

**Banja Luka-Doboj Motorway
(Hrvaćani village)**

Complaint SG/E/2019/06

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

Initial Assessment Report

31 March 2020

Prepared by

EIB Complaints Mechanism

Preben Rügge

Damir Petrovic

Roberto Rando

Sonja Derkum

Head of Division

Complaints Mechanism

Confidentiality: No

External Distribution:

Complainant

Promoter

Internal Distribution:

Inspector General

Relevant EIB services concerned

The EIB Complaints Mechanism

The EIB Complaints Mechanism is designed to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases in which members of the public feel that the EIB Group has done something wrong, i.e. if they consider that the EIB Group has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB Group, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) – and one external – the European Ombudsman (EO).

Maladministration means poor or failed administration. It occurs when the EIB Group fails to act in accordance with a rule or principle that is binding upon it, including its own policies, standards and procedures. Examples of maladministration include administrative irregularities, unlawful discrimination, unjustified refusals of information, abuse of power, unnecessary delays as well as a failure by the EIB Group to comply with its own obligations in the appraisal and monitoring of projects financed by the EIB Group. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities.

The EIB Complaints Mechanism is designed not only to address non-compliance by the EIB with its policies and procedures but also to endeavour to solve the problem(s) raised by complainants such as those regarding the implementation of projects.

For further and more detailed information regarding the EIB Complaints Mechanism please visit our website: <https://www.eib.org/en/about/accountability/complaints/index.htm>

TABLE OF CONTENTS

1. THE COMPLAINT 5

2. THE PROJECT 6

3. WORK PERFORMED 6

4. INITIAL ASSESMENT 7

5. WAY FORWARD 9

LIST OF ABBREVIATIONS..... 10

INITIAL ASSESSMENT REPORT

1. THE COMPLAINT

- 1.1 In March 2019, the EIB Complaints Mechanism (EIB-CM) received a complaint¹ from an individual living in Naseobina Hrvaćani, part of the village of Hrvaćani in Republika Srpska (RS), Bosnia and Herzegovina (BiH). The complainant alleges that the newly built Banja Luka-Doboj Motorway would split the village and cause negative impacts to the community in terms of (i) safety and access, (ii) spatial planning and (iii) property rights.
- 1.2 The complainant alleges that pedestrians are exposed to a higher level of safety risk after the construction of the motorway than before. S/he is particularly concerned about children walking to and from school as well as the safety of elderly persons. The complainant further argues that the construction of the motorway forces pedestrians to walk a longer way to get to the other part of the village. This entails also walking for longer along main roads without or with unsatisfactory sidewalks, compared to the situation before the project. The complainant also states that people had started using a pipe culvert to cross the Motorway. Furthermore, the complainant states that the motorway is separating Naseobina Hrvaćani (88 inhabitants including 18 children of age between 0 – 19) from Hrvaćani (468 inhabitants), which hosts a local school, a church and shops². The complainant focused in this regard on children walking to school, or other pedestrians walking from Naseobina Hrvaćani to Hrvaćani.
- 1.3 The complainant furthermore alleges that the Stegići overpass³ and Donjani underpass⁴ are not suitable for pedestrians, that the Stegići overpass is narrower than required, affecting the traffic, and that the access to the Stegići overpass from the M16.1 road is dangerous.
- 1.4 The complainant also alleges that the roads from Naseobina Hrvaćani to Hrvaćani village are not suitable for pedestrian use (e.g. disabled people cannot use the local roads) and that there are issues with a steep incline from Hrvaćani to Naseobina Hrvaćani and next to the underpass preventing car access through the underpass.
- 1.5 The complainant alleges that some construction work is not finished, referring to amongst others lack of railing on a bridge and construction material left uncleaned, and that local traffic of cars and pedestrians cannot always use local roads around the motorway (e.g. 117A-N between the pipe culvert and Stegići overpass) due to flooding.
- 1.6 With regard to spatial planning, the complainant argues that, unlike the spatial plan for Prnjavor municipality from 2011, the sub-division plan does not include (i) a Kojin Han interchange, therefore preventing 15 villages from directly accessing the motorway, or (ii) an overpass close to where the pipe culvert is located now. In addition, the complainant alleges that (iii) the public consultation for the sub-

¹ The complaint was complemented by further correspondence sent to the EIB-CM on 20 May and 5 July 2019.

