

Airport CAPEX Plan Budapest

(Hungary)

Complaint SG/E/2020/03

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

CONCLUSIONS REPORT

21 October 2021

Prepared by

The Complaints Mechanism

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Confidential

No

External distribution

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Promoter

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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 has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) – and one external – the European Ombudsman.

Complainants who are not satisfied with the EIB-CM's reply have the right to lodge a complaint of maladministration against the EIB with the European Ombudsman.

The European Ombudsman was “created” by the Maastricht Treaty of 1992 as a European Union (EU) institution to which any EU citizen or entity may appeal to investigate any EU institution or body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as set out by the European Ombudsman, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities and to project cycle-related policies and other applicable policies of the EIB.

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>

GLOSSARY OF TERMS AND LIST OF ACRONYMS

| | |
|-----------------|---|
| BFKH | Budapest Főváros Kormányhivatala (Government Offices of the Capital City of Budapest) |
| CAPEX | Capital expenditure |
| CJEU | Court of Justice of the European Union |
| CO ₂ | Carbon dioxide (greenhouse gas) |
| dB | Decibel |
| EC | European Commission |
| EFSI | European Fund for Strategic Investments |
| EIA | Environmental impact assessment |
| EIA Decree | Hungarian Government Decree No 314/2005 on the environmental impact assessment and the uniform environmental use authorisation procedure |
| EIB-CM | European Investment Bank Group Complaints Mechanism |
| ESDS | Environmental and Social Data Sheet |
| ESMS | Environmental and social management system |
| ESMP | Environmental and social management plan |
| EU | European Union |
| GHG | Greenhouse gases |
| Handbook | The EIB Environmental and Social Handbook (Volume II, 2013) |
| Ktf. | <i>Korlátolt Felelősségű Társaság</i> (limited liability company) |
| KTVF | <i>Közép-Duna-völgyi. Környezetvédelmi, Természetvédelmi és Vízügyi Felügyelőség</i> (Central Danube Valley Inspectorate for Environment, Nature Conservation and Water Management) |
| mppa | Million passengers per annum |
| MWh | Megawatt hour |
| NGO | Non-governmental organisation |
| Noise committee | Regional Noise Protection Committee |
| NPZ | Noise protection zone |
| OKTVF | <i>Országos Környezetvédelmi, Természetvédelmi és Vízügyi Főfelügyelőség</i> (National Inspectorate for the Environment, Nature Conservation and Water Management) |
| PM | Particulate matter |
| PMK | <i>Pest Megyei Kormányhivatal</i> – (Pest County Government Office) |
| Project | Budapest Airport Concession project (CAPEX plan) |
| Promoter | Budapest Airport Zrt. is the project promoter, borrower and final beneficiary |
| TFEU | Treaty on the Functioning of the European Union |
| Zrt. | <i>Zártkörűen működő részvénytársaság</i> (private company limited by shares) |

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EXECUTIVE SUMMARY

In March 2020, the EIB Group Complaints Mechanism (EIB-CM) received a complaint from two Hungarian non-governmental organisations (NGOs)¹ (hereinafter the “complainant”) concerning the Budapest Airport Concession (CAPEX plan) project in Hungary.

The EIB-CM carried out an initial assessment of the concerns raised by the complainant and identified five allegations (see table below). On the basis of its initial assessment, the EIB-CM carried out a compliance review and assessed the complainant’s allegations in the context of potential EIB maladministration, including whether the Bank complied with the applicable regulatory framework.

The findings of the compliance review are presented in this report. The EIB-CM finds that the EIB did take into consideration the project impacts on climate when performing its economic appraisal. The EIB also correctly applied the EIB GHG Methodology², as applicable at the time of the appraisal. Where the EIB-CM found the allegations to be grounded, it has issued recommendations; furthermore, it has issued a suggestion for improvement.

| Allegation | Outcome | Suggestions for improvement |
|---|--|--|
| Failure to assess and mitigate the climate impact of the project through an environmental impact assessment and alleged non-compliance with the EIB’s climate-related standards | Recommendation: Prior to further disbursements, the EIB services should request the promoter to provide the EIB with at least a screening determination for the project components enabling capacity expansion, with a view to ensure an adequate assessment of the cumulative impacts of the project, including the “Cargo City,” also in light of the case-law of the Court of Justice of the European Union on air quality in Hungary. | To the extent possible, with preference to complex projects, adequate technical (environmental and/or social) and linguistic expertise should be available to the appraisal and monitoring teams. This is necessary in order to grasp the complexities as well as to apply the requirements of EIB standards and EU law concerning project’s environmental and social impacts, their mitigation and monitoring, as well as understanding and critically assessing project documentation. |
| Failure to assess the impact of the 50% increase in air traffic and land transport on air pollution | | |
| Failure to assess and mitigate noise pollution and negative social impacts on project-affected people | Recommendation: The EIB services should engage with the promoter in order to require that: | |
| Lack of public consultations on the project and failure to involve local stakeholders from civil society | - The promoter (re)maps project affected stakeholders and adequately engages with them, including through the establishment of a comprehensive grievance mechanism in accordance with the EIB’s E&S standards 1 and 10. - The current environmental and social management plan includes efficient and long-term mitigation measures for incurred negative social aspects, in particular noise pollution, of the project. | |
| Inadequate information on the social and environmental impacts of the project and its approval procedures in the Environmental and Social Data Sheet and related information on the EIB’s website | Recommendation: The EIB services should (i) update information contained in the Environmental and Social Data Sheet in light of the EIB-CM’s findings and conclusions and (ii) remove the current documents labelled as “Environmental and Social Impact Assessment” from the EIB’s project website. | |

¹ The complaint was lodged by the National Society of Conservationists – Friends of the Earth Hungary and the Hungarian NGO Association for Civilized Air Transport.

² Methodologies for the Assessment of Project GHG Emissions and Emission Variations; Induced GHG Footprint: The carbon footprint of projects financed by the Bank.

1. THE COMPLAINT

- 1.1 On 2 March 2020, two Hungarian NGOs³ (hereinafter the “complainant”) lodged a complaint with the EIB-CM concerning the environmental and social impact of the Budapest Airport Concession (CAPEX plan) project (hereinafter the “project”).
- 1.2 The complainant considers that the project contradicts the EIB’s sustainability commitments as outlined in the EIB’s Environmental and Social Standards. The complainant also stresses that, while the project assumes a 50% increase in air traffic⁴ by 2030, no environmental impact assessment (EIA) had been conducted. As a result, no mitigation and compensation measures were proposed regarding the estimated increase in greenhouse gas (GHG) emissions.
- 1.3 The complainant alleges particulate matter (PM) pollution based on the Schiphol Airport (Netherlands) model applied to Budapest Airport on the basis of its 2018-2019 traffic data. The complainant alleges that while the average normal concentration of particulate matter (PM) is about 1 000-1 200 p/cm³, the PM concentration in the project-affected area ranges from two to 13 times the average normal level⁵. The complainant emphasises the fact that the increased air pollution and GHG emissions are also due to intensified landside traffic caused by the project⁶.
- 1.4 The complainant alleges that the market value of neighbouring real estate has dropped drastically due to the unhealthy and noisy environment. According to the complainant, houses are being physically ruined by noise pollution. The complainant takes the view that the affected local communities are an especially vulnerable group. Furthermore, the complainant points out that regulations on flight paths and the distances from the ground over inhabited land are often violated and that this produces negative impacts on the project-affected people. The complainant notes that households located 300 m from the runway were offered ineffective noise mitigation measures. In addition, any further noise mitigation measures require contributions from the affected people.
- 1.5 The complainant stresses that the concerns raised by local stakeholders remain unaddressed by Budapest City, Budapest Airport, Budapest Cluster and the EIB. In this regard, the complainant alleges that there has been no dedicated stakeholder forum on the project and its components. According to the complainant, none of the two general forums held to date⁷ served to consult on the project and to address the public concerns. In the complainant’s view, local communities’ concerns shall be heard, given that the project will impact “approximately 1 million people indirectly and 0.5 million local people directly.” Furthermore, the complainant alleges that the identity of the environmental authority in charge is not clear⁸

³ The complainant did not request confidentiality; the complaint was lodged by the National Society of Conservationists – Friends of the Earth Hungary and the Hungarian NGO Association for Civil Air Transport.

⁴ From 15 million to 21 million passengers per year.

⁵ “In the red zone, covering a 19 km circle around the airport, [the] concentration [of particulate matter] is likely to amount to 5 100 particles/cm³; in the blue zone (9 km), 12 700 p/cm³; while in the yellow zone (5 km) 16 510 p/cm³.”

⁶ The complainant highlights that the planned train connection, even if environmentally sound, would potentially further increase airport traffic and thus aggravate the health and environmental impacts of the project.

⁷ Forum of 14 June 2018 solely for the inhabitants of the 10th District (according to the complainant, the Association for Civilized Air Transport (CATA) and many affected locals were not invited) and the forum on airport-related problems of 12 February 2019.

⁸ According to the complainant, the Hungarian State considers the District Office of Érd to be the environmental authority in charge, while the Ministry of Agriculture considers the Ministry for Innovation and Technology to be the relevant environmental authority.

and that this has negative impacts on the adequacy of planning/monitoring and of the stakeholders' engagement (including project-level grievance mechanisms).

1.6 The complainant alleges that the Environmental and Social Data Sheet (ESDS) pertaining to the contested operation⁹ together with the project summary sheet¹⁰ "lacks core aspects, adequate measurements and methodology, and contains false information." In particular, the complainant notes the following:

- Documents referred to as "Environmental and Social Impact Assessment" do not focus on the impacts of the project or are not linked to an EIA, as no environmental assessment took place in accordance with the EIA Directive¹¹;
- Lack of requirements to ensure an EIA for the development of Terminal 3 (or 2C);
- No solutions regarding the increase in emissions from landside traffic; the expected increase in landside traffic will likely be accommodated by the existing road infrastructure and increase in car parking area, as well as by the increase of bus frequencies;
- The ESDS statement that "[t]here are no significant adverse social impacts related to the project" is contradicted by noting that individuals and local municipalities had appealed against the operational permit due to the significant impacts of the project, such as noise, pollution, damage to buildings, impact on health and depreciation of properties;
- Wrong claims that "public consultation has and is being undertaken in accordance with Hungarian and European legislation."

1.7 Lastly, the complainant informs the EIB-CM of the announcement of further airport development projects worth at least HUF¹² 279 billion and that Budapest Cargo City and a new passenger pier (with 14 gates, of which six are ready) had already been built without a proper EIA. Several appeals were launched by the complainant and other stakeholders against authorisations given to the promoter¹³.

1.8 Based on the above, the complainant called on the EIB to:

- Put on hold the loan, the EFSI guarantee and all project development until the new terminal plan undergoes an EIA, including public consultation, in line with the relevant EU legislation, standards and limit values;
- Identify the competent authority for this project and share this information publicly;
- Request the promoter to determine noise mitigation zones according to the relevant EU directives and standards;

⁹ The Environmental and Social Data Sheet is available [here](#).

¹⁰ The project summary sheet on the EIB website is available [here](#).

