

SG/E/2021/03

# S2 DÉNIVELLATION DE HUIT CARREFOURS À SFAX (TUNISIA)

INITIAL ASSESSMENT REPORT

27 JULY 2021



# S2 Dénivellation de huit carrefours à Sfax

## Initial Assessment Report

### **Complaint confidential**

No

### **External distribution**

Complainant

### **Internal distribution**

Management Committee  
Secretary General  
Inspector General  
Relevant EIB services

### **Disclaimer**

This report is based on the information available to the EIB Group Complaints Mechanism as at 18 June 2021.

In the event of divergence between the language versions, the French version will prevail.

## The EIB Group Complaints Mechanism

The EIB Group Complaints Mechanism (EIB-CM) 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. The Complaints Mechanism is not a legal enforcement mechanism and will not substitute the judgement of competent judicial authorities.

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 (EIB-CM) — and one external — the European Ombudsman. Complainants who are not satisfied with the EIB-CM's reply have the right to lodge a complaint of maladministration against the EIB with the European Ombudsman. The European Ombudsman was “created” by the Maastricht Treaty of 1992 as a European Union (EU) institution to which any EU citizen or entity may appeal to investigate any EU institution or body on the grounds of maladministration. 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 and unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group activities and to project cycle-related policies and other applicable policies of the EIB.

The EIB-CM also endeavours to solve the problem(s) raised by complainants such as those regarding the implementation of projects. For more information on the EIB Group Complaints Mechanism please visit:

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

## Initial Assessment Report

Initial Assessment Reports aim to<sup>1</sup>:

- clarify the concerns raised by the complainant, to better understand the complainant's position as well as the views of other project stakeholders (project promoter, national authorities, etc.);
- understand the validity of the concerns raised;
- assess whether and how the project stakeholders (such as the complainant, the relevant EIB Group services and the project promoter) could seek resolution of the issues under complaint;
- 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.

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<sup>1</sup> [EIB Group Complaints Mechanism Procedures](#), November 2018, Article 2.2.1.

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**GLOSSARY**

DGPC	General Directorate for Roads and Bridges ( <i>Direction générale des ponts et chaussées</i> ) within the MEHI
EIB	European Investment Bank
ESPS	EIB Statement of Environmental and Social Principles and Standards
EU	European Union
EUR	Euro
FEMIP	Facility for Euro-Mediterranean Investment and Partnership
MEHI	Ministry of Equipment, Housing and Infrastructure ( <i>Ministère de l'équipement, de l'habitat et de l'infrastructure</i> ), formerly Ministry of Equipment, Housing and Spatial Planning ( <i>Ministère de l'équipement, de l'habitat et de l'aménagement du territoire</i> ) of the Republic of Tunisia
PMU	Project Management Unit at the DGPC
RAP	Resettlement Action Plan
RPF	Resettlement Policy Framework

## SUMMARY

In March 2021, the EIB Group Complaints Mechanism (EIB-CM) received a complaint from the majority shareholder of a company alleging that the EIB-financed “S2 Dénivellation de huit carrefours à Sfax” project had negatively affected the company's business.

The EIB-CM grouped the issues identified by the complainant as follows:

- i. total lack of compensation for financial losses caused by construction activities related to the project from July 2018 and the loss of earning resulting from the project, including: a) loss of commercial activity (decrease in 2018 and no turnover from 2019); b) loss of income, despite the expenses incurred since the start of works (such as rent payments); and c) loss in market value of the business and investments made;
- ii. lack of consultation and adequate information on the project and its impact, including on an appropriate complaints mechanism put in place at project level.

The EIB-CM assessed the possibility of establishing an amicable dispute resolution process, with several elements supporting this option. However, the promoter's representative argues that amicable resolution is impossible due to the Tunisian legal framework. In the circumstances, the EIB-CM decided to conduct an investigation with a compliance review.

