

COMPLAINTS MECHANISM

SG/E/2021/25

CAIRO METRO LINE 3 (PHASE 3) EGYPT

CONCLUSIONS REPORT

26 JANUARY 2023



Cairo Metro Line 3 (Phase 3) Conclusions Report

Complaint confidential: No¹

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Disclaimer

The conclusions presented in this report are based on the information available to the EIB Group Complaints Mechanism up to 2 December 2022, representing the report's cut-off date. The conclusions are addressed solely to the EIB.

¹ The complainants' representative confirmed in an email dated 15 December 2021 that the complaint is non-confidential.

The EIB Group Complaints Mechanism

The EIB Group Complaints Mechanism is a tool enabling the resolution of disputes if 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 judgment of competent judicial authorities.

Maladministration means poor or failed administration. It occurs when the EIB fails to act in accordance with a rule or principle that is binding upon it, including its own policies, standards and procedures. The concept of maladministration includes failure by the EIB to comply with human rights, applicable law, or the principles of good administration. Maladministration may relate to the EIB Group's decisions, actions or omissions and this may include the environmental or social impacts of the EIB's projects and operations.

One of the main objectives of the EIB Group Complaints Mechanism is to ensure the right to be heard and the right to complain. For more information on the EIB Group Complaints Mechanism please visit: <https://www.eib.org/en/about/accountability/complaints/index.htm>.

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GLOSSARY

AFD	French Development Agency
ECM	Egyptian Company for Metro
EIA	Environmental impact assessment
EIB	European Investment Bank
EIB-CM	EIB Group Complaints Mechanism Division
ESIA	Environmental and social impact assessment
ESMP	Environmental and social management plan
ESPS	EIB Statement of Environmental and Social Principles and Standards
EU	European Union
NAT	National Authority for Tunnels
PIU	Project Implementation Unit
PJ	EIB Projects Directorate
PMTS	Project Management and Technical Support
Project	Cairo Metro Line 3 (Phase 3)
Promoter	National Authority for Tunnels (NAT)
RAP	Resettlement action plan
SEP	Stakeholder engagement plan
SIA	Social impact assessment

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 complaint concerns the location of one of the stairways for entering and exiting the station.

The complaint received by the EIB Group Complaints Mechanism (Complaints Mechanism) concerned the alleged potential negative impact on accessibility and safety for vehicles exiting the garage of a building adjacent to the station, due to the location of one of the stairways for entering and exiting the station. The complainants are the residents of a building adjacent to the station. The complainants alleged that the location and design of the stairs had changed over the course of construction and that the promoter had failed to consult with the residents, to properly assess alternatives and to identify and minimise social impacts.

After reviewing the available information, the Complaints Mechanism presents the conclusions reached. As part of this review, the Complaints Mechanism reviewed evidence of whether the EIB services had properly carried out due diligence and monitoring of the project.

The promoter (the National Authority for Tunnels (NAT)) was required to report to the EIB on any material change² or any significant change³ to the project, which was not the case here. Thus, the EIB only became aware of the issues once the complaint had been made to the Complaints Mechanism. In line with the EIB's environmental and social monitoring requirements, the EIB services adequately monitored NAT's management of its own grievance mechanism and provided active support to NAT and the Complaints Mechanism in their handling of the complaint.

The allegations of the project's non-compliance with the EIB environmental and social standards were found ungrounded. The impact of the design change was identified by the promoter and partially mitigated as of the date of the complaint. The independent experts' report commissioned by the Complaints Mechanism identified a number of additional mitigation measures that could be taken. A few suggestions for improvement are proposed as set out below.

Allegation	Outcome	Suggestions for improvement
Lack of assessment of alternatives	No grounds.	No
Lack of impact identification and mitigation	No grounds.	<p>Yes</p> <p>In the first quarter of 2023, the EIB monitors that that NAT confirms each of the measures listed in the letter dated 29 May 2022 from the project-contracted engineer company to the joint venture.</p> <p>Given the potential residual risk to public safety, the additional measures proposed by the independent expert should be discussed with NAT during the</p>

² Not defined in the contract. See also paragraph 3.2.1.

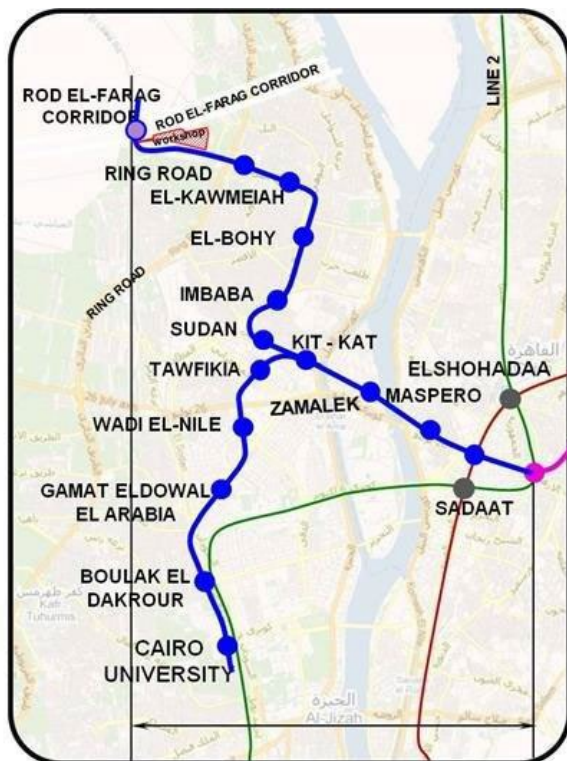
³ Any change which based on nature, scale and size of the impact may exceed an environmental threshold/limit, affect a nature protected area, or a large population. See also paragraph 4.1.4.

Allegation	Outcome	Suggestions for improvement
		<p>EIB Project Directorate's next site visit (for its own consideration).</p> <p>In the first quarter of 2023, the EIB monitors that NAT formally communicates its proposed resolution of the grievance to the complainants.</p>
Lack of meaningful participation and consultation	No grounds.	No
EIB monitoring	<p>No grounds.</p> <p>The conditions precedent in the finance contract in relation to approval of the environmental and social impact assessment and implementation of the environmental and social management plan were verified prior to the disbursement of the first and subsequent tranches of financing.</p> <p>The EIB project team performed adequate monitoring of the grievance to the Complaints Mechanism from the moment it was notified of the complaint.</p>	No

1 BACKGROUND

1.1 Project

- 1.1.1 On 18 September 2012, the EIB Board of Directors approved the financing of the Cairo Metro Line 3 (Phase 3) project in Egypt in the amount of up to €600 million⁴. The borrower of this project is the Arab Republic of Egypt (the borrower) and the promoter and implementing agency is the National Authority for Tunnels (NAT). The project-contracted engineering company is responsible for project management.
- 1.1.2 The National Authority for Tunnels was established by the government to carry out tunnel and metro projects throughout Egypt. The final beneficiary of the project is the Egyptian Company for Metro (ECM), which will operate the project once the construction managed by NAT is completed. ECM is a public body that operates and maintains the Cairo metro under the auspices of the Ministry of Transport.
- 1.1.3 The project consists in the expansion of the existing Cairo metro line. Phase 3 of this expansion involves the construction of 17.4 km of railways and 15 metro stations. The construction works are being carried out by a joint venture of French and Egyptian companies (the joint venture).