¹¹ The complainant alleges that "the quoted Airport Rules Chapter VI serves general requirements. Due to the lack of explicit rules it is impossible to measure whether the rules are followed (e.g. 'If possible, biodegradable chemicals are to be used for the washing of aircraft and vehicles.' – 'If possible' is vague and easy to neglect). There is no information about the monitoring system and its methods in Airport Rules, nor in the Environmental and Social Data Sheet."

¹² Hungarian forints.

¹³ From the information provided by the complainant, these cases concern (a) the designation of the noise protection/mitigation zone; (b) the environmental operating permit; (c) the construction permit for the new passenger pier; and (d) the construction permit for Cargo City.

- Ensure fair project development by requiring the promoter to take further steps with regard to (i) the assessment of the project's environmental and social impacts, and (ii) the design of mitigation and compensation measures addressing them, including the appropriate involvement of affected communities and civil society representatives.

2. BACKGROUND INFORMATION

2.1 The project

- 2.1.1 The project comprises a number of investments at Budapest Airport, located 16 km south-east of the centre of Budapest. The project promoter, developer and operator is Budapest Airport Zrt.
- 2.1.2 The project mainly aims at accommodating future growth in traffic and ensuring the highest airport safety and security standards. It is expected to increase the handling capacity of Budapest Airport to accommodate expected future demand, strengthen the airport's operational resilience and improve the passenger experience. The project consists of 19 components and works, which are presented in Table 1.

Table 1 – Project components

| |
|---|
| Construction of the new Pier B in Terminal 2 (Pier 2B building (around 11 500 m ²), extension of U taxiway and holiday parking) |
| Construction of Terminal 3 |
| Construction of a new freight facility called Cargo City (16 000 m ²) |
| Cargo City forwarder facility (7 000 m ²) |
| Renewal of the airfield ground lighting (AGL primary control update and secondary cables) |
| Multi-storey car park: six levels with 2 470 spaces, holiday parking, Rent a Car relocation of containers |
| Construction of Apron 3 (112 000 m ²) with parking positions |
| Airfield upgrade to EASA, reconstruction of runway 13L-31R |
| Construction of Apron North (52 000 m ²) |
| Operational reliability upgrade |
| Replacement of heating mains (around 5 200 m of pipes) |
| Construction of painting hangar (around 6 000 m ²): hangar building, construction of a gas pipeline and apron expansion |
| Replacement of ILS: ILS Development (RWY13L_31R) and ILS 13L GO antenna pole construction and demolition |
| Passenger transfer facilities (located on T2A apron and T2B arrivals, comprising passenger screening lanes, contact stands and refurbishing of 3 000 m ² of terminal area) |
| Building maintenance and energy |

| |
|---|
| Security screening lanes (T2B UB lane expansion) |
| T2B arrival reconfiguration |
| Replacement of hold baggage machines (A1-A3 passenger gate extension, BHS building) |
| Replacement of hold baggage machines, body scanners |

2.1.3 The promoter plans to increase terminal capacity in a phased manner, starting with the construction of a new Pier B and a new terminal towards the end of the investment period. This project is expected to provide a balanced capacity increase from the current 15 million passengers per annum (mppa) to 21 mppa, which is enough to accommodate demand until the early 2030s according to the promoter's traffic forecasts¹⁴. Project-related works started in 2017 and are expected to be completed in 2022.

2.1.4 In 2018, the EIB committed to financing the project up to €200 million. The project benefits from an EFSI guarantee¹⁵. As of September 2021, the EIB had disbursed €124 million to the promoter for the project.

2.2 Project permitting

Environmental operational licences

2.2.1 In 2006, the Central Danube Valley Inspectorate for Environment, Nature Conservation and Water Management (KTVF)¹⁶, the first-instance environmental authority, granted the promoter an environmental operational license¹⁷ (EOL) for the airport. The EOL was updated in 2007 following appeals before the National Inspectorate for the Environment, Nature Conservation and Water Management (OKTVF)¹⁸.

2.2.2 On 9 November 2011, the KTVF issued a renewed EOL¹⁹, which was appealed. On 10 January 2012, the OKTVF issued a decision²⁰ upholding and supplementing the 2011 EOL. The decision of the OKTVF was appealed before the Budapest-Capital Regional Court, which in November 2012 issued a judgment²¹ annulling the final decision on the 2011 EOL and ordering the KTVF to conduct a new procedure, which was launched in January 2013.

2.2.3 This new EOL procedure was based on environmental data records covering the period between January 2008 and December 2012, with some additional information from 2013. In 2014, the KTVF issued the EOL²², which was appealed again before the OKTVF.

2.2.4 On 28 January 2015²³, the OKTVF annulled the KTVF's decision issuing the EOL. The OKTVF

¹⁴ The promoter's document setting the scene for the airport developments is the Budapest Airport master plan (2013). It presented the predicted air passenger growth from 8.2 mppa in 2012 to 19.5 mppa in 2032.

¹⁵ Information is available [here](#).

¹⁶ The Central Danube Valley Inspectorate for Environment, Nature Conservation and Water Management was subordinate to the Ministry of Rural Development (between 2010 and 2015). As of 2015, it became the Directorate for Protection of Nature and the Environment of the Pest County Government Office.

¹⁷ Environmental operational licence ref. KTF: 41608-2/2006 issued by the KTVF.

¹⁸ Environmental operational licence ref. 14/0042-20/2007 issued by the OKTVF.

¹⁹ Environmental operational licence ref. KTF: 3848-10/2011 issued by the KTVF.

²⁰ Decision ref. 14/6438-16/2011 issued by the OKTVF.

²¹ Judgment No 27.K.30.710/2013/3 issued by the Budapest-Capital Regional Court.

²² Decision ref. KTF: 80-88/2014.

²³ Decision ref. OKTF-KP/1788/2015.

ordered the KTVF to conduct a new procedure including newer environmental and operational data available also for the years 2013 and 2014. On 30 March 2015, the KTVF issued its decision²⁴ granting the EOL. This decision was appealed before the OKTVF, which upheld it on 15 September 2015²⁵. Therefore, the currently valid EOL is the 2015 EOL, which is valid until 31 December 2025²⁶.

2.2.5 Key relevant environmental measures imposed by the 2015 EOL are as follows:

- Aircraft operations on the ground and in the air, in particular near inhabited areas and at night, must be carried out in such a way that:
 - o in areas where the noise exposure calculated from the airport operation does not exceed the noise exposure limit values specified by law, the noise exposure should remain below the limit values in the future;
 - o in areas where the noise exposure already exceeds the limit value, the projected noise exposure should not increase any further²⁷.
- In the course of operating and developing the airport, noise exposure exceeding the limit values defined by law must be gradually reduced based on a schedule²⁸.
- By using the evaluation data of noise monitoring, the annual environmental noise exposure must be plotted on a map with equal loudness contours. The map must be published on Budapest Airport's website by 31 May of the year following the year under review²⁹.
- In order to inform the public, Budapest Airport must regularly publish on its website noise exposure maps showing the development of noise exposure, the measurement results of the noise measuring stations, and the number of aircraft operations that occurred. The flight paths used must be described and the population concerned must be informed of any planned maintenance work³⁰.
- The tasks specified in the final strategic action plan approved for 2013-2022 must be implemented in a scheduled, planned manner³¹.
- The environmental operating licence did not set a deadline by which the noise protection zone needs to be established, but stated that the airport must be operated in accordance with national law³².
- Air pollution requirements were laid down in relation to the point source on the airport territory: annual (electronic) reporting on air pollution (emissions) measurements on the airport territory and the requirement to comply with the provisions of the point source operating permit³³.

²⁴ Decision ref. KTF: 2167-57/2015.

²⁵ Decision ref. OKTF-KP/9586-15/2015.

²⁶ Decision ref. KTF: 2167-57/2015 (the 2015 EOL), section IV, paragraph 1.

²⁷ 2015 EOL, section III "From the aspect of noise and vibration abatement", paragraph 1.

²⁸ 2015 EOL, section III "From the aspect of noise and vibration abatement", paragraph 2.

²⁹ 2015 EOL, section III "From the aspect of noise and vibration abatement", paragraph 4. The map is available [here](#).

³⁰ 2015 EOL, section III "From the aspect of noise and vibration abatement", paragraph 6.

³¹ 2015 EOL, section III "From the aspect of noise and vibration abatement", paragraph 11.

³² i.e. the transitional measures of Government Decree 176/1997 of 11 October 1997. See 2015 EOL, section III "From the aspect of noise and vibration abatement", paragraph 12.

³³ Operating permit No. KTVF: 19630-2/2013, as amended by No. KTVF: 19630-5/2013.

Noise protection zone

- 2.2.6 The competent authority for the designation of a noise protection zone (NPZ) in the vicinity of Budapest Airport is the National Transport Authority's Aviation Department (hereinafter the "NTA").
- 2.2.7 In January 2012, Budapest Airport submitted an application to the NTA, based on data collected over three years (2008–2011).
- 2.2.8 Prior to its decision on the NPZ, the NTA consulted several Budapest municipalities concerned and the KTVF during mandatory consultations. In August 2014, the NTA authorised the NPZ subject to certain conditions and restrictions brought forward by the KTVF and the municipalities.
- 2.2.9 Following several appeals by civil society and local government alike, the 2014 decision was upheld in 2016, and as such is the one in force today and up to 2024³⁴.
- 2.2.10 The NPZ establishes the following:
- Designation of boundaries.
 - Restrictions applicable to aircrafts and aircraft movements.
 - Restrictions applicable to runways and take-off and landing procedures.
 - Night-time flight restrictions (deep-sleep zone)^{35, 36}.
 - Period of validity: ten years, unless the operational conditions of the airport change to a significant extent and therefore the airport operator is obliged to apply for the re-designation of the zone earlier.
 - Obligations related to noise monitoring systems³⁷, noise protection schemes³⁸ and a noise committee³⁹.
 - Obligations related to the disclosure of information to citizens⁴⁰.

³⁴ Decision issued by the NTA, ref. No.: LR/RK/NS/A/1965/0/2014.

³⁵ "The number of movements of scheduled and non-scheduled commercial landings and take-offs that may be planned for night-time between 22:00 and 06:00 Local Time is at most 50 movements, of which no more than six movements may occur between 00:00 and 05:00 Local Time."

³⁶ "Engine testing is prohibited at the engine testing stand as well between 22:00 and 06:00 Local Time, if engine testing noise together with the noise originating from the flight movements reaches or exceeds 55 dB in front of the façade of buildings to be protected."

³⁷ The airport operator is obliged to operate a noise monitoring system in order to continuously monitor environmental noise nuisance and check compliance with the required flight procedures. Furthermore, the airport operator must review the currently functioning noise monitoring system within six months of this decision becoming final and, if need be, initiate the relocation of the measurement points.

³⁸ The airport operator is obliged to prepare a noise protection scheme within six months of this decision becoming final and submit it to the authority. In this scheme the airport operator sets out the planned environmentally friendly flight procedures and restrictions and the ground noise abatement and change of land use measures, as well as the scheduling of noise abatement measures related to the properties to be introduced after the designation of the noise abatement zone.

³⁹ In view of the fact that it is obligatory to operate a noise monitoring system at the airport, the airport operator must continue to operate a noise protection committee in order to coordinate the provision of information related to the airport's noise problems and conciliation tasks.