The investigation and compliance review will assess the complainant's allegations against the EIB's good administration requirement, including compliance with the applicable regulatory framework and EIB policies, procedures and standards. The investigation will assess the project documentation and due diligence process as well as the EIB's monitoring of the project in the areas related to the complainant's allegations.

The outcome of the investigation and compliance review will be communicated to the complainant in the EIB-CM Conclusions Report in accordance with Article 2.4.6. of the Complaints Mechanism Procedures.

## 1 THE PROJECT

- 1.1 The “Modernisation Routière II<sup>2</sup>” operation is a €150 million sovereign framework loan granted to the Republic of Tunisia and co-financed by the European Investment Bank (EIB) under the European Union (EU) External Lending Mandate. The operation has multiple components and concerns the construction and modernisation of roads in Tunisia. The framework loan relates to the financing of six sub-projects. In December 2015, the EIB Board of Directors approved the framework loan and the EIB signed the finance contract.
- 1.2 The framework loan includes a secondary operation — “S2 Dénivellation de huit carrefours à Sfax” (the “project”)<sup>3</sup> — concerning the construction of eight grade-separated interchanges on Sfax’s main inner bypass (Rocade km4). The proposed allocation of €32.7 million covers 50% of the estimated project cost. The EIB Board of Directors approved the project in September 2017.
- 1.3 The project is being implemented by the Ministry of Equipment, Housing and Infrastructure (MEHI)<sup>4</sup> via the General Directorate for Roads and Bridges (DGPC or the “promoter”). The promoter set up a Project Management Unit (PMU) to cover the supervision and technical coordination of the works, management of the calls for tenders, environmental and social management and general monitoring of project implementation. The PMU has a branch in Sfax responsible for project implementation on the ground. The promoter also used external consultants to supervise the construction works.
- 1.4 The EIB is providing technical assistance to reinforce the promoter's capacity and mitigate implementation risks of projects financed by the framework loan, in particular assisting the PMU with the technical monitoring and environmental and social management of the projects. This technical assistance team is being financed under the Facility for Euro-Mediterranean Investment and Partnership (FEMIP). The EIB uses a local consultant to support the social monitoring of EIB-financed transport projects in Tunisia. These consultancy services are financed from the EIB’s own resources. More recently, the EIB has been providing ad hoc technical assistance to speed up the implementation of projects experiencing delays and/or disbursement difficulties. This second technical assistance team is being financed by the Economic Resilience Initiative for the EU neighbourhood.

## 2 THE COMPLAINT

- 2.1 In March 2021, the EIB Group Complaints Mechanism (EIB-CM) received a complaint from a majority shareholder of a company (the “complainant”) alleging that the project had negatively affected the company's business.
- 2.2 The complainant indicated that the company has been renting the showroom — with display windows on the road affected by the project — since 2011. Its commercial activity is based on the display windows and its customers are users of the road.
- 2.3 The complainant explains being surprised, in May 2018, by the installation of a sign indicating the start of work on “the grade separation of eight junctions on the Rocade km4 bypass in the Sfax governorate.” They had never heard of this project before. At an information meeting organised by the Sfax governorate shortly after the installation of the sign, the complainant learned that the work in front of the company's showroom would last no longer than eight months. At this meeting, the complainant was also informed of the existence of a social budget to cover the damage/losses caused by the works, to be examined on a case-by-case basis. In July 2018, the works began, the road was closed and access blocked on both sides. The

<sup>2</sup> More information on the framework loan is available at: <https://www.eib.org/projects/pipelines/pipeline/20150308>.

<sup>3</sup> More information on the project is available at: <https://www.eib.org/projects/pipelines/pipeline/20170152>.

<sup>4</sup> Formerly Ministry of Equipment, Housing and Spatial Planning. More information on the Ministry of Equipment, Housing and Infrastructure is available at: <http://www.equipement.tn/index.php?id=2&L=2>.

showroom was no longer accessible and visible from the road and the complainant therefore decided to close. The business ceased trading in July 2018. The company suffered a total loss of income as a result of the project works, which were still ongoing at the time the complaint was lodged, over two years after they started.

