

**COMPLAINTS**

Case SG/E/2021/12

Case SG/E/2021/15

Case SG/E/2021/17

# **FLOOD PROTECTION MEASURES (Greece)**

**CONCLUSIONS REPORT**

**8 MAY 2023**



# Conclusions Report

Case SG/E/2021/12

Case SG/E/2021/15

Case SG/E/2021/17

**Complaint confidential:** No

## **External distribution**

Complainants  
Promoter

## **Internal distribution**

Management Committee  
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## **Disclaimers**

The conclusions presented in this report are based on the information available to the EIB Group Complaints Mechanism up to 13 March 2023. The conclusions are addressed solely to the EIB.

A Greek translation of this report is also available. In case of discrepancies between language versions, the English version prevails.

## **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 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, 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

AEPO	Environmental Conditions Approval Decision (abbreviated to AEPO in Greek)
borrower	Ministry of Finance of the Hellenic Republic
CAP	corrective action plan
CEB	Council of Europe Development Bank
CJEU	Court of Justice of the European Union
E&S	environmental and social
EIA	environmental impact assessment
EIB	European Investment Bank
EIB-CM	European Investment Bank Group Complaints Mechanism
ESDS	Environmental and Social Data Sheet
GG	Government Gazette
JMD	Joint Ministerial Decree (Κοινή Υπουργική Απόφαση in Greek)
NGO	non-governmental organisation
promoter	Ministry of Infrastructure and Transport of the Hellenic Republic/Directorate of Flood Protection Works
RBMP	river basin management plan
SEA	strategic environmental assessment
SSCO	site-specific conservation objective
WFD	Water Framework Directive



## EXECUTIVE SUMMARY

In 2021, the European Investment Bank Group Complaints Mechanism (EIB-CM) received three complaints regarding a component of the “flood protection measures” operation located in the catchment area of the Erasinos stream in the Attica region of Greece (also referred to here as “the Erasinos flood protection scheme”, “the Erasinos sub-project” or “the sub-project”). The complainants are environmental non-governmental organisations (NGOs)/civil society organisations (OZON, the Erasinos Protection Initiative, Institutions and Movements for the Protection of Streams — Remattiki, the Citizen Association for River Protection and the Hellenic Ornithological Society) and a private individual.

The EIB-CM reviewed the three complaints and issued one single Initial Assessment Report in December 2021 summarising the submissions as the following three allegations:

- non-compliance of the Erasinos sub-project with national law — failure to correctly classify the protected areas concerned, failure to comply with the provisions of national law, failure to assess the impact on an endemic and protected species of fish, and financial compensation for resettlement and start of works before the necessary documentation was obtained;
- non-compliance of the Erasinos sub-project with EU law — mainly the Environmental Impact Assessment Directive, the Habitats Directive, the Water Framework Directive (WFD) and the Floods Directive;
- failure of the European Investment Bank (EIB) to adequately assess the sub-project and comply with the EIB’s environmental and social standards and other commitments in the area of environment.

After conducting a review of the available information in addition to a site visit, the EIB-CM issued this Conclusions Report containing two recommendations and one suggestion for improvements, as presented in the table below. Further details are provided in section 6.

Allegation	Outcome/recommendations	Suggestions for improvement
1: Non-compliance of the Erasinos sub-project with national law	No grounds	n/a
2: Non-compliance of the Erasinos sub-project with EU law	<p>Grounded</p> <p>1.1. In view of the non-compliance of the sub-project with EU environmental law:</p> <p>(i) take any appropriate measures in line with the finance contract, which could include, among other things, the commitment from the promoter not to use any EIB funds for the Erasinos component until formal compliance with EU environmental law is achieved to the satisfaction of the Bank;</p> <p>(ii) continue to engage with the stakeholders of the Erasinos sub-project to:</p> <p>a. formally agree on a corrective action plan (CAP) to be implemented by the promoter with the view of redressing the non-compliance issues and meeting the requirements of EU environmental law (see § 6.1.3), as a condition for the</p>	<p>2.1 The EIB environmental and social (E&amp;S) procedures currently under review should include a framework that guides the scope of the Bank’s E&amp;S due diligence in EU operations. More specifically, suggests to:</p> <p>(i) find a suitable way on how to keep better informed about and take into account relevant EU law infringements, ongoing infringement procedures and significant environmental, climate and social risks;</p> <p>(ii) enhance the verification of the compliance with the WFD, more specifically by checking the necessity for and/or availability of a test/assessment regarding achievement of the</p>

	<p>Erasinós sub-project implementation;</p> <p>b. provide technical environmental expertise to the promoter if and where needed for the effective implementation of the CAP (see § 6.1.2).</p> <p>The objectives of the CAP and the EIB-CM's monitored actions in relation to the CAP are provided in section 6.1.</p>	<p>environmental objectives of the WFD.</p>
<p>3: Failure of the EIB to adequately assess the sub-project and comply with the EIB's environmental and social standards</p>	<p>Grounded</p> <p>1.2. Review the way the Erasinós sub-project is presented in the Environmental and Social Data Sheet (ESDS), highlighting its specific characteristics, and correct factual errors in the "Public consultation and stakeholder engagement" section.</p>	<p>n/a</p>

n/a, not applicable.



# 1 BACKGROUND INFORMATION

## 1.1 The operation

- 1.1.1 In June 2019, the European Investment Bank (EIB) Board of Directors approved financing for an operation consisting of ten flood protection schemes in Greece.<sup>1</sup> The operation includes schemes falling under the investment priority “Application of strategies in response to climate change, protection and natural disasters management” of the Transport Infrastructure, Environment and Sustainable Development operational programme co-funded by the EU Structural Funds, the Greek national budget and a loan from the Council of Europe Development Bank (CEB).
- 1.1.2 The borrower is the Ministry of Finance of the Hellenic Republic (hereinafter the “borrower”), and the promoter is the Ministry of Infrastructure and Transport/Directorate of Flood Protection Works (hereinafter the “promoter”). In September 2019, the EIB signed the first finance contract for the operation with the borrower.
- 1.1.3 A part of the operation<sup>2</sup> concerns rehabilitation works to enhance the hydraulic capacity of the Erasinos stream and a part of the Agios Georgios stream. The Erasinos flood protection scheme (also referred to hereinafter as “the Erasinos sub-project” or “the sub-project”) is a **component of the operation** and is the subject of the complaint. Works on the Erasinos sub-project include the following:<sup>3</sup>
- broadening the streams and covering them with gabions;<sup>4</sup>
  - reinforcing the banks and the bed;
  - constructing a flood retention dam (with a culvert opening at the bottom of the dam) and an embankment for the local road (with culvert openings) on the Erasinos stream path (upper Erasinos);
  - constructing all relevant technical structures for entering, exiting and crossing existing road junctions.
- 1.1.4 The overall operation contributes to the implementation of the objectives of the Floods Directive. Urban drainage management systems for the nearby municipalities surrounding the Erasinos basin cannot be implemented as they cannot be connected to the Erasinos stream, as a final recipient, without the construction of the sub-project in question.

## 1.2 Impact area of the sub-project

- 1.2.1 The Erasinos flood protection scheme is being developed in the Attica region within the basin<sup>5</sup> of the Erasinos stream (see Figure 1), which is known for its natural, agricultural and archaeological value. A part of the area is protected owing to its inclusion within a Natura 2000 site, which also accommodates several archaeological sites (see Figure 2).

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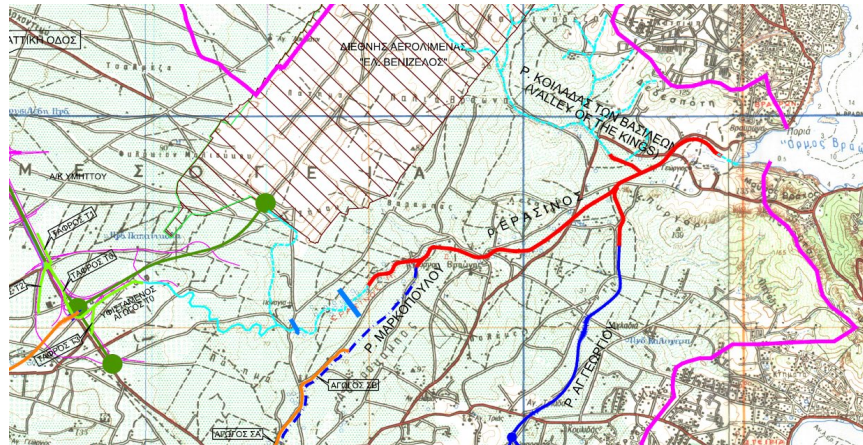
<sup>1</sup> On 21 June 2019, the EIB approved financing of up to €150 million for the operation, as detailed [here](#).

<sup>2</sup> The Erasinos sub-project at the time of the EIB’s approval was estimated to cost €40.49 million (excluding VAT).

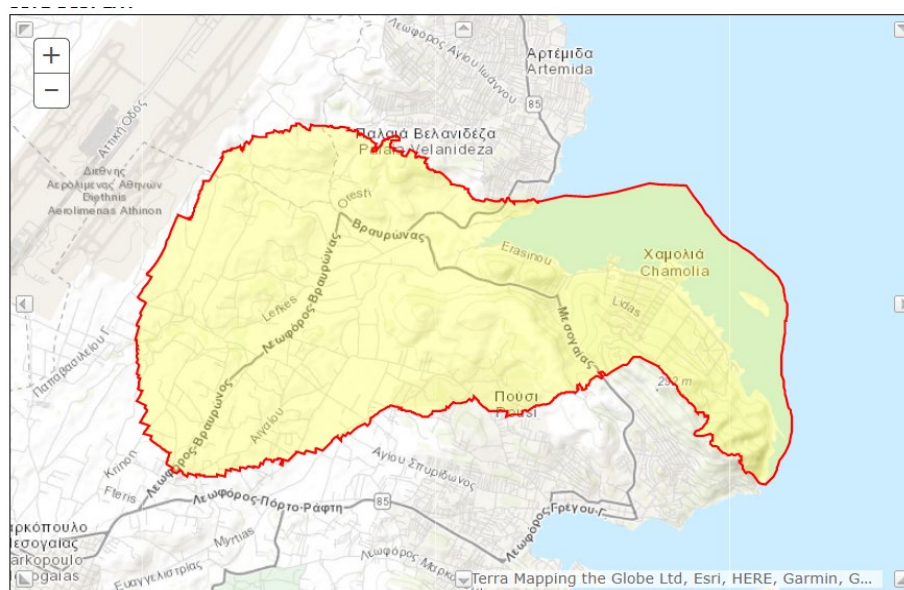
<sup>3</sup> The relevant sub-projects are the management of the Erasinos stream and the management of the Agios Georgios stream (in the Erasinos area).

<sup>4</sup> A gabion is a twisted steel wire crate/ basket, usually 1.00-2.00 m wide and 0.50-1.50 m tall, filled with earth, stones or other materials and is used in civil engineering works.

<sup>5</sup> According to Article 2.13 of the Water Framework Directive (WFD), “river basin” means the area of land from which all surface run-off flows through a sequence of streams, rivers and, possibly, lakes into the sea at a single river mouth, estuary or delta. The WFD is available [here](#).

Figure 1: The Erasinos sub-project<sup>6</sup>

1.2.2 The EU Natura 2000 site relevant to the sub-project is called Vravrona — Paraktia Thalassia Zoni.<sup>7</sup> It was proposed as a Site of Community Importance in 1996, confirmed in 2006 and designated as a special area of conservation in 2011.<sup>8</sup> The site provides habitats for the *Pelagus marathonicus* (hereinafter the “Marathon minnow”). This fish species is an important element of the Natura 2000 site, being listed in the site’s Standard Data Form,<sup>9</sup> and it is also of national importance, being included in the national Red Book.<sup>10</sup>

Figure 2: Natura 2000 site in the lower part of the Erasinos river basin<sup>11</sup>

<sup>6</sup> Figure 1 sourced from the environmental impact assessment documentation. The red line represents the Erasinos stream; the two light blue lines crossing the upper Erasinos stream represent the embankment for the local road (with culvert openings) and a flood retention dam (to hold back run-off water with a culvert opening at the bottom of the dam); and the dark blue line represents the Agios Georgios stream, which is a part of the Erasinos basin and was added to the scheme in 2017.

<sup>7</sup> Information about Vravrona — Paraktia Thalassia Zoni Ref. GR3000004 available [here](#) (source: European Commission Natura Viewer). Article 1.1 of the Habitats Directive defines a “special area of conservation” as “a Site of Community Importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a **favourable conservation status, of the natural habitats** and/or the populations of the species for which the site is designated.”

<sup>8</sup> Joint Ministerial Decision Ref. 33318/3028/98 (GG II 1289/98).

<sup>9</sup> Information available [here](#).

<sup>10</sup> Information on the website of the European Environmental Agency available [here](#) and in the Red Book of Greece [here](#) (in Greek) about the endangered species *Pelagus marathonicus*, known in Greek as the attikopsaro (“fish of Attica”) and referred to by the name “Marathon minnow” throughout this report.

<sup>11</sup> Source: [N2K GR3000004 data form \(europa.eu\)](#).