⁴⁰ The airport operator must, upon request, ensure access for citizens to documents relating to noise abatement zones in accordance with the procedure established to meet the requirements for the disclosure of information of public interest.

Development consents

- 2.2.11 The promoter applied for development consents for project components. It is understood that in Hungary development consent within the meaning of the EIA Directive is a construction permit⁴¹.
- 2.2.12 The competent authorities which issued construction permits (development consent procedures) for the project were the Government Offices of the Capital City of Budapest (BFKH) (No. V, No. XII and BFKH Departments)⁴² and the Ministry of Innovation and Technology (see Annex 1). The Department of Environment and Nature Protection of the Pest County Government Office (PMK, Érd District) was consulted as part of some development consent procedures⁴³.
- 2.2.13 According to the promoter, the components of the project submitted for development consent did not require an environmental impact assessment or a screening determination (see Table 1). The promoter has not yet applied for a construction permit for Terminal 3. In April 2021, the promoter informed the EIB that the commencement date of the Terminal 3 component was uncertain due to the COVID-19 crisis and that it intended to carry out an environmental impact assessment for this project component when appropriate.
- 2.2.14 The construction permit for a multi-storey car park was issued in 2018. In 2020, the promoter informed the EIB that the construction permit was annulled. Furthermore, the promoter informed the EIB that the aircraft parking apron and all taxiway works did not require construction permits. Development consent documentation made available to the EIB-CM is listed in Annex 1 to this report.

3. APPLICABLE REGULATORY FRAMEWORK

3.1 EIB Complaints Mechanism

- 3.1.1 The EIB Complaints Mechanism Policy tasks the EIB-CM with addressing complaints concerning alleged maladministration by the EIB⁴⁴. Maladministration means poor or failed administration. This occurs when the EIB fails to act in accordance with the applicable legislation and/or established policies, standards and procedures. Maladministration may also relate to the environmental or social impacts of the EIB's activities⁴⁵.
- 3.1.2 The EIB-CM Policy specifies the role of the EIB-CM, such as gathering and reviewing existing information on the subject under complaint, conducting appropriate inquiries with a view to assessing whether the EIB's policies and procedures have been followed and promoting adherence to the EIB's policies⁴⁶.

⁴¹ In Hungarian, *Építési engedély*.

⁴² Budapest Főváros Kormányhivatala.

⁴³ Pursuant to the provisions of Government Decree no. 66/2015 (III. 30.) on Budapest and county government offices and district (capital district) offices, environmental protection and nature conservation inspectorates were merged with district government offices as of 31 March 2015, and thus ceased to exist. The general legal successors of the inspectorates are the Budapest and the county government offices pursuant to Annex 3 of the Government Decree.

⁴⁴ Section 1 of the EIB-CM Policy ([2018](#)).

⁴⁵ Section 3 of the EIB-CM Policy ([2018](#)).

⁴⁶ Section 6, paragraph 6.1.1 of the EIB-CM Policy ([2018](#)).

3.2 European and national legal framework

EU and national law on the assessment of effects of projects on the environment

- 3.2.1 Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (EIA Directive, as amended) provides a legal framework for the assessment of projects with significant environmental impacts, public information and public participation in the decision-making.
- 3.2.2 Article 3 of the EIA Directive states that the environmental impact assessment shall identify, describe and assess in an appropriate manner the direct and indirect effects of a project on a number of factors, including climate. Article 4 of the EIA Directive states that for projects listed in Annex II, Member States shall determine whether the project shall be made subject to an assessment. As noted in the case-law of the Court of Justice of the European Union (CJEU)⁴⁷, screening determinations (both “positive” and “negative”) must state the main reasons for requiring or not requiring an assessment.
- 3.2.3 The case-law of the CJEU established that works to change the infrastructure of an existing airport, without extension of the runway, are likely to be covered by Annex II of the EIA Directive, where they may be regarded as an alteration of the airport itself due to their nature, extent and characteristics, “in particular for works aimed at significantly increasing the activity of the airport and air traffic”⁴⁸. At the same time, the case-law indicates that “in the absence of any works or interventions involving alterations to the physical aspect of the site,” a renewal of an existing permit to operate an airport could not be classified as a “project” or “construction” for the purposes of the EIA Directive⁴⁹.
- 3.2.4 Annex II of the EIA Directive lists the projects for which screening determination is required. Point 13(a) of Annex II refers to “Any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I).” Relevant categories from the EIA Directive are listed under Annex I, point 7(a)⁵⁰ and Annex II, point 10(b)⁵¹.
- 3.2.5 The latest amendment to the EIA Directive⁵² includes the requirement to assess and provide information in the EIA report on “the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change”⁵³.

⁴⁷ Case C-87/02 *European Commission v Italy* (available [here](#)) and Case C-75/08 *Christopher Mellor v Secretary of State for Communities and Local Government*, paragraph 66 (available [here](#)).

⁴⁸ See Case C-244/12 *Salzburger Flughafen GmbH v Umweltssenat*, paragraph 28; Case C-275/09 *Brussels Hoofdstedelijk Gewest and Others v Vlaamse Gewest*, paragraph 35; Case C-435/97 *World Wildlife Fund (WWF) and Others v Autonome Provinz Bozen and Others*, paragraph 40; and the case-law cited.

⁴⁹ Case C-275/09 *Brussels Hoofdstedelijk Gewest and Others v Vlaamse Gewest*, paragraph 24 (available [here](#)).

⁵⁰ EIA Directive, Annex I, point 7(a): Construction of lines for long-distance railway traffic and of airports with a basic runway length of 2 100 m or more.

⁵¹ EIA Directive, Annex II, point 10: Infrastructure projects: (b) Urban development projects, including [...] car parks. There is no threshold for the size of car parks in the EIA Directive.

⁵² Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment was amended by Directive 2014/52/EU, which came into force on 15 May 2014 with a transposition deadline of 16 May 2017.

⁵³ [EIA Directive](#), Annex IV, information referred to in Article 5(1) (information for the environmental impact assessment report) — 5. A description of the likely significant effects of the proposed project on the environment, point (f).

- 3.2.6 The case-law of the CJEU⁵⁴ established that it may be necessary to take account of the cumulative effect of projects, when determination is carried out as required by Article 4(3) of the EIA Directive, in order to avoid a circumvention of the objective of EU legislation by splitting projects which, taken together, are likely to have significant effects on the environment.
- 3.2.7 As stated by the CJEU, for the development works in the airports, it is up to the national authorities to establish if the project or its components require a full environmental impact assessment. However, “It would be contrary to the very objective of [the EIA Directive] to exclude works to improve or extend the infrastructure of an existing airport from the scope of Annex II on the ground that Annex I covers the ‘construction of airports’ and not ‘airports’ as such. Such an interpretation would indeed allow all works to modify a pre-existing airport, regardless of their extent, to fall outside the obligations resulting from [the EIA Directive] and would, in that regard, thus deprive Annex II to [the EIA Directive] of all effect”⁵⁵.
- 3.2.8 Government Decree 314/2005 on the environmental impact assessment and the uniform environmental use authorisation procedure (EIA Decree)⁵⁶ transposes the requirements of the EIA Directive. Before construction permits are issued, the project or its separate components are subject to preliminary assessment, if they are above the thresholds (Annex 3 of the EIA Decree⁵⁷, which transposed Annex II of the EIA Directive).
- 3.2.9 The issuance of environmental operating licences is governed by the Law on the General Rules for the Protection of the Environment⁵⁸ and the EIA Decree⁵⁹.
- 3.2.10 If it becomes apparent that the project requires an environmental impact assessment or a screening, the competent authority for issuing construction permits must consult the relevant environmental authority. If the activity, as described in the application for development consent, does not fall under Annex 1 or Annex 3 of the EIA Decree⁶⁰, the consultations with the relevant environmental authorities, if any, will be carried out within the electronic documentation system supporting the building authority permitting procedure⁶¹.

⁵⁴ Case C-392/96 *Commission v Ireland* [1999], paragraph 76; Case C-2/07 *Paul Abraham and Others v Région wallonne and Others*, paragraph 28; Case C-244/12 *Salzburger Flughafen GmbH v Umweltsenat*, paragraph 37. See also Case C-275/09 *Brussels Hoofdstedelijk Gewest and Others v Vlaamse Gewest*, paragraph 36; and the case-law cited.

⁵⁵ Case C-2/07 *Paul Abraham and Others v Région wallonne and Others*, paragraph 32 (available [here](#)).

⁵⁶ Decree 314/2005 (XII. 25.) *Korm. rendelet a környezeti hatásvizsgálati és az egységes környezethasználati engedélyezési eljárásról* (as amended).

⁵⁷ Categories/subcategories relevant to the project in question: Transportation and storage: (90) Independently installed intermodal cargo transfer facility: no size restrictions; (92.a) Self-contained surface or underground car park, including a parking garage: from 300 parking spaces; Activities or installations not classified in the nomenclature: (128) Other, not covered by the points on pp. 1–127, structure or assembly of structures or in the area intended for installation: (a) covering an area of 2 ha; (b) from 300 parking spots; (c) buildings from 50 m high.

⁵⁸ 1995. évi LIII. törvény a környezet védelmének általános szabályairól (as amended).

⁵⁹ Decree 314/2005 (XII. 25.) *Korm. rendelet a környezeti hatásvizsgálati és az egységes környezethasználati engedélyezési eljárásról* (as amended).

⁶⁰ Decree 314/2005 (XII. 25.) *Korm. rendelet a környezeti hatásvizsgálati és az egységes környezethasználati engedélyezési eljárásról* (as amended). Available [here](#).

⁶¹ Abbreviated as ÉTDR in Hungarian.

EU and national law on air quality

3.2.11 Directive 2008/50/EC⁶² on ambient air quality and cleaner air for Europe (hereinafter the “Air Quality Directive”) establishes the legal framework for air pollution, such as emission limit values for PM10, ozone and related NO and NO₂ for transport emissions, sampling (e.g. daily averages), determination of exceedances and dissemination requirements. It was transposed into the Government Decree on Air Protection⁶³.

3.2.12 In February 2021, the CJEU ruled that Hungary had breached the Air Quality Directive:

- by systematically and persistently exceeding the daily limit value set for concentrations of PM10 from 1 January 2005 and up to and including 2017 in zone HU0001 — Budapest region;
- by failing to adopt, with effect from 11 June 2010, appropriate measures to ensure compliance with the daily limit value laid down for PM10 concentrations⁶⁴.

EU and national legislation on noise

3.2.13 Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise (hereinafter the “Noise Directive”) defines a common approach intended to avoid, prevent or reduce those harmful effects which derive from the exposure to environmental noise. As such, the Noise Directive sets the legal basis for harmonised calculations in order to perform strategic noise mapping and implement subsequent action plans⁶⁵. Major airports are included as areas requiring a strategic noise map. In addition, Member States are required to appoint competent authorities to draw up “strategic noise maps” for major airports using harmonised noise indicators, with the public to be informed and consulted about noise exposure, its effects and the measures being considered to address noise.