² Republika Srpska, Institute of Statistics, Results of the 2013 census in Republika Srpska, available at: http://www2.rzs.rs.ba/static/uploads/bilteni/popis/gradovi_opstine_naseljena_miesta/Rezultati_Popisa_2013_Gradovi_Opstine_Naseljena_Miesta_WEB.pdf, accessed on 11 December 2019

³ Km 12+041.

⁴ Km 13+706.

division plan for the motorway was not carried out properly and that (iv) the public has no access to the sub-division plan for the motorway.

- 1.7 The complainant alleges that, instead of carrying out a comprehensive formal expropriation process, in several cases the promoter concluded rental agreements with landowners for land impacted by the motorway construction. It was therefore alleged that, in some cases, parts of the motorway were constructed on land not owned by the promoter.
- 1.8 During the on-site visit, the complainant clarified the following allegations: (i) The water drainage from the motorway is emptied onto private land, (ii) the water supply to Buč (part of Hrvačani village) is negatively impacted by the project as water pipes have broken because of the motorway (iii) there is an increased risk of flooding, and to minimise this risk the Crkvena river bed needs to be improved and (iv) Sound barriers are missing.

2. THE PROJECT

- 2.1 The project concerns the construction of a motorway between Banja Luka and Doboј in RS, BiH. The EIB financed the western section of the motorway, i.e. the 35.3 km-long section between Banja Luka (Mahovljani interchange) and Prnjavor⁵. This section is located on the territory of the Prnjavor municipality. The section was completed and brought into use on 2 October 2018.
- 2.2 The RS Motorways are implementing the project (hereinafter, the promoter). The state of BiH is the borrower. The EIB Board of Directors approved the project on 4 June 2013 and the finance contract for the project, implemented as an investment loan, was concluded on 16 December 2013.

3. WORK PERFORMED

- 3.1 As per § 2.1.3 of its Procedures⁶, the EIB-CM, carried out an initial assessment of the case aiming at:
- Clarifying the concerns raised by the complainants and better understanding their allegations and viewpoints;
 - Establishing a position on the situation in the field and the viewpoints of the promoter;
 - Assessing the validity of the concerns raised by the complainants;
 - Assessing whether and how the complainants and promoter could seek resolution in respect of the allegations;
 - Determining if further work by the EIB-CM is necessary and/or possible to address the allegations or resolve the issues raised by the complainants. The further work may include investigation/compliance review or mediation between the parties.
- 3.2 As part of the initial assessment, the EIB-CM:
- (i) had an initial meeting with the EIB services;
 - (ii) reviewed EIB documents;
 - (iii) requested and received information from the complainants and the promoter;
 - (iv) held conference calls with both the complainant and the promoter; and

⁵ For more information about the project, see: <http://www.eib.org/projects/pipelines/pipeline/20110622>, accessed on 16 March 2020.

⁶ The Complaint Mechanism Procedures are available here: https://www.eib.org/attachments/strategies/complaints_mechanism_procedures_en.pdf