- 1.1.4 The EIB loan of €600 million is expected to cover 25% of the total project cost. Other co-financiers include the French Development Agency (AFD), which is expected to finance the rolling stock at €435 million. The EU Neighbourhood Investment Facility is providing a grant of €40 million, while the remaining €1.043 billion will be covered by the borrower.
- 1.1.5 The formal inauguration of this new section of Cairo Metro Line 3 took place on 4 July 2022⁵. While the first sub-section of the project has become operational, other sub-sections, including the station of concern here, are not yet operational and are still under construction.

⁴ More information on the EIB website: <http://www.eib.org/en/projects/all/20100613>.

⁵ See, for example: [Egypt: EIB Vice-President welcomes successful completion of Cairo Metro Line 3](#).

- 1.1.6 A revised environmental and social impact assessment (ESIA) was prepared in 2012 in accordance with the EIB's standards and requirements applicable to the project⁶. A Public Consultation Report describes the consultations that took place for the development and disclosure of the ESIA in 2011 and 2012⁷. 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 Cairo Metro Line 3 (Phase 3)⁸.

1.2 Complaint

- 1.2.1 On 2 December 2021, the EIB Group Complaints Mechanism Division (Complaints Mechanism) received a complaint from the complainants' representative regarding the design of one of the stations. The complainants are residents of the building adjacent to the station. Nine residents including the representative signed the complaint; all of them are owners/residents of apartments in the building. In their complaint, the complainants raised concerns about the potential negative impact on accessibility and safety when entering and exiting the garage of their residential building.
- 1.2.2 The complainants alleged that the design of one of the station entrances had changed over the course of construction. According to previous informal conversations with site engineers and their interpretation of the ongoing works, the stairs were initially supposed to be located in front of another adjacent building. Allegedly, the design had changed during construction, resulting in the stairs being constructed in front of their building.
- 1.2.3 The complainants indicated that the adjacent building where the stairs were initially supposed to be located had no garage and that its residents would not have been affected by the station's original design.
- 1.2.4 The complainants alleged that the current design had not taken into account the negative impact on residents' accessibility to the building's garage. Allegedly, the corners of the stair fence are aligned with the edge of their garage entrance, forming a 90-degree angle with the street. This limits space and creates difficulties for cars when turning and entering the garage.
- 1.2.5 The complainants further alleged that the design would cause a risk to the safety of road and garage users and pedestrians due to reduced visibility caused by the stair fence. This risk would allegedly be high because, according to the complainants, cars were unable to manoeuvre in the garage and must therefore exit in reverse.
- 1.2.6 They also claimed that the residents of the building were not informed about the project or changes to the station design over time.
- 1.2.7 For the purposes of this Conclusions Report, the Complaints Mechanism has grouped the above allegations into the following headings: (1) lack of assessment of alternatives; (2) lack of impact identification and mitigation; and (3) lack of meaningful participation and consultation.
- 1.2.8 The complainants request that the stairs be moved back in front of the adjacent building, which does not have a garage, in line with what they maintain was the original design.
- 1.2.9 At the time of receipt of the complaint, the construction works at the metro station were already well advanced; digging activities had been completed and the structural surface works for the underground stairs were near completion.

⁶ The environmental and social impact assessment is available online on the EIB's project website: <http://www.eib.org/en/registers/all/47052553>.

⁷ Public Consultation Report — ESIA: <http://www.eib.org/en/registers/all/47048709>.

⁸ Stakeholder engagement plan: <http://www.eib.org/en/registers/all/47050790>.

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1.2.10 The same complaint was submitted to NAT a few days later on 5 December 2021.

2 WORK PERFORMED

- 2.1.1 As stated in the Complaints Mechanism’s Initial Assessment Report dated 8 March 2022⁹, once it had received the complaint, the Complaints Mechanism conducted initial meetings with the complainants’ representative to better understand the complaint, and also met with the EIB services to present the complaint and to collect information. The Initial Assessment Report sets out relevant information about the complaint and the proposed way forward.
- 2.1.2 As indicated in the Initial Assessment Report, NAT presented a number of mitigation measures to the EIB. The Complaints Mechanism presented the proposed mitigation measures to the complainants’ representative, along with the suggestion from the project-contracted engineering company for a meeting to discuss the possible options. The complainants considered the proposed options to be unsuitable but expressed their willingness to participate in such a meeting. The EIB services offered to NAT to organise the meeting at the EIB’s local office¹⁰. The meeting was held on 13 April 2022, but no agreement could be reached.
- 2.1.3 Based on that meeting and the review of exchanges between the complainants and NAT, the Initial Assessment Report concluded that the Complaints Mechanism would carry out a compliance review, including an assessment of whether the EIB carried out appropriate monitoring of the project implementation. The Complaints Mechanism decided to engage the services of a team of independent experts to carry out a fact-finding mission to: (1) verify the validity of the complainants’ allegations; (2) identify relevant international or regional standards and good practices; (3) assess the alleged impacts against those standards and good practices; (4) assess information from NAT on the elaboration of the design, the assessment of alternatives, the consultations undertaken, impact mitigation and other constraints taken into consideration; and (5) as applicable, propose technical solutions to avoid, minimise or mitigate the alleged impacts. The independent experts’ report was delivered on 22 August 2022.
- 2.1.4 The Complaints Mechanism reviewed the available information and documents, such as the independent experts’ report, NAT’s management plans (such as the environmental and social impact assessment, environmental and social management plan (ESMP) and stakeholder engagement plan) and the EIB’s monitoring activities in the context of this complaint.
- 2.1.5 On the basis of the information collected and analysed, the Complaints Mechanism prepared this Conclusions Report.

3 REGULATORY FRAMEWORK

3.1 The EIB Group Complaints Mechanism

- 3.1.1 The EIB Group Complaints Mechanism Policy¹¹ (the policy) tasks the Complaints Mechanism with handling complaints concerning alleged maladministration by the EIB¹². Maladministration means poor or failed administration, and occurs when the EIB Group fails to act in accordance with a rule or principle binding upon it, including its own policies, standards and procedures¹³.

⁹ Available at: [EIB Group Complaints Mechanism Initial Assessment Report](#).

¹⁰ Email of 23 February 2022.

¹¹ Available at: https://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf.

¹² Section 5.1.3 of the EIB Group Complaints Mechanism Policy.

¹³ Section 3.1 of the EIB Group Complaints Mechanism Policy.

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 Group¹⁴.

- 3.1.2 The policy specifies that the Complaints Mechanism reviews the EIB's activities with a view to determining whether maladministration attributed to the EIB has taken place¹⁵. This review by the Complaints Mechanism may include a substantive review of project compliance with environmental and social standards¹⁶.

