

**COMPLAINTS MECHANISM**

SG/E/2021/25

# **CAIRO METRO LINE 3 (PHASE 3) EGYPT**

**INITIAL ASSESSMENT REPORT**

**8 MARCH 2022**



# Cairo Metro Line 3 (Phase 3) Initial Assessment Report

## **Complaint confidential**

No<sup>1</sup>

## **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 up to 23 of February 2022.

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<sup>1</sup> The complainants' representative confirmed by email that the complaint is non-confidential.

## 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 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>.

## The Initial Assessment Report

The initial assessment generally aims to<sup>2</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 (e.g. 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>2</sup> As outlined in article 2.2.1 of the [EIB-CM Procedures](#).

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## GLOSSARY

EIB	European Investment Bank
EIB-CM	EIB Group Complaints Mechanism Division
ESDS	EIB Environmental and Social Data Sheet
ESMP	Environmental and Social Management Plan
ESPS	EIB Statement of Environmental and Social Principles and Standards
E&S	Environmental and Social
EHS	Environment, Health and Safety
EIA	Environmental Impact Assessment
ESIA	Environmental and Social Impact Assessment
NAT	National Authority of Tunnels
NIF	Neighbourhood Investment Facility
PIU	Project Implementation Unit
SEP	Stakeholder Engagement Plan

## EXECUTIVE SUMMARY

This report concerns a complaint regarding the Cairo Metro Line 3 (Phase 3) project in Egypt, financed by the European Investment Bank (EIB). The station concerned by the complaint is ----- station (the station). The construction works at the station were ongoing at the receipt of the complaint.

The complaint received by the EIB Complaint Mechanism (EIB-CM) concerned expected negative impact on accessibility and safety of access & exit to a building's garage. The complainants are the residents of a building adjacent of the station. The complainants' representative alleges that the station has changed design over the course of construction and that the promoter failed to consult with the residents, and to identify and minimize social impacts.

The complainants have also lodged a grievance with the Promoter directly. Following a site visit by a promoter's engineer and several written exchanges between the complainant and the Promoter, the parties have not reached a solution.

After conducting a review of available information, the EIB-CM has decided to proceed with a compliance review. The EIB-CM will seek for an independent expert opinion to support its fact-finding.

The EIB-CM identified the following allegations as constituting the scope of the compliance investigation:

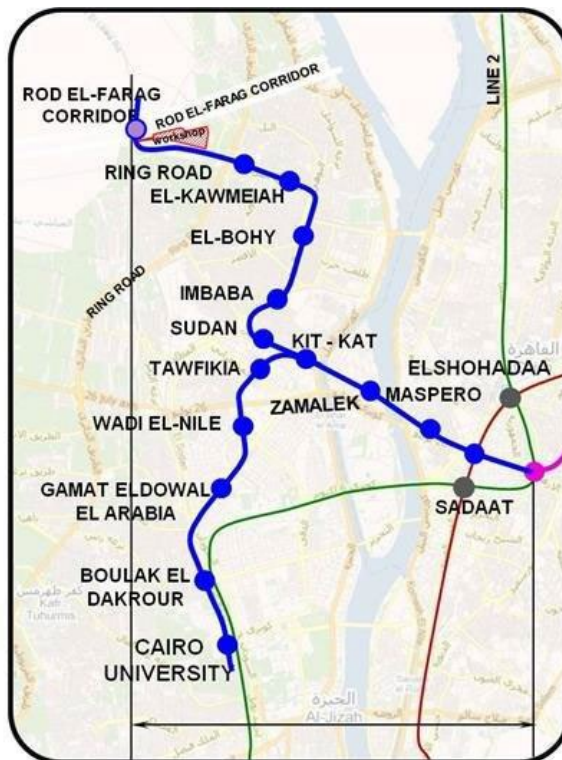
<b>Allegation</b>	<b>Description of the Allegation</b>
<b>Lack of impact identification and mitigation</b>	Failure to (1) identify alleged impacts from the station and (2) to minimize impacts on the building.
<b>Lack of assessment of alternatives</b>	Failure to assess the station design alternatives with the objective to avoid, minimize or mitigate alleged negative impacts.
<b>Lack of meaningful participation and consultation</b>	Failure to consult on a timely manner with the building residents on the station design and its proposed changes.

In light of the above allegations, the EIB-CM will assess potential maladministration by EIB services with regard to their monitoring and due diligence duties, including whether it failed to verify the correct implementation of the E&S requirements by the promoter.