3.2.14 Regulation (EU) No 598/2014⁶⁶ of 16 April 2014 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports (hereinafter the “Noise Regulation”) provides rules on the process for the introduction of noise-related operating restrictions in a consistent manner on an airport-by-airport basis so as to help improve the noise climate and to limit or reduce the number of people significantly affected by potentially harmful effects of aircraft noise, in accordance with the Balanced Approach⁶⁷.

3.2.15 Article 6 specifies that the competent authorities shall also ensure that local residents, or their representatives, and relevant local authorities are consulted, and that technical information

⁶² [Directive 2008/50/EC](#) of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe.

⁶³ Decree 306/2010 (XII. 23.) *Korm. rendelet a levegő védelméről* (as amended). Available [here](#).

⁶⁴ The full text of Case C-637-18 *European Commission v Hungary* of 3 February 2021 is available [here](#).

⁶⁵ Article 1: adoption of action plans by the Member States, based upon noise-mapping results, with a view to preventing and reducing environmental noise where necessary and particularly where exposure levels can induce harmful effects on human health and to preserving environmental noise quality where it is good.

⁶⁶ [Regulation \(EU\) No 598/2014](#) of 16 April 2014 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports within a Balanced Approach and repealing Directive 2002/30/EC.

⁶⁷ The Balanced Approach is an international principle (also provided in the Noise Regulation) that stems from the [International Civil Aviation Organization](#). Namely, the Balanced Approach “consists of identifying the noise problem at a specific airport and analysing various measures available to reduce noise. The goal is to address noise problems on an individual airport basis and to identify the noise-related measures that achieve maximum environmental benefit most cost-effectively using objective and measurable criteria.”

on noise mitigation measures is provided to them. Article 6 further emphasises that the process of consultation with interested parties, which may take the form of a mediation process, is organised in a timely and substantive manner, ensuring openness and transparency as regards data and computation methodologies. Interested parties shall have at least three months prior to the adoption of the new operating restrictions to submit comments. The interested parties shall include at least “local residents living in the vicinity of the airport and affected by air traffic noise, or their representatives, and the relevant local authorities.”

- 3.2.16 Section 38(2) of Act XCVII of 1995 on aviation (hereinafter the “Aviation Act”) states that a safety and NPZ or excessive noise area that includes the area of the airport must be designated.
- 3.2.17 Section 5(5) of Government Decree 176/1997 of 11 October 1997 lays down the rules for the designation, use and termination of noise protection zones to be established around airports (hereinafter referred to as “Government Decree 176/1997”).
- 3.2.18 Section 13 of Joint Decree 18/1997 of 11 October 1997 stipulates detailed technical rules for the designation, use and termination of noise abatement zones to be established around airports. This Decree sets the legal basis for the establishment of a noise committee that shall function as liaison between the affected public, the operator and the government regarding all matters related to the NPZ. Article 13B(3) entitles one joint representative of civil society organisations operating in the vicinity of the airport or in the capital (Budapest) to sit on the committee.

EU legislation on public participation and stakeholder engagement

- 3.2.19 Article 2 of Directive 2003/35/EC⁶⁸ on public participation in environmental plans and programmes (hereinafter the “Public Participation Directive”) states that the public is to be informed timely and efficiently, prior to final decision-making, and should be given sufficient time to engage and raise concerns, which should be taken into account in decision-making.
- 3.2.20 Article 6(4) of the EIA Directive states that the public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures and shall, for that purpose, be entitled to express comments and opinions.
- 3.2.21 Article 8 of the EIA Directive requires the results of consultations and the information gathered to be taken into consideration in the development consent procedure.

Other EU and national legislation relevant for the present inquiry

- 3.2.22 Directive 2010/31/EU⁶⁹ on the energy performance of buildings (as amended) requires compliance with nearly zero-energy building (NZEB) standards by 31 December 2018 for all buildings acquired by public bodies and by 31 December 2020 for all new buildings. The standards enable the implementation of the European Union’s 20% energy efficiency target for 2020 and are verified by energy efficiency certificates. In 2018, the Energy Performance of

⁶⁸ [Directive 2003/35/EC](#) of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC - Statement by the Commission.

⁶⁹ [Directive 2010/31/EU](#) of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings. Directive 2010/31/EU was amended by Regulation (EU) 2018/1999 with effect from 1 January 2021.

Buildings Directive was amended by Directive (EU) 2018/844⁷⁰ and by the Regulation on the Governance of the Energy Union and Climate Action⁷¹, both of which enhanced the provisions of the 2010 Directive.

- 3.2.23 The Government Decree⁷² on building and construction supervision procedures and inspections and on building authority services transposed the requirements of the Energy Performance of Buildings Directive. For new buildings, the energy efficiency requirements shall apply from 31 December 2020. Buildings which have not been designed to comply with NZEB standards must comply with the requirements from 30 June 2022.

3.3 EIB policies and standards applying to the project

The EIB Statement

- 3.3.1 The EIB Statement of Environmental and Social Principles and Standards⁷³ (hereinafter the “Statement”) requires that all projects financed by the EIB must at least comply with:
- Applicable national environmental law;
 - Applicable EU environmental law, notably the EIA Directive, as well as sector-specific directives and “cross-cutting” directives.
- 3.3.2 In the Statement, the EIB recognises the need for a proactive approach to ensure that environmental and social considerations are taken into account during the early stages of strategic decision-making by promoters so as to have a real influence on the choice of alternative developments. The EIB requires the application of the precautionary principle⁷⁴ through the mitigation hierarchy in order to promote more sustainable patterns of development in the regions it operates. The assessment of environmental and social impacts and risks, including their significance and materiality, as well as the development of adequate management plans and programmes are key tools for achieving sound environmental and social performance. In this respect, all EIB-financed operations shall comply with national legislation and international conventions and agreements ratified by the host country.
- 3.3.3 In accordance with the Statement, the EIB assumes that for projects in Europe, EU environmental and social legislation has been correctly transposed into national law, and that national law is being enforced by the responsible authorities. The EIB’s due diligence therefore focuses particularly on countries and/or specific laws where there is evidence to suggest these assumptions may be false.

⁷⁰ Directive (EU) 2018/844 of the European Parliament and of the Council of 30 May 2018 amending Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency (available [here](#)).

⁷¹ Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 (available [here](#)).

⁷² Paragraph 19.1(i) of section 16, “Assessing the application for a construction permit” of Government Decree 312/2012 (XI.8, as amended) and Ministerial Decree 13/2021 ([III. 10.](#)).

⁷³ The EIB Statement of Environmental and Social Principles and Standards (2009) is available here: <https://www.eib.org/en/publications/environmental-and-social-principles-and-standards>

⁷⁴ The precautionary principle is detailed in Article 191 of the Treaty on the Functioning of the European Union. It aims at ensuring a higher level of environmental protection through preventative decision-taking in the case of risk. As such, the EIB considers the need for applying the precautionary principle when there is a risk that a project may cause significant and irreversible damage to the environment. In such cases, in line with the precautionary principle and EU law, measures should be taken by the developer to avoid such risk in the first place and if a feasible alternative is not available to reduce that risk to an acceptable degree.

The EIB Environmental and Social Standards

- 3.3.4 The EIB's Environmental and Social Standards⁷⁵ (hereinafter the "Standards") provide an operational translation of the overarching policies, principles and standards put forward in the Statement.
- 3.3.5 The EIB's Environmental and Social Standards⁷⁶ are applicable to the project. Standard 1 (Assessment and Management of Environmental and Social Impacts and Risks), Standard 2 (Pollution Prevention and Abatement), Standard 4 (EIB Climate-related Standards), and Standard 10 (Stakeholder Engagement) were identified as relevant for the present inquiry.

Standard 1

- 3.3.6 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 EIB-financed operation. Standard 1 requires that all projects comply with national legislation and regulations as well as obligations and standards in the relevant international treaties, conventions and multilateral agreements.
- 3.3.7 According to Standard 1, all operations located in the European Union which are likely to have significant effects on the environment, human health and well-being and may interfere with human rights will be subject to an assessment according to the EIA Directive. Furthermore, Standard 1 establishes that, considering the findings of the project environmental and social impact assessment, the promoter will develop an environmental and social management plan (ESMP) to be implemented through an integrated environmental and social management system (ESMS).
- 3.3.8 The EIB defines the environmental and social management plan as a plan which "forms part of the Environmental and Social Assessment and sets out the measures required to maximise the benefits of the project, avoid, minimise, mitigate and offset (in the case of environment) or remedy (in the case of social impacts) any adverse environmental and social impacts, together with budget and cost estimates, sources of funding, and adequate institutional, monitoring reporting and accountability arrangements capable of ensuring proper implementation of, and regular feedback on, compliance with the environmental and social management/action plan"⁷⁷. The environmental and social management plan shall thus document key environmental and social impacts and risks, and the measures to be taken to address them adequately.
- 3.3.9 The environmental and social management plan should also contain "comprehensive and context-specific stakeholder identification and analysis, including identification of individuals and communities actually and potentially impacted by the project, in particular vulnerable individuals or groups, as well as other relevant stakeholders. Description of the precise engagement and consultation activities undertaken with different groups of impacted individuals, communities and other relevant stakeholders as part of the impact assessment process, including details on information sharing, timing and formats of engagement, numbers and types of stakeholders consulted, feedback received and details on how feedback

⁷⁵ The EIB Environmental and Social Standards (2018) are available here: https://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf.

⁷⁶ EIB Environmental and Social Standards (2018). Available [here](#).

⁷⁷ EIB Environmental and Social Standards (2018), p. 2. Available [here](#).

was taken into consideration in the identification and assessment of impacts, design of project alternatives, impact mitigation and monitoring”⁷⁸.

- 3.3.10 The environmental and social management plan will also include provisions for the involvement of impacted individuals, communities and other stakeholders as appropriate, as well as provisions for remedy (through an effective grievance mechanism), and all compensatory and remedial measures will be addressed in the environmental and social management plan⁷⁹.
- 3.3.11 The environmental and social management system will outline the set of management processes and procedures (such as human resources management, environmental management and occupational health and safety management) that allow the promoter to identify, avoid, minimise, mitigate and offset or remedy any environmental and social impacts of the operation⁸⁰. The promoter shall establish procedures to monitor and measure the timely implementation and effectiveness of the environmental and social management plan against the agreed indicators and benchmarks, as well as compliance with any environmental and social provisions included in relevant legal and/or contractual obligations and regulatory requirements⁸¹.
- 3.3.12 Finally, the promoter shall document monitoring results; the results of the monitoring should be used to correct and improve operational performance, and when relevant, disseminated to the stakeholders.

Standard 2

- 3.3.13 The objective of Standard 2 encompasses the avoidance of any deterioration in the quality of human health or the environment, support for the European Union that aims to reduce greenhouse gas emissions and enhance resource efficiency, and the promotion of an integrated approach to prevention and control of emissions into air, water and soil, to waste management, to energy efficiency and to accident prevention for the protection of the environment as a whole and therefore, avoiding the shift of pollution from one environmental medium to another.
- 3.3.14 According to Standard 2, in order to detect possible pollution of air at an earlier stage and, therefore, taking corrective measures avoiding spreading the pollution, the promoter shall put in place processes to ensure that all emissions are monitored on a regular basis. The monitoring requirements of emissions into air, the implementation measures, as well as the appropriate requirements for the regular maintenance and monitoring measures taken will be described in the promoter’s overall environmental and social management plan and will be integrated into the environmental and social management system. The results of the emission monitoring shall be properly communicated and made available by the promoter, thereby ensuring increased transparency of the promoter’s overall management system⁸².
- 3.3.15 Standard 2 requires the promoter to ensure that the project is designed, constructed and operated so as to avoid, prevent or reduce the harmful effects, including nuisance, as a result

⁷⁸ EIB Environmental and Social Standards (2018), p. 13. Available [here](#).