3.2 Finance contract

- 3.2.1 EIB finance contracts generally include undertakings from the borrower/promoter to carry out a project in compliance with environmental law (defined to include EU law, the EIB standards and principles, and any applicable international treaties, if relevant)¹⁷ and in compliance with the environmental and social impact assessment and environmental and social management plan, among others. In addition, the EIB includes requirements to provide information such as the borrower's/promoter's undertakings to: (1) submit to the Bank for approval and without delay, any material change¹⁸ to the project in respect of the design or plans for the project, among other things; (2) promptly inform the Bank of any action or protest initiated, any objection raised by any third party, any genuine complaint received by the counterparties or any material environmental claim with regard to environmental or other matters affecting the project; and (3) promptly inform the Bank of any fact or event known to the borrower that may substantially prejudice or affect the conditions of execution or operation of the project.
- 3.2.2 EIB finance contracts generally also require the borrower to provide the Bank with regular progress reports that must include, among other things: (1) a brief update on the technical description explaining the reasons for significant changes versus the initial scope; (2) a description of any major issue with impact on the environment¹⁹; (3) any significant issue that has occurred and any significant risk that may affect the project's operation; and (4) any legal action concerning the project that may be ongoing. In addition, for these types of projects, including the project at stake, the finance contracts generally include conditions precedent to disbursements regarding the approval of the environmental and social impact assessment, the creation of a satisfactory environmental and social management plan, and ensuring that the measures specified in these documents have been fully implemented.
- 3.2.3 The above undertakings and requirements apply to the finance contracts for this project²⁰.

3.3 Promoter's regulatory framework

- 3.3.1 As noted above, the 2009 EIB Statement of Environmental and Social Principles and Standards (the Statement) was applicable at the time of project appraisal and signature. It requires that financed projects be acceptable in environmental and social terms (paragraph 1 of the Statement). In line with paragraph 2 of the Statement, "Promoters are responsible for preparing,

¹⁴ Section 3.3 of the EIB Group Complaints Mechanism Policy.

¹⁵ Section 5.3.3 of the EIB Group Complaints Mechanism Policy.

¹⁶ Section 5.3.3 of the EIB Group Complaints Mechanism Policy.

¹⁷ As of the date of the finance contract, 14 November 2012, the applicable EIB standards and principles were those set out in the 2009 EIB Statement of Environmental and Social Principles and Standards (available at http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf) and the 2010 EIB Environmental and Social Practices Handbook.

¹⁸ "Material change" is not defined in the contract. The contract defines "material adverse change" as any event or change of condition affecting the borrower which, in the opinion of the Bank, materially impairs the ability of the borrower to perform its obligations under the contract, or materially impairs the financial condition or prospects of the borrower.

¹⁹ The contract defines "environment" as including occupational and community health and safety matters and working conditions.

²⁰ Three finance contracts were signed for this project).

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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.” All projects financed by the EIB are required to undergo an appropriate environmental assessment. If a formal environmental impact assessment is required, it should integrate an assessment of project alternatives and include timely public disclosure of relevant information, together with meaningful consultations²¹. In accordance with paragraph 19 of the Statement, the environmental assessment should relate to the entire project and its sphere of influence and encompass the cumulative direct and indirect impacts of the project. If required, the promoter must also prepare an acceptable environmental and social management plan. Other requirements from the Statement which are relevant to this case include:

- i. Pursuant to paragraph 16, alternatives should be considered and appropriate mitigation and/or compensation measures identified for projects that have a significant social impact by virtue of their size, nature or location.
- ii. In line with paragraph 17, projects should be designed so as to avoid, and if not possible, to reduce any significant adverse impact; further design changes may be justified if the socioeconomic benefits of the change exceed the costs; any significant residual negative impact should be, in order of preference, mitigated, compensated or offset.
- iii. In accordance with paragraph 63, stakeholder concerns should be considered as early as possible in the project assessment process in order to reduce risks and provide for timely resolution of conflicts. Where a formal environmental impact assessment is required by the EIB, the promoter should conduct a meaningful, transparent and culturally appropriate public consultation of affected communities and provide for a timely disclosure of appropriate information in a suitable form. There should also be evidence that the views expressed have been considered.
- iv. In line with paragraph 64, meaningful dialogue and participation is crucial to promoting and supporting the rights of people affected by a project. As such, public consultation is a general requirement of the environmental and social safeguards of the Bank, being applied to specific social issues.

3.3.2 A full environmental and social impact assessment was required for such a project under Egyptian legislation, including public consultation.

3.4 Responsibilities of the EIB

3.4.1 In line with the EIB Statement of Environmental and Social Principles and Standards, the responsibility for compliance with the project-applicable standards lies with the promoter²². However, the EIB will not finance projects that do not meet project-applicable standards²³. Whether the projects meet the project-applicable standards is established as part of the EIB's project appraisal and monitoring.

3.4.2 The Statement requires the EIB to appraise the projects it finances²⁴. The appraisal takes place prior to signature of the finance contract²⁵. Among other objectives, the appraisal aims to assess the project's impact and whether the project complies with the project-applicable standards. Sometimes, the appraisal results in conditions for signature, conditions for disbursement and/or

²¹ Paragraphs 17 and 18 of the EIB Statement of Environmental and Social Principles and Standards 2009.

²² Paragraph 2 of the EIB Statement of Environmental and Social Principles and Standards.

²³ Paragraph 6 of the EIB Statement of Environmental and Social Principles and Standards.

²⁴ Paragraph 17 of the EIB Statement of Environmental and Social Principles and Standards.

²⁵ <https://www.eib.org/en/projects/cycle/index.htm>

particular undertakings. The promoter must fulfil these conditions and/or undertakings to the satisfaction of the EIB by the appropriate deadline(s)²⁶.

- 3.4.3 Once the promoter and the EIB sign the finance contract, the EIB is required to monitor the project. The monitoring aims to ensure compliance of the project with the EIB's approval conditions²⁷. The EIB monitors projects on the basis of reports provided by the promoter, as well as EIB site visits, information provided by the local community, etc.²⁸.
- 3.4.4 The EIB Environmental and Social Practices Handbook 2010 (the Handbook) translates the procedures, principles and standards from the EIB Statement of Environmental and Social Principles and Standards into the routine practices of the EIB²⁹. In accordance with the Handbook, the EIB is responsible for checking whether the promoter has fulfilled the following requirements: a full environmental impact assessment process, where applicable (including the public consultation and approvals/planning consent), the identification of the impacts and appropriate measures to avoid, reduce or mitigate these impacts, the consideration of alternatives, the proposed mitigation and compensation measures and associated mitigation plan, and public disclosure, while carrying out due diligence on the assessments carried out by the national authorities. The EIB's role is to verify the compliance of the project with environmental and social standards requirements as well as with European Union (EU) and national legislation.
- 3.4.5 Where a formal environmental impact assessment is required outside the European Union, the environmental impact assessment process must be consistent with the requirements of the EU EIA Directive³⁰, which includes public consultation³¹. Projects likely to have a significant adverse social impact should be subject to a social impact assessment (SIA), which should be integrated into the environmental impact assessment process and the resulting Environmental and Social Impact Assessment Report³².
- 3.4.6 The Handbook requires that monitoring be carried out during the implementation and operation of the project to verify that environmental and social objectives have been met, to confirm any mitigation and compensation measures have been applied and to ascertain that any environmental conditions have been fulfilled³³.

4 FINDINGS/OBSERVATIONS/ANALYSIS

4.1 The Environmental and Social Impact Assessment Report and environmental and social management plan

- 4.1.1 An initial environmental and social impact assessment study was carried out and the report produced in 2011. Following a review against EIB requirements and standards, a number of gaps were noted. As a result, an updated and revised Environmental and Social Impact Assessment Report was prepared in 2012, along with an associated environmental and social management plan, and a stakeholder engagement plan.