# 1 BACKGROUND

## 1.1 The Project

- 1.1.1 The EIB is providing an investment loan for the “Cairo Metro Line 3 (Phase 3)” project, which concerns Phase 3 of the construction of Cairo’s third metro line<sup>3</sup>. The planned alignment of the metro line stretches over several districts for 15.7 km and comprises 15 metro stations. The borrower for the project is the Arab Republic of Egypt and the promoter is the National Authority for Tunnels (“NAT” or “the Promoter”). The investment loan is complemented with a mobilisation of grants from the Neighbourhood Investment Facility (NIF<sup>4</sup>) to provide technical support to the Promoter, including upgrading the environmental and social (E&S) studies and management plans of the project.
- 1.1.2 The station concerned by the complaint is ----- station (the station). The construction works at the station were ongoing at the receipt of the complaint and are well advanced; digging activities are completed and structural works of surface to underground stairs near completion.



- 1.1.3 A revised Environmental and Social Impact Assessment (ESIA) was prepared in 2012 in accordance with the EIB’s standards and requirements applicable to the project<sup>5</sup>. A Public Consultation Report describes the consultations that took place for the development and disclosure of the ESIA in 2011 and 2012<sup>6</sup>. A Stakeholder Engagement Plan (SEP) sets out the principles and a plan for stakeholder engagement by the project in the final design, alignment and construction of Metro Line 3 – Phase 3<sup>7</sup>.

<sup>3</sup> More information on the project on EIB website : <https://www.eib.org/en/projects/pipelines/all/20100613>

<sup>4</sup> [https://ec.europa.eu/europeaid/tags/neighbourhood-investment-facility-nif\\_en](https://ec.europa.eu/europeaid/tags/neighbourhood-investment-facility-nif_en)

<sup>5</sup> ESIA available online on EIB project’s website: <https://www.eib.org/en/registers/all/47052553>

<sup>6</sup> Public Consultation Report ESIA : <https://www.eib.org/en/registers/all/47048709>

<sup>7</sup> Stakeholder Engagement Plan : <https://www.eib.org/en/registers/all/47050790>

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## 1.2 Complaint

- 1.2.1 On 2 December 2021, the EIB Group Complaints Mechanism Division (hereinafter: EIB-CM) received a complaint from the complainants' representative regarding the station design. The complaint concerned expected negative impacts on accessibility and safety of access & exit of the garage of a residential building. The complainants are the residents of the building adjacent to the station. Nine residents including the representative signed the complaint; all are owners of apartment(s) in the building.
- 1.2.2 The complainants' representative alleges that the station has changed design over course of construction. According to their past informal interactions with site engineers and their interpretation of the ongoing works, stairs were initially planned to be located in front of another adjacent building. Allegedly, during construction, the design changed resulting in stairs being constructed in front of their building.
- 1.2.3 The complaint indicated that the adjacent building – for which the initial location of the station was planned - has no garage and that residents would not have been affected by the station's original design.
- 1.2.4 The complaint alleges that the stairs will also affect accessibility to the shop located at the ground floor of the building. One of the complainant owns the shop.
- 1.2.5 The complaint alleges that the current design did not take into account the negative impact on residents' accessibility to the building garage. Allegedly, the stairs' fence corners are aligned to the side of their garage entrance, forming a 90° angle with ----- street, causing reduced space and difficulty for cars to turn and access the garage.
- 1.2.6 The representative alleges that the design will cause a safety risk to the road drivers and garage users due to reduced visibility caused by the stairs fence. This risk would allegedly be high because, according to the complainant, cars cannot manoeuvre in the garage and must therefore exit in reverse.
- 1.2.7 The representative alleges that the residents of the building were not informed about the project and changes to the station design over time.
- 1.2.8 The complainants request that the stairs be moved back in front of the adjacent building as per the original design.
- 1.2.9 The same complaint dated 5 December 2021 was submitted to the Promoter. Subsequently, according to the complainants' representative, on 15 December 2021, a promoters' engineer visited the building and met with one of its residents.