⁷⁹ EIB Environmental and Social Standards (2018), paragraphs 43-44, p. 20. Available [here](#).

⁸⁰ EIB Environmental and Social Standards (2018), paragraph 49, p. 21. Available [here](#).

⁸¹ EIB Environmental and Social Standards (2018), paragraph 58, p. 22. Available [here](#).

⁸² EIB Environmental and Social Standards (2018), paragraph 14, p. 20. Available [here](#).

of exposure to environmental noise by humans. The promoter shall reduce noise emissions using one or a combination of techniques identified and recommended by the available reference documents for best available techniques⁸³.

Standard 4

- 3.3.16 Standard 4 stipulates that the EIB is committed to promoting the adoption of energy efficient solutions in the projects financed and mainstream climate risk considerations generally into the project cycle⁸⁴.
- 3.3.17 Standard 4 requires that greenhouse gas emissions produced as a result of the project are systematically assessed based on proprietary sector-specific methodologies and reported for projects emitting more than 100 kt CO₂eq/yr in absolute terms or leading to an emission variation of more than 20 kt CO₂eq/yr⁸⁵. Furthermore, Standard 4 encourages project promoters to provide information to the EIB on expected absolute and relative greenhouse gas emissions from the project it finances⁸⁶.
- 3.3.18 In this context, it is worth mentioning that the EIB has developed its own “Methodologies for the Assessment of Project GHG Emissions and Emission Variations; Induced GHG Footprint: The carbon footprint of projects financed by the Bank” (hereinafter the “EIB GHG Methodology”). The EIB GHG Methodology applicable at the time⁸⁷ contained a category of projects called “Airport capacity expansion”; however, it stated that “Scope 1 and 2 emissions do not normally meet the thresholds” for this category⁸⁸.

Standard 10

- 3.3.19 Standard 10 deals with stakeholder engagement in EIB-financed projects. As a public organisation, the EIB requires promoters to build and maintain a constructive relationship with relevant stakeholders. As such, the EIB promotes the right to timely access to information, public consultation and stakeholder participation, as well as the right to remedy, including through grievance resolution.
- 3.3.20 Standard 10 outlines that stakeholder engagement is an inclusive and iterative process that involves, in varying degrees, stakeholder analysis and engagement planning, timely disclosure and dissemination of/access to information, public consultations and stakeholder participation, and a mechanism ensuring access to grievance and remedy⁸⁹.
- 3.3.21 Specifically, Standard 10 emphasises the importance of “Establishing and maintaining a constructive dialogue between the promoter, the affected communities and other interested parties throughout the project lifecycle; [...]the EIB expects that promoters uphold an open, transparent and accountable dialogue with all relevant stakeholders at the local level targeted [...]. The views, interests, and concerns of project affected communities and other interested

⁸³ EIB Environmental and Social Standards (2018), paragraphs 16-17, p. 20. Available [here](#).

⁸⁴ EIB Environmental and Social Standards (2018), paragraph 1, p. 35. Available [here](#).

⁸⁵ EIB Environmental and Social Standards (2018), paragraph 2, p. 35. Available [here](#).

⁸⁶ EIB Environmental and Social Standards (2018), paragraph 9, p. 36. Available [here](#).

⁸⁷ EIB Methodologies for the Assessment of Project GHG Emissions and Emission Variations (version 10.1, 2014).

⁸⁸ The EIB Methodologies for the Assessment of Project GHG Emissions and Emission Variations define the scopes of assessments: Scope 1 (direct emissions) for emissions directly occurring from sources that are operated by the project and within the project boundaries, and Scope 2 (indirect emissions) for emissions from the generation of electricity consumed by the project and that, even if produced outside the project boundaries, can be controlled by the project.

⁸⁹ EIB Environmental and Social Standards (2018), paragraph 1, p. 75.

stakeholders are heard, understood, and taken into account throughout the project lifecycle”⁹⁰ (emphasis added).

- 3.3.22 Additionally, the promoter will inform, in a timely manner, those who have participated in the public consultation process of the final decision on the project, the accompanying environmental and social mitigation measures and any associated benefits for the local communities⁹¹. As such, 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 hearings⁹².
- 3.3.23 The promoter will ensure that a public and accessible grievance mechanism is introduced at project level, irrespective of other complementary linkages or access to existing public grievance channels in the country concerned. It is expected that such a mechanism is introduced by the promoter at the very outset of project design⁹³.
- 3.3.24 It is further recommended that the promoter, as part of its monitoring activities, maintains regular contact and consults with the relevant civil society organisations/community based organisations and other relevant locally based organisations (national human rights institutions, universities and research centres, international agencies, etc.)⁹⁴.

The EIB Group Transparency Policy

- 3.3.25 The EIB Group Transparency Policy states that “if applicable, the project summary includes a link to the EIB Public Register which hosts the Non-Technical Summary (NTS) of an EIA [...]”⁹⁵.

3.4 Role of the EIB

- 3.4.1 The EIB’s Environmental and Social Handbook (hereinafter the “Handbook”)⁹⁶ explains how the EIB conducts its work on environmental and social matters throughout the project cycle and specifies documentation/information required from the promoter for the purpose of the EIB’s due diligence. Whether the project meets the project applicable standards is established as part of the EIB’s project appraisal and monitoring.

Project appraisal

- 3.4.2 The appraisal takes place prior to the approval of the operation by the EIB governing bodies and the signature of the finance contract⁹⁷. Among other things, it aims to assess (i) the project’s compliance with the applicable standards and (ii) the project’s impact⁹⁸. The Handbook also details the assessment procedure⁹⁹. During appraisal, the EIB identifies the main environmental legal and regulatory framework relating to the project and any legal

⁹⁰ EIB Environmental and Social Standards (2018), paragraph 1, p. 75.

⁹¹ EIB Environmental and Social Standards (2018), paragraph 38, p. 80.

⁹² EIB Environmental and Social Standards (2018), paragraph 53.

⁹³ EIB Environmental and Social Standards (2018), paragraphs 46-47, p.81.

⁹⁴ EIB Environmental and Social Standards (2018), Standard 10, paragraph 23.

⁹⁵ EIB Group Transparency Policy (2015), paragraph 4.9.

⁹⁶ EIB Environmental and Social Handbook (2013).

⁹⁷ <https://www.eib.org/en/projects/cycle/index.htm> (accessed 11 November 2019).

⁹⁸ Section 90, indent 2, EIB Environmental and Social Handbook (2013).

⁹⁹ Section 12 of the Background and Section 17 of the EIB Statement of Environmental and Social Principles and Standards (available [here](#)).

issues¹⁰⁰. The EIB needs to take into account residual impacts, i.e. those adverse environmental impacts caused by the operation that will remain after mitigation and impact management measures have been applied (e.g. air emissions)¹⁰¹. This information is taken into account when judging the overall acceptability of the project¹⁰².

- 3.4.3 Based on the information gathered during the screening phase, the EIB needs to further appraise and record the social issues relevant to the project/operation. At minimum, the EIB shall appraise the core issues set out in the five Social Standards (i.e. Standards 6 to 10). Depending on the context and type of project/operation, the EIB may also need to assess other relevant issues necessary for carrying out a comprehensive social appraisal.
- 3.4.4 The appraisal may result in conditions to ensure the environmental and social acceptability of the project during implementation and operation. These include, among others: (i) conditions for disbursement, and (ii) particular undertakings. Once approved by the EIB governing bodies, the conditions for disbursement and the particular undertakings are included in the finance contract¹⁰³ and the promoter must complete them to the satisfaction of the EIB¹⁰⁴.
- 3.4.5 When adverse environmental and social impacts and risks are anticipated, the environmental and social management plan for mitigating and managing the environmental and social impacts shall be referred to by the finance contract¹⁰⁵.

Project monitoring

- 3.4.6 The Statement stipulates that the EIB monitors the environmental and social performance of the projects it finances, especially the fulfilment of any specific obligations described in the finance contract¹⁰⁶. The monitoring aims to ensure that the project complies with the EIB's approval conditions¹⁰⁷. The extent of physical monitoring depends on the characteristics of the project, the capacity of the promoter and the country context. The EIB monitors projects on the basis of reports provided by the promoter, as well as EIB visits, information provided by the local community, etc.¹⁰⁸. Close follow-up of environmental and social actions that are required as part of the finance contract (in particular those related to disbursement conditions) is essential¹⁰⁹.
- 3.4.7 On top of the general requirements, environmental and social requirements include evidence of the fulfilment of appropriate environmental and social legislation, the respect of contract conditions and undertakings related to the environment and social matters, if any, and the implementation of agreed mitigation and compensation measures, if any¹¹⁰.

¹⁰⁰ EIB Environmental and Social Handbook (2013), paragraph 90, indent 2.

¹⁰¹ EIB Environmental and Social Handbook (2013), paragraphs 221 and 222.

¹⁰² EIB Environmental and Social Handbook (2013), paragraphs 223 and 232.

¹⁰³ EIB Statement of Environmental and Social Principles and Standards (2009), paragraph 7.

¹⁰⁴ EIB Environmental and Social Handbook (2013), paragraphs 255 and 256, indent 2.

¹⁰⁵ EIB Environmental and Social Handbook (2013), paragraph 261, p. 147.

¹⁰⁶ EIB Statement of Environmental and Social Principles and Standards (2009), paragraph 8.

¹⁰⁷ EIB Environmental and Social Handbook (2013), paragraph 270.

¹⁰⁸ EIB Statement of Environmental and Social Principles and Standards (2009), paragraph 8.

¹⁰⁹ EIB Environmental and Social Handbook (2013), paragraph 272.

¹¹⁰ EIB Environmental and Social Handbook (2013), paragraph 271, p. 148.

- 3.4.8 Where required, the EIB operational services can seek the support of additional in-house experts to review environmental or social impact studies or other specific documentation submitted by the promoter¹¹¹.
- 3.4.9 If a project includes the implementation of mitigation measures, it should not be considered complete until these measures are implemented, even if the remainder of the project is complete. The EIB's monitoring should continue until all mitigation and compensation measures, as detailed in the environmental and social management plan, are implemented. For instance, it may continue after the borrowers/promoters provide the project completion report¹¹².