- 2.4 According to the complainant, the company had to continue paying the rent for the showroom despite it being closed. The employees were dismissed. The business has lost its value given the loss of customers and the fact that the display windows are no longer visible from the road due to the bridge built in front of them. Due to the project, the parking spaces in front of the showroom previously used by customers will no longer be available.
- 2.5 The complainant claims not to have been aware of the existence of a local (project-level) non-judicial mechanism for claims linked to resettlement caused by the project. In October 2019, the complainant, acting on behalf of the company, initiated proceedings against MEHI before the Administrative Court of Tunis, claiming compensation for the losses caused by the project authorised by the administration and requesting the appointment of experts to assess the amount of compensation. The complainant claims not to have been informed of any progress in the handling of the case by the court and not to have received a decision at the time the complaint to the EIB Group Complainants Mechanism was lodged in March 2021.
- 2.6 The complainant requests that the EIB handle the case in order to obtain fair compensation.
- 2.7 On the basis of the complaint, meetings with the complainant and successive exchanges, the problems identified by the complainant as grouped by the EIB-CM are as follows:
- i. total lack of compensation for financial losses caused by construction activities related to the project from July 2018 and the loss of earnings resulting from the project, including: a) loss of commercial activity (decrease in 2018 and no turnover from 2019); b) loss of income, despite the expenses incurred since the start of works (such as rent payments); and c) loss in market value of the business and investments made;
  - ii. lack of consultation and adequate information on the project and its impact, including on an appropriate complaints mechanism put in place at project level.

### **3 APPLICABLE REGULATORY FRAMEWORK**

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

- 3.1 The EIB Group Complaints Mechanism Policy (the “policy”)<sup>5</sup> and the EIB Group Complaints Mechanism Procedures (the “procedures”)<sup>6</sup> apply to all allegations of maladministration lodged against the EIB. Article 3 of the policy states that 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.
- 3.2 When discharging its functions and pursuant to Article 5.3.2 of its policy, among other things the EIB-CM assesses concerns of maladministration raised by complainants; evaluates and reports on compliance with the EIB’s relevant regulatory framework; provides advice and recommendations to the EIB’s management; and follows up and reports on efforts to take corrective actions, whenever applicable. Furthermore, the EIB-CM enables alternative and pre-emptive resolution of disputes. The dispute resolution team attempts to resolve problems raised by complainants through consensual processes in cooperation with the relevant internal and external stakeholders.<sup>7</sup>

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<sup>5</sup> [EIB Group Complaints Mechanism Policy](#), November 2018.

<sup>6</sup> [EIB Group Complaints Mechanism Procedures](#), November 2018.

<sup>7</sup> [EIB Group Complaints Mechanism Policy](#), November 2018, Article 5.3.2.



- 3.3 Compliance of a project with international, EU, national or local standards is the responsibility of the project promoter and local authorities. However, the EIB has a duty to verify compliance with its applicable policies, procedures or standards.<sup>8</sup> The EIB's role in the initial assessment and monitoring of projects includes: i) assessing the operation against the applicable legal framework; ii) assessing the operation with regard to the EIB Environmental and Social Principles and Standards; iii) advising and, where applicable, assisting the promoter in devising measures to manage the impact of the environmental and social risks of the operation in line with EIB standards; iv) assessing the institutional environmental and social capacity of the promoter and the competent national authorities and agencies and providing technical assistance if necessary; and v) monitoring the operation's performance in line with EIB environmental and social standards throughout the term of the loan.<sup>9</sup>

