.”*

#### **Project-applicable standards**

- 3.7 Based on the initial assessment, the project-applicable standards include:
  - Relevant national and EU environmental law such as the EIA Directive<sup>15</sup>, the SEA Directive<sup>16</sup>, the Habitats Directive<sup>17</sup> and the Water Framework Directive<sup>18</sup>.

<sup>10</sup> Available at: [https://www.eib.org/attachments/strategies/complaints\\_mechanism\\_policy\\_en.pdf](https://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf).

<sup>11</sup> Section 5.1.3 and 5.3.2 of the EIB Group Complaints Mechanism [Policy](#).

<sup>12</sup> Section 3 of the EIB Group Complaints Mechanism [Policy](#).

<sup>13</sup> Available at: [https://www.eib.org/attachments/strategies/complaints\\_mechanism\\_procedures\\_en.pdf](https://www.eib.org/attachments/strategies/complaints_mechanism_procedures_en.pdf).

<sup>14</sup> Section 4.3.14 and 5.3.3 of the EIB Group Complaints Mechanism [Policy](#).

<sup>15</sup> 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).

<sup>16</sup> SEA Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (applicable on a strategic planning level).

<sup>17</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

<sup>18</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

- The EIB Statement of Environmental and Social Principles and Standards (ESPS, 2009<sup>19</sup>) and the Environmental and Social Practices Handbook (Volume I (2018<sup>20</sup>)), including:
  - Standard 1: Assessment and management of environmental and social impacts and risks;
  - Standard 3: Biodiversity and ecosystems;
  - Standard 10: Stakeholder engagement.

#### **4. WORK PERFORMED by the EIB-CM**

##### **Initial assessment phase**

- 4.1 Following the admissibility of the complaint, the EIB-CM carried out an initial assessment of the concerns raised by the complainant. The objective of the initial assessment is to clarify the complainant's concerns, understand the complainant's position and the validity of the concerns raised, and determine if further work by the EIB-CM is necessary and/or possible (compliance review or mediation between the parties) to address the allegations or resolve the issues raised by the complainant.
- 4.2 As part of its initial assessment, the EIB-CM reviewed project documentation, including the Environmental and Social Data Sheet (ESDS<sup>21</sup>) summarising the EIB's environmental and social appraisal and project information made available to the public on the EIB website<sup>22</sup>.
- 4.3 The EIB-CM had an initial meeting with the EIB services on the case, which took place in March 2021. The services shared information and further documentation following the meeting.
- 4.4 The EIB-CM attempted to liaise with the complainant with a view to presenting the mandate and procedures of the EIB-CM and clarifying information and issues raised in the complainant's written submissions. The EIB-CM was not successful in reaching the complainant to discuss the allegations over the phone. The EIB-CM reviewed the written complaint and further correspondence and additional documents provided by the complainant up to the time of drafting this report.
- 4.5 During the initial assessment, a collaborative resolution process was considered, but was deemed unsuitable to address the complainant's concerns.

##### **Project documentation reviewed<sup>23</sup>**

- 4.6 The information provided in paragraphs 4.9 to 4.21 is sourced from the ESDS, a document prepared by the Bank during its project appraisal and made public after the Board's approval of the project. The full document is available on the EIB's website<sup>24</sup>.

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<sup>19</sup> The EIB Statement of Environmental and Social Principles and Standards (2009) is available [here](#) (in English).

<sup>20</sup> The EIB Environmental and Social Practices Handbook (2018) is available [here](#) (in English).

<sup>21</sup> The ESDS is available [here](#).

<sup>22</sup> EIB project summary sheet (online), which can be accessed [here](#).

<sup>23</sup> Please note that only extracts of project documentation are presented in this section.

<sup>24</sup> The ESDS is available [here](#).

***Project scope and change to the project scope***

- 4.7 The scope of the EIB project (approved for financing) is defined in the description of the project, as presented in the EIB documents pertaining to the project appraisal. The EIB-CM notes that the finance contract with the borrower has not been signed yet.
- 4.8 According to the EIA Directive, a change to the project scope, as assessed for the purpose of development consent, is subject to a screening determination (a change of scope falling within the meaning of Annex II) or may be subject to an environmental impact assessment (a change of scope falling within Annex I).