- 1.2.3 The Vravra area is known as Brauron, an archaeological site containing ancient buildings, such as a prehistoric acropolis and the Temple of Artemis at Vravra, and a museum.
- 1.2.4 The affected area is bordered by the Athens international airport, which opened in 2001 and covers approximately 1 244 ha.<sup>12</sup> It is situated in the municipalities of Markopoulou Mesogaïas, Saronikos, Laurtiki, Spata — Artemida and Kropia, with the biggest towns being Markopoulou, Artemidos, Spata, Koropi and Lavreotiki,<sup>13</sup> and it is undergoing substantial urban development. The affected area is dominated by a network of rural and local roads and is the main drainage channel for the eastern section of Attiki Odos,<sup>14</sup> located within the beltways surrounding the Greater Athens metropolitan area. Its construction started in 1996, with parts being implemented and opened to traffic in 2001 together with the opening of the international airport.
- 1.2.5 The sub-project is implemented in an area covered by the national Flood Risk Management Plan adopted in 2018. Figure 3 shows that the Erasinos stream is an important artery that directly drains areas of Markopoulou and Koropi. The Erasinos stream is surrounded by a high flood risk zone (black line framing the area marked in red dots) and is itself considered a high flood risk stream.<sup>15</sup>

Figure 3: Extract from the Flood Risk Management Plan: flood risk map<sup>16</sup>



- 1.2.6 In 2014, Law 4277,<sup>17</sup> enacting the Master Plan of Athens — Attica, identified three wetland areas in the Erasinos basin as “priority A” wetlands: Pyrgos Vravra, the Erasinos stream wetlands and the Vravra marsh. In 2018, Law 4559 enacted an additional condition, specifying that any activity degrading the ecological status of these wetlands is prohibited before a demarcation by Presidential Decree.<sup>18</sup> These wetlands are a part of the Erasinos water body, which is a natural (unmodified) water body, as provided by the relevant river basin management plan (RBMP).<sup>19</sup>

## 1.3 Complaints

- 1.3.1 In 2021, the European Investment Bank Complaints Mechanism (EIB-CM) received three separate complaints regarding the Erasinos sub-project: two complaints were received in July 2021 (SG/E/2021/12 and SG/E/2021/15) and one in September 2021 (SG/E/2021/17). The complaints are summarised in the Initial Assessment Report issued in December 2021.<sup>20</sup> The complainants comprise specialised environmental non-governmental organisations (NGOs) and concerned citizens, including a local inhabitant of the area concerned.

<sup>12</sup> 1 244 ha is 12.44 km<sup>2</sup>. Information on the airport is available [here](#).

<sup>13</sup> Information from Section 4 of the EIA report.

<sup>14</sup> Information available from [here](#).

<sup>15</sup> Information was available in January 2023 from

[http://thyamis.itia.ntua.gr/egyffloods/gr06/gr06\\_maps\\_jpg\\_p08/GR06\\_P08\\_S9\\_Risk\\_map\\_T50.jpg](http://thyamis.itia.ntua.gr/egyffloods/gr06/gr06_maps_jpg_p08/GR06_P08_S9_Risk_map_T50.jpg).

<sup>16</sup> Information was available in January 2023 from

[http://thyamis.itia.ntua.gr/egyffloods/gr06/gr06\\_maps\\_jpg\\_p01/GR06\\_P01\\_S3\\_works.jpg](http://thyamis.itia.ntua.gr/egyffloods/gr06/gr06_maps_jpg_p01/GR06_P01_S3_works.jpg) and

[https://www.civilprotection.gr/sites/default/gscp\\_uploads/attiki\\_a1.pdf](https://www.civilprotection.gr/sites/default/gscp_uploads/attiki_a1.pdf).

<sup>17</sup> Law 4277/2014 available [here](#).

<sup>18</sup> Law 4559/2018 (Article 54: Protection of wetlands in Attica) available [here](#).

<sup>19</sup> River basin management plan of Attica (2017) available [here](#) (in Greek).

<sup>20</sup> A joint Initial Assessment Report for cases SG/E/2021/12, SG/E/2021/15 and SG/E/2021/17 is available [here](#) in English and in Greek.



1.3.2 The complainants allege the following:

- **non-compliance of the Erasinos sub-project with national law**, specifically (i) failure to correctly classify the protected areas concerned, (ii) failure to comply with the provisions of national law, (iii) failure to assess the impact on an endemic and protected species of fish, and (iv) provision of financial compensation for resettlement and start of works before the necessary documentation was obtained (that is, a Presidential Decree approving work in the area of the Erasinos);
- **non-compliance of the Erasinos sub-project with EU law**, primarily (i) the Environmental Impact Assessment (EIA) Directive (including failure to adequately analyse alternatives, shortcomings of the data and the EIA report and failure to set appropriate mitigation and compensation measures), (ii) the Habitats Directive (for example failure to establish appropriate conservation objectives for the site in question and to carry out an appropriate assessment in line with the Directive) and (iii) the Water Framework Directive (WFD) and the Floods Directive;
- **failure of the EIB** to adequately assess the sub-project and comply with the EIB's environmental and social standards and other commitments in the area of environment (for example the Environmental and Social Data Sheet contains some information that is not correct and/or not applicable to the Erasinos flood protection scheme).

1.3.3 The complainants alleged that the area of the sub-project's impact is not only a Natura 2000 site but also a protected area in accordance with national law (see § 1.2.6). The Erasinos is one of the three designated sites for the Marathon minnow species, the status of which is near threatened.<sup>21</sup>

1.3.4 The complainants requested that the EIB withdraw the financing from the sub-project in question and that the resources be re-allocated to other eligible project(s) in Greece.

## 2 WORK PERFORMED

2.1.1 After receiving the complaints, the EIB-CM conducted an initial meeting with the EIB services and contacted the complainants to discuss their concerns and the information and evidence they had provided up to that point.<sup>22</sup> The EIB-CM also reviewed the available information regarding the Bank's project appraisal and approval, the EIA information available to the Bank, judgments from national courts relevant to the case, and the information provided by the complainants, including their opinions and photographic evidence of works allegedly carried out in the area of the sub-project. The EIB-CM prepared the Initial Assessment Report and issued it in December 2021.

2.1.2 The Chief Compliance Officer of the CEB had received a joint complaint with the same concerns about the sub-project as those received by the EIB-CM. Both accountability mechanisms agreed to coordinate and keep each other informed about the case handling process and its outcome.

2.1.3 In May 2022, the EIB-CM conducted a mission to the site of the sub-project (jointly with the EIB services) and met with key stakeholders, including the promoter, the designer, the relevant environmental authorities and the complainants (represented by delegates). The **EIB-CM's observations from the mission are summarised below**.

2.1.4 **Progress of works.** The mission enabled the EIB-CM to observe that some works have been carried out; for instance, excavation material was accumulated in one visited area next to the future flood protection dam (see Figure 2). Land clearing had been carried out in some places. There was an ongoing archaeological investigation, with workers present on the site.

<sup>21</sup> Καθορισμός Μέτρων Αποκατάστασης της Ποτάμιας Συνεκτικότητας και της Ανόρθωσης Ενδιατημάτων του Ενδημικού Είδους «Αττικόψαρο» και Άλλων Ειδών Πανίδας / Τελική Έκθεση (2022). *Determination of measures for the restoration of river's coherence and habitat of the endemic species Atticopsaro (Pelasgus marathonicus) and other species of fauna* (Final report, April 2022).

<sup>22</sup> Online meetings with the complainants took place on 24 September 2021 for SG/E/2021/12 and on 22 October 2021 for SG/E/2021/15 and SG/E/2021/17.

- 2.1.5 **Condition of culverts.** The rain on the day before the visit enabled the EIB-CM to observe that the stream was departing from its normal course, flooding the local roads and the stream valley. The observable reasons for flooding were complex and possibly also linked to the inadequate culverts, which were partially collapsed and blocked by debris carried by floodwater, and the insufficient capacity of the culverts for the quantities of water during floods.
- 2.1.6 **Land ownership.** Projects such as the one in question enable the authorities to demarcate rivers to begin work on their protection. Discussion with the officials accompanying the mission established that the processes for establishing a cadastre were still in progress. The EIB-CM observed that the absence of demarcation and the private ownership of the riverbed resulted in the unauthorised hindering of the river flow (for example by cultivation in parts of the riverbed), unauthorised fortification of the slopes (for example with concrete) and construction too close to the riverbed, as observed by the EIB-CM during the mission.
- 2.1.7 **Flash floods.** The mission was informed that, after the completion of new urban drainage projects, the area is expected to receive more untreated run-off water. The national stakeholders also informed the EIB-CM of the government's plans to authorise additional run-off water projects that will increase water drainage into the Erasinos from nearby urban areas in the near future (see § 1.1.4). The urban drainage management systems of the nearby municipalities cannot be implemented without connection to the Erasinos stream as the final recipient. The situation may worsen in the future for the surrounding natural and archaeological protected areas. Climate change and urbanisation are contributing to the increasingly concentrated precipitation (heavy rains) and flash floods in the Erasinos basin and its drainage areas. Heavy rains are likely to intensify in the coming decades, which is stated in the Bank's appraisal document.<sup>23</sup> Flood water breaking free of the natural riverbed has already caused damage to the road network. Some areas were not accessible to the mission due to flooding, and others were not visited due to time constraints.
- 2.1.8 After the mission, the EIB-CM contacted the EIB services and the complainants requesting additional information on the development of the sub-project and the actions taken to set the site-specific conservation objectives (SSCOs) for the site in question.
- 2.1.9 From the start of the investigation, the EIB-CM liaised with the EIB services to discuss the sub-project's compliance with the EIB's environmental and social standards and obtain additional information. The EIB-CM processed the additional information received from the services (including from the promoter via the services) and from the complainants over the course of the investigation between December 2021 and December 2022. In March 2023, the EIB formally appointed an environmental specialist to the project. On the basis of the above information, the EIB-CM prepared this Conclusions Report.

## 3 REGULATORY FRAMEWORK

### 3.1 The EIB Group Complaints Mechanism

- 3.1.1 The *EIB Group Complaints Mechanism Policy*<sup>24</sup> tasks the EIB-CM with handling complaints concerning alleged maladministration by the EIB.<sup>25</sup> Maladministration means poor or failed administration.<sup>26</sup> This occurs when the EIB fails to act in accordance with the applicable legislation and/or established policies, standards and procedures.<sup>27</sup> Maladministration may also relate to the environmental or social impact of the EIB's activities.<sup>28</sup>
- 3.1.2 The policy specifies that the EIB-CM reviews the EIB's activities with a view to determining whether maladministration attributable to the EIB has taken place. Members of the public do

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<sup>23</sup> See the Climate Change section of the ESDS, available [here](#).

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

<sup>25</sup> § 5.1.3 of the *EIB Group Complaints Mechanism Policy*.

<sup>26</sup> § 3.1 of the *EIB Group Complaints Mechanism Policy*: "failure by the EIB Group to comply with its own obligations in the appraisal [...] of projects financed by the EIB Group."

<sup>27</sup> Section II, § 1.2 of the *EIB Group Complaints Mechanism Procedure*.

<sup>28</sup> Section II, § 1.2 of the *EIB Group Complaints Mechanism Procedure*.

not need to identify a specific policy, procedure or standard, nor do they need to directly challenge the EIB Group on non-compliance with specific policies, procedures or standards.<sup>29</sup>

- 3.1.3 *The EIB Group Complaints Mechanism Procedures*<sup>30</sup> regulate the work of the EIB-CM. The EIB-CM compliance review includes an investigation of compliance with existing policies, procedures and standards.<sup>31</sup>
- 3.1.4 It is important to note that, in accordance with section 4.3.2 of the *EIB Group Complaints Mechanism Policy*, complaints against national, regional or local authorities (for example government departments, state agencies and local councils) are not handled by the EIB-CM.
- 3.1.5 As indicated below, the EIB Environmental and Social Standards require compliance of the project with applicable national and EU law, which is the responsibility of the promoter and local authorities. Furthermore, section 4.3.14 of the EIB-CM policy states that the EIB Group has a duty to verify compliance with its applicable policies, procedures or standards.
- 3.1.6 Finally, section 1.4.5 of the EIB-CM procedures states that an EIB-CM review will not pass judgment on activities under the sole responsibility of third parties, notably those of the promoter, the borrower, authorities at local, regional or national level, or European institutions or international organisations. **Unless an infringement of EU law is established by the Court of Justice of the European Union (CJEU)**, an EIB-CM review will not call into question the correctness of the transposition of EU law into national law by EU Member States, in the context of its inquiries.
- 3.1.7 The EIB-CM records its findings and conclusions in the form of a Conclusions Report.<sup>32</sup> If it issues certain recommendations in the Conclusions Report, the policy tasks the EIB-CM with monitoring the implementation of the recommendations.<sup>33</sup>

## 3.2 Project-applicable standards

- 3.2.1 The sub-project must comply with the project-applicable standards. The EIB-CM identified the following most relevant project-applicable standards:
- **EU legislation** — the Strategic Environmental Assessment (SEA) Directive,<sup>34</sup> the EIA Directive (as amended),<sup>35</sup> the Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (the Habitats Directive),<sup>36</sup> the Water Framework Directive (WFD)<sup>37</sup> and the Directive on the Assessment and Management of Flood Risk (the Floods Directive);<sup>38</sup>

<sup>29</sup> §§ 1.4 and 5.3.3 of the *EIB Group Complaints Mechanism Policy*.

<sup>30</sup> The full *EIB Group Complaints Mechanism Procedures* are available [here](#).

<sup>31</sup> §§ 4.3.14 and 5.3.3 of the *EIB Group Complaints Mechanism Policy* (2018).

<sup>32</sup> § 6.2.5 of the *EIB Group Complaints Mechanism Policy* (2018).

<sup>33</sup> § 5.3.1, point 4, of the *EIB Group Complaints Mechanism Policy* (2018).

<sup>34</sup> Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.

<sup>35</sup> Council Directive [85/337/EEC](#) of 27 June 1985, repealed subsequently by Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, available [here](#).

<sup>36</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended, available [here](#). Article 6(3): "Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in **view of the site's conservation objectives**. [...] the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public."

<sup>37</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, as amended, available [here](#).

<sup>38</sup> Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks, available [here](#).