### Applicable standards

- 3.4 According to the finance contract, the applicable environmental and social standards include, beyond national regulations, the EIB Statement of Environmental and Social Principles and Standards (the "statement")<sup>10</sup> and the EIB's Environmental and Social Handbook in its version 9.0 of 2 December 2013 (the "handbook").<sup>11</sup> Article 2 of the statement notes that promoters are responsible for preparing, implementing, and operating projects financed by the EIB and that they are responsible for the fulfilment of EIB requirements. Article 8 of the statement states that the EIB monitors the environmental and social performance of a project that the EIB is financing. Article 51 of the statement stipulates that people whose livelihoods are negatively affected by a project should have their livelihoods improved or at minimum restored and/or adequately compensated for any losses incurred.
- 3.5 In particular, Standard 1 of the handbook outlines the promoter's responsibilities related to assessing and managing environmental and social impacts and risks, considering them during the selection of alternatives and applying a mitigation hierarchy to compensate/remedy significant adverse residual effects. The promoter develops an environmental and social management system that identifies actions to be taken and clarifies different responsibilities.<sup>12</sup>
- 3.6 Standard 6 of the handbook on involuntary resettlement aims at respecting the right to property of all affected people and at mitigating any adverse impact arising from their loss of assets, or access to assets and/or restrictions of land use, whether temporary or permanent, direct or indirect, partial or in their totality. Any project-affected person is eligible to receive compensation or to restore his/her livelihood. The promoter must at least restore the living conditions of the project-affected persons and ideally strive to continuously improve their living conditions.<sup>13</sup>
- 3.7 In line with EIB's requirements under Standard 6, the DGPC prepared a Resettlement Policy Framework (RPF) for the framework operation in 2015, which was updated in 2018<sup>14</sup> as well as a Resettlement Action Plan (RAP) for the project.<sup>15</sup> The updated RPF clearly states that people affected temporarily or permanently by the loss of property or by the loss of income linked to the implementation of any sub-project of the framework operation have a right to compensation.<sup>16</sup> The total or partial loss of income is equally covered by the RAP and listed as giving right to compensation.<sup>17</sup>

<sup>8</sup> [EIB Group Complaints Mechanism Policy](#), November 2018, Article 4.3.14.

<sup>9</sup> EIB Environmental and Social Handbook, v9.0 of 2 December 2013, p. 97, paragraph 8.

<sup>10</sup> [EIB Statement of Environmental and Social Principles and Standards](#), 2009.

<sup>11</sup> EIB Environmental and Social Handbook, v9.0 of 2 December 2013.

<sup>12</sup> EIB Environmental and Social Handbook, v9.0 of 2 December 2013, p. 97, paragraph 7.

<sup>13</sup> EIB Environmental and Social Handbook, v9.0 of 2 December 2013, Standard 6: Involuntary resettlement, p. 56, paragraph 26.

<sup>14</sup> [Resettlement Policy Framework](#), updated.

<sup>15</sup> [Resettlement Action Plans](#).

<sup>16</sup> [Resettlement Policy Framework](#), updated, Section 14: PAP eligibility.

<sup>17</sup> [Resettlement Action Plans](#), p. 60.

- 3.8 Standard 10 states that the promoter should establish and maintain a constructive dialogue between the promoter, the affected communities and other interested parties throughout the project life cycle. The promoter must ensure that all stakeholders are properly identified and engaged. The promoter will be comprehensive in identifying and prioritising all project stakeholders in the given context. Stakeholder analysis needs to clearly identify and differentiate between the different types of stakeholders, including consideration of their rights, roles, duties and responsibilities in the given context, outlining rights-holders and duty-bearers.<sup>18</sup>
- 3.9 In accordance with Standard 10, the promoter will provide project information to all identified stakeholders who are likely to be affected by adverse environmental or social impacts from the project, including: the duration of proposed project activities; any risks to and potential adverse impacts with regard to the environment, land tenure changes (resettlement, land acquisition or expropriation), occupational and community health, safety and security, and any other potential adverse impact on communities arising from the project; the proposed mitigation plans and associated budget; the envisaged consultation process, if any, and opportunities and ways in which the public can participate; and, time and venue of any envisaged public meetings, and the process by which meetings are notified, summarised, and reported.<sup>19</sup>
- 3.10 In line with Standards 6 and 10, the promoter needs to grant affected people free and easy access to an independent and effective grievance redress mechanism. The mechanism shall address concerns about compensation and relocation in a timely and effective manner and shall not impede access to other redress mechanisms, such as judicial, administrative or extrajudicial means of complaint. The promoter must inform the community members of the existence of the grievance mechanism.