## 2 WORK PERFORMED

- 2.1.1 § 4.2.1 of the EIB Group Complaints Mechanism Policy (Policy)<sup>8</sup> and § 2.1.3 of the EIB Group Complaints Mechanism Procedures (Procedures)<sup>9</sup> require the EIB-CM to carry out the initial assessment of the complaint<sup>10</sup>. 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 as well as to determine if further work by the EIB-CM is necessary and/or possible in order to address the allegation or resolve the issues raised by the complainant<sup>11</sup>. Further work may include compliance review or collaborative resolution process (e.g. mediation). This report contains the results of the EIB-CM's initial assessment.
- 2.1.2 During the initial assessment, the EIB-CM had two meetings with the complainants' representative to better substantiate the complaint, allegations therein and complainants' expectations. During these meetings, the representative highlighted that the difficulty to change the design increases as the works progress. Two other meetings<sup>12</sup> also took place between the EIB-CM and the EIB services to present the complaint and collect information.
- 2.1.3 On 19 December 2021, NAT provided a written response to the complainants' representative grievance (see 1.2.9). The response states that the original design included stairs and an elevator in front of the complainants' building. The design resulted in an elevator height of 2,5m and a distance of 1m from the building. To avoid this impact, an alternative design with elevator and stairs in front of the adjacent building was developed which resulted in the same problem. Therefore, the final design includes no elevator and the stairs are relocated in front of the complainants' building (as per the original design) further away from the building wall. The final design fence height is of 1,2m with a distance of 2,4m from the building, which, according to NAT, is sufficient to allow access to the garage. NAT refers to the possibility of adding a mirror in front of the garage entrance to enhance visibility. The three designs were annexed to the response, the first is dated February 2014 and reportedly submitted *upon tender phase* and the second is dated May 2015 and labelled "issue for tender". There was no legend to the third and final drawing.
- 2.1.4 On 26 of December 2021, the representative of the complainants sent a response to NAT stating that the solution to the reduced accessibility and safety is to move the stairs and that the proposed mirror solution would not solve the problem, as cars exit the garage in reverse due to the manoeuvre difficulty inside the parking.
- 2.1.5 NAT replied to the complainant on 17 January 2022 confirming its original reply of 19 December. It noted that re-adjustments cannot take place since the concrete of the stairs has already been placed and ceramic will soon be installed. In addition, NAT states that the current stairs height does not affect vision, entrance and exit to the garage.
- 2.1.6 EIB services requested by email<sup>13</sup> to NAT the following assessments of Systra (the project contracted engineering company) : i) analysis of alternatives of the station designs, road safety assessment, impact assessment of removal of electric escalators, in particular on station capacity and emergency evacuation. NAT replied by email<sup>14</sup> with similar reasoning as presented

<sup>8</sup> Available at: [EIB GROUP COMPLAINTS MECHANISM POLICY](#).

<sup>9</sup> Available at: [EIB GROUP COMPLAINTS MECHANISM PROCEDURES](#).

<sup>10</sup> Please note that this complaint concerns social impacts of an EIB-financed project. As noted in § 2.1.2 of the Procedures, complaints related to social impacts of financed projects usually raise complex issues. For this reason, and because of the sensitivity of the relations involving the project promoter, national authorities, civil society organisations and project affected people, particular attention needs to be paid to the specific processes regarding these types of complaints. In line with § 2.1.2 of the Procedures, for these types of complaint, the normal process is formally structured in two phases: an initial assessment phase and a compliance review or collaborative resolution process phase.

<sup>11</sup> § 2.2.1 of the Procedures.

<sup>12</sup> Meetings of 17 December 2021 and 10 January 2022.

<sup>13</sup> Email of 25 January 2022

<sup>14</sup> Email of 03 February 2022

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in paragraphs 2.1.3 and 2.1.5 with 3 designs<sup>15</sup> in attachment. In another email, EIB reminded its request to receive Systra's assessments and requested the following clarifications<sup>16</sup> on the designs: i) exact distance between station fence and the building wall in design 2 and 3 as there seemed to be no difference while this was the stated reason for changing the design, ii) to share the legend and date of the third design.

- 2.1.7 Systra provided upon NAT's request a letter with a 1 page narrative report<sup>17</sup> to EIB services. The report refers to the available area for construction and passengers circulations as the constraints that have guided the adoption of the current design. The completion of primary civil works and stairs casts is mentioned as an additional constraint. It acknowledges that there will be some impact to the original circulation and access arrangements for the surrounding buildings and that no specific traffic study was carried out. To mitigate the situation it proposes the following possible options: i) change fence material with glass, ii) installation of a mirror, iii) extend the sidewalk to create a barrier to incoming traffic specifying this last measure would require the authorisation of the district traffic authority. In its letter the engineer suggest that Systra should discuss these options with NAT and the complainant to reach an agreement.
- 2.1.8 The EIB-CM presented to the representative these proposed solutions and Systra's suggestion for a meeting. The complainant expressed its willingness to participate in such meeting. EIB services proposed NAT to organize a meeting in its local office<sup>18</sup>.
- 2.1.9 On the basis of the gathered information and the review of the exchanges between the complainant and NAT, the EIB-CM has decided to proceed with a compliance review.