²⁶ Paragraph 243 of the EIB Environmental and Social Practices Handbook 2010.

²⁷ Paragraph 258 of the EIB Environmental and Social Practices Handbook 2010.

²⁸ Paragraph 8 of the EIB Statement of Environmental and Social Principles and Standards.

²⁹ Foreword to the EIB Environmental and Social Practices Handbook 2010.

³⁰ EU Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

³¹ Paragraph 53 of the EIB Environmental and Social Practices Handbook 2010.

³² Paragraph 54 of the EIB Environmental and Social Practices Handbook 2010.

³³ Part D: "Monitoring", paragraphs 258-264 of the EIB Environmental and Social Practices Handbook 2010.

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- 4.1.2 Chapter 4, “Consideration of alternatives”, of the Environmental and Social Impact Assessment Report noted that the selection of the routes for the alignment and the location of stations for phase 3 had been carried out in stages and had considered several alternative designs. Section 4.2 of the report noted that there had been several design changes in the period from November 2009 to the (then) final proposal. The report therefore noted that it would be important to propose a design change procedure in the event of new changes in the design in the future.
- 4.1.3 Section 8.15 of the Environmental and Social Impact Assessment Report addressed community health and safety. It concluded that the impact on community health and safety during the construction phase was considered “to be an indirect impact of likely occurrence on a local level. The duration is long term and possible to mitigate. The impact is of major significance.”³⁴ The suggested mitigation measures during the construction phase for addressing community health and safety included:
- i. Ensuring the timely and appropriate dissemination of information on the planned design, alignment and construction to affected communities along the alignment.
 - ii. Inviting the community to share their concerns, and listening and responding to these concerns properly.
 - iii. Providing timely and appropriate information on the grievance mechanism established by NAT for this project to the affected communities.
 - iv. Providing satisfactory resolutions for each legitimate complaint and grievance.
 - v. Ensuring the timely and appropriate disclosure of information, including stakeholder information, on the NAT website.
- 4.1.4 Chapter 9 of the Environmental and Social Impact Assessment Report presents the framework environmental and social management plan. This plan outlines the management programme to be developed for the project through the environmental and social management system and is supported by early environment and social planning in relation to the management of specific issues such as community relations, community safety and traffic management. The environmental and social management plan includes a design change procedure that should be applied if serious concerns arise as a result of public consultations or technical requirements. If there were a serious concern, then the next stage of the design change procedure would be a screening step to determine the potential for any significant negative environmental, social or cost impacts. The procedure states that the “concept of significant impacts will be that as contained in the Environmental and Social Impact Assessment Report. Generally, a significant impact is where a legal or accepted environmental standard is exceeded or where a designated and protected area (e.g. nature conservation area) is being harmed. **An effect which may impact a large population can also be considered significant.**”³⁵ (emphasis added). The screening criteria for deciding significance include characteristics of the project, location of the project, and nature and extent of the potential impacts.
- 4.1.5 The Public Consultation Report dated August 2012, which was prepared as an additional service on top of the environmental and social impact assessment, notes that there was a public consultation scoping meeting for the relevant section of the project (which includes the station in question). The Public Consultation Report emphasised the existence of the NAT complaints redress mechanism, which is permanently available for handling complaints during the project preparation, implementation and operation phases. The report also highlights that relevant documents and information were available on the NAT website.
- 4.1.6 The stakeholder engagement plan dated 29 May 2012 describes the consultations that had already been carried out by NAT as well as the principles and plans for future stakeholder

³⁴ Section 8.15.3 of the Environmental and Social Impact Assessment Report.

³⁵ Section 9.6 of the Environmental and Social Impact Assessment Report.

engagement during project construction and operation. This included the preparation of separate fact sheets for each metro station which would include a map and the following information: (i) the location of the station and alignment of the line, (ii) a general description of the planned construction of the station and line segments and the timetable for construction, (iii) planned temporary and permanent expropriations and resettlements specific to this area (if any), (iv) a cross-section drawing of the elevated metro station and line (if applicable), (v) planned traffic diversions and traffic impacts, (vi) station access for older people and people with disabilities, (vii) responses to key questions heard during stage 1 engagement specific to this area, (viii) contact details/hotline for inquiries and complaints. Some 500 copies of each factsheet were to be printed by NAT for distribution and an electronic version of each factsheet was to be available online for download. The plan also included details of the proposed grievance redress mechanism.

4.2 Validation of ESMP implementation as contract condition by the Bank

- 4.2.1 As noted above in paragraph 3.2.3, it was a condition precedent that the environmental and social impact assessment (including the environmental and social management plan) be approved before the first disbursement, and that the measures specified in the plan were being fully implemented before the disbursement of all tranches.
- 4.2.2 The Complaints Mechanism reviewed whether the relevant conditions precedent had been verified, confirmed and documented by the services as part of the disbursements. The Complaints Mechanism confirms that this was generally the case, in particular that:
- i. as part of the first disbursement of the first contract in early 2016, the environmental and social management plan had been received as part of the approval of the environmental and social impact assessment;
 - ii. for the second and third disbursements under the same contract, the continuing implementation of the environmental and social management plan was confirmed by email by the Bank staff members responsible, albeit without reference to supporting documentation or evidence;
 - iii. more comprehensive checks on disbursements for subsequent financial instruments were performed and justified as the project moved from planning and procurement to construction.

4.3 NAT's grievance management

- 4.3.1 As noted above in paragraph 1.2.10, the complainants submitted a complaint to NAT on 5 December 2021, a few days after making the same complaint to the Complaints Mechanism. Later in December 2021, NAT provided a response to the complaint, stating that the original design was based on having "fixed [stairs] and electric [escalators]" in front of the building in question with a height of 2.5 m and a distance between the building and escalator of 1 m. This initial design was refused by NAT, as was the proposal to move the stairs in front of the adjacent building. Thus, the original location was retained in the design, i.e. outside the building in question, but with stairs only (so without the escalator or the cover). This resulted in a distance of 2.4 m between the end of the stair fence and the entrance to the garage, and a 1.2 m high fence around the stairs. There was also the possibility of a mirror in front of the garage to see cars entering and exiting the garage.
- 4.3.2 The complainants replied to NAT's response on 22 December 2021, again requesting that the stairs be moved back in front of the adjacent building. They also believed that the proposed mirror would not solve the problem.

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- 4.3.3 In February 2022, the project-contracted engineering company reported on its assessment of the complaint and the potential impacts, and proposed mitigation measures. The EIB also suggested that the project-contracted engineering company organise a meeting with NAT and the complainants to discuss the available options.
- 4.3.4 Accordingly, the complainants, NAT and the project-contracted engineering company met at the local EIB offices on 13 April 2022 but found no solution.
- 4.3.5 The project-contracted engineering company sent an updated report to the EIB in April 2022, reportedly having noted the comments from the EIB on the earlier draft of the report. The only mitigation measure proposed in the report was the option for the installation of a traffic mirror. A subsequent **letter from the project-contracted engineering company to the joint venture dated 29 May 2022 lists mitigation measures to be taken, namely a concrete parapet limited to 1.05 m with a handrail to achieve the required total height of 1.2 m (the handrail must be as unobtrusive as possible to maintain visibility); the installation of a traffic mirror; and road markings in the area immediately adjacent to the garage entrance to maintain clear access.** The last two measures require approval from the traffic authority.