#### **4 WORK PERFORMED**

- 4.1 Following the admissibility of the complaint and in line with Article 2.2 of the procedures,<sup>20</sup> the EIB-CM carried out an initial assessment. The objective of the assessment is to clarify the concerns raised by the complainant and to determine if further work is necessary to address the issues raised by the complainant.
- 4.2 To this end, the EIB-CM organised a meeting with the complainant, followed by several written communications. Several meetings were also held with the EIB services concerned in which the EIB-CM obtained clarifications and further details regarding the ongoing monitoring of the project. A meeting with the promoter's representatives also took place.<sup>21</sup> The EIB-CM gathered and reviewed the EIB project documentation.
- 4.3 During its initial assessment, the EIB-CM assessed the possibility of establishing an amicable dispute resolution process. The EIB-CM believes there were several elements in favour of this approach:
- i. the complainant confirmed a willingness to engage in an amicable settlement process;
  - ii. the resettlement action plan includes and prioritises this option<sup>22</sup>;
  - iii. the Resettlement Action Plan covers the procedure to be followed for total or partial loss of income or livelihood, including for businesses<sup>23</sup>;

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<sup>18</sup> EIB Environmental and Social Handbook, v9.0 of 2 December 2013, Standard 10: Stakeholder participation, p. 87, paragraphs 21 and 22.

<sup>19</sup> EIB Environmental and Social Handbook, v9.0 of 2 December 2013, Standard 10: Stakeholder participation, p. 89, paragraphs 32 and 33.

<sup>20</sup> [EIB Group Complaints Mechanism Procedures](#), November 2018, Article 2.2.

<sup>21</sup> Meeting of 18 June 2021.

<sup>22</sup> [Resettlement Action Plans](#), p. 56, Table 4: Analysis of compliance and differences between Tunisian law and EIB standards.

<sup>23</sup> [Resettlement Action Plans](#), p. 60, Table 5: PAP eligibility matrix.

iv. the EIB services also favoured this route, and suggested that the promoter engage in an amicable resolution process.<sup>24</sup>

4.4 However, the EIB services informed the EIB-CM of an argument from the representative of the promoter that amicable resolution is impossible due to the Tunisian legal framework. According to the promoter, no action can be taken in favour of the complainant before the final judgment of the Administrative Court, as this court is the only body legally permitted to estimate the amount of compensation to be paid for the damage caused by the works.<sup>25</sup>

4.5 The EIB-CM notes that the EIB services have initiated procedures with the borrower and the promoter in an attempt to find a solution. These procedures, which were still ongoing as this report was being drafted, could potentially lead to an amicable resolution of the dispute.

## 5 WAY FORWARD

5.1 Following the initial assessment and taking into account the promoter's refusal at this stage to engage in an amicable dispute resolution process, the EIB-CM decided to perform an investigation with a compliance review.

5.2 The allegations identified by the EIB-CM in paragraph 2.7 above will be investigated with a compliance review.

5.3 The investigation and compliance review will assess the complainant's allegations against the EIB's good administration requirement, including compliance with the applicable regulatory framework and EIB policies, procedures and standards (Section 3). The investigation will assess the project documentation and due diligence process as well as the EIB's monitoring of the project in the areas related to the complainant's allegations.

5.4 The outcome of the investigation and compliance review will be communicated to the complainant in the EIB-CM Conclusions Report in accordance with Article 2.4.6. of the procedures.<sup>26</sup>

## Complaints Mechanism

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<sup>24</sup> Email from EIB services of 6 May 2021.

<sup>25</sup> Email from the promoter of 21 May 2021.

<sup>26</sup> [EIB Group Complaints Mechanism Procedures](#), November 2018, Article 2.4.6.