- **National legislation** — Greek Law 1650/1986<sup>39</sup> on the protection of the environment (as amended), the Environmental licensing law 4014/2011,<sup>40</sup> the Civil Code approved by Presidential Decree Ref. 456/1984 (as amended),<sup>41</sup> Ministerial Decision 31822/1542/E103/2010<sup>42</sup> (transposing the Floods Directive), Joint Ministerial Decree (JMD) 107017/2006 (Government Gazette (GG) 1225)<sup>43</sup> (transposing the SEA Directive), Greek Law 3199/2003 (GG A'280)<sup>44</sup> and Presidential Decree 51/2007 (GG I 54) (transposing the WFD), JMD 37338/2010 (GG 1495/B)<sup>45</sup> defining measures and procedures for the conservation of wild birds and of their habitats (as amended, transposing the Birds Directive<sup>46</sup>), JMD 33318/3028/1998<sup>47</sup> (GG 1289/B) (as amended by Greek Law 3937/11, JMD 14849/08 (GG 645B) and JMD 37338/2010 (GG 1495B)) on defining measures and procedures for the conservation of natural habitats as well as wild fauna and flora, JMD 4685/2020 (GG A92)<sup>48</sup> on modernisation of environmental legislation (related to validity of the Environmental Conditions Approval Decision (AEPO)<sup>49</sup> being lengthened to 15 years), JMD 48963/12 (GG 2703B)<sup>50</sup> on the content specifications for AEPOs, and Law 4559/2018 (Article 54);
- **Applicable EIB standards** — the *EIB Statement of Environmental and Social Principles and Standards* (2009)<sup>51</sup> and the *EIB Environmental and Social Standards* (2018),<sup>52</sup> in addition to the EIB's environmental and social (E&S) internal procedures as described in volume II of the *EIB Environmental and Social Handbook* (2013).<sup>53</sup>

#### The EIB Statement of Environmental and Social Principles and Standards<sup>54</sup>

- 3.2.2 The *EIB Statement of Environmental and Social Principles and Standards* (2009) applies to all EIB operations. It also informs promoters, the public, affected communities, other EU institutions (in particular the European Commission), other multilateral financial institutions, financial and business partners, and representatives of civil society (including non-governmental organisations), on the requirements of the Bank.
- 3.2.3 All projects financed by the EIB are required to undergo the EIB appraisal (see also § 3.3.2). The EIB will not finance projects that **do not comply with EU law** and national environmental law in force at the time. Within the EU, **the EIB assumes that national law correctly transposes EU environmental law and that competent authorities are enforcing the national law**. The EIB monitors the project's environmental performance, especially the fulfilment of any specific obligations described in the finance contract, based on reports from the promoter.

#### EIB Environmental and Social Standards (2018)<sup>55</sup>

##### *Standard 1: Assessment and management of environmental and social impacts and risks*

<sup>39</sup> Common Ministerial Decision 69269/5387/90 enacted Law 1650/1986 on the protection of the environment, available [here](#) (in Greek), as amended. This also includes requirements for the EIA procedure, which are currently carried out under the Framework Law.

<sup>40</sup> Available [here](#) (in Greek).

<sup>41</sup> Presidential Decree 456/1984 (as updated) available [here](#) (in Greek).

<sup>42</sup> Ministerial decision No. 31822/1542/E103/2010 (ΦΕΚ1108/B/21-07-2010) available [here](#) (in Greek), which incorporated the Floods Directive into national law.

<sup>43</sup> Decision of the Ministry of Education and Culture No. 107017/2006, available [here](#) (in Greek), which incorporated the SEA Directive into national law.

<sup>44</sup> Law 3199/2003 is available [here](#) (in Greek).

<sup>45</sup> Available [here](#) (in Greek).

<sup>46</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (as amended) available [here](#).

<sup>47</sup> Available [here](#) (in Greek).

<sup>48</sup> Available [here](#) (in Greek).

<sup>49</sup> "Environmental Conditions Approval Decision" is abbreviated as AEPO in Greek.

<sup>50</sup> Available [here](#) (in Greek).

<sup>51</sup> The *EIB Statement of Environmental and Social Principles and Standards* (2009) is available [here](#) (in English).

<sup>52</sup> The *EIB Environmental and Social Standards* (2018) are available [here](#) (in English).

<sup>53</sup> *EIB Environmental and Social Handbook* volume II (2013) is available [here](#).

<sup>54</sup> The EIB Statement is a part of the *EIB Statement of Environmental and Social Principles and Standards* (2009).

<sup>55</sup> The *EIB Environmental and Social Standards* (2018) are available [here](#) (in English).

- 3.2.4 The overall objective of Standard 1 is to outline the promoter's responsibilities in the process of assessing, managing and monitoring environmental and social impacts and risks associated with the operations, specifically stakeholder engagement. The promoter shall ensure that such stakeholders are appropriately engaged with on environmental and social issues that could potentially affect them through a sustained public participation process comprising both information disclosure and meaningful consultation.
- 3.2.5 The promoter shall carry out an environmental and social assessment for any project that is likely to have significant environmental and social impacts and risks. The promoter shall be responsible for putting in place its own systems that will allow for a comprehensive and rigorous environmental and social assessment of impacts and risks, using an integrated approach<sup>56</sup> in order to achieve a high level of protection of the environment taken as a whole.
- 3.2.6 The promoter shall establish and maintain throughout the lifecycle of the project a process for identifying the environmental and social impacts and risks of the project. The process will consider all relevant environmental and social impacts and the stakeholders who are likely to be affected by the project. The promoter will provide to the Bank, along with information on environmental and social impacts of the project, information on any expropriation, land acquisition and expropriation, land acquisition and easements and/or involuntary resettlement of people, and likely restrictions on access to land, shelter and/or livelihood and subsistence strategies.<sup>57</sup>
- 3.2.7 A comprehensive environmental and/or social assessment is carried out for projects classified under Annex I of the EIA Directive, and/or where an Environmental and/or Social Impact Assessment is required by national legislation or for projects where likely significant impacts and risks on the environment, population, human health and well-being have been determined. These projects require specific formalised and participatory assessment processes.
- 3.2.8 To **guarantee the completeness and sufficient quality of the information** included in the environmental and social study, the promoter should ensure that the information required is up to date<sup>58</sup> with respect to the measures envisaged to prevent, reduce and, where necessary, compensate/remedy any significant adverse impacts. This should be achieved by providing an update of the environmental and social study based on updated studies as necessary (the exact scope of the additional information to be provided by the promoter will be agreed with the EIB on a case-by-case basis) and/or by providing a statement from the relevant authority, confirming that the information included in such documents remains accurate and relevant and properly reflects, among other things, the baseline conditions, legal requirements, current knowledge and methods of assessment.
- 3.2.9 As part of the assessment process, to ensure an adequate participatory process, the promoter will identify and engage with stakeholders in accordance with Standard 10.
- 3.2.10 For projects located in the European Union that are subject to other assessment procedures under EU legislation,<sup>59</sup> the promoter will ensure that the comprehensive environmental and social assessment is coordinated or integrated with the other specific assessment procedures. The test/assessment required under Article 4.7 of **the WFD, which refers to new modifications<sup>60</sup> to the physical characteristics of a surface water body** as a result of sustainable human development activities, aims at supporting decisions on derogation from the WFD's environmental objectives, for example through the setting of a longer timeframe.<sup>61</sup>

<sup>56</sup> This requirement stems also from Article 2(3) of the EIA Directive.

<sup>57</sup> § 30, Standard 1, *EIB Environmental and Social Standards* (2018).

<sup>58</sup> Information required is provided under § 32 of Standard 1, *EIB Environmental and Social Standards* (2018), and is based on Appendix IV of the EIA Directive.

<sup>59</sup> In particular, the assessments required under Articles 6(3) and 6(4) of the Habitats Directive 92/43/EEC, and the assessment required by Article 4.7 of the Water Framework Directive 2000/60/EC, as outlined in § 37, standard 1, *EIB Environmental and Social Standards* (2018).

<sup>60</sup> Types of activities that cause modifications include land drainage, sediment dredging, construction of embankments and flood protection. See information provided [here](#).

<sup>61</sup> §§ 39-41, Standard 1, *EIB Environmental and Social Standards* (2018) (bold added for emphasis): "In defining whether the criteria and conditions set out in Article 4.7 of the WFD are met, the promoter will follow the approach



- 3.2.11 The EIB is required to submit projects it intends to finance to the European Commission for an opinion.<sup>62</sup> As part of this process, the EIB shares environmental information with the Commission, such as on nearby protected areas and whether the project complies with the Habitats Directive.<sup>63</sup>
- 3.2.12 During its appraisal, the Bank verifies the project's alignment with the EIB's standards and that the appropriate assessment procedure, as set out in the Habitats Directive, has been carried out.<sup>64</sup>
- 3.2.13 The results of the monitoring should be used to correct and improve operational performance and, when relevant, disseminated to the stakeholders. If during project implementation, and taking into account the promoter's self-monitoring, governmental inspection reports and/or third party audits/reports, the need for corrective and preventive actions is identified, the promoter shall amend the environmental management plan accordingly and shall submit it to the EIB for approval. **The promoter shall implement agreed corrective and preventive actions** and follow up on these actions to ensure their effectiveness.<sup>65</sup>

### *Standard 3: Biodiversity and ecosystems*

- 3.2.14 The EIB acknowledges the fact that its operations may have adverse impacts on biodiversity, ecosystems and their associated services. To secure favourable economic, environmental and social outcomes of its operations, it is committed to a number of key principles, which include the use of an adaptive management approach supported by monitoring so that **corrective actions** can be taken if needed to achieve biodiversity actions and targets.
- 3.2.15 Projects located in the European Union that may have a significant effect on a site designated or in the process of being designated a Natura 2000 site shall be subject to the assessment procedures required under the Habitats Directive (Articles 6(3) and 6(4)). The use of the European Commission's methodological guidance on Articles 6(3) and 6(4) of the Habitats Directive is recommended.<sup>66</sup>
- 3.2.16 For projects within the Natura 2000 network, the EIB requires the promoter to ensure that the assessment is able to demonstrate, with supporting evidence, that (i) there will be no significant effects on a Natura 2000 site or (ii) there will be no adverse effects on the integrity of a Natura 2000 site or (iii) there is an absence of alternatives to a project or plan that is likely to have adverse effects on the integrity of a Natura 2000 site and (iv) there are compensation measures in place that maintain or enhance the overall coherence of the Natura 2000 network and the sub-project is justified by imperative reasons of overriding public interest.
- 3.2.17 Cumulative impacts of the project should be appropriately assessed (i) between the different elements of the projects (in other words, no "salami-slicing" of impacts), (ii) with regard to other

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recommended by the Commission guidance, mainly those developed as part of the Common Implementation Strategy for the WFD. The promoter will carry out the assessment either at planning stage, incorporating the evaluation into the SEA process, if applicable, or as part of the EIA process thereby avoiding duplications. The promoter should be aware that a derogation under Article 4.7 can only be justified if all of the requirements presented for each stage are fulfilled. The promoter should provide the relevant quantitative and qualitative information required under **the stages in Article 4.7 assessment process**. It requires a wide range of expertise and knowledge on the biophysical, economic and social issues. It requires the use of different approaches in gathering this information, such as: qualitative description of the situation or impact in cases where it is difficult to quantify specific variables (for example a change in landscape), assessment of functional impact, the involvement of stakeholders to provide information and their assessment of various alternatives and option, thereby taking into account social issues and cultural/local perceptions, the performance of an economic assessment to compare the costs of different alternatives for delivering the beneficial objectives considered, the benefits and foregone environmental benefits linked to new activities and, when monetary valuation is possible, the environmental impact of different options." The key Article 4.7 test, as provided in the checklist, consists of the following four steps: (i) Do (other) relevant, practicable and not disproportionately costly mitigation measures exist? (ii) Are there any environmentally better, technically viable and not disproportionately costly alternatives? (iii) Are there reasons of overriding public interest or do the benefits of the modification outweigh the benefits of achieving the WFD objectives for the water body? (iv) Is the proposed modification discussed in the RBMP or can this be done retrospectively? See more [here](#) (in Greek).

<sup>62</sup> Article 19 of the EIB's Statute, available [here](#).

<sup>63</sup> §§ 79-81 and 82 of *EIB Environmental and Social Handbook* volume II (2013), available [here](#).

<sup>64</sup> § 90, *EIB Environmental and Social Handbook* volume II (2013).

<sup>65</sup> §§ 61 and 61, Standard 1, *EIB Environmental and Social Handbook* (2018).

<sup>66</sup> The up-to-date Commission notes, notices and methodological guidance on the management of Natura 2000 sites are available [here](#).

projects in the same area likely to have similar impacts and (iii) with regard to other activities, threats and pressures in the wider landscape that might have similar or related impacts on biodiversity and ecosystems.

- 3.2.18 Monitoring is a requirement for projects in critical habitats and, in some cases, to evaluate the **effectiveness of the biodiversity management plan**. Results from monitoring should be used to evaluate the effectiveness of the mitigation strategy and trigger appropriate management, corrective or adaptive actions, if and where needed.<sup>67</sup>

*Standard 5: Cultural heritage*

- 3.2.19 The EIB recognises that sites or objects representing value or significance for cultural heritage could be uncovered in unexpected locations during the actual implementation of an approved operation. Therefore, an **operation might be subject to the provisions of Standard 5 if it involves significant excavations, movement of earth, flooding or other changes in the physical environment** or it is located in, or in the vicinity of, a cultural heritage site recognised by the country of operation. As part of the inclusive engagement, the promoter will ensure consultation with the relevant national or local regulatory authorities entrusted with the protection of cultural heritage.<sup>68</sup>

*Standard 10: Stakeholder engagement*

- 3.2.20 Specific objectives arising from stakeholder engagement for the promoter amount to establishing and maintaining a constructive dialogue between the promoter, the affected communities and other interested parties throughout the project lifecycle, ensuring that all stakeholders are properly identified and engaged, ensuring the engagement of stakeholders in the disclosure process, and ensuring that engagement and consultation processes are appropriate and effective throughout the project lifecycle, in line with the principles of public participation, non-discrimination and transparency.
- 3.2.21 In terms of monitoring, the promoter will arrange for all necessary provisions to assure stakeholder engagement during the monitoring phase. Thereby, the promoter will endeavour to involve independent third parties or to facilitate community-driven monitoring, where practical and acceptable by the communities concerned.
- 3.2.22 In terms of reporting, the promoter will establish regular communication and reporting channels back to the communities and individuals impacted and concerned, whether through non-technical summaries of progress updates, engagement activities, public meetings or targeted issue-based hearings.