4.4 EIB monitoring of NAT's grievance management

- 4.4.1 At the end of January 2022, the EIB services sought further clarifications from NAT on the proposed design for the metro stairs in question. In particular, the EIB requested the project-contracted engineering company's assessment of the best location for the staircase and an analysis of the alternatives, as well as a road safety assessment to clarify what measures should be proposed if necessary. NAT responded in early February to say that it believed it was "not able to make amendments at the present time due to the completion of the civil and operational works of the stairs in the mentioned area." The EIB reiterated its request twice, and asked for further clarifications. NAT replied in mid-February to say that it had sent the request to the project-contracted engineering company and that NAT would pass on the reply once it received it.
- 4.4.2 The EIB services conducted a project review mission at the end of March 2022, during which this complaint was discussed with NAT. The EIB services noted that NAT had sent a letter to the complainants with possible solutions, but that a final solution could only be decided once construction had progressed further. NAT had reduced the height of the metro entrance wall to improve visibility. NAT and the complainants were due to talk at the beginning of April with the EIB as observer.
- 4.4.3 The EIB services commented on the updated project-contracted engineering company's report in April 2022, along with the expected cooperation of NAT on the next steps. The EIB suggested that NAT/the project-contracted engineering company clarify the selected options in the report, and that NAT formally write to the complainants with the proposed solution, in line with best practice in grievance management.
- 4.4.4 As a further follow-up to the updated project-contracted engineering company's report, the EIB additionally noted³⁶ that one of its main roles was to ensure that the project is being implemented according to its environmental and social standards, which includes the local grievance mechanism being properly managed in line with EIB standards. As regards the proposed solutions, the EIB suggested that NAT confirm its decision to implement relevant mitigation measures and inform the complainants accordingly.

³⁶ Email of 24 April 2022.

- 4.4.5 The EIB services sent the independent experts' report (see section 4.5 below) to NAT³⁷ believing that it would be useful for NAT and the project-contracted engineering company, and kindly requested NAT's opinion and next steps on the mitigation measures proposed in the report.
- 4.4.6 In October 2022, the EIB services followed up with NAT on the matter and suggested informing the complainants of its proposed resolution to their grievance, and liaising as necessary with the road authorities.
- 4.4.7 NAT responded to the EIB's requests at the end of October 2022³⁸ stating that a traffic mirror would be installed and that the height of the concrete staircase wall would be reduced and replaced by a metal railing (with vertical metal bars) to improve visibility. It should be noted that NAT did not explicitly confirm that it would communicate its decision to the complainants nor that the joint venture had liaised as necessary with the road authorities.

4.5 The independent experts' report

- 4.5.1 The independent experts' Fact-Finding and Compliance Review Report is dated 22 August 2022. Its objective was to: (1) verify the validity of the complainants' allegations; (2) identify any applicable international or regional design standards and good practices; (3) assess the alleged impacts against any applicable standards and good practices; (4) collect and assess information from NAT on the design, the assessment of alternatives, the consultations undertaken, impact mitigation and other constraints taken into consideration; and (5) propose technical solutions to avoid, minimise or mitigate the alleged impacts. The experts' report was prepared by a qualified architect and university lecturer with wide experience in urban design projects, and a transport engineer with experience in road and traffic impact studies.
- 4.5.2 The report confirmed that the only way for cars to exit the building garage was by reversing. The report also clarified the chronology of the design changes and tried to clarify the reasons for the various changes. The original design in the tender documents of February 2014 placed one of the five station entrances in front of the building in question. The entrance had a staircase and an escalator, as well as a 2.5 m high cover to protect the escalator from climate hazards. According to NAT reports, this proposal was not accepted due to technical and structural issues that were revealed after the completion of site investigations. In the May 2015 tender documents, the entrances had changed. The entrance in question was relocated in front of the adjacent building and consisted of only a staircase, without an escalator or a cover. This was to widen the pavement. The report notes that the reasons given for the various design changes were not very clear. In any event, in the final design (as built) the stairs were placed back in front of the building in question, without an escalator or a cover. The cover was not required as there was no escalator, which also meant (according to NAT) that the view of a driver entering or leaving the garage would not be blocked. The experts' report also noted that in April 2022, the project-contracted engineering company had suggested that the stair parapet be designed with a height of 1.2 m (1.05 m of reinforced concrete and 15 cm of perforated metal), with the rationale behind the perforated metal section being to improve driver visibility.
- 4.5.3 The experts' report considered the complainant's suggestion to move the entrance stairs back in front of the adjacent building, either facing north or alternatively facing south. The north-facing alternative would, in the experts' opinion, create an additional hazard as the station entrance and exit for pedestrians would then cut directly across the garage entrance and thus increase the risk of accidents between pedestrians/metro users and drivers entering or exiting the garage. The south-facing alternative would also be problematic because the current as-built entrance and exit is the only one leading northwards, and changing it to lead southwards would

³⁷ Email of 16 September 2022.

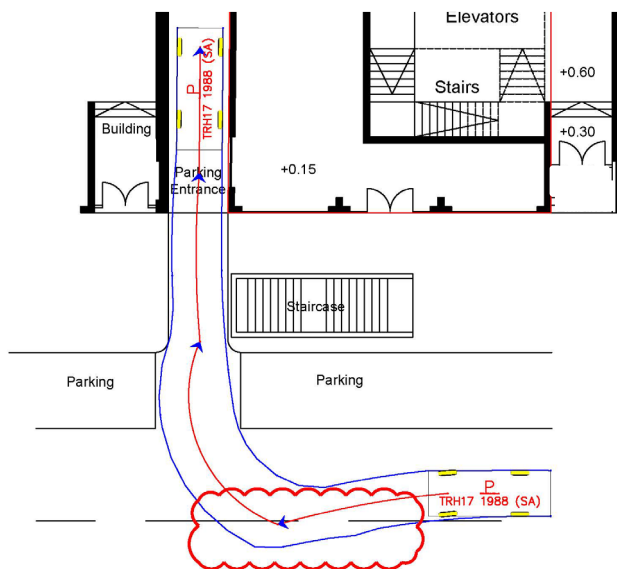
³⁸ Email of 1 December 2022.

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make it very close to one of the other metro station entrances and exits, and would also mean there would be no northward entrance or exit, which would affect the flow of passengers from and into the metro station.