Other relevant EIB policies

- 3.4.10 The 2011 EIB Transport Lending Policy¹¹³ establishes that the EIB will finance airports that are part of the trans-European transport network and/or located in less developed regions¹¹⁴.
- 3.4.11 The EIB Climate Strategy - Mobilising finance for the transition to a low-carbon and climate-resilient economy¹¹⁵ notes that the Transport Lending Policy only screens in airport projects if they have high socioeconomic returns through criteria based on the full economic assessment of each investment.
- 3.4.12 With regard to externalities, the EIB's Economic Appraisal of Investment Projects states that "Air transport is associated to four main external costs, including emissions of GHG, air pollution through the emission of particles, noise emissions, and relocations necessary to make room for infrastructure. [...] Emissions by airlines operating from an airport cannot be attributed to the airport or to air traffic control. [...] Only aircraft emissions that are attributed to air traffic generated by the project, that is, traffic that would not have travelled at all in the absence of the project, can be attributed as costs of the airport (or air traffic control) project." Also, the greenhouse gas emissions included in the EU Emissions Trading Scheme are not accounted for as part of the external costs¹¹⁶.

4. EIB PROJECT CYCLE

4.1 Project appraisal and approval

- 4.1.1 The EIB appraisal of the project was completed in August 2018. The project appraised by the EIB comprised a number of investments at Budapest Airport, aimed at alleviating current congestion, accommodating future growth in passenger and cargo traffic and bringing airport safety and security up to the latest standards. Works included the construction of the new pier in Terminal 2 and a new Terminal 3, the construction of a new Cargo City, the renewal of the airfield ground lighting and a range of other landside and airside enhancements, as well as the upgrade of the baggage handling system.

¹¹¹ EIB Environmental and Social Handbook (2013), paragraph 272, p. 149.

¹¹² EIB Environmental and Social Handbook (2013), paragraph 275, p. 149.

¹¹³ [EIB Transport Lending Policy](#) (2011).

¹¹⁴ Section 4 "Guiding principles and selection criteria" and Section 101 of the [EIB Transport Lending Policy](#) (2011).

¹¹⁵ Section 26 of the EIB Climate Strategy - Mobilising finance for the transition to a low-carbon and climate-resilient economy (2014).

¹¹⁶ The Economic Appraisal of Investment Projects at the EIB, March 2013 (under review).

- 4.1.2 The EIB appraisal highlighted that Budapest Airport is the main international gateway for Hungary and serves Hungary and the border regions of Croatia, Romania, Serbia, Slovakia and Slovenia. It is part of the core network of trans-European transport network airports. These projects are of common interest to several Member States and fully in line with the objectives of the EIB set down in the Treaty of Lisbon. As such, the project is expected to expand the capacity of the airport from the current 15 million to 21 million passengers per year.
- 4.1.3 When consulting the European Commission during the appraisal, the EIB presented the project as falling under Annex II, i.e. subject to screening determination.
- 4.1.4 The EIB appraisal stated that:
- Budapest Airport was operating under a renewable ten-year operating licence, which had been awarded in 2015 and was valid until 2025 (see chapter 2.2 of this report).
 - A full environmental impact assessment was required and a full EIA study including a non-technical summary was available, consultations with authorities had been carried out and the public had been consulted and informed. It was noted that the competent authorities had issued an environmental operating permit granting full development consent, which allows the promoter to operate the airport and to develop its infrastructure so that it can continue running its business while accommodating (additional) passenger demand.
 - EU and national environmental legislation, including EIA legislation, had been complied with for all project components. The future Terminal 3 was identified as a component for which relevant clearance will be needed prior to the commencement of works. No significant environmental or social risks and mitigants were identified as part of the EIB appraisal.
 - The economic appraisal of the project incorporated greenhouse gas emissions (for normal and diverted traffic and generated traffic). The EIB appraisal indicated a positive impact during the project financing phase.
 - As part of the appraisal, the EIB competent services established the following:
 - As a condition for disbursement of the amounts relating to work items, the EIB should receive proof of a “positive decision” from the competent authority for Terminal 3.
 - As undertakings,
 - (i) an adequate environmental and social management plan(s) (ESMP) shall be implemented and monitored by an independent and certified body acceptable by the Bank during the construction of the project and (ii) any unexpected environmental impacts or incidents during the works shall be notified to the Bank;
 - as soon as a scheme design and detailed budget for Terminal 3 is available, it should be submitted to the Bank’s services for functional assessment.
- 4.1.5 The Environmental and Social Data Sheet was prepared as part of the project appraisal. While using terms such as “operating licence” and “environmental operating permit” interchangeably, it noted the following:

- There was no requirement for an environmental impact assessment as “pre-existing consent” was in place.
- The operating licence did not require the airport operator to submit an environmental application for each project component. Most of the project components did not require a screening decision from the competent authority as their construction was approved in advance.
- While presenting the status of the environmental screening decisions for the key project components, it noted that exemptions from the EIA screening or clearance was granted for the reconstruction of runway 13R-31L and the new Pier B in Terminal 2. For apron and taxiway works no permits were required. The multi-storey car park had a valid construction permit, while for Terminal 3, the promoter would seek the relevant clearance prior to the start of works. As such, all components except Terminal 3 were exempt from EIA screening as they fell under the environmental operating licence.
- Public consultation and stakeholder engagement were deemed to be ongoing in accordance with EU and Hungarian law, where relevant.
- The EIB did not perform a carbon footprint exercise for the project, as it was not required at the time of the appraisal¹¹⁷. The EIB appraisal indicated that expected absolute emissions and expected relative emissions (both expressed in kt CO₂e) were <100 and <20, respectively.
- Budapest Airport had committed to implement and continuously improve the energy and carbon management system in order to achieve energy and greenhouse gas reductions. Therefore, the airport had established a dedicated Carbon and Energy Management Policy in 2010 and revised it in 2017.
- Budapest Airport was at the forefront of decarbonisation and efficient energy usage. Pier B in Terminal 2 was expected to be fully compliant with nearly zero-energy building (NZEB) standards. By applying the EU Energy Performance of Buildings Directive, Budapest Airport was implementing NZEB standards well ahead of the required schedule. At the same time, the Environmental and Social Data Sheet states that “at the time of its publication no simulation of energy characteristics and behaviour [of buildings] had been undertaken and so the respective licence had not yet been issued.”
- In line with its Energy and Carbon Policy, Budapest Airport decided to participate in the Airport Carbon Accreditation (ACA) programme with the goal of accomplishing all four ACA levels. In 2018 it achieved ACA Level 3+ with the highest possible level of neutrality in the scheme.

4.1.6 On 9 October 2018, the EIB’s Board of Directors approved the project financing decision with conditions and undertakings mirroring those established during the project appraisal.

¹¹⁷ Environmental and Social Data Sheet (2018): Only projects that meet the scope of the Pilot Exercise, as defined in the EIB draft Carbon Footprint Methodologies, are included, provided estimated emissions exceed the methodology thresholds: above 100 000 tonnes CO₂e/year absolute (gross) or 20 000 tonnes CO₂e/year relative (net) – both increases and savings.

- 4.1.7 Project-related documents entitled “Environmental and Social Impact Assessment (ESIA)”¹¹⁸ were published on the EIB website:
- “Noise and Environmental Protection (English and Hungarian, 2017)”¹¹⁹, which is an extract from the promoter’s operating procedures;
 - “Energy and Carbon Management Policy (English and Hungarian, 2014)”¹²⁰, the promoter’s statement on environmental standards with reference to an energy management system in line with the ISO 50001 standard.

4.2 Finance contract

- 4.2.1 The project’s finance contract was signed in December 2018.
- 4.2.2 Conditions and undertakings in the finance contract mirror those approved by the EIB Board¹²¹. Accordingly, the finance contract establishes the following reporting requirements:
- The borrower should regularly provide the EIB with an update on the receipt of all outstanding environmental permits and a description of any major issue with an impact on the environment.
 - At project completion, the borrower should provide the EIB with a description of any major issue with an impact on the environment or social impacts.
- 4.2.3 Furthermore, the finance contract requires the promoter to “(i) implement and operate the project in compliance with environmental law, (ii) obtain and maintain requisite environmental approvals for the project and (iii) comply with any such environmental approvals.”

5. METHODOLOGY OF THE INQUIRY

- 5.1 Following the admissibility of the complaint and in line with Article 2.2 of the EIB-CM Procedures, the EIB-CM carried out an initial assessment. The objective of the assessment was to clarify the concerns raised by the complainant and to determine if further work was necessary to address the issues raised by the complainant¹²².
- 5.2 During the EIB-CM’s initial assessment of the case, the EIB services informed the EIB-CM that the current environmental authority responsible for environmental permits within development consent procedures for Terminal 3 was the Department of Environmental Protection, Nature Conservation, and Mining Inspectorate of PMK¹²³.

¹¹⁸ The document is available [here](#).

¹¹⁹ Version 9 dated 1 May 2017 is available [here](#).

¹²⁰ The document is available [here](#).

¹²¹ EIB Environmental and Social Handbook (Volume II, 2013).

¹²² <https://www.eib.org/en/about/accountability/complaints/cases/budapest-airport-concession-sg-e-2020-03>.

¹²³ The legal successor of the Central Danube Valley Environmental Protection and Nature Conservation Inspectorate. The Initial Assessment report is available [here](#).

5.3 Over the course of the initial assessment, it became apparent that certain claims made by the complainant required further inquiry. Therefore, the EIB-CM decided to carry out a compliance review with regard to the following allegations:

- i.* Failure to assess and mitigate the climate impact of the project through an EIA and alleged non-compliance with the EIB's climate-related standards;
- ii.* Failure to assess the impact of the 50% increase in air traffic and land transport on air pollution;
- iii.* Failure to assess and mitigate noise pollution and negative social impacts on project-affected people;
- iv.* Lack of public consultations on the project and failure to involve local stakeholders from civil society; and
- v.* Inadequate information on the social and environmental impacts of the project and its approval procedures in the ESDS and related information on the EIB's website.

5.4 With regard to allegations which were manifestly ungrounded or beyond the EIB-CM's mandate in accordance with its policy¹²⁴, the EIB-CM communicated the outcome of the inquiry in its Initial Assessment Report.

5.5 The compliance review assessed the allegations in the context of potential maladministration, including whether the EIB complied with the applicable regulatory framework (chapter 3 of this report). The review assessed the project documentation and the due diligence carried out by the Bank in the areas related to the complainant's concerns.

5.6 As part of the inquiry, the EIB-CM reviewed all documents submitted by the promoter to the EIB, and analysed relevant European and national legislation. In order to form its reasoned conclusions, the EIB-CM deemed it necessary to request additional documents from the EIB services concerned, including:

- ESMP, ESMS and relevant management plans;
- Minutes of meetings with the affected public as well as proof of meaningful stakeholder engagement;
- Information on and status of advancement of the new NPZ of Budapest Airport;
- Proof of mitigation measures including compensation for noise-related negative effects;
- Environmental and development consents for the project components, as proposed for financing; and
- Updated certificates and promoter's policies that were taken into consideration during the EIB's appraisal of the project, where available.

5.7 During the inquiry, the EIB-CM also liaised with the European Commission's Directorate-General for Environment to ascertain whether there were ongoing infringement proceedings vis-à-vis Hungary with regard to the EIA, the Noise Directive and the Energy Performance of Buildings Directive. In this context, the EIB-CM was informed of the following:

¹²⁴ Section 4.3 of the EIB-CM Policy ([link](#)).