### 3.3 Responsibilities of the EIB

- 3.3.1 In line with the *EIB Statement of Environmental and Social Principles and Standards* (2009), the responsibility for compliance with the project-applicable standards lies with the promoter and local authorities. The Environmental and Social Screening process is carried out during the EIB's **pre-appraisal stage for a project**, through which its technical services determine the nature/scope of the environmental and social assessment with reference to a series of issues, all of which must be screened. **Whether the project-applicable standards are met is established as part of the EIB's project appraisal and monitoring.**<sup>69</sup> **However, the EIB will not finance projects that do not meet the project-applicable standards.**
- 3.3.2 The EIB Statement **requires the EIB to appraise the projects it finances**. The appraisal takes place prior to signature of the finance contract. The appraisal aims at, among other things, assessing the project's impact and whether the project complies with the project-applicable standards. Sometimes, the appraisal results in conditions for disbursement. The promoter must complete these conditions to the satisfaction of the EIB **prior to the disbursement of the EIB financing**.
- 3.3.3 For projects approved for EIB financing, the obligations of the promoter that derive from the environmental and social requirements of the Bank are described in the finance contract

<sup>67</sup> § 64, Standard 3, *EIB Environmental and Social Standards* (2018).

<sup>68</sup> §§ 6 and 20, Standard 5, *EIB Environmental and Social Standards* (2018).

<sup>69</sup> The *EIB Statement of Environmental and Social Principles and Standards* (2009) is available [here](#).

signed between the EIB and the borrower. Following signature of the finance contract, the **EIB is required to monitor the project**. The monitoring aims at ensuring compliance of the project with the EIB's approval conditions, and more generally with the Bank's environmental and social requirements. The EIB monitors projects on the basis of reports provided by the promoter, and also EIB site visits, information provided by the local community, etc. A breach of contractual obligations and/or poor project performance in other respects **requires corrective action by the promoter**, in agreement with the Bank.

- 3.3.4 Should the project be complex in nature and involve **complex environmental and social issues**, in particular related to **biodiversity** and climate change adaptation, then the support of an **environmental specialist from the Bank should be sought. For this purpose, the specialist may be formally assigned to the project team**. For complex, high-risk and contentious projects an external expert may be consulted to assist in the review of specific E&S aspects and impacts.
- 3.3.5 As part of the Article 19 Procedure (Request for the Opinion of the Commission), for projects in the European Union, the EIB should provide indications regarding compliance of the operation with EU environmental policies and legislation (confirming compliance or indicating how confirmation will be given at a later stage). The EIB can only confirm compliance of the operation with EU policies and with legislation to the best of its knowledge. Among other things, its confirmation should be based on its appreciation of the principal features of relevant legislation and information provided by the European Commission (for example on ongoing infringement procedures), knowledge about the promoter and any other relevant evidence.

## 4 PROJECT CYCLE

### 4.1 Pre-appraisal and appraisal stages

- 4.1.1 At the start of the project cycle, **during the pre-appraisal stage**, the promoter completed a questionnaire (the appraisal questionnaire requested by the EIB) with environmental information regarding the sub-project's legal compliance. The said questionnaire stated that the sub-project had the relevant EIA permits and that there is a high likelihood of unearthing archaeological finds. Follow-up questions were asked in terms of the need for any additional permits before the start of the construction.
- 4.1.2 During the pre-appraisal stage, the importance of compliance with the Floods Directive was stressed, specifically in relation to the assessment and management of flood risks. It was noted that Greece transposed the Floods Directive in 2010 and that risk assessment maps for the two water districts covered by the operation were sent to the European Commission in 2017 and subsequently approved by the Greek government in 2018. All projects under the programme have been identified in the approved flood risk management plans.
- 4.1.3 Works foreseen as part of the programme include the **creation of flood retention basins**, the widening of streambeds, the reinforcement of stream banks, and **the casing of streams in highly populated urban areas**. The pre-appraisal stage noted that the sub-projects are located mainly within urban areas, so land expropriation will be necessary. In terms of compliance with the relevant EU environmental and social principles, standards and practices, and also international good practice, during the pre-appraisal the Bank committed to verify the compliance during the appraisal.
- 4.1.4 During the pre-appraisal period, the EIB services identified that the proposed project **implements the requirements** of the Floods Directive and the WFD. In its communication to the Commission, the EIB committed to respecting the requirements of the EIA Directive. Prior to utilising any EIB funds, the promoter would be responsible for transmitting to the Bank the non-technical summary of the EIA for publication on its website. For any sub-project that may impact on a nature conservation site (which is the case for Erasinós), the promoter would be required to provide to the Bank information on the mitigating measures required to comply with the Habitats Directive and the Birds Directive.
- 4.1.5 The **project appraisal**, undertaken in the first half of 2019, identified the project-applicable environmental standards to be as follows: Standard 1 on the assessment and management of environmental and social impacts and risks, Standard 3 on biodiversity and ecosystems

and Standard 4 on climate (see § 3.2). The Bank's services considered that after mitigation measures are implemented, residual environmental effects were not significant despite some of the sub-projects being located inside the Natura 2000 network. The appraisal stated that the overall project will ensure compliance with the Floods Directive, enabling the protection of people and assets against floods, and would enable the implementation of high-priority measures established by the recently approved flood risk management plans. It further stated that all sub-projects will have lasting positive social benefits as they will protect lives and secure the quality of the economic activity, the quality of the environment and cultural heritage in the area against the effects of severe flooding.

## 4.2 Board approval

- 4.2.1 The Environmental and Social Data Sheet (ESDS) noted that the project works<sup>70</sup> will include the widening and deepening of riverbeds to enhance river hydraulic capacities, the reinforcement of riverbanks, and the construction of stormwater drainage systems. In addition, it was stated that the river stabilisation works would include covering the open trapezoidal stream sections with gabions that would not reduce the rain infiltration rate.<sup>71</sup>
- 4.2.2 The information about the project was mainly presented in broad terms, describing similar impacts from sub-projects and expected outcomes from the ten flood management schemes. Information on the Erasinios sub-project in particular was provided with regard to appropriate assessment, land expropriation needs linked with project implementation and description of appeals against the AEPO of the lower Erasinios. The ESDS stated that the appropriate assessment for the Erasinios sub-project did not request compensation/offsets for adverse effects, as the flood protection investments will protect the 2 669-ha Special Protection Area against extreme climatic conditions. It was stated that the necessary mitigation measures for flood protection schemes that fall into Natura 2000 areas or in areas of special environmental interest focus on preserving and enhancing the natural vegetation and confining the construction of new access roads within these areas to a strict minimum.
- 4.2.3 At approval stage, the services specified the need to comply with a number of pieces of EU legislation, namely the EIA Directive, the Habitats Directive and the Birds Directive. The WFD and the Floods Directive were identified as relevant in terms of the project's eligibility and contribution to improved water quality.
- 4.2.4 The overall project risks included delays in implementation due to archaeology, as most sub-projects are located in areas where there is a high likelihood of unearthing archaeological finds. As unearthing archaeological finds during construction in Attica is rather common, it was noted that the authorities have streamlined the relevant processes and procedures. Contractors are obliged to submit bids that include plans to continue works as far as possible during the period in which archaeological investigations take place.
- 4.2.5 The ESDS summarised information from public consultation and stakeholder engagement for the operation as a whole. It pointed out that there were "complaints during the public participation process for Erasinios and Rafina sub-projects, which were rejected in court as it was concluded that the people contesting against the works had false understanding of the technical features of the works and also had personal financial interests to vote against them."

## 4.3 Finance contract and monitoring

- 4.3.1 The EIB financing of the project is divided into two finance contracts, with the first finance contract signed in 2019 and the signature of the second finance contract is pending. The first finance contract included conditions precedent such as the requirement of evidence that the borrower and the promoter had obtained all necessary authorisations required in connection with this contract and the project.
- 4.3.2 The finance contract requires (as continuing project undertakings) that the promoter implements and operates the project in compliance with environmental law, obtains and maintains the requisite environmental approvals for the project and complies with any such environmental approvals. As part of the continuing project undertakings, there are also specific

<sup>70</sup> Note: this is attributable to the entire project and not specifically to the sub-project in question.

<sup>71</sup> ESDS of 10 June 2019 available [here](#).

requirements regarding the commitment and allocation of EIB funds for project components that impact nature conservation sites and those that require a full EIA.

- 4.3.3 The promoter submitted the monitoring reports for 2020, 2021 and 2022. The Erasinós sub-project reported no works and there was no report on (potential) issues of non-compliance.

## 5 ANALYSIS AND FINDINGS

The Initial Assessment Report established three complex allegations, which are analysed in the three sub-sections below.

### 5.1 The Erasinós sub-project and national law

- 5.1.1 The first allegation concerns non-compliance of the Erasinós sub-project with national law, specifically (i) failure to **correctly classify the protected areas** concerned, (ii) failure to comply with the provisions of national law (lack of Presidential Decree for demarcation of the Erasinós), (iii) failure to assess the impact on an endemic and protected species of fish and (iv) issues with financial compensation for resettlement and start of works before the necessary documentation was obtained (Presidential Decree).

#### ***Project's compliance with applicable standards related to classification of the protected areas***

- 5.1.2 Standard 1 of the *EIB Environmental and Social Standards* (2018) requires the project to comply with national environmental law (see § 3.2.3). For the sub-project in question, two EIAs were carried out: for the upper Erasinós an AEPO was issued in 2001 and for the lower Erasinós an AEPO was issued in 2007.
- 5.1.3 From an **archaeological point of view**, the project documentation stated that the sub-project is located in an area of national cultural heritage, namely the archaeological site of the Temple of Artemis at Vravra in the Erasinós delta (see §§ 1.1.3 and 1.2.3). The sub-project justification also includes numerous references to the requirements to ensure the protection of archaeological heritage, to enable surveys before works begin and to conduct supervision during the project implementation (see §§ 4.1.1 and 4.3.3). The project documentation pointed out the need to tender the archaeological supervision and management of the construction, which was pending at the time of the appraisal (see § 4.1.1). At the same time, the Bank was informed that no specific authorisation was required before the start of the construction works and that all necessary permits were in place to launch construction.
- 5.1.4 The **EIA documentation** for the sub-project comprised, as a minimum, the environmental information for the AEPO for the upper Erasinós (prepared in 2001 and 2011) and for the AEPO for the lower Erasinós (prepared in 2007 and 2017). The EIA documentation also included information on a Natura 2000 site relevant to the sub-project (see § 1.2.2). In the EIB-CM's view, the environmental information for the AEPOs of 2001 and 2007 did not address the requirements of the Habitats Directive Article 6(3). The 2011 AEPO extension also does not seem to contain information on the Natura 2000 site, which is downstream of the relevant section of the upper Erasinós. Environmental information for the 2017 AEPO for the lower Erasinós contained information pertaining to the appropriate assessment and cumulative impact of the sub-project for the upper Erasinós.
- 5.1.5 The 2001 and 2007 environmental reports (for the original AEPOs) were prepared before the establishment of the **protected status of the wetlands in the Erasinós basin** by the Master Plan of Athens — Attica (2014) (see § 1.2.6). However, the 2014 law approving the said plan was relevant to the renewal of AEPO for the lower Erasinós, which took place in 2017. The environmental report (2017) stated that there were no changes to the institutional framework governing land use and construction conditions in the area since the 2007 AEPO, as required by EIA law.<sup>72</sup> The said report does not quantify the impact of the sub-project on the Category A wetlands.

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<sup>72</sup> Law 40, Article 11.5: "The study shall contain at least a brief description of parameters of the current state of the environment that have changed during the period of validity of the AEPO to be reviewed and proposals to amend



- 5.1.6 On the **sub-project's environmental impact**, the environmental report (2017) states that the sub-project “will protect the Special Protection Area of 2 669 ha against extreme climatic conditions, which may have detrimental effect on the bird ecosystem of the protected area.” This argument is correct in terms of the protection of the archaeological area concerned from flooding (both natural and caused by human activity). In the EIB-CM's opinion, the report does not reflect the scientific theory that wetlands are the best environments for balancing water regimes: inland wetland ecosystems absorb excess water and help prevent floods and drought.<sup>73</sup> The latter was the argument used for classifying the Erasinos wetlands as protected areas to ensure the preservation of ecosystem services and longevity.
- 5.1.7 The environmental information notes the Master Plan of Markopoulou (1987), pointing out the established **landscape protection zone for the almost entire study area and some protection zones in Vravrona**.<sup>74</sup> The Erasinos area is known as a **landscape of exceptional natural beauty**, in accordance with national law (between 1957 and 1995).<sup>75</sup> Such areas mostly overlap with the Natura 2000 network; therefore, protected status is presumed to be provided by national law in relation to transposing the Habitats Directive, environmental protection and land-use planning (see § 5.2). The environmental information focuses on the sub-project's compliance with flood control. Justification with regard to compliance with other pieces of legislation, such as water management, nature protection and landscape protection, appears to be missing.
- 5.1.8 The environmental procedure for the extension of the validity of the AEPO for the lower Erasinos in 2017 also resulted in **an enlarged scope for the AEPO**.<sup>76</sup> The 2017 AEPO added four conditions (numbers 25-28) specifying the content of the **materials' transfer plan** to be prepared by the developer and **the environmental monitoring programme**. The environmental report was not made available to the public during the decision-making process.
- 5.1.9 It is important to point out that, at the time of the Bank's appraisal and approval, the **sub-project had valid AEPOs, including their extensions** (see § 5.1.4). Two appeals were filed to the Council of State during the decision-making process for the sub-project. An appeal procedure against the 2007 AEPO for the lower Erasinos was concluded in 2013. The second appeal requested an annulment of the announcement of the sub-project works and was concluded in 2020. The Council of State did not investigate the technical matters and information used for environmental decision-making. It instead focused on the legal aspects of the AEPO decision-making process. The Council of State rejected both appeals, sustaining the relevant AEPO (see Appendix).<sup>77</sup>

***Project's compliance with applicable standards related to the provisions of national law (lack of Presidential Decree for demarcation of the Erasinos) and the start of works***

- 5.1.10 The complainants alleged that the sub-project works started before the issuance of the Presidential Decree. The Presidential Decree demarcating the Erasinos stream was required

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conditions and restrictions, if any, resulting from an amendment or legislative provisions concerning the environment in the period between the adoption of the AEPO and the submission of the renewal dossier” (text originally in Greek). The EIA report, which notes for the first time the presence of Marathon minnow, is the 2017 EIA report for the lower Erasinos (see § 1.3.3).

<sup>73</sup> Information available [here](#).

<sup>74</sup> GG Series II, No. 916/A/1987.