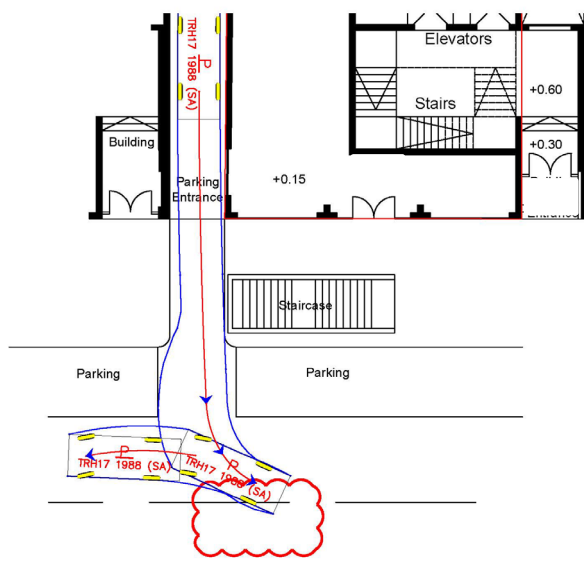
- 4.5.4 The experts' report concludes that, based on the available evidence, placing the station entrance in front of the building in question seems to be more reasonable than in front of the adjacent building.
- 4.5.5 The experts' report considered the complainants' allegation that the proposed staircase parapet was aligned with the edge of the garage entrance, forming a 90-degree angle with the street and limiting space and creating difficulties for drivers when turning and entering the garage. This allegation had been noted by NAT³⁹ and, therefore, in the April 2022 report, the project-contracted engineering company proposed a solution to redesign the street to include a narrower street island in order to create a space for two travel lanes and a parking lane parallel to the pavement.
- 4.5.6 The experts' report notes that even with the presence of the parking lane, entering and exiting the garage with this 90-degree angle will still pose a hazard for the public (see figures below). The experts' report concludes that more mitigation is required to resolve this issue.

Simulation of car entering garage at right angles, with no room for manoeuvre (from experts' report)



Simulation of car exiting garage at right angles, with no room for manoeuvre (from experts' report)

³⁹ But only after the complaint had been made to the EIB and to NAT. NAT was apparently not aware of the garage prior to the complaint.



- 4.5.7 The allegation that the proposed design would pose a safety risk to road drivers and to garage users due to reduced visibility caused by the stair fence was addressed in the experts' report. As noted above (paragraph 4.3.1), NAT's proposed solution to design a structural parapet of 1.2 m would not block the view of drivers entering the garage driving forwards. However, it would not solve the problem when reversing out of the garage. The experts' report noted that the parapet would not be the only thing blocking drivers' view when reversing out of the garage — any cars parked adjacent to the garage entrance would also block their view. The proposed introduction of a traffic mirror would not assist the drivers much as the drivers exit the garage by reversing, but would be of greater benefit to pedestrians as they could see if there was a vehicle exiting the garage.
- 4.5.8 The experts' report suggests three alternative mitigation measures that aim to resolve the problem. In proposing these mitigation measures, the report took account of the following constraints and mitigation measures already noted and proposed by the project-contracted engineering company: (i) no change in staircase locations; (ii) drivers must exit the garage by reversing; (iii) try, if possible, to provide an area for cars exiting from the garage to manoeuvre to join the street parallel to the pavement in the same direction as the flow of traffic⁴⁰; (iv) include a parking lane in the street design allowing for cars to park parallel to the street; (v) prevent cars from parking adjacent to the station entrance to enhance visibility; (vi) address the visibility concerns when entering and exiting the garage; (vii) provide a minimum of 25 cm between the driveway kerb and the parapet of the staircase and an optimum distance of 60 cm; (viii) install a rubber column corner guard on the edges of the parapet to reduce the damage caused by collision; (ix) adopt the project-contracted engineering company's suggestion to design a 1.2 m high parapet (1.05 m of reinforced concrete and 15 cm of perforated metal) to enhance visibility; (x) install traffic mirrors to enable car drivers exiting the garage to see pedestrians crossing the driveway from both sides, as well as a traffic mirror to see the oncoming traffic on the street.
- 4.5.9 The following three alternative mitigation measures from the experts' report are illustrated in the annex:

⁴⁰ This would be in accordance with the proposal in the updated project-contracted engineering company report (see paragraph 4.5.5 above) to redesign the street to include a narrower street island in order to provide for two travel lanes and a parking lane.

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- i. Install No Parking signs and floor markings in the area in front of the garage exit and next to the parapet. Allocate a space in front of the adjacent building entrance that is 1.15 m from the pavement edge to provide more space to manoeuvre for cars entering and exiting the garage. This alternative requires minimum intervention, but the report notes that drivers are likely to ignore the No Parking signs and the markings and thus park in these areas anyway.
- ii. Install traffic bollards on either side of the entrance to the garage driveway. This will prevent people parking adjacent to the garage entrance while still allowing cars to enter and exit the garage.
- iii. Design an extended kerb on the right-hand side of the driveway to facilitate the entry and exit of cars and install bollards on the left-hand side to prevent any cars from parking there and blocking the driveway.

4.5.10 It should be noted that NAT responded to the independent experts' report by stating⁴¹ that the following actions would be taken:

- i. The height of the concrete parapet of the adjacent station staircase would be limited to 1.05 m to enhance visibility.
- ii. A handrail would be installed on top of the concrete parapet to achieve the required total height of 1.2 m (the handrail would be as unobtrusive as possible to maintain visibility).
- iii. A traffic mirror would be installed on the pavement to provide greater visibility of oncoming traffic for the building occupants when exiting the garage to the street.

4.5.11 It is also noted that the measures listed in paragraph 4.5.10 do not contain any parking restriction measures; neither those required by the project-contracted engineering company (see paragraph 4.3.5) nor those proposed by the independent experts' report (see paragraph 4.5.9). Moreover, these measures do not mention the need to seek approval from the relevant traffic authority (required for the traffic mirror and the parking restriction — see paragraph 4.3.5).

5 CONCLUSIONS

5.1 Allegation of lack of assessment of alternatives

- 5.1.1 As is clear from the responses from NAT and the project-contracted engineering company and from the independent experts' report, the various alternatives were considered and assessments prepared. After reviewing these documents, it appears that various alternatives for the location and orientation of the stairs at this entrance to the station were considered and designed taking into account the technical constraints at the location and with the aim of minimising risks to pedestrian and metro user safety (see paragraph 2.1.2, and sections 4.3 and 4.5 above).
- 5.1.2 The design changes for these various alternatives were not serious enough to trigger the design change procedure (see section 9.6 of the revised environmental and social impact assessment and paragraph 4.1.4 above).
- 5.1.3 Thus, it can be concluded that the allegation of failure to assess alternatives is ungrounded.

5.2 Allegation of lack of impact identification and mitigation

- 5.2.1 The design for the station entrance went from including stairs, an escalator and a cover in front of the building in question to, ultimately (and after having relocated the stairs outside the

⁴¹ Email of 2 October 2022.

adjacent building), stairs only in front of the building. These design alternatives and the final design selected appear to be based on minimising the impact on pedestrians and metro users, while taking account of technical constraints.

- 5.2.2 The design alternatives did not appear to identify the garage issue before the complaint was made. However, once the problem was identified through the grievance mechanism, NAT identified and proposed some mitigation measures. The independent experts' report found these mitigation measures to be insufficient and proposed some additional mitigation measures to mitigate the public safety risks that were communicated to NAT. These measures, similar to some of those requested by the project-contracted engineering company in paragraph 4.3.5, require approval by the road authorities. Therefore, and in order to minimise the risk to public safety, some suggestions for improvement are made below to ensure that all relevant information is fully discussed with NAT for its own consideration. However, as noted above, the design changes and impacts were not material (see paragraph 3.2.1) or significant enough (see paragraphs 3.2.1, 3.2.2 and, in particular, 4.1.4) to trigger the informing or reporting requirements to the Bank as specified in the finance contract. Thus, it can be concluded that the allegation of failure to identify impacts arising from the station design and failure to mitigate these impacts is ungrounded.