## 3 REGULATORY FRAMEWORK

- 3.1.1 § 2.2.4 of the Procedures sets out key questions to be addressed during the initial assessment, namely:
- Understand how the relevant EIB services have:
    - Verified compliance with the applicable regulatory framework, including EIB standards and
    - Carried out appropriate monitoring of project implementation.
  - Assess potential indications that EIB standards have failed to provide an adequate level of protection and safeguards.
  - Identify, if any, reasonable indications of non-compliance with the applicable regulatory framework.
- 3.1.2 The 2009 EIB Statement of Environmental and Social Principles and Standards<sup>19</sup> (EIB ESPS) were applicable at the time of project appraisal and signature. The following requirements are relevant to this case:
- § 16 mentions that *alternatives should be considered and appropriate mitigation and/or compensation measures identified for projects with significant (...) social impacts (so called **assessment of alternatives**)*.
  - § 17 states that *projects should be designed so as to avoid and if this is not possible reduce any significant adverse impact, and further design changes may be justified if the socio-economic benefits of the change exceed the costs; any significant residual negative impact should be, in order of preference, mitigated, compensated or offset* (so called **mitigation hierarchy**).

<sup>15</sup> Design 1 of February 2014, Issue for Tender; Design 2 of May 2015, Issue for Tender, Design 3 with not legend but reportedly adapted later and reflecting the current design.

<sup>16</sup> Email of 03 February 2022

<sup>17</sup> Report of 13 February 2022

<sup>18</sup> Email of 23 February 2022, cut of date of this report.

<sup>19</sup> [https://www.eib.org/attachments/strategies/eib\\_statement\\_esps\\_en.pdf](https://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf)

- § 55 requires that *where there are risks to (...) community health, promoters should develop and implement verifiable programmes and procedures to ensure community and occupational health and safety standards are aligned with good international practices. The purpose is to avoid or minimize risks and impacts to the health and safety of (...) communities, (...).* (so called **community safety**).
  - § 64 states that *consultation and participation is essential for investment sustainability through increased local ownership and support through informed involvement. Moreover, meaningful dialogue and participation is crucial to promoting and supporting the rights of people affected by a project. This includes the rights to due process via recourse to independent appeal and arbitration procedures in the case of disputes. As such, public consultation is a general requirement of the environmental and social safeguards of the Bank, as well as being applied to specific social issues, (...).* (so called **meaningful ongoing consultations**).
  - In line with § 39, *for projects in all other regions of EIB activity, the Bank requires that all projects comply with national legislation, including international conventions ratified by the host country, as well as EU standards. Where EU standards are more stringent than national standards the higher EU standards are required, if practical and feasible. § 43 states that the EU approach to environmental matters incorporated in EU policy may be supplemented by other examples of good practices related to technical standards, processes and management systems in specific sectors developed by other international bodies as interpreted by the EIB.* (so called **international best practice**).
- 3.1.3 The 2009 EIB Statement of Environmental and Social Principles and Standards applies to the EIB and the promoter as stated in its §2. The EIB applies a set of environmental and social requirements throughout the project cycle to help ensure the sustainability of all the projects that it finances. Promoters are responsible for preparing, implementing and operating projects financed by the Bank; they are also responsible for the fulfilment of Bank requirements, especially for legal compliance. The Bank will assist the promoter to fulfil these responsibilities.
- 3.1.4 As per § 18 of ESPS for a project that requires an EIA, the Bank will not finance the project before the EIA has been completed according to the requirements of the Bank<sup>20</sup>. As stated in 1.1.3 above, the ESIA was disclosed and consultations took place in 2012. The ESIA includes an E&S Management Plan (ESMP) applicable to the project. The Bank has reviewed the ESIA as part of its project appraisal<sup>21</sup> and investment decision<sup>22</sup>.
- 3.1.5 The Environmental and Social Practices Handbook (2010)<sup>23</sup>, translates the requirements above into practices and procedures that EIB is subject to during the project investment cycle (e.g. appraisal and monitoring). The handbook includes a series of social assessment guidance notes to assist bank teams in appraisal and monitoring. Guidance Note 4 (Community and Occupational Health and Safety) and Guidance Note 5 (Consultation and Participation) are of relevance to this case.
- 3.1.6 In the loan agreement, the borrower, acting through NAT, undertakes that it shall implement the Project in compliance with the ESMP. As a condition precedent to all disbursements by the Bank, the borrower, acting through NAT, shall deliver to the Bank evidence that the measures specified in the ESMP have been fully implemented and outline/explain which further measures the Promoter plans to take.
- 3.1.7 As per 2.1.6 above, the change to the design of the station occurred in 2014-2015, hence after EIB investment decision. These changes are typical marginal post Front End Engineering

<sup>20</sup> Also required in paragraphs 53, 84-98 of EIB E&S Practices Handbook (2010), adding that it must be consistent with the requirements of EU EIA Directive.