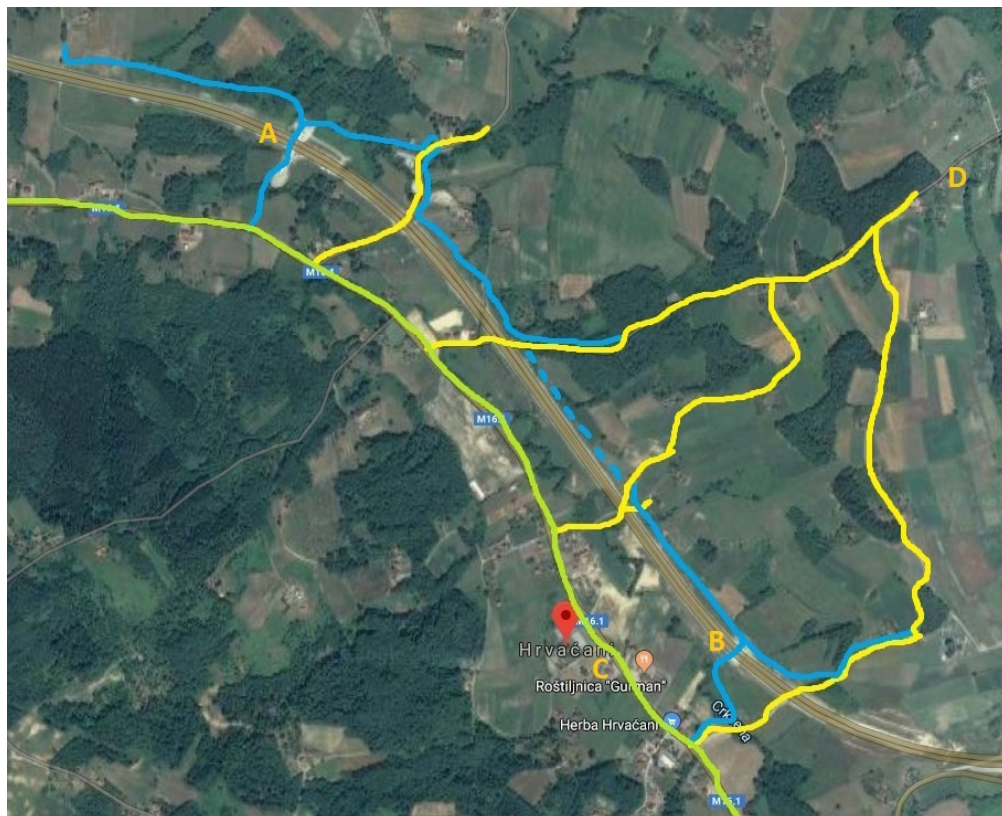
(v) conducted a site visit in October 2019, during which it met with the complainants, the promoter and the relevant national authorities (RS Ministry of Spatial Planning and Construction and Ecology and the RS Attorney General).

4. INITIAL ASSESMENT

4.1 Concerns around safety and access

- 4.1.1 During the initial assessment, the promoter provided maps of the before and after situation, which have been confirmed by the complainant. The EIB-CM has prepared Map 1 based on the information provided by the promoter and the complainant as well as on the information gathered as part of its on-site visit. Map 1 highlights the four feasible access roads before (in yellow) and the two access roads after (in blue) the project's implementation. The dotted blue line is where the promoter is currently building a connecting access road. The green road is the state road (Magistralni put) from Banja Luka – Prnjavor (M16-1). The red point is where the school is located. A marks the Stegići overpass; B marks the Donjani underpass; C marks the centre of Hrvaćani village; and D marks the area of Naseobina Hrvaćani.

1 (area around Hrvaćani village)



- 4.1.2 With regard to the complainant's concerns reported in §1.4, the promoter informed the EIB-CM that it is constructing an additional parallel access road (marked in blue-dotted line on map 1) to ease access, but also states that all access roads have been improved or are in the same state as they were before the project started, in accordance with the project requirements. During its on-site visit, the EIB-CM noted that the construction of the parallel access road was ongoing. In January 2020, the promoter

confirmed that the parallel access road has been finalised and stated that they furthermore have improved some of the gravel infrastructure roads (toward point D) beyond what was foreseen by the original project.