<sup>75</sup> Ως «Πηγές του αρχαίου ποταμού Ερασίνου» έχουν ενταχθεί στα Μνημεία και Τοπία Υδατικού Ενδιαφέροντος Αττικής (Φ.Ε.Κ. 198/Β/95)“Sources of the ancient river Erasinos” were included in the Monuments and Landscapes of Aquatic Interest of Attica (GG 198/B/95), GG 265B/1-10-57, GG 117B/20-3-63, GG 952B/10-9-75, GG 7B/10-1-79, GG 157B/7-3-95, GG 334/3-5-95, GG Series I No. 718B/27-12-79 (on strict construction restrictions), GG 649B/25-7-95, GG Series I No. 706B/26-7-80 (on landscape of exceptional natural beauty and historical zones), etc.

<sup>76</sup> The new scope includes the Agios Georgios stream section of approximately 825 m, the Markopoulou stream of approximately 167 m and the Vassiliadas Vasilada stream of approximately 460 m, according to information provided in the EIA technical report (2017).

<sup>77</sup> In Greece, appeals are lodged in the administrative courts and the supreme administrative court (the Council of State). Technical aspects of administrative procedures can be appealed in an administrative appeal. The Council of State examines the legal aspects only of administrative procedures.

by law<sup>78</sup> and should have preceded **any works in the protected areas**. The law in this respect lists the type of activities which should not be carried out until the legal requirement is implemented, namely **construction, filling, disruptive activities, any activity which degrades the ecological status** of priority wetlands and the issuing of building permits. Though missing at the start of the project implementation, the Presidential Decree was **issued in August 2021** (see § 1.2.6 and Appendix).

- 5.1.11 The complainants pointed out that some works (physical intervention) have taken place in the Erasinos river basin since 2020 (excavation, movement of soil and ground dumping) and that these works are part of the sub-project's implementation. The EIB-CM discussed the situation with the EIB services after the complaints were received and requested the Bank to (i) verify information on the start of project works, (ii) refrain from further disbursing financial resources for the sub-project and (iii) advise the promoter to suspend any activities on the site until compliance with the law was reached (see § 3.3.3). The EIB services committed to engaging with the promoter and clarifying the situation.
- 5.1.12 The actions taken by the promoter between November 2020 and November 2021 are summarised in the EIB-CM's Initial Assessment Report (see footnote 20). They have also been confirmed by the complainants, who noted that (i) in spring 2021 works associated with the sub-project were stopped and (ii) after the issuance of the Presidential Decree the project works resumed again<sup>79</sup>. In spring 2022, the EIB-CM received information on a temporary halt of works around the Erasinos again. However, construction restarted once national archaeological services started issuing authorisations (in March 2022 according to the promoter). The EIB-CM mission to the site took place in May 2022, during which signs of construction-related activities (but not construction itself) in the Erasinos valley were observed; archaeological excavations were also taking place (see § 2.1.4).
- 5.1.13 According to the promoter and the contractor, no works took place before August 2021 except for making specific sections of the Erasinos accessible for survey and depositing materials to analyse their quality and composition. The EIB-CM is not tasked with determining the type of activities/works that were carried out before the issuance of the Presidential Decree in August 2021, or their location in relation to archaeological and environmental protection boundaries or the parameters of the execution of works.

### ***Project's compliance with applicable standards related to the assessment of impact on an endemic and protected species of fish***

- 5.1.14 This section should be read in conjunction with the analysis of the sub-project's compliance with the requirements of the Habitats Directive (see §§ 5.2.6-5.2.12); therefore, information here is limited to (i) the existence of analysis of the protected species of fish (see § 1.2.2) and (ii) the identification of safeguards to ensure minimal negative impact on and monitoring of the protected habitats and species.
- 5.1.15 Standard 3 of the *EIB Environmental and Social Standards* (2018), regarding biodiversity and ecosystems, requires the promoter to assess any activity that may have a significant effect on a site designated or in the process of being designated as Natura 2000 site (see § 3.2.15).
- 5.1.16 In the EIB-CM's opinion, the environmental information for the AEPO for the upper Erasinos (2001 and renewed in 2011) does not assess or point out **the presence of an endemic and protected species of fish, namely the Marathon minnow**. The environmental information for the 2007 AEPO for the lower Erasinos also did not mention the species in question. Environmental information for the AEPO extension for the lower Erasinos section (2017) reported on the protected species and habitats. The Marathon minnow was found to be non-significantly represented in the area. There was no description of how the species of fish accustomed to permanent water availability will adapt to the water fluctuation in the modified riverbed, which will ensure fast drainage after flash rain and prolonged dry periods. There was no information on the biology of the species or its conservation status, and no impact analysis

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<sup>78</sup> Presidential Decree on Validation of the demarcation of the eastern Mediterranean border: the Erasinos stream (along the length, upstream and downstream of flood containment projects) and its associated streams. This information is also noted in the EIB-CM Initial Assessment Report of 14 December 2021.

<sup>79</sup> As stated in the Initial Assessment Report of the EIB-CM, and as stated by the promoter, between November 2020 and August 2021 no major works took place. Some small-scale deforestation was reported on the upper part of the sub-project. Works have also been temporarily suspended until the third quarter of 2021 because of the contracting of archaeological supervision and investigations.

was carried out on the survival of the species in the changed environment. The AEPO recognised an overriding public interest in tackling the likelihood of an increased frequency and volume of flooding.

- 5.1.17 The 2017 AEPO extension for the lower Erasinós detailed the **monitoring programme and reports** with the issues to be monitored, enabled by the national law on environmental licensing.<sup>80</sup> The AEPO renewal decision requested the monitoring of the qualitative and quantitative parameters of the waters of the area at characteristic points (point 28.4.3 of the AEPO) and of bird species of interest in the Special Protection Area (point 28.4.4 of the AEPO).
- 5.1.18 Additional studies produced after the 2017 AEPO extension provide supplementary information on the status of the Marathon minnow, the likelihood of significant negative effects and the needed conservation measures. The legal certainty of actions proposed in these studies is to be established in the **Natura 2000 site's management plan** to be prepared and approved in order to fulfil the requirements of the Habitats Directive (see also § 5.2).
- 5.1.19 Furthermore, as a result of the report on "Determination of measures for the restoration of river's coherence and habitat of the Marathon Minnow and other fauna species"<sup>81</sup> completed by the Hellenic Centre for Marine Research and delivered to the Natural Environment and Climate Change Agency in April 2022, the monitoring of the population of the Marathon minnow species in the Erasinós stream was proposed to the Ministry of Environment and Energy as part of the sub-project EIA monitoring programme.<sup>82</sup> This proposal is expected to be implemented.

***Project's compliance with applicable standards related to resettlement before obtaining the necessary documentation (Presidential Decree)***

- 5.1.20 After receiving the complaints, the EIB-CM forwarded the alleged issue related to fraud in financial compensation for resettlement to the Bank's competent services for investigation, as it does not fall under the EIB-CM mandate. The complainants were not directly affected by expropriation or personally claimed unfair compensation.
- 5.1.21 As required by Standard 1 of the *EIB Environmental and Social Standards* (2018) (see § 3.2.6), the promoter informed the Bank that some sub-projects would require land acquisition and the physical resettlement of affected people (without specifying the sub-project(s) concerned).<sup>83</sup> The approval process also identified the possible issue of delays in completing public administration processes, such as the execution of land acquisition procedures. The sub-project-related land acquisition started in 2003 and at the time of the appraisal, in 2019, the Bank was informed that expropriation was largely completed, and the overall risk was considered low.
- 5.1.22 The promoter is required to follow the national expropriation requirements. The expropriation announcements were made in the Governmental Gazette and a daily newspaper in Athens

<sup>80</sup> Law 4014/2011 on environmental licensing:

- § 7 of Article 2 provides that monitoring should be a part of the environmental permit, and should be executed, as a special term of the permit, according to environmental legislation in force, be fit to its purpose, thus environmental protection, relevant, proportional and linked to the specific activity/ project that refers to and its size, and above all precise, achievable, binding and reviewable.
- §§ 5 and 6 of Article 11 provide that a monitoring programme is going to provide evidence when/if the developer submits an environmental licence renewal/ modification request.
- § 7 of Annex II provides that, as a minimum, the folder (environmental study) submitted by the developer for the approval of a project, should contain an environmental management plan to be implemented to ensure effective protection of the environment and implementation of the proposed measures, which will also include the proposed monitoring programme. The monitoring programme in whose application it is committed the operator of the project or activity includes at least: (a) the parameters, elements and indicators of the environment monitored, (b) the recording methods, place, time and frequency, (c) the measures to ensure the quality and reliability of the records, (d) the update schedule of the Environmental Electronic Registry.

Ministerial decision No 170225/2014 on the Specification of the folder contents for the licensing of projects and activities of Category A.

<sup>81</sup> The title of the report in Greek is provided in footnote 21.

<sup>82</sup> Information received on 2 November 2022 from the Ministry of Environment and Energy.

<sup>83</sup> The sub-project of Agios Georgios (the Erasinós basin) is a different sub-project covered by a separate AEPO and with its own expropriation budget. Six people in the Agios Georgios area will have to be resettled.



(legal requirement). The AEPO serves as a construction permit in Greece. Therefore, once received, it provides the legal basis to initiate the expropriation. The Presidential Decree demarcating the Erasinios stream was not a requirement for expropriation or resettlement.<sup>84</sup> **As the AEPO is valid, the process of expropriation cannot be questioned** (see § 5.1.9).

### ***Conclusions regarding the project's compliance with national law***

- 5.1.23 The environmental information for the original AEPOs linked with the Erasinios sub-component dates from before 2014 — in other words, from before the establishment of the national protected status of the wetlands in the Erasinios basin. The environmental information for the 2017 renewal of the AEPO for the lower Erasinios omitted relevant information such as that on the Master Plan of Athens — Attica and the elevated protected status of some parts of the river basin (see §§ 5.1.4-5.1.5). Moreover, incomplete information was provided on the Marathon minnow, which is relevant to the site. From a technical point of view, the EIB-CM is of the opinion that the protected wetlands and the protected species should have been emphasised in the decision-making on the Erasinios sub-project with suitable measures and justifications. The protection of wetlands, which are a habitats for many species (including protected species), and the Natura 2000 network are closely linked (see § 5.1.7). However, the EIB-CM is not in a position to question the validity of the AEPO decisions (see §§ 5.1.9, 5.1.10 and 5.1.22).
- 5.1.24 The promoter's information states that the sub-project-related land expropriation took place after the relevant AEPO was issued. Since the AEPO is valid, the EIB-CM has no reason to believe that national law was not followed in terms of the timing of expropriation for the purpose of the sub-project (see § 5.1.22). Moreover, as stated above, the EIB-CM does not deal with issues of fraud.
- 5.1.25 The EIB-CM **did not find evidence of the project's non-compliance with national law** (from a procedural point of view). The EIB-CM notes that it does not deal with allegations concerning the actions of national and local authorities.

## **5.2 The Erasinios sub-project and EU law**

- 5.2.1 The allegation of the sub-project's non-compliance with EU law was broken down into issues with the following directives: (i) the EIA Directive (including failure to adequately analyse alternatives, environmental information shortcomings and failure to set out appropriate mitigation and compensation measures), (ii) the Habitats Directive (that is, issues with appropriate assessment, as required by the Habitats Directive) and (iii) the Water Framework Directive (including analysis of the impact on the status of the water body (Article 4.7)) and the Floods Directive.

### ***Project's compliance with applicable standards related to the requirements of the EIA Directive***

- 5.2.2 The reviewed evidence shows that the sub-project is covered by two AEPOs (development consents), for which EIAs were carried out (see Appendix).<sup>85</sup> The AEPO for the lower Erasinios was upheld after appeals in 2013 and 2020 and remains valid (see § 5.1.9). Environmental information for the 2017 renewal of the AEPO covered the cumulative impact for the upper Erasinios (upstream of the flood retention dam) and lower Erasinios sections and provided information pertaining to the Habitats Directive — without prejudice to the quality of the appropriate assessment, the WFD and the Floods Directive (see §§ 5.2.9 and 5.2.20).
- 5.2.3 Since 2020 (see §§ 5.2.11 and 5.2.12) the process of establishing the sub-project's compliance with the Habitats Directive is ongoing; the decision-making procedure for the project is therefore not yet completed. The sub-project, as a result of site-specific conservation objectives (SSCOs) to be established for compliance with the Habitats Directive, may require modifications. Any changes to the sub-project that may have significant (positive or negative)

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<sup>84</sup> The applicable laws are Law 2882/01, Law 2985/2002 (GG Series I, No. 18), Law 4070/2012 (GG Series I, No. 82); Law 4512/2018 (GG Series I, No. 5/2018); and Law N.3481/2-8-06 (GG Series I, No. 162/A/2006), on amendments to the legislation on the National Land Register, the award and execution of works and studies contracts, and other provisions.

<sup>85</sup> The project falls under Annex II of the EIA Directive, which requires a screening procedure. In Greece, all Annex II (group A2) projects require full EIA-type procedures, so no screening is carried out (see §§ 3.2.5-3.2.13).

effects on the SSCOs will be subject to decision-making by the relevant environmental authorities.<sup>86</sup>

- 5.2.4 Information gaps in the procedures for projects with completed decision-making (completed EIAs) pose a special challenge to the EIB. However, if information gaps are identified, in particular those posing a risk to safeguarding compliance with EU law (for example ongoing infringement procedures) or the EIB's environmental and social standards, additional assessments can be requested if deemed necessary (see §§ 3.2.8 and 3.3.5).
- 5.2.5 The EIB-CM reviewed publicly available information on infringement procedures regarding the EIA Directive in Greece and has not identified any relevant cases. The EIB-CM notes that the sub-project's compliance with law is required not only before approval but also throughout the project cycle (as part of the Bank's monitoring phase) (see § 3.3.1). As the decision-making process is ongoing at the time of the preparation of this report (see § 5.2.3), the EIB-CM welcomes that the EIB is monitoring the project to ensure compliance with the EIA Directive.