- In 2017, the European Commission had issued a reasoned opinion regarding a lack of noise maps and actions plans in Hungary¹²⁵.
- In 2019, the Commission had opened an infringement case against Hungary (INF-19-4251) on the non-conformity of Hungarian legislation with the EIA Directive (as amended)¹²⁶. The Commission noted that Hungary had established general exemptions from conducting EIA instead of limiting the exemptions to exceptional cases and had incorrectly enacted the definition of development consent.
- In 2020, the Commission sent a formal notice to Hungary (INF-20/2142) on the non-conformity of Hungarian legislation with the Energy Performance of Buildings Directive and its amending Directive.

6. FINDINGS AND CONCLUSIONS

6.1 Alleged failure to assess and mitigate the climate impact of the project through an EIA and alleged non-compliance with the EIB's climate-related standards

- 6.1.1 The EIB-CM investigated how the requirements of the EIA Directive were applied to the project. The EIB-CM's inquiry revealed that while the EIB had initially considered the project to be subject to at least screening determination (see paragraph 4.1.3), based on the review of the 2015 EOL and the construction permits, the EIB concluded that all the required permits had been obtained by the promoter (see paragraph 4.1.4).
- 6.1.2 The case-law of the CJEU established that modifications of airports with a runway longer than 2 100 m¹²⁷ or even with a shorter runway¹²⁸ must be subject to an environmental impact assessment procedure: screening determination and/or EIA (see paragraph 3.2.3).
- 6.1.3 The EIB has no evidence that an EIA or any screening determination was conducted for the project in question. The EOL is not part of the development consent procedure(s) as per the EIA Directive (see paragraph 3.2.4); it is issued outside the procedure for development consent and is not connected to any concrete works (a new construction or a significant change). While the promoter provided the EIB with construction permits (development consent), no environmental permits — which would have been obtained if the requirements of the EIA Directive had been applied — were provided to the EIB.
- 6.1.4 The project development started in 2016 (first relevant construction permit issued, see Annex 1), but most development consents were granted after May 2017 without an EIA or screening determinations. In this regard, it is worth highlighting that as of 2017, the amended EIA Directive (2014) also required an assessment of the project's vulnerability to and impacts on climate change. The EIB-CM did not find any evidence that the climate impacts of the project or its elements have been assessed in accordance with the EIA Directive, as amended.
- 6.1.5 It is not for the EIB-CM to establish if the project must be subject to a full EIA procedure or a screening determination; however, the EIB-CM notes that the minimum requirement (i.e. a screening determination for the project in question), as communicated to the European Commission and identified in the present inquiry, was not provided to the EIB. As a result, the

¹²⁵ The memo on the European Commission's reasoned opinion can be found [here](#).

¹²⁶ The link to the list of infringements is available [here](#).

¹²⁷ CJEU Case C-2/07 *Paul Abraham and Others v Région wallonne and Others* (available [here](#)).

¹²⁸ CJEU case C-435/97 *World Wildlife Fund (WWF) and Others v Autonome Provinz Bozen and Others* is available [here](#).

EIB has no evidence or justification for climate change impacts, if any, for the project components which received development consent after 2017.

- 6.1.6 The EOL shows that the competent environmental authority was partially made aware of the long-term plans for the airport (e.g. Cargo City and multi-storey car park, but not Terminal 3, which was planned after the EOL was approved). However, the 2013 study for the EOL refers to the climate change impacts at the time of its issuance, but does not provide information on or assess the impacts of future traffic growth on GHG or air pollution.
- 6.1.7 The EIB appraisal was completed in August 2018. Therefore, the EIB GHG Methodology applied to the project (see paragraph 3.3.18) did not require a GHG calculation for the sector or type of project in question. Consequently, GHG emissions have not been reported in the appraisal as “climate action” indicators (see paragraph 4.1.4). The project’s rate of return calculated as part of the EIB appraisal includes “the effects of including aviation on the Emissions Trading Scheme” (see paragraph 3.4.12).
- 6.1.8 Although the ESDS states that the promoter was implementing NZEB standards well ahead of the required schedule (e.g. NZEB, see paragraph 4.1.5), during the inquiry the EIB-CM was informed by the promoter that it was yet to comply with NZEB standards. However, the EIB-CM’s inquiry (see paragraph 3.2.23) shows that — with regard to project components for which construction is already complete — promoters are required by the applicable regulatory framework to comply with NZEB standards.

Conclusions

- 6.1.9 Based on its findings, the EIB-CM concludes that the EIB did take into consideration the project impacts on climate when performing its economic appraisal. The EIB also correctly applied the EIB GHG Methodology, as applicable at the time of the appraisal.
- 6.1.10 However, the EIB-CM did not find any evidence that at least a screening determination was carried out for any of the project components for which construction had already started (e.g. Cargo City). The promoter informed the EIB-CM that the construction permits already issued do not need individual exemptions due to a “block exemption” or “pre-existing consent.” The EIB-CM did not receive documentary evidence supporting this statement. Furthermore, the available documents (2015 EOL, construction permits) do not take into account the climate-related and cumulative impacts of the EIB-financed project, considerations which are required under EIA/screening determination in line with EU law (see paragraph 3.2.5).
- 6.1.11 On the other hand, the EIB introduced a condition for disbursement in the form of a “positive approval for T3” (see paragraph 4.1.4). The understanding of the EIB services and of the borrower was that the above condition will lead to at least a screening determination, as required by the EIA Directive.
- 6.1.12 The EIB-CM notes that during its pre-appraisal, the EIB informed the European Commission that the project required a screening determination (see paragraph 4.1.3). Furthermore, during its appraisal the EIB noted that a full EIA was required and that a full EIA study and an environmental operational permit enabling the promoter to operate the airport and to develop its infrastructure to accommodate (additional) passenger demand (see paragraph 4.1.4) were available. Finally, in the ESDS, the EIB stated that there was no requirement for an EIA due to “pre-existing consents” and that most project components did not require a screening determination as their construction was allowed in advance (see paragraph 4.1.5).

- 6.1.13 Based on the above, the EIB-CM concludes that the promoter did not provide the EIB with evidence of compliance of the project components requiring a screening determination under the EIA Directive. As such, it is not clear on which basis the EIB services considered the project components (e.g. those enabling increased capacity such as Pier 2B and Cargo City) as compliant with EIB standards. Consequently, it appears that the allegation is grounded insofar as the climate impact of the relevant project components was not assessed in line with EIB Standard 1.
- 6.1.14 Furthermore, the EIB-CM finds that — for project components for which construction is already complete — the promoter did not provide evidence of the project’s compliance with NZEB standards. In this context and considering the information provided in paragraph 5.7 of this report, it is not clear on which basis the ESDS contains statements about the promoter’s implementation of NZEB standards, as no energy certificates for the completed buildings have been provided to the EIB.

6.2 Alleged failure to assess the impact of the 50% increase in air traffic and land transport on air pollution

- 6.2.1 The EIB appraisal acknowledged that the promoter plans to increase the airport’s capacity “accommodating future traffic growth”¹²⁹ (see chapter 2.1 above). The Budapest Airport master plan and the 2013 study for the EOL stated that the increase in passenger traffic will be more than twofold by 2032 (from 2012 levels, see paragraph 2.1.3). The 2013 study for the EOL stated that the expected capacity in 2022 will be around 13 million passengers. It indicated that traffic served by the airport in 2012 was 8.2 million passengers, 75 000 aircraft movements (ATM) with a chart presenting the planned traffic grow until 2032 (with 111 800 ATM in 2020 and 157 000 ATM in 2032). The air cargo volumes in 2012 were reported at 91 000 t/y with plans to reach 251 000 t/y by 2032 (see also paragraph 6.1.11). It is worth noting that between 2013 (the year of the EOL study) and 2019, traffic grew by 46.5% (from 83 830 to 122 814 movements)¹³⁰.
- 6.2.2 The 2013 study for the EOL stated that in 2013 two monitoring stations located in the territory of the airport did not report that emission limits were exceeded. However, the 2013 study did not present data on daily emissions. As such, in line with environmental law (see paragraph 3.2.11) and the case-law of the CJEU (see paragraph 5.7), it appears that the air quality assessment was incomplete.
- 6.2.3 The 2013 study for the EOL describes the air pollution modelling results for NO_x, CO, O₃, PM₁₀ and SO_x, which includes pollution sources from inside the airport and from adjacent areas (road traffic). The 2013 study for the EOL presents the existing measures to manage air emissions from airport ground services and also refers to the national law on the release of kerosene into the air in emergency situations¹³¹. The 2013 study for the EOL does not provide information on (or assess) the impacts of traffic growth on the above-mentioned pollutants, including in the areas surrounding the airport.
- 6.2.4 The 2013 study for the EOL modelled the concentrations of key air pollutants inside the airport territory. According to the 2013 study for the EOL PM₁₀ pollution was the most critical around the car park; however, it does not present the air pollution situation in the Budapest

¹²⁹ The ESDS is available here: <https://www.eib.org/attachments/registers/85454133.pdf>

¹³⁰ Official Budapest airport traffic movement figures can be found here: [bud_traffic_report_annual.pdf](#)

¹³¹ Decree 16/2000. (XI. 22.) on air traffic management rules issued by the Ministry of Transport (KöViM) is available [here](#). KöViM has been replaced by Nemzeti Közlekedési Hatóság (NKH) — the National Transport Authority.

agglomeration, which — from the information provided in paragraph 3.2.12 — appears to be serious for a number of years, at least in terms of PM10 pollution. The 2013 study for the EOL identified some measures to reduce air pollution in the airport territory, mostly aimed at the airport ground transport¹³². It also noted rail access plans for Budapest Airport as an alternative to road traffic. However, it does not take into consideration the impact on air quality resulting from the increase in road traffic caused by the development of the multi-storey car park.

- 6.2.5 In line with the findings reported in chapter 6.1 above, the EOL does not constitute development consent to authorise the project in line with the EIA Directive. The promoter did not provide any screening determination(s) in relation to any component of the project or the project as whole. The promoter states that no environmental permit was required and that the environmental authority assessed the environmental impacts of the project “on the basis of a full-scale environmental part” of the permit applications¹³³. Therefore, it appears that the full scope of the project’s cumulative air pollution impacts on the territory of the airport as well as on its area of influence was not assessed in line with the applicable regulatory framework.
- 6.2.6 In this regard, it is worth emphasising that the case-law of the CJEU indicates that works to modify the infrastructure of an existing airport, without an extension of the runway, may be regarded, in particular because of their nature, extent and characteristics, as a modification of the airport itself and are as such subject to a screening¹³⁴.

Conclusions

- 6.2.7 The project, consisting of an airport development leading to the modification of infrastructure (without changes to runways(s)) and the extension of airport capacity, was not assessed within an EIA procedure¹³⁵ (see paragraph 3.2.7). The project and its components are expected to lead to an increase in air traffic and land transport around the airport and may result in significant air pollution. In line with the case-law of the CJEU, it appears that the project should have been subject to screening determination(s), as identified by the EIB at the initial stage of its appraisal (see paragraph 4.1.3).
- 6.2.8 It is for the national environmental authority to establish what the impacts are, including on air quality, of a planned activity falling under Annex II of the EIA Directive, by taking into account the criteria established in Annex III of the EIA Directive (see paragraphs 3.2.2 and 3.2.3).
- 6.2.9 Furthermore, in line with EU law and the case-law of the CJEU (see paragraph 3.2.6), the assessment of impacts shall take into account the cumulative impact of modifications made to the airport’s infrastructure to accommodate an increase in its activity.
- 6.2.10 The promoter is responsible for ensuring that the project complies with EU and national environmental requirements (see paragraphs 3.3.1 and 3.3.6). However, the EIB must ensure

¹³² During the inquiry, the EIB services informed the EIB-CM that Budapest Airport had put forward a comprehensive set of measures to decrease air pollution, including from airlines, ground handlers and the airport, and that this information is publicly available on the airport’s website.