***Project alignment, environmental risks and mitigation measures***

- 4.9 The project is a civil engineering scheme to be implemented as a greenfield development. It will be realised mostly in tunnels or on viaducts, which may give rise to a number of associated potential impacts and risks. As per the ESDS, the alignment has been defined taking into account the best available knowledge of the karst phenomena in the area and all known caves have been mapped. In particular, the alignment has been modified so that the Ocizeljaska Jama cave system can be avoided.
- 4.10 Environmental risks include geotechnical and geological risks (such as disturbances of surfaces, landslides, rockslides and erosion); contamination of soil by hazardous or harmful substances; pollution or alteration of groundwater and surface watercourses; destruction of or damage to caves; destruction of or damage to wildlife habitats (including those of protected species); visual impact; noise and vibration during construction; and burden on the environment due to significant surplus of excavated material (4.2 million m<sup>3</sup>, including the enlarged service tunnels as described below). The main cross-border risks are related to potential impacts on groundwater and surface watercourses, and noise during construction and operation.
- 4.11 The project runs through or close to the following Natura 2000 sites: SAC Kras (project runs 13.1 km through SI3000276), SPA Kras (project runs 15.4 km through SI5000023), SCI Carso Triestino e Groziano (IT3340006, close to the continuation of SI3000276 in Italy), SPA Aree Carsiche della Venezia Giulia (IT3341002, close to the continuation of SI5000023 in Italy), SAC Rizana (350 metres from the project), SI3000252 SAC Škocjanski zatok (1.2 km from the project) and SI5000008 SPA Škocjanski zatok (1.2 km from the project).
- 4.12 The project's risks and impacts were analysed during the EIA procedure. The EIA report and the environmental consent documentation define corresponding mitigation measures. Moreover, they define further detailed studies to be undertaken prior to the commencement of the works, such as a study for the prevention and reduction of particle emissions, as well as monitoring during construction and operation.
- 4.13 Mitigation measures include stabilisation of the terrain to prevent rockslides or landslides; sedimentation tanks; specific design of the drainage system and water-tightness of the tunnels to prevent water pollution; a detailed protocol for actions to take if caves are encountered, including notifying the competent authority; limitation of the construction time and of the size of construction bases; and screens for reducing environmental noise during operation.



- 4.14 The main residual impacts of the project are the conversion of about 106 ha of land (mostly forest, but also 29 ha of agricultural land); visual intrusion; use of finite resources; and nuisance during the construction phase, for both wildlife and trackside dwellers.
- 4.15 Despite the geological surveys carried out and other mitigation measures, there remains some residual risk related to the karst phenomena and the corresponding potential contamination of groundwater or change of hydrological regime. The appraisal documentation also states that this risk cannot be fully mitigated.

***National authorisation for the project on a strategic level***

- 4.16 According to the ESDS, the project forms part of Slovenia's transport development strategy up to 2030, which has been subject to an SEA as set out in Directive 2001/42/EC.
- 4.17 The ESDS also notes that the project has been subject to considerable public debate and two national referendums.

***Project assessment under the EIA procedure***

- 4.18 The project falls under Annex I of the EIA Directive (Directive 2011/92/EU, as amended) with the EIA procedure undertaken between 2012 and 2014.
- 4.19 The project's alignment passes the immediate vicinity of the Slovenian/Italian state border (see Figure 1 above). As per the ESDS, transboundary consultations were held with the competent Italian authorities in 2012 to 2013 and their comments were taken into account in granting environmental consent.
- 4.20 In February 2014, the competent authority (the Environmental Agency of the Republic of Slovenia) granted partial environmental consent, which did not include a section in the Beka Landscape Park; this section runs on a viaduct between two tunnels. In October 2014, the competent authority issued a supplementary decision giving consent for the Beka Landscape Park section.
- 4.21 The appraisal documentation states that, as part of the EIA, an appropriate assessment of the likely impacts of the project on these sites was carried out in accordance with Article 6(3) of Directive 92/43/EEC (the Habitats Directive). The EIA report and environmental consent documentation establish some specific mitigation measures for avoiding or minimising impacts on these sites, such as prohibiting works or the transport of material in particular areas, limiting the period during which trees and bushes may be cut, and limiting the period during which watercourses may be regulated.

## 5. WAY FORWARD

- 5.1 As a result of its initial assessment, the EIB-CM identified the following allegations, which will be subject to a compliance review:

*Allegation 1: The project's negative impacts on the environment and its non-compliance with the relevant EU regulatory framework.*

*Sub-allegation 1.1: Issues with the application of the Strategic Environmental Assessment (SEA) Directive in the project approval process with public consultations and transboundary consultations, faulty project justification in terms of its planned capacity, and unassessed significant negative cumulative impacts.*

*Sub-allegation 1.2: The project's non-compliance with the Environmental Impact Assessment (EIA) Directive in the 2012-2014 EIA procedure leading to the EIA decision, including, but not limited to, the quality of environmental information prepared for the EIA and the assessment of negative environmental impacts (e.g. regarding negative transboundary impacts).*

*Sub-allegation 1.3: The project's non-compliance with the Water Framework Directive and the quality of the 2012-2014 assessment in terms of hydrological impacts on groundwater and surface water.*

*Sub-allegation 1.4: The project's non-compliance with the requirements of assessment as per the Habitats Directive.*

*Allegation 2: The lack of impact assessment of tunnels in the approval process of the relevant National Spatial Plan, which disregarded the national Mining Law.*

- 5.2 The compliance review will assess the complainant's allegations in the context of potential Bank maladministration, including whether the Bank complied with the applicable regulatory framework and the EIB Group's own policies, procedures and standards (see paragraphs 3.1 to 3.7). The review will assess the project documentation and the due diligence process carried out by the Bank in the areas related to the complainant's concerns as identified above (see paragraph 5.1).
- 5.3 The outcome of the compliance review will be communicated to the complainant through the EIB-CM's Conclusions Report.

Complaints Mechanism  
30.04.2021

Complaints and Reporting  
30.04.2021