***Project's compliance with applicable standards related to the requirements of the Habitats Directive***

- 5.2.6 As required by the Habitats Directive, the sub-project should be subject to appropriate assessment, if it is not directly connected with or necessary to the management of the site but is likely to have a significant effect thereon, either individually or in combination with other projects (see § 3.2.1 and footnote 41). The authority of such a requirement comes from the fact that a significant proportion of the sub-project is located within a Natura 2000 site (see § 1.2.1). In line with EU law, a screening of the likelihood of a significant negative impact on the relevant Natura 2000 site was, as a minimum, required.
- 5.2.7 **The upper section of the Erasinios stream** is covered with an AEPO from 2001<sup>87</sup> and its extension decision of 2011<sup>88</sup> (with no change of project description or conditions). As the sub-project carried out in the upper Erasinios would have an influence on the Natura 2000 site, its environmental information should have provided an explanation on how it is not likely to negatively affect the site-specific conservation objectives of Vravrona — Paraktia Thalassia Zoni located downstream (the site was confirmed as a Site of Community Importance in 2006). The EIB-CM found no evidence that environmental information for the 2011 AEPO contained evidence on the lack of likelihood of a significant impact on the Natura 2000 network (see § 1.2.2).
- 5.2.8 The sub-project in the lower section of the Erasinios stream is covered by a separate AEPO.<sup>89</sup> The EIB-CM notes that the 2007 AEPO procedure for the lower Erasinios did not include an assessment, as required by Habitats Directive Article 6.3, of the likelihood of a significant negative impact on the conservation objectives of the Natura 2000 site in question (see § 5.2.6). The 2007 AEPO decision stated that any negative effects of the construction and operation of the project on the area were deemed to be adequately addressed by the remedial measures. However, it did not specify how the measures imposed will protect and/or contribute to the integrity of the site and the Natura 2000 network or the SSCOs. In EIB-CM's view, this could have been identified as a point that would require further attention by the Bank's project team.
- 5.2.9 **The renewal of the AEPO for the lower Erasinios** took place in 2017. It resulted in a renewed AEPO for 10 years, the modification of the AEPO because of the enlarged scope of the sub-project **and additional mitigation measures (see § 5.1.8)**.<sup>90</sup> The decision was informed by a report on the sub-project's impact on Natura 2000. **The study covered the relevant**

<sup>86</sup> Point 13(a), Annex II, the EIA Directive (2011, as amended). Available [here](#).

<sup>87</sup> JMD No. 109488/12.10.2001 on the construction of a section of 2 385 m of the Erasinios stream in the framework of the Attiki Odos projects.

<sup>88</sup> MD of 25 November 2011 for the Renewal of the period of validity of the JMD No 109488/12.10.2001 on the construction of a section of 2 385 m of the Erasinios River under the projects of Attiki Odos.

<sup>89</sup> JMD No.129583/1.06.2007 on the Approval of the environmental conditions of the Erasinios section (approximately 5.5 km long) from its estuary into the Gulf of Vravrona to the downstream of Attiki Odos works to the south of El Venizelos airport.

<sup>90</sup> MD No 11150/14-09-2017 on the renewal and amendment of JMD No 129583/1-6-2007 AEPO for the Management of the Erasinios stream (approximately 5.5 km) from its estuary in the Gulf of Vravrona to the Attiki Odos in the south of the Airport.

**Natura 2000 site** and works planned as far the first dam upstream (that is, the cumulative impact). The environmental information states that the assessment was prepared **in the absence of SSCOs. The procedure was not subject to public consultations.**<sup>91</sup> **Nevertheless, the AEPO extension decision was made available to the public and the public could request any environmental information provided for decision-making.**<sup>92</sup> The national law does not envisage consultations during AEPO extensions (which are exempt from EIA, but require an environmental report) or project modifications, unless a full EIA is requested.

- 5.2.10 The environmental information for the 2017 AEPO extension reported that the Marathon minnow is present in the Erasinos and in other streams of the Attica region. It noted that the main habitat of this fish in the Erasinos stream is in the wetlands, especially where they meet the sea. The 2017 environmental report indicated that no significant fish population was present in the project area and no significant impact was expected for the population found in the wetland area. As per the project design, the location of the main habitat of the fish is an area where the original streambed and flow regime of Erasinos should be maintained as much as possible to avoid disturbance to this area.
- 5.2.11 The EIB's project appraisal stated that the necessary mitigation measures for flood protection schemes that fall within Natura 2000 areas or areas of special environmental interest focus on preserving and enhancing the natural vegetation and confining the construction of new access roads within these areas to a strict minimum. However, the project design description details **excavations planned along the length of the Erasinos riverbed with gabion lining** for some 5 500 m of the riverbed **located inside the Natura 2000 area. This information stems from the sub-project description in the environmental information for the 2011 and 2017 AEPO decisions.** The works' description appears to be threatening the assets of Natura 2000 network for which it was established (see § 1.2.2 and Figure 2).<sup>93</sup> The EIB-CM considers the sub-project's environmental information on the protection of habitats and species to be insufficiently detailed.<sup>94</sup> More detailed information can be obtained through suitable monitoring.
- 5.2.12 **In 2015**, the European Commission launched a formal infringement procedure related to the transposition and implementation of the requirements of the Habitats Directive. The EIB is expected to take infringement proceedings into consideration when assessing possible risks and impacts during the project appraisal (see § 3.3.5). In 2020, in its judgment,<sup>95</sup> the Court of

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<sup>91</sup> European Commission notice C(2021) 6913 "Assessment of plans and projects in relation to Natura 2000 sites - Methodological guidance on Article 6(3) and (4) of the Habitats Directive 92/43/E": The decision, as required by Article 6.3 should be made publicly available. Although the text of the directive makes no explicit reference to this, the **Court has recognised that public participation is required also in the screening phase of Article 6(3)** (case C-243/15, paragraphs 46-49). In addition, the Court has recognised the right of NGOs to challenge the screening decision taken by the authorities (case C-243/15, paragraphs 56-61).

<sup>92</sup> The Commission Note on establishing conservation measures for Natura 2000 sites (available [here](#)) clearly recommends public participation and consultation for such plans/instruments.

<sup>93</sup> The aim of the network is to ensure the long-term survival of Europe's most valuable and threatened species and habitats, listed under both the Birds Directive and the Habitats Directive. The features that determine the quality and importance of the site in question are described in the site data sheet as follows: (i) the variety of sufficiently conserved habitat types within a relatively small area; (ii) the archaeological site of the temple of Artemis near the wetland acts as a barrier for extensive human activities since the site gained protected status; (iii) the position of the site near Athens; (iv) the importance of the wetland as a refuge for many bird species; (v) the traditional vineyard cultivations, which prohibit extensive and intensive industrial use; and (vi) the overall unaltered nature of the site since ancient times.

<sup>94</sup> The scale of the impact is not described or explained, including how the proposed works will ensure the integrity of the site, how much of which habitats will be lost and how the loss will impact the protection of the habitats in the site in question (see § 3.2.15).

<sup>95</sup> Judgment of the CJEU of 17 December 2020 in case C-849/19, action for failure to fulfil obligations under Article 258 of the Treaty on the Functioning of the European Union, brought on 21 November 2019 (available in French and Greek [here](#)). Since 2014 the European Commission urged Greece to respect obligations under the Habitats Directive (Council Directive 92/43/EEC) for the protection of natural habitats and species included in the Natura 2000 network (INFR(2014)2260). Member States must designate the EU-listed Sites of Community Importance as Special Areas of Conservation. They also must establish conservation priorities and objectives as well as the necessary conservation measures to maintain or restore the species and habitats present to a favourable condition. These steps need to be carried out **within six years** after the inclusion of these sites in the EU list as Sites of Community Importance. While Greece has formally designated all its sites as special areas of conservation, it has neither established conservation priorities and objectives nor the necessary conservation measures for these sites. Therefore, on 25 July 2019, the Commission decided to refer the matter to the Court of Justice of the EU.

Justice of the European Union (CJEU) ruled that **Greece failed to establish conservation objectives and appropriate conservation measures for Sites of Community Importance for the conservation of natural habitats**. The EIB-CM considers the above infringement judgment to be relevant to this sub-project (see § 5.2.8). The infringement found is horizontal and not specific to a particular project in the country. Nevertheless, it is relevant here, as the sub-project is located in a Site of Community Importance. While the site concerned was subject to an appropriate assessment in compliance with the Habitats Directive, the EIB-CM is of the opinion that, in view of the above judgment, the sub-project can no longer be considered compliant with EU law requirements, given the absence of SSCOs.<sup>96</sup> Nevertheless, the EIB-CM takes note of the efforts of the Greek authorities to implement the necessary actions to rectify the horizontal infringement established by the judgment.<sup>97</sup>

- 5.2.13 During its mission in May 2022, the EIB-CM was informed that the relevant authorities were in the process of preparing **SSCOs and the management plan for the Erasinus Natura 2000 site** to be adopted by relevant administrative acts in order to align the project with the requirements of the Habitats Directive (see § 5.2.9). National law does not require the management plans or SSCOs to undergo a public consultation phase. Public consultations were planned on the Special Environmental Study feeding into the SSCOs and were expected to take place in the summer of 2022; however, at the time of drafting this report (March 2023) they have not yet started. The next step would be to re-assess the sub-project in relation to the needs of the SSCOs and the site's management plan. The promoter would then give notification of the project modifications, if any, to the appropriate environmental decision-making body in accordance with the law.<sup>98</sup> As the type and scale of modifications, if any, are unknown at this stage, the EIB-CM is not in a position to state if a notification would need to be made available to the public or not (see § 5.2.3).

***Project's compliance with applicable standards related to the requirements of the WFD and the Floods Directive***

- 5.2.14 For new modifications to a water body, the **WFD** calls for an assessment of the necessary requirements to achieve the WFD objectives for the water body, as is also reinforced by Standard 1 of the *EIB Environmental and Social Standards* (2018) (see § 3.2.10). **The test/assessment has to be carried out in an integrated way and the fact that the project is located largely in a Natura 2000 site should be taken into account.**
- 5.2.15 The sub-project description<sup>99</sup> provided to the Bank includes works such as excavating, digging, installing gabions and constructing a flood retention dam (with a culvert opening at the bottom of the dam) and an embankment for the local road (with culvert openings), which should have been screened for its impact on the hydro-morphological elements of the water body in question.<sup>100,101</sup> According to the 2001 AEPO for the upper part of the Erasinus, the project includes the aforementioned dam,<sup>102</sup> with an outflow to reduce the peak of the flood wave, and the lining (with gabions) of the banks along 1 750 m of the stream. The project information available to the Bank describes the **construction of the flood retention basin and a road embankment** (see §§ 1.1.3 and 4.1.3). The AEPO for the lower Erasinus also includes works to be carried out in the Markopoulou stream, the Agios Georgios stream and the Vassiliadas Vasilada stream, which have sections located in the Natura 2000 site relevant to the sub-project (see § 5.1.8).
- 5.2.16 During the project appraisal, the EIB services inquired with the promoter about the compliance of the project with the EU legal framework. The promoter stated that the 2017 River Basin Management Plan (RBMP) had been drafted on the basis of Directive 2000/60/EC. The services found the sub-project to be in compliance with the RBMP for Attica (2014) and its first revision (2017). Compliance issues, other than the statement on the consistency with EU

<sup>96</sup> The existence of the SSCOs provides a legal benchmark for the appropriate assessment of a given site.

<sup>97</sup> The EIB services shared draft SSCOs for the site in question with the EIB-CM on 16 March 2023.

<sup>98</sup> Law 4964/2022, on modifications of Article 4 of Council Regulation: Simplification of the procedure for updating or amending the decision approving environmental conditions — Amendment of paragraphs 1 and 1a and subparagraph (aa)(b) of Article 6 of Law 4014/2011. Available [here](#) (in Greek).

<sup>99</sup> The project description is provided in the ESDS and in the relevant AEPOs.

<sup>100</sup> *WFD and Hydromorphological Pressures Technical Report* (2006) is available [here](#).

<sup>101</sup> *Hydromorphological alterations and pressures in European rivers, lakes, transitional and coastal waters. Thematic assessment for EEA Water* (2012) is available [here](#).

<sup>102</sup> Structure of 14.00 m width and 5.50 m height.



policy objectives, were not elaborated on. The assessment provided was, in the EIB-CM's view, incomplete regarding how the sub-project will enable compliance with the objectives of the WFD, namely non-deterioration of the status of the water body in question. It is the EIB-CM's opinion that the sub-project may impact on the physical characteristics of the water body of the Erasinos, therefore at least a test for the applicability of Article 4.7 assessment should have been carried out (see § 5.2.14).<sup>103</sup>

- 5.2.17 The RBMP for the Attica region lists the water body of the Erasinos as a natural water body. The relevant RBMP notes that the Erasinos water body has moderate ecological status and its chemical status is unknown. The overall status of the surface water body was established as moderate; however, other elements, such as physicochemical status were not defined for the Erasinos. The Erasinos river was listed as a natural water body (having unmodified physical characteristics).<sup>104</sup>
- 5.2.18 No projects or issues that may impact on the physical or ecological status of the water body have been noted in the RBMP.<sup>105</sup> It is the EIB-CM's opinion that the sub-project requires a screening to establish if the flood retention dam and the embankment for the road will modify the riverbed of the Erasinos in its upper section. The project was reported in the 2013 RBMP. No exemption was requested in relation to the project in question for the water body of the Erasinos. The status of the water body in question was and still is not completely established, which makes it difficult to determine the impact. The planned sub-project includes covering a section of the stream with gabions, which also has a potential to modify the hydro-morphological elements of the surface waterbody in question. The WFD requires the above-mentioned works to **be tested/assessed for the need of exemption (Article 4.7) and the exemption, if found, reported in the next RBMP** (see § 3.2.10).<sup>106</sup>
- 5.2.19 In its first review of the RBMPs (2015), the Commission observed that “the plans do not provide sufficiently detailed analysis of the application of Article 4.7 provisions.”<sup>107</sup> The RBMP (2014, revised in 2017) for Attica has no information in relation to the application of Article 4.7. The Commission report stated that “the justification for the dams according to the conditions in Article 4.7 should be included in the RBMPs, including the strategic alternatives to the dams (for example other projects which may achieve the same objective by other means).” **The EIB-CM found no evidence of such test/assessment including analysis of alternatives to reach the objectives of the sub-project, as required by the WFD (Article 4.7)** (see § 5.2.17).
- 5.2.20 The area of the sub-project is covered by a Flood Risk Management Plan, which is required by the **Floods Directive**. The relevant flood maps were subject to SEA.<sup>108</sup> The Erasinos stream is marked as a high-risk area, most of which is upstream of the areas draining into the Erasinos basin (see § 1.2.4). The Bank's appraisal indicated that the project implements measures in respect to flood risk management, reducing flood risk in downstream stretches and adverse consequences for human lives and cultural heritage. The sub-project is located outside of urban areas, but it is seen as the basin to be used for draining run-off waters from surrounding towns (see § 1.2.4). The flood risk maps show that the stream receives water from urban areas located upstream or even outside of its normal basin boundaries due to structures built over the past few decades to divert flash rainwater (see §§ 1.2.5 and 2.1.6).
- 5.2.21 The justification for the sub-project mainly focused on imperative reasons of overriding public interest under the Flood Directive and Flood Risk Management Plan to protect the area and

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<sup>103</sup> To strive to achieve the objective of the directive, the RBMPs benchmark the status of all water bodies. The directive also does not allow for the status to drop because of a project; therefore, it outlines a procedure for exceptions, as provided by Article 4.7. The procedure must include a test and/or comprehensive/integrated assessment and justification on the four aspects (see § 3.2.10 and its footnote).