5.3 Allegation of lack of meaningful participation and consultation

- 5.3.1 As noted above in paragraph 4.1.5, a Public Consultation Report was prepared as part of an additional service on top of the environmental and social impact assessment. The report emphasised the existence of the complaints redress mechanism (the grievance mechanism) and highlighted that relevant documents and information were available on the NAT website.
- 5.3.2 From the information provided to the Complaints Mechanism and from the various discussions, there is no evidence to suggest that the complainants had been previously informed about the various design changes.
- 5.3.3 The design change procedure (section 9.6 of the revised environmental and social impact assessment) is only followed in situations where serious concerns arise as a result of public consultations or technical requirements. If the design change constituted a serious concern, then a screening stage would determine whether there was potential for significant negative environmental, social or cost impacts (see paragraph 4.1.4).
- 5.3.4 From the information provided to the Complaints Mechanism and from the various discussions, there is no evidence to suggest that the design changes in question constitute a serious concern.
- 5.3.5 It is noted that the Stakeholder Engagement Plan Report highlights the importance of stakeholder engagement throughout the construction phase of the project. While the plan for sustained dialogue with stakeholders during the construction phase focused on another sub-phase of the project, the report references the grievance redress mechanism to be established by NAT with a view to responding promptly and accurately to people's complaints.
- 5.3.6 The design changes that are considered here are more typical front-end engineering design adaptations. The Complaints Mechanism finds that that the design change procedure (see paragraph 5.3.4) does not apply and that there was no obligation on NAT to have a prior consultation with the complainants about the proposed design changes.
- 5.3.7 Thus, it can be concluded that this allegation of failure to inform and consult is ungrounded. While the grievance mechanism did enable the impact of the design change to be identified, a more proactive consultation would have enabled such identification at a much earlier stage. Some suggestions for improvement are therefore made below.

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5.3.8 It is good practice in any grievance mechanism to inform the complainant about the actions or measures taken to resolve the complaint. Such a requirement is included in both the environmental and social management plan (as part of the revised environmental and social impact assessment, see paragraph 4.1.3) and the stakeholder engagement plan. Therefore, in accordance with EIB standards and best practice, the EIB services should monitor that NAT has informed the complainants about the proposed resolution of the complaint when closing the local grievance⁴².

5.4 Allegation concerning EIB monitoring

5.4.1 Verification by the Bank of conditions precedent before disbursements:

- i. The Complaints Mechanism finds that there is no evidence of maladministration, as the EIB generally verified compliance with conditions precedent to disbursements in relation to the approval of the environmental and social impact assessment and the implementation of the environmental and social management plan (see paragraph 4.2.2). The Complaints Mechanism found that documentation and verification of compliance with the conditions precedent improved over time, justified by the project moving from planning and procurement to construction. Thus, no suggestion for improvement is made.

5.4.2 EIB monitoring as from date of the complaint:

- i. EIB services carried out a number of activities to monitor the progress of the complaint and the local EIB office provided local support.
- ii. The Complaints Mechanism finds that there is no evidence of maladministration as the EIB appears to have carried out its responsibilities in line with its monitoring obligations.

5.4.3 Design changes:

- i. The changes to the design of this station entrance are typical post-front-end engineering design changes that take place after the environmental and social impact assessment.
- ii. The Complaints Mechanism believes that the design changes were not material enough to require NAT to seek prior approval from the Bank.
- iii. The Complaints Mechanism believes that the design changes were not significant enough to require NAT to inform the Bank.
- iv. Thus, the Complaints Mechanism found that the Bank did not need to be informed of the design changes.

6 OUTCOMES AND SUGGESTIONS FOR IMPROVEMENT

6.1.1 The table below summarises the outcomes of this investigation into the allegations made by the complainants as regards the negative impact on accessibility and safety of use of their garage, which is adjacent to one of the entrances to the metro station. In addition, it summarises the outcome of the investigation of relevant EIB monitoring. Where relevant, some suggestions for improvement are proposed for the EIB services.

Table 2 — Summary of allegations, outcomes and suggestions for improvement

Allegation	Outcome	Suggestions for improvement
Lack of assessment of alternatives	No grounds.	No

⁴² This was not done by the cut-off date of this report.

Allegation	Outcome	Suggestions for improvement
Lack of impact identification and mitigation	No grounds.	<p>Yes</p> <p>In the first quarter of 2023, the EIB monitors that that NAT confirms each of the measures listed in the letter dated 29 May 2022 from the project-contracted engineer company to the joint venture.</p> <p>Given the potential residual risk to public safety, the additional measures proposed by the independent expert should be discussed with NAT during the EIB Projects Directorate's next site visit (for its own consideration).</p> <p>In the first quarter of 2023, the EIB monitors that NAT formally communicates its proposed resolution of the grievance to the complainants.</p>
Lack of meaningful participation and consultation	No grounds.	No
EIB monitoring	<p>No grounds.</p> <p>The conditions precedent in the finance contract in relation to approval of the environmental and social impact assessment and implementation of the environmental and social management plan were verified prior to the disbursement of the first and subsequent tranches of financing.</p> <p>The EIB project team performed adequate monitoring of the grievance to the Complaints Mechanism from the moment it was notified of the complaint.</p>	No

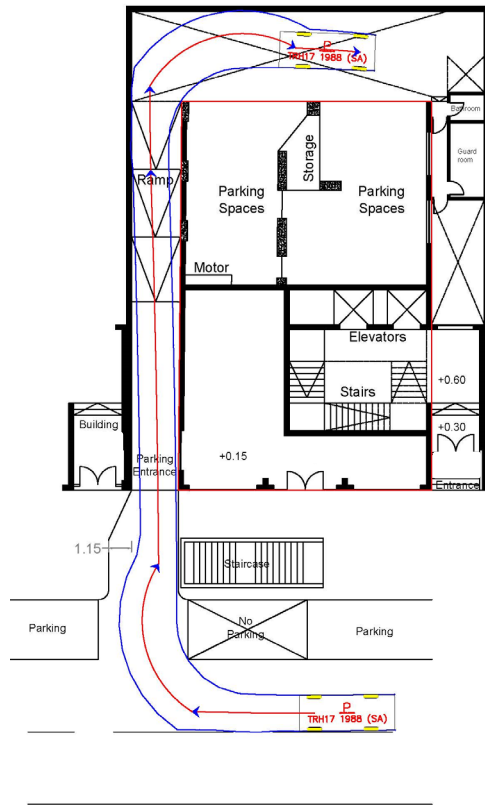
Available remedy:

Complainants who are not satisfied with the conclusions report may file a complaint of maladministration against the EIB Group with the European Ombudsman⁴³.