<sup>21</sup> See also EIB E&S Data Sheet : <https://www.eib.org/en/registers/all/54885885>

<sup>22</sup> Board of Directors investment decision of September 2012.

<sup>23</sup> EIB Environmental and Social Practices Handbook, Version 2 of 24/02/2010

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Design that take place post ESIA and are not part of the promoters reporting requirements<sup>24</sup> to the Bank.

- 3.1.8 The EIB-CM carried out an initial review of the EIB's appraisal and monitoring<sup>25</sup> as well as of the project ESIA, ESMP and SEP. The ESMP outlines the management programme to be developed for the project through the project E&S Management System and is supported by early E&S planning in relation to the management of specific issues such as community relations, community safety, traffic management. The ESMP also includes a Design Change Procedure in case of serious concerns from public consultation or due to technical needs. The Stakeholder Engagement Plan (SEP) describes NAT consultations undertaken as well as principles and plans of future stakeholder engagement during project construction and operation, including access to grievance mechanism. The appraisal note highlights the need to have dedicated EHS and social professionals to operationalize these plans and notes the promoter's limited experience in implementing measures contained in these plans. These aspects would however be mitigated by (i) the establishment of a Project implementation Unit (PIU) including E&S experts to provide the promoter with the appropriate support and training and (ii) a condition precedent in the loan agreement aiming to ensure that the measures specified in the ESMP have been fully implemented accordingly.
- 3.1.9 The EIB-CM will review whether these plans include measures that would have helped prevent or mitigate the alleged impacts and whether they were implemented correctly. The EIB-CM will also assess EIB services' monitoring and validation of the implementation of these plans by the promoter, in particular completion of condition precedent to disbursement referred to in paragraph 3.1.6.

## 4 WAY FORWARD

- 4.1.1 As explained in 2.1.9, the EIB-CM concluded that it would proceed with a compliance review. The EIB-CM remains however supportive of a meeting between NAT, Systra and the complainant (see 2.1.7 and 2.1.8). The outcome of any such discussion will be reflected in the context of the compliance review process.
- 4.1.2 The EIB-CM will seek an independent expert opinion to support its fact-finding. The following activities constitute the scope of the expert assignment :
- verification of the complainants' allegations (e.g. difficulty to manoeuvre inside the garage; absence of other garage at adjacent building) and identification of other environmental, social and technical constraints on site;
  - assessment of the alleged impacts (see 1.2.1)<sup>26</sup> against international best practice and design standards (e.g. design requirements informed by drivers eyes height and turning radius);
  - collection and assessment of information from NAT on the elaboration of the design, the assessment of alternatives, impacts mitigation and other constraints taken into consideration.
  - If applicable, proposal on technical solutions to mitigate the alleged impacts.

<sup>24</sup> Under the contract and prior to its signature, NAT was required to submit for the approval of the Bank any **material change** to the Project in respect of, inter alia, design. Contract definition of a material change would cover changes affecting the Borrower's ability to perform its contractual obligations or changes to its financial situation. NAT was also required to deliver regularly a **brief update on the technical description**, explaining the reasons for **significant changes** vs. initial scope.

<sup>25</sup> See also EIB E&S Data Sheet : <https://www.eib.org/en/registers/all/54885885>

<sup>26</sup> Alleged impacts are reduced on accessibility and safety of access & exit of the garage of a residential building.

- 4.1.3 The EIB-CM identified the following allegations as constituting the scope of the compliance investigation:

Allegation	Description of the Allegation
Lack of impact identification and mitigation	Failure to identify alleged impacts from the station and to minimize impacts on the building.
Lack of assessment of alternatives	Failure to assess the station design alternatives with the objective to avoid, minimize or mitigate alleged negative impacts.
Lack of meaningful participation and consultation	Failure to consult on a timely manner with the building residents on the station design and its proposed changes.

- 4.1.4 The EIB-CM will also assess whether EIB services carried out appropriate monitoring of project implementation.
- 4.1.5 The outcome of the compliance review will be communicated to the complainants through the EIB-CM's conclusion report.

#### Complaints Mechanism