<sup>104</sup> Erasinos natural water body Ref. EL0626R000300014N and two ground water bodies: EL0600150 and EL0600170. Information from the first revision of the RBMP (EL06) is available [here](#) in Greek.

<sup>105</sup> RBMP for Attica of December 2017 is available [here](#) in Greek. The lack of assessment in line with Article 4.7 is noted in the recent *Commission Staff Working Document* (Ref. SWD(2022) 254 final) of 8 September 2022, which is available [here](#).

<sup>106</sup> Article 4.7 applies only to new modifications to the physical characteristics of a surface water body and new sustainable human development activities that can lead to failure in achieving the WFD objectives. *Guidance Document No 36 Exemptions to the Environmental Objectives according to Article 4.7* is available [here](#).

<sup>107</sup> *Commission Staff Working Document: Report on the implementation of the Water Framework Directive (River Basin Management Plans) — Member State: Greece* (Ref. SWD(2015) 54 final) of 9 March 2015 is available [here](#).

<sup>108</sup> The Flood Risk Management Plan was prepared along with an SEA (conducted in 2017) and approved in 2018.

archaeologic heritage from floods (see § 3.2.19). The sub-project emerged after the establishment of the Natura 2000 site of the Erasinos and before the formulation of the Natura 2000 site-specific conservation objectives of the Habitats Directive. Furthermore, it does not provide adequate **alternative analysis** to solve the issues created by intensive urbanisation and information on alternative ways that flash rain waters could be managed.

### **Conclusions regarding the project's compliance with EU environmental law**

- 5.2.22 The reviewed evidence shows that the sub-allegation regarding non-compliance of the sub-project with **the EIA Directive** is ungrounded because the sub-project is covered by two development consents (AEPOs) with timely extensions of their validity, as required by EIA Law (see § 5.2.5). The EIB-CM reviewed publicly available information on ongoing infringement procedures of the EIA Directive in Greece without identifying any applicable procedures. That said, this sub-allegation is linked to the quality of information used during the EIA and the sub-project's compliance with the requirements of the Habitats Directive and the WFD.
- 5.2.23 In terms of the sub-project's compliance with the Habitats Directive, the EIB-CM considers the infringement established by the CJEU to be relevant to the sub-project. Accordingly, the EIB-CM is of the opinion that the sub-project is not currently compliant with the requirements of EU law (see §§ 5.2.6-5.2.11). However, efforts of the Greek authorities in this respect are duly noted. The EIB-CM received information that the Ministry of Environment and Energy is in the process of setting the SSCOs and preparing the management plan for the Natura 2000 site in question (see § 5.2.12).
- 5.2.24 In terms of ensuring compliance with **the WFD**, information on how/if the sub-project satisfies the requirements of Article 4.7, as required by Standard 1 of the *EIB Environmental and Social Standards* (2018) (see §§ 5.2.14-5.2.17), was found to be incomplete. The EIB-CM believes that the sub-project should have been subject to a test/assessment to establish if the modifications could impact on the current status of the water body and its ability to timely reach the WFD objectives (no deterioration is allowed except in cases where an exception is approved), which was not carried out during the project preparation. Therefore, the EIB-CM considers the sub-project does not meet the above standard.

## 5.3 The Erasinos sub-project and EIB's role

- 5.3.1 The applicable EIB's environmental and social standards are listed in section 3.2 of this report. The EIB-CM reviewed the Bank's environmental and social (E&S) due diligence for the project during the (i) pre-appraisal and appraisal and (ii) monitoring (ongoing) stages of the project cycle.<sup>109</sup>

### **The EIB's role during the project pre-appraisal and appraisal stages**

- 5.3.2 **During the pre-appraisal stage**, the EIB services carried out a mission to meet the project's stakeholders<sup>110</sup> and requested that the promoter provide information on the environmental decision-making for the sub-project in question (see § 4.1).<sup>111</sup> As required by the EIB E&S standards and procedures, the EIB also consulted the Commission and received its positive opinion on the operation (including the Erasinos sub-project).<sup>112</sup> The pre-appraisal stage (as well as subsequent project cycle stages) presented the overall operation with a global flood risk management objective emphasising the overriding public interest in a predominantly urban environment.
- 5.3.3 In terms of **verifying the project's compliance with EU law**, the EIB-CM did not find evidence that the **project appraisal** checked the publicly available information on applicable infringement procedures (see § 3.1.6). The EIB-CM is of the opinion that the Bank should take

<sup>109</sup> Information about the EIB project cycle is available [here](#).

<sup>110</sup> The mission was carried out jointly with the CEB (see also § 1.1.1 for other co-financing institutions).

<sup>111</sup> § 44, *Environmental and Social Handbook: Volume II: EIB Environmental and Social Practices and Procedures*, available [here](#).

<sup>112</sup> Positive Commission opinion on the project co-financing was received on 14 March 2019.

note of publicly available information regarding relevant ongoing infringement proceedings<sup>113</sup> as part of due diligence in order to identify risks of non-compliance.<sup>114</sup> Information made available by the Commission through biannual EU Environmental Implementation Review Country Reports also provides insights into environmental and climate risks.<sup>115</sup> Despite the project being implemented inside a Natura 2000 area and an ongoing appeal taking place, the Bank ranked the **initial operation’s environmental and social risks as low to moderate and did not request the assignment of an internal environmental expert to assist the project team in their due diligence** — a possibility foreseen in its procedures (see § 3.3.4). Formally, the sub-project was compliant with EU environmental law during the appraisal stage; it became non-compliant after signature of the finance contract for the operation and during the Bank’s monitoring phase, with the infringement declared in CJEU’s judgment mentioned above.

- 5.3.4 The EIB services requested and received information on the project’s compliance with the following directives: the EIA Directive, the SEA Directive, the Floods Directive and, to some extent, the WFD (see § 4.2.3). The appraisal established that the sub-project received all relevant development permissions (the AEPOs) for the entire scope of the intervention (see Appendix) and that there were two public appeals. At the time of the Bank’s approval, one appeal was closed and the other was still pending (see § 5.1.9).
- 5.3.5 As the sub-project is located inside a Natura 2000 site,<sup>116</sup> the sub-project appraisal stated that appropriate assessment was carried out (see § 3.2.12). The appropriate assessment of the lower Erasinós as required by the Habitats Directive (Article 6.3) was not carried out in 2007. As part of the 2017 AEPO renewal procedure, the environmental documentation made an attempt to satisfy the requirements of the Habitats Directive; however, the SSCOs were not yet established, so the **appropriate assessment was not compliant with the requirements of the Habitats Directive** (see §§ 3.2.15 and 3.2.16). The analysed documentation showed that the appropriate assessment, as required by the Habitats Directive, did not follow the Commission Guidance for appropriate assessment (see § 5.3.4).<sup>117</sup>
- 5.3.6 The appraisal stated that, **during construction, temporary effects on the environment**, such as (i) alterations to the pattern of waterflow as a result of the excavation of the riverbed and surrounding riverbanks, (ii) disturbances to fauna, particularly birds, and (iii) an increase in the turbidity in the water due to the sediments, are possible. In the EIB-CM’s view, considering the presence of some habitats and species, such as the fish species, such effects can be significant and may not be temporary in nature; therefore, the sub-project may require special management and monitoring.<sup>118</sup> However, overall, the conclusion of the environmental report for the 2017 AEPO extension decision stated that the project will be beneficial to the Natura 2000 site in question (see § 5.1.6).
- 5.3.7 The appraisal mentions the applicability of the WFD and the need to comply with a relevant RBMP. The EIB-CM did not find evidence that during the project appraisal the services requested information on the project’s **compliance with Article 4.7 of the WFD** (see §§ 5.2.14 and 5.2.15). Such information is considered relevant as the sub-project may change

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<sup>113</sup> Ongoing EU law infringement procedures are understood as cases pursued by the Commission at its sole discretion, where it has identified a possible breach of EU law by the Member States. The steps taken by the Commission in such procedures are recorded in the database, which is available [here](#).

<sup>114</sup> See § 83, *EIB Environmental and Social Handbook: Volume II: EIB Environmental and Social Practices and Procedures*. The publicly available and searchable database of Commission infringement procedural steps is available [here](#). C-849/19, The Judgment of the CJEU of 17 December 2020, European Commission vs the Hellenic Republic, is available [here](#) (in Greek). The infringement relevant to this sub-project concerns a failure to establish conservation objectives and appropriate conservation measures with respect to a number of Sites of Community Importance in Greece, hindering the appropriate assessment of projects and preventing the conservation of affected species and habitats.

<sup>115</sup> The Commission issues biannual EU Environmental Implementation Review Country Reports (per Member State) available [here](#).

<sup>116</sup> Article 6.3 of the Habitats Directive states that projects that are not necessary to the management of the site, but likely to have a significant effect thereon, shall be subject to appropriate assessment.

<sup>117</sup> Guidance on how to carry out appropriate assessment as required by the Habitats Directive is published by the Commission, with the most recent version available [here](#).

<sup>118</sup> In May 2022, the Protected Areas Management Directorate of the Natural Environment and Climate Change Agency provided to the Bank the final report titled *Determination of measures to restore river coherence and of habitats of the endemic species Marathon Minnow and other species of fauna*.

the hydro-morphological characteristics of a water body.<sup>119</sup> Article 4.7 allows for the deterioration of status or the non-achievement of a good status (or “potential”) under certain distinct conditions.<sup>120</sup> The EIB-CM did not find, as part of the appraisal analysis, an appropriate description or justification of the sub-project in terms of compliance with the above requirements. It was not established whether or not the works planned in the area would lead to the physical modification of the water body and no alternatives were analysed to meet the objectives of the sub-project.<sup>121</sup> The requirements of the WFD necessitate complex analysis and coordination with other processes such as an EIA and an appropriate assessment (see § 3.2.10).

- 5.3.8 The Bank services prepared the **Environmental and Social Data Sheet** (ESDS) highlighting the expected benefits of the operation. The ESDS reflects the EIB’s understanding of the project following the Bank’s due diligence in the context of the project appraisal, based on project’s information provided to the EIB. The ESDS looked at the operation as a whole and presented information regarding the ten sub-projects. While some of the general statements summing up the ten sub-projects are applicable to the Erasinios sub-project, some of them are not.<sup>122</sup> The ESDS noted that the sub-project was subject to an appropriate assessment as per the Habitats Directive. However, the ESDS omitted information that is particularly relevant to the Erasinios sub-project, specifically the construction of a flood retention dam and a road embankment to hold back water on the Erasinios.
- 5.3.9 The EIB-CM would like to point out that the ESDS contains statements that were considered by complainants as inappropriate to the Erasinios sub-project (see § 1.3.2). For example, the “Appropriate Assessment concluded that [...] the flood protection investments will protect the Special Protection Area [...] which may have detrimental effect on the bird ecosystem of the protected area,” minor negative environmental effects, mitigation measures are aimed at “preserving and enhancing the natural vegetation and confining to a strict minimum the construction of new access roads within these areas,” and “that the people contesting against the works had false understanding of the technical features of the works and also had personal financial interests to vote against them” (see §§ 4.2.1-4.2.5).

#### ***The EIB’s role during project monitoring***

- 5.3.10 The EIB-CM observed that in May 2021 the complainants of the case SG/E/2021/17 sent a letter to the EIB’s office in Athens. This communication was not forwarded to the EIB-CM and the complainants regrettably did not get any response from the local office. In

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<sup>119</sup> In line with the EIB’s standards, reported sub-project works are subject to assessment within an integrated procedure, as is required by EIB Standard 1. European Commission (2018), *Commission Staff Working Document: Report on the implementation of the Water Framework Directive River Basin Management Plans — Member State: Greece* (Ref. SWD(2015) 54 final/2) is available [here](#).

<sup>120</sup> Member States will not be in breach of the WFD when (i) “failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater” or (ii) “failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities” and all the following conditions are met: “(a) All practicable steps are taken to mitigate the adverse impact on the status of the body of water; (b) The reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years; (c) The reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and (d) The beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.” Further information from Guidance Document No 36 is available [here](#).

<sup>121</sup> Although the reasons for these modifications can be considered to be of overriding public interest, no information was found on how the benefits of the new modification will contribute to sustainable development, especially because in the area in question elements of human health and human safety are not as paramount as in other sub-projects included in the package (that is, there were no human deaths recorded in the concerned area, which is sparsely populated with farmhouses and cottages distantly located on the slopes of the valley). The EIA report provides information on a different scale regarding the same excavation and trenching works.

<sup>122</sup> Environmental and Social Data Sheet for the project available [here](#) (in English).