- 4.1.3 The EIB-CM notes that the promoter does not dispute that the complainant has a longer distance to walk to and from Naseobina Hrváčani – Hrváčani than before the project, but states that the project has been implemented in line with the applicable rules and standards. The promoter states that the pipe culvert referred to in §1.2 is now 'difficult to access', since the parallel constructed access road (blue dotted line on above map) is elevated. The promoter estimates that by the end of January 2020 the pipe culvert will be sealed with a fence in order to prevent potential danger resulting from the unconventional use of the pipe culvert to cross the Motorway.
- 4.1.4 With regard to the complainant's allegations concerning the Stegići overpass and Donjani underpass, the promoter does not share the view of the complainant but has expressed willingness to listen to the concerns.
- 4.1.5 As regards the complainant's allegations reported in §1.5, the promoter did not recognise that there was any construction work left unfinished. However, the promoter confirmed that it would look into this matter to assess the validity of those claims and, in case of confirmatory findings, remedy the situation. As to the claim regarding flooding of the local road, the promoter mentioned that a contractor was hired to remedy this issue.
- 4.1.6 With regard to the complainant's concerns reported in §1.8, the promoter observed that point (i) has been addressed by the elevation of the parallel access road (see §4.1.3) while point (ii) has been addressed as broken water pipes have been repaired and extra water pipes, beyond what was foreseen in the project, have been installed to connect other households to the water grid. The promoter informed the EIB-CM that point (iii) is currently on hold until the settlement of expropriation cases, which have to be solved before addressing this issue. The promoter also referred to the responsibility of other public authorities. Lastly, related to point (iv), the promoter will analyse the information provided by the EIB-CM with a view to forming a reasoned opinion on needed activities, if any.

4.2 Spatial planning

- 4.2.1 The promoter states that the interchange at Kojin Han referred to by the complainant was never planned, while it acknowledged that due to technical difficulties the originally planned overpass was moved to where it is now located. Finally, the promoter states that public consultation was carried out in line with the project requirements (i.e. national law and EIB Standards).
- 4.2.2 During the on-site visit, the EIB-CM found that the public has access to sub-division plan for the concerned Motorway at the Municipality of Prnjavor.

4.3 Property Rights

- 4.3.1 Regarding the property rights allegations in §1.7, the promoter states that it has not concluded any rental agreements. However, rental agreements might have been concluded by a construction company carrying out works in order to temporarily use the plots (e.g. temporary storage of construction equipment). The promoter states that no part of the motorway is constructed on land owned by any private individual.

5. WAY FORWARD

- 5.1 Based on the information available and its discussions with the promoter and the complainant, the EIB-CM notes that there is an openness to engage in a problem-solving facilitation. The EIB-CM wishes to highlight that the complainant welcomes an opportunity to engage in a facilitated problem-solving process with the promoter. The promoter has expressed its willingness to engage in a problem-solving facilitation to listen to and address valid concerns that the complainant may have. The EIB-CM also recognises the efforts of the Bank services to monitor the project and their support for the parties' endeavours to find constructive solutions to the concerns raised.
- 5.2 Based on the above assessment, it appears that, in particular for issues of safety and access between the two parts of the village, a problem-solving facilitation, where the focus will be on finding concrete solutions to the issues raised as appropriate, may prove beneficial. The EIB-CM therefore proposes to launch a problem-solving facilitation between the complainant and the promoter. It appears from the above assessment that some issues would benefit from the promoter providing additional clarifications to the complainant during the problem-solving process.
- 5.3 The EIB-CM would take an active role in the process with the aim that such facilitation may address further communication on the main concerns of the complainant, in a manner that respects and benefits the promoter's long-term relationship with its stakeholders. Such dialogue will be established, whenever feasible, using or in concertation with already existing communication channels of the project.
- 5.4 With the submission of this report, the complainant and the promoter are kindly requested to confirm their willingness to engage in the described problem-solving facilitation process within 15 working days from receipt of this report. If deemed beneficial, the EIB-CM will make itself available to both parties to clarify the above proposal in further detail. After obtaining written confirmation from the complainant and the promoter, the EIB-CM will organise the next steps in the process.
- 5.5 If agreement is obtained, the above problem-solving process will be initiated. In the absence of agreement by both parties, a compliance review will be launched on the complaint.
- 5.6 Based on the initial assessment (see §4.2.2), the EIB-CM concludes that the allegation that the public has no access to the Banja Luka Doboj sub-division plan is ungrounded.

S. Derkum
Head of Division
Complaints Mechanism
31 March 2020

P. Rügge
Mediation Officer

31 March 2020

LIST OF ABBREVIATIONS

EIB	European Investment Bank
EIB-CM	EIB Complaints Mechanism
EO	European Ombudsman
RS	Republika Srpska
BiH	Bosnia and Herzegovina