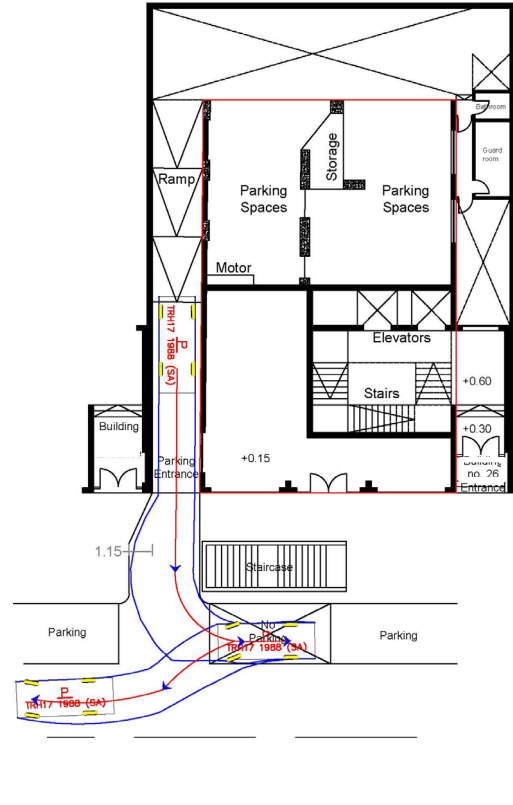
⁴³ Available at: <https://www.ombudsman.europa.eu/en/home>.

ANNEX 1. THE THREE ALTERNATIVES FOR MITIGATION OF THE GARAGE ISSUE AS PROPOSED BY THE EXPERTS' REPORT

Alternative 1: No parking

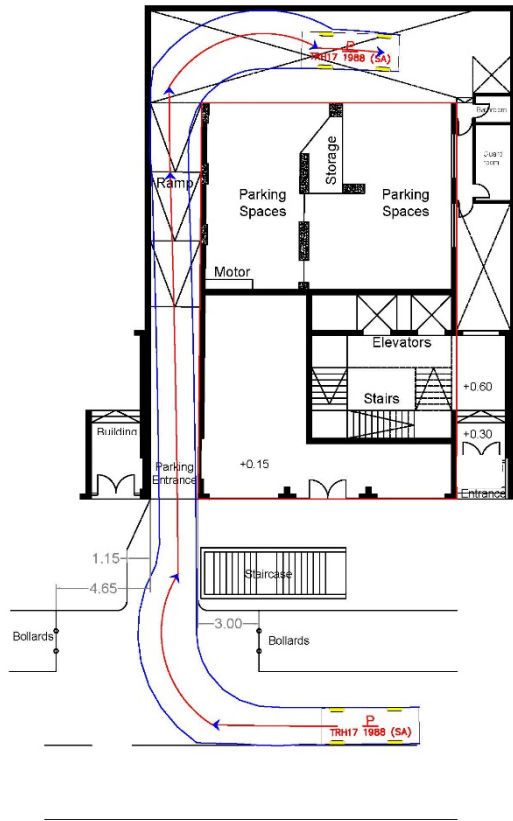


Alternative 1. No parking in front of the staircase and ramp access. Entry simulation.

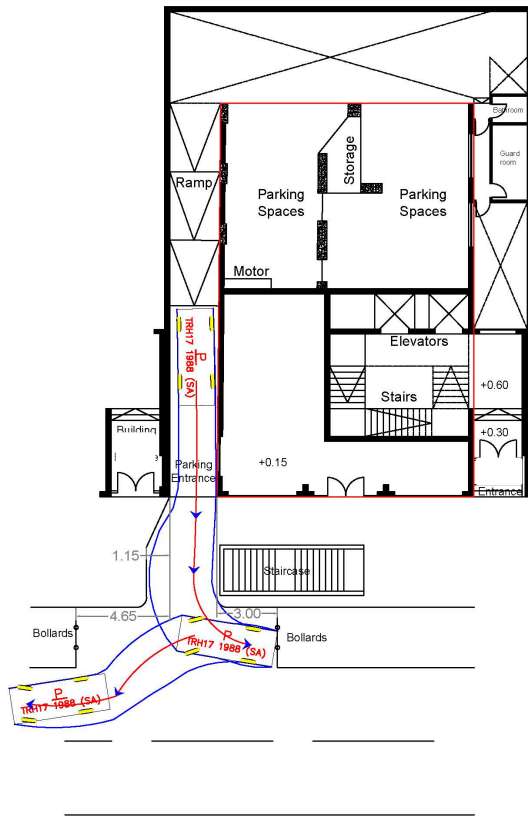


Alternative 1. No parking in front of the staircase and ramp access. Exit simulation.

Alternative 2: Bollards

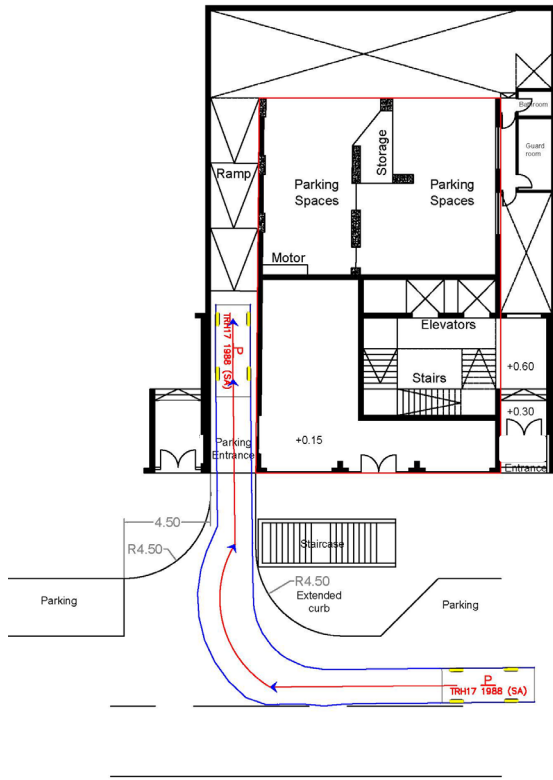


Alternative 2. Bollards. Entry simulation.

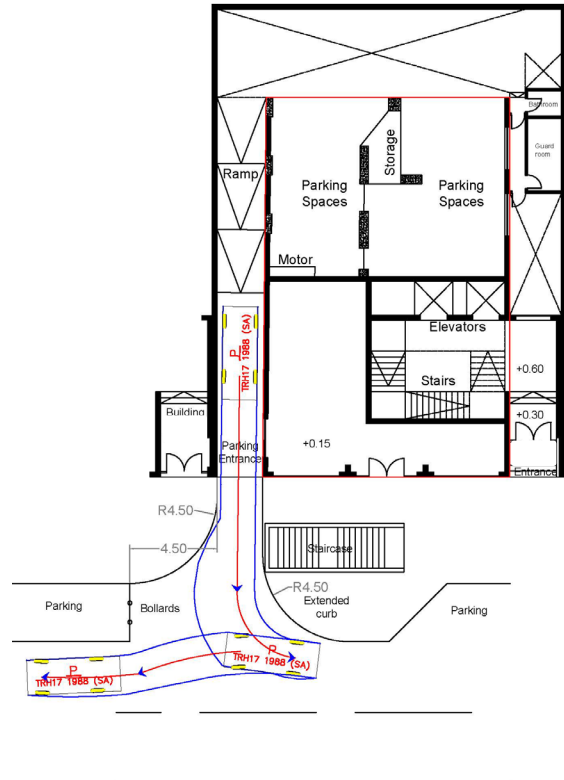


Alternative 2. Bollards. Exit simulation.

Alternative 3: Bollards with extended kerb



Alternative 3. Bollards with extended kerb. Entry simulation.



Alternative 3. Bollards with extended kerb. Exit simulation.