September 2021, the complainants reached out again to the EIB Athens office, with a copy sent to the EIB-CM.<sup>123</sup>

- 5.3.11 The EIB-CM reiterates that complainants can reach out to any service, office of staff member of the EIB.<sup>124</sup> All communication containing allegations or resembling a complaint, especially regarding environmental and social issues, should be forwarded to the EIB-CM without any delay (see § 3.1).
- 5.3.12 As soon as the EIB-CM recognised that there might be issues related to the project's compliance with the Habitats Directive in October 2021, **the EIB-CM advised the Bank's services to initiate a constructive dialogue with the promoter on the requirements and to agree on the way forward, as well as to support the promoter in ensuring compliance with the Habitats Directive, as required by the EIB's environmental and social standards** (see § 3.3.3).
- 5.3.13 In May 2022, the EIB services (including an environmental specialist)<sup>125</sup> and the EIB-CM went on a joint mission to the sub-project site, where they met with key stakeholders (see § 2.1.2). The Ministry of Environment and the promoter listed a number of steps to be taken to achieve compliance with the Habitats Directive. **In December 2022, most of the steps planned by the national stakeholders were not implemented. The EIB-CM is of the opinion that the promoter and other stakeholders may need support in achieving the sub-project's full compliance with EU law and the contractual obligations.** In March 2023, the EIB formally appointed an environmental specialist to the project.

### **Conclusions on the EIB's role**

- 5.3.14 The EIB services carried out environmental and social due diligence for the sub-project during its cycle. The EIB-CM found shortcomings in relation to the following aspects:
- risk categorisation of the sub-project and timely engagement of appropriate **environmental expertise by the project team**, especially for this sub-project, which is planned within a Natura 2000 site (see § 5.3.3);
  - identification of relevant/possible EU law infringements and assessment of their potential impact on the sub-project outcomes during the project appraisal and monitoring stages (see § 5.3.3);<sup>126</sup>
  - lack of evidence regarding the assessment of the applicability of the requirements of Article 4.7 of the WFD during the appraisal (see § 5.3.7);
  - the ESDS in relation to the sub-project (including factual errors) (see § 5.3.8).
- 5.3.15 In line with the Bank's environmental and social standards, the findings during the project monitoring phase, especially regarding issues of non-compliance with the finance contract (specifically non-compliance with EU environmental law), should be corrected (see §§ 3.2.3 and 3.2.13). **The Bank would be expected to formally communicate to the promoter (during the project's monitoring phase) the need and how to redress issues of non-compliance in order to meet the requirements of the EU environmental law for the sub-project, with the support of appropriate environmental expertise** (see § 5.2.23).

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<sup>123</sup> The letter forwarded to the EIB-CM is dated 17 May 2021, with one of recipients being [athens@eib.org](mailto:athens@eib.org). The EIB-CM registered the case after receiving the letter on 21 September 2021.

<sup>124</sup> Article 4.1.3 of the *EIB Group Complaints Mechanism Policy* (2018).

<sup>125</sup> However, an environmental specialist has not yet been formally appointed to the project team.

<sup>126</sup> By relevant/possible EU law infringements, the EIB-CM is hereby referring to information provided on infringement procedural steps of the Directorate-General for Environment of the Commission (available on the public website [here](#)) and/or judgments on infringements by the CJEU (case law).

## 6 OUTCOMES

Based on the EIB-CM's findings and conclusions, the EIB-CM issues the following recommendations and suggestions for improvement.

### 6.1 Recommendations

The EIB-CM recommends the following actions to the Bank.

6.1.1 In view of the non-compliance of the sub-project with EU environmental law:

- (i) **take any appropriate measures in line with the finance contract**, which could include, among other things, the commitment from the promoter not to use any EIB funds for the Erasinós component until formal compliance with EU environmental law is achieved to the satisfaction of the Bank;
- (ii) continue to engage with the stakeholders of the Erasinós sub-project to:
  - a. **formally agree on a corrective action plan (CAP)** to be implemented by the promoter with the view of redressing the non-compliance issues and meeting the requirements of EU environmental law (see § 6.1.3), as a condition for the Erasinós sub-project implementation;
  - b. **provide technical environmental expertise** to the promoter if and where needed for the effective implementation of the CAP (see § 6.1.2).

*Point (i) is to be implemented as soon as possible and no later than the third quarter of 2023. Point (ii) is to be monitored from the date of the Conclusions Report for 24 months.*

6.1.2 The **CAP** for the sub-project should achieve the following **objectives**:

- ensure the compliance of the sub-project with the Habitats Directive;
- ensure that the sub-project is tested and/or re-assessed in view of achieving the environmental objectives of the WFD (as part of the process to address the non-compliance issues with the Habitats Directive);<sup>127</sup>
- monitor the impact of the sub-project on the SSCOs of the Natura 2000 site in question.

6.1.3 The EIB-CM expects the CAP to include at least the following elements:

- a re-assessment of the environmental impact of the sub-project on the site (Ref. GR3000004), in light of the established and adopted SSCOs for the Natura 2000 site in question, in accordance with Article 6(3) of the Habitats Directive;
- an endorsement of the competent environmental authority is received for the re-assessment and the changes to the project changes, if any;
- implementation of additional mitigation measures resulting from the revised appropriate assessment/decision of the relevant competent authority, if required, and/or compensation measures (if the re-assessment cannot exclude significant adverse effects on the integrity of the site);
- monitoring of the impact of the project in accordance with national law for the time prescribed by the competent environmental authority.

<sup>127</sup> It is important to coordinate the Article 4.7 test/assessment with the re-assessment of the sub-project for compliance with the Habitats Directive, as the same information is relevant to points 1 and 2 of the CAP objectives.

- 6.1.4 **Review the way the Erasinós sub-project is presented in the ESDS**, highlighting its specific characteristics,<sup>128</sup> and correct factual errors in the “Public consultation and stakeholder engagement” section.

*The recommendations outlined in sections 6.1.2-6.1.4 are to be implemented no later than the third quarter of 2023.*

## 6.2 Suggestions for improvement

The EIB-CM suggests the following improvements to the Bank.

- 6.2.1 The EIB E&S procedures currently under review should include a framework that guides the scope of the Bank’s E&S due diligence **in EU operations**. More specifically, suggests to:
- (i) find a suitable way on how to keep better informed about and take into account relevant EU law infringements, ongoing infringement procedures and significant environmental, climate and social risks;<sup>129</sup>
  - (ii) enhance the verification of the compliance with the WFD, more specifically by checking the necessity for and/or availability of a test/assessment regarding the achievement of the environmental objectives of the WFD.

These suggestions should be incorporated into *internal ECS* procedures no later than the last quarter of 2023.

### Complaints Mechanism

#### **Available remedy:**

Complainants who are not satisfied with the Conclusions Report may file a complaint of maladministration against the EIB Group with the European Ombudsman.<sup>130</sup>

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<sup>128</sup> See §§ 5.3.8 and 5.3.9. The revision should be published alongside the original ESDS.

<sup>129</sup> Including CJEU infringement judgments, CJEU ongoing infringement cases, ongoing infringement procedural steps by the European Commission (available on the public website [here](#)) and the Commission-issued biannual EU Environmental Implementation Review Country reports (per Member State), which is available [here](#).

<sup>130</sup> Information on the European Ombudsman is available [here](#).

APPENDIX: SUB-PROJECT DECISION-MAKING TIMELINE<sup>131</sup>

Date	Actions	Comments
<b>AEPO permit for the upper section of the Erasinos within the sub-project</b>		
12 October 2001	Joint Ministerial Decision (JMD) Ref. 109488/12-10-2001 approving the environmental conditions for the project "Regulation of the section 2 385 m of the Erasinos stream within the projects of the Attiki Odos" in the region of Attica.	The project concerns 2 385 m of the natural Erasinos stream southeast of the airport. <sup>132</sup>
25 November 2011	Extension of the validity of the AEPO by JMD Ref. 205487/25-11-2011 <sup>133</sup> by the Environment of the Ministry of Environment, Energy and Climate Change. The following renewal of the AEPO is due in 2026 (see footnote 133).	It renewed the project without any change of scope, including the dam for the regulation of the Erasinos.
<b>AEPO permit for the lower section of the Erasinos within the sub-project</b>		
01 June 2007	<b>AEPO/EIA Decision</b> of the Ministers for the Environment, Regional Planning and Public Works, Rural Development, and Food and Culture (JMD) Ref. 129583/1.6.2007 <sup>134</sup> approving environmental conditions and any other relevant act or omission of the administration.	The project <sup>135</sup> concerns the works for the management of the Erasinos stream along approximately 5.5 km of its bed from its estuary to the Bay of Vravrona, south of the airport of Attica in the prefecture of Eastern Attica.
14 September 2017	<b>Extension of the validity</b> of the AEPO by JMD Ref. 129583/1.6.2007. <sup>136</sup>	Decision No. 11150/14.9.2017 of the Director-General for Environmental Policy of the Ministry of the Environment and Energy. The extension decision also modified the AEPO by adding a section of the Markopoulou stream of a total length of 167 m.
<b>AEPO permit for St. George stream/Agios Georgios</b>		
27 June 2016	<b>JMD</b> Ref. 32079/27.6.2016 (valid until 27 June 2026).	Regulation of the Agios Georgios stream (East Attica) from 0 + 824 km (upstream contribution of the Erasinos) to 8 + 161 km.
<b>Appeals</b>		
26 May 2009 (supplemented on 26)	<b>Decision of the Council of State Ref. 4888/2013</b> of 23 January 2013 rejected the appeal, concluding that the EIA does not infringe on Article 24 of the	Appeal requesting the annulment of the JMD of 2007.

<sup>131</sup> The table covers selected procedural steps and is not an exhaustive list of project approvals.

<sup>132</sup> The project's scope is as follows: a rectangular dam for a 150 m section of the Erasinos, 5.00 m wide and 4.50 m tall; gabions covering a 485 m section; a cross-section with graduated walls and a bed lining by means of gabions for a 1 750 m section (downstream of the above section of the Erasinos); a dam, 20 m tall and 10 m wide, with an outflow (twin trunk) at the base of the dam for permanent water channelling without water retention. The storage time after heavy rainfall is limited. Emphasis was made on the relocation of the project away from the historic monument of the Panagia Varaba chapel (Royal Decree 9.7.1923, FK 194/17.7.1923).

<sup>133</sup> This licence (available [here](#) in Greek) was not renewed before 30 November 2021 (original expiration date), but expected in 2026 (in accordance with Law 4685/2020). Article 1(1) of Law 4685/2020 changed the valid period for EIA licences/decisions to 15 years. An AEPO is valid for 15 years, provided that there is no change in the data on the basis of which it was issued.

<sup>134</sup> The EIA was followed by at least three studies: (i) a **draft 'Erasinos stream development study'**, approved on 23 August 2007 by Letter Ref. Decision Δ10/22434π.ε./23-08-2007 of the Ministry of the Environment, Regional Planning and Public Works; (ii) the final "Erasinos stream development study", approved on 23 March 2009; and (iii) the "Definitive geotechnical study for the Erasinos", approved on 5 May 2011.

<sup>135</sup> The works will be carried out on the entire length of the stream, mostly using 4.5 m × 8.5 m gabions. The downstream section (T5 from 0+829.50 m) is to be excavated at a depth of 0.2-6 cm. The lower part of the St. Georgios stream flowing into the Erasinos (a total length of 824 m) will be set into an 18 m base coated with gabions.

<sup>136</sup> Available [here](#) (in Greek).

September 2011)	Constitution, the protection of biotopes, or international, community and national legislation.	
13 January 2019	<b>Decision of the Council of State Ref. 5/2020</b> of 8 January 2020 rejected the appeal and confirmed that the project can be implemented only after the EIA conditions are met (for example archaeological supervision) and after the boundaries of the Erasinos basin are approved by the Presidential Decree.	A request for the annulment of the announcement of the project entitled “Works on the Erasinos stream in East Attica” issued by Ministerial Decision Ref. 2650/29.10.2018 for publication in the local press by letter on 14 November 2018 (Ministry of Infrastructure and Transport)
<b>Demarcation of wetlands</b>		
2014	Law 4277/2014 <sup>137</sup> of 1 August 2014, enacting the Master Plan of Athens — Attica and other provisions.	Three wetland areas in the Erasinos basin were identified as priority A wetlands: Pyrgos Vravra, the Erasinos stream and the Vravra marsh, and protection measures were established.
2018	Law 4559/2018 <sup>138</sup> of 3 August 2018, Article 54.	The Law required that in order to carry out specific works, demarcation of the area has to be granted in the form of a Presidential Decree.
6 August 2021	Presidential Decree on the validation of the demarcation of the eastern Mediterranean border: the Erasinos stream (along the length, upstream and downstream of flood containment projects) and its associated streams (GG D’518/2021).	The Presidential Decree also refers to Decision 5/2020, by which the Council of State rejected an application for annulment of the announcement of the project in question. This Decree does not refer to the Laws which established and demarcated the priority A wetlands in the Erasinos basin.

<sup>137</sup> Law 4277/2014 available [here](#) (in Greek). Article 20(2)(c)(aa): “[priority wetlands A] are considered to be the most hydrologically and ecologically important surface aquatic ecosystems included in the register of protected areas of the river basin management plans [...] and falling within the administrative boundaries of Attica; the wetlands [...] are [...] protected by Presidential Decree 22.6/3.7.2000 (GG, Series II 395) and JMD A5/2280/1983 (GG, Series II 720).” The law describes the measures imposed on each category of wetlands identified, including “priority wetlands A”, in Annex IX, § 1: “Measures include **prohibition of construction, embankment, nuisance activities, and any activity that degrades [wetlands]’ ecological status**. Ecological restoration interventions, visits for recreation and scientific research and fencing of particularly sensitive parts in need of absolute protection may be carried out. It may also be permitted to set up outdoor recreation and observation facilities for biodiversity and the landscape. Visiting and educational facilities shall ensure equal access for people with special needs in these areas.”

<sup>138</sup> Law 4559/2018 (Article 54) available [here](#) (in Greek). **Article 54. Protection of wetlands in Attica:** “In the areas of priority wetlands referred to in Article 20(2)(c)(aa) of Law 4277/2014 (GG I 156), as shown in their dotted lines in the relevant original diagrams, which were endorsed by the Head of the Directorate. Topographical applications [is provided] as Annex A to this Law, until they are delineated in accordance with the provisions of Law 3937/2011 (GG I 60) prohibit the construction, filling, exercise of nuisance activities and any activity which degrade their ecological status and the issuing of building permits.”