¹³³ For projects which do not require an EIA/screening determination, the applicants for development consent (e.g. construction permit) prepare an “environmental part.”

¹³⁴ Case C-2/07 *Paul Abraham and Others v Région wallonne and Others*, paragraph 46 (available [here](#)).

¹³⁵ The project is an airport development without a runway extension; therefore, it falls under Annex II of the EIA Directive.

that the project it finances complies with EU and national law as well as with EIB standards, including Standard 1. The EIB-CM's inquiry established that the EIB services do not have sufficient evidence that the project impacts on air pollution have been assessed in line with the applicable regulatory framework (see paragraphs 3.2.8 and 3.2.12) and that the project complies with EIB standards. Therefore, the EIB-CM finds that this allegation is grounded.

6.3 Alleged failure to assess and mitigate noise pollution and negative social impacts on project-affected people

- 6.3.1 The project required an ESMP through an undertaking in the finance contract (see paragraphs 4.1.4 and 4.2.2).
- 6.3.2 As per Standard 1 (see paragraph 3.3.8), an ESMP sets out the measures required to avoid, minimise, mitigate and offset (in the case of environment) or remedy (in the case of social impacts) any adverse environmental and social impacts. It should also contain arrangements for grievance mechanisms.
- 6.3.3 Standard 1 also requires, in order to implement the ESMP, an integrated environmental and social management system (see paragraph 3.3.11). This tool is needed to implement and monitor the ESMP practically.
- 6.3.4 According to the Handbook, the EIB has the duty to undertake the necessary monitoring missions to review the project against the ESMPs/environmental and social action plans and the established indicators and will verify the project's compliance with the environmental and social conditions in the finance contract¹³⁶.
- 6.3.5 The EIB-CM reviewed the existing ESMP and found no mention of social aspects for local communities; only the occupational health and safety of the airport's own employees was considered. This is due to the fact that the ESMP is the result of the 2013 study for the EOL, which did not contain any chapter on social aspects or noise pollution. As such, the ESMP does not identify any mitigation or monitoring measures pertaining to project-related noise pollution on inhabitants in the vicinity of the airport.
- 6.3.6 During its inquiry, the EIB-CM asked the promoter for the ESMS, also known as the Project Management Handbook in this project. The promoter explained that the Project Management Handbook was undergoing an update and as such could not be shared. The EIB-CM then requested to have access to the older version of the ESMS, which the promoter provided, but which falls short of the description of an ESMS (which should include responsibilities, tasks, and mitigation and monitoring measures as defined in Standard 1), as it does not contain any monitoring or mitigation measures.
- 6.3.7 Another element of the allegation is the contested NPZ, a tool aimed at assessing, mitigating and protecting inhabitants in the vicinity of the airport from noise pollution. The current NPZ surrounding the airport is has been in place since 2011, and is based on traffic data from 2008-2011. Various local authorities have contested it in national court; it was upheld in 2014, re-opposed and finally upheld definitively in 2016.
- 6.3.8 The EIB-CM analysed the decision establishing the current NPZ in light of the EIB appraisal, which estimated the ultimate capacity of the existing site at approximately 60 mppa — more than four times the current passenger demand given the unconstrained airside layout — with

¹³⁶ EIB Environmental and Social Handbook (Volume II, 2013), p. 98.

two widely spaced parallel runways allowing for simultaneous independent operations and a large midfield area, which can accommodate significant apron and terminal expansions. This should be read in conjunction with the provisions established in the NPZ decision, which state that in the event of significant changes, the promoter should reapply for a new licence. The EIB-CM notes that since 2012 there have been significant changes leading to more noise pollution, and in light of the promoter's development plans, further noise pollution is expected to materialise.

Conclusions

6.3.9 Although the ESMP required by the finance contract formally exists, it does not fulfil the quality required by EIB Standard 1. Moreover, the mitigation and monitoring measures related to noise pollution and negative social impacts have not been incorporated in the ESMP as required by Standard 1. Based on the above, the EIB-CM finds the allegation grounded.

6.4 Alleged lack of public consultation on the project and failure to involve local stakeholders from civil society

6.4.1 Standard 10 (see paragraphs 3.3.19 to 3.3.24) sets the framework for an interactive stakeholder engagement process throughout a project's lifecycle. This engagement should result in regular communication with stakeholders and the implementation of an adequate grievance mechanism with appropriate remedies and compensation.

6.4.2 EIB staff are required, when reviewing the public consultation process carried out for the project/operation, to verify that¹³⁷:

- Engagement with the stakeholders and relevant authorities has begun early in the process;
- Timeframes for consultation are proportionate and realistic, giving stakeholders sufficient time to provide a considered response;
- The time required for public consultation is commensurate to the nature and impact of the project/operation (e.g. the diversity of interested parties or the complexity of the issues);
- Sufficient information has been made available to stakeholders to enable them to make informed comments. Relevant documentation should be easily accessible.

6.4.3 Additionally, pursuant to Article 2 of the Public Participation Directive (see chapter 3.2 of this report), the public is to be informed timely and efficiently, prior to final decision-making, and should be given sufficient time to engage and raise concerns, which should be taken into account in decision-making.

6.4.4 The EIB-CM reviewed the available documents concerning stakeholder consultations and requested additional documents such as minutes of meetings and lists of attendees.

6.4.5 The EIB-CM notes that only two semi-public consultations have taken place up to 29 July 2021. These were conducted long after plans and decisions had been approved; one consultation took place in 2018, the other one in 2019. Since then, there has been no engagement with the

¹³⁷ EIB Environmental and Social Handbook (Volume II, 2013).

affected public and none of their suggestions or concerns have been “taken into account during decision-making” or been “heard” as far as the EIB-CM is aware.

- 6.4.6 Additionally, the lists of attendees for the two consultations were limited and cannot be considered as representing “affected communities and interested parties.” Only a few local residents were present, two district mayors, a government representative and an airport official. The EIB-CM did not obtain evidence of how these sessions were advertised in due time and followed up afterwards.
- 6.4.7 As such, the public was not informed in line with the process identified in paragraph 6.4.3 of this report considering the substantial modification (increase) in traffic and noise pollution. Most importantly, the consultations happened after the licence was granted and the go-ahead for expansion given, which defeats the purpose of consultations and the spirit of the Public Participation Directive and EIB Standard 10.
- 6.4.8 Moreover, from the documents reviewed by the EIB-CM, it appears that there is no adequate project-level grievance mechanism or ESMS, which would have ensured the development and implementation of social mitigation measures. In the absence of these crucial tools, and taking into consideration EIB Standard 10, public consultations and subsequent stakeholder engagement are insufficient.
- 6.4.9 Lastly, the Public Participation Directive stipulates that Member States shall identify the public entitled to participate, which includes relevant non-governmental organisations meeting any requirements imposed under national law, such as those promoting environmental protection¹³⁸.
- 6.4.10 In 2005, Budapest Airport, as required by Decree 18/1997 (see paragraph 3.2.18) established a Regional Noise Protection Committee (hereinafter the “noise committee”). The aim of the noise committee is to provide a platform for exchanging information on noise-related matters associated with the operation of the airport, as well as to formulate recommendations on noise protection regarding the air traffic at Budapest Airport.
- 6.4.11 The noise committee is composed of one representative from each of the following:
- the airport operator;
 - the organisation operating the aviation service;
 - the environmental authority in charge;
 - the public health authority; and
 - the aviation authority.
- 6.4.12 Decree 18/1997 states that a “single representative of civil societies dealing with environmental matters and operating in neighbouring settlements” is entitled to sit on the committee. However, this is not a requirement. Decree 18/1997 allows the minister in charge, at their discretion, to invite potential candidate civil society organisations or to choose to directly appoint a representative.

¹³⁸ Directive 2003/35/EC, Article 2(3).

- 6.4.13 Civil society is not currently represented on the committee; instead, an independent transport scientist was appointed by the minister to fulfil that role.
- 6.4.14 Most importantly, noise committee meetings are confidential. Decree 18/1997 stipulates that meetings “shall not be public” and that “members may not pass on data or information related to the operation or development of the airport which has become known to them during the activities of the noise committee.” This implies that keeping the affected public informed and engaged, as required by EIB Standard 10 which calls for inclusive and continuous stakeholder engagement, is not allowed. As such, it appears that residents and civil society are not in a position to voice their concerns or work towards solutions through the channels offered in Decree 18/1997.
- 6.4.15 The noise committee has not met since late 2019.
- 6.4.16 The EIB-CM notes (i) the limited scope of public consultations in the past, (ii) the absence of civil society members in the noise committee, (iii) the clause on the confidentiality of noise committee meetings, and (iv) the fact that the noise committee has not met since late 2019, even though growth operations have continued.

Conclusions

- 6.4.17 During its inquiry, the EIB-CM found no evidence that public participation and stakeholder engagement were adequately implemented in the project. In this regard, it is questionable whether the findings in paragraph 6.4.16 can be considered as inclusive stakeholder engagement covering all affected persons as intended by EIB Standard 10 and applicable EU law. As a result, the EIB-CM finds the allegation to be grounded.

6.5 Allegedly inadequate information on the social and environmental impacts of the project and its approval procedures in the ESDS and related information on the EIB’s website

- 6.5.1 The EIB’s Handbook requires that the EIB appraises and records environmental and social issues relevant to the project (see paragraphs 3.4.2 to 3.4.3).
- 6.5.2 The EIB appraisal noted that there are no significant adverse social or environmental impacts related to the project and that the potential creation of additional permanent jobs will have a positive economic and social impact on the surrounding area¹³⁹. Accordingly, the ESDS states that there are no significant environmental and social impacts related to the project.
- 6.5.3 The EIB-CM’s inquiry shows that the concrete risk that the project will bear adverse environmental and social impacts, in particular on human health, has not been adequately assessed. In fact, considering that the airport in its current capacity already borders several Budapest districts very closely, a new pier and a Cargo City will lead to an increase in air traffic and thus noise and air pollution, affecting local residents negatively, in particular in the absence of substantive mitigation measures, as currently appears to be the case.
- 6.5.4 The EIB Group Transparency Policy sets requirements for the publication of project-related documents on the EIB’s website (see paragraph 3.3.25). The EIB-CM found that the documents on the EIB’s website entitled “Environmental and Social Impact Assessment” are not EIA-

¹³⁹ [Environmental and Social Data Sheet \(eib.org\)](https://www.eib.org/en/press-room/2019/09/19-09-2019)

related documents (see paragraph 4.1.7): (i) the “Noise and Environmental Protection” document is an extract from the promoter’s operating procedures, and (ii) the “Energy and Carbon Management Policy” document is a one-page document from 2014 containing a statement on the promoter’s vision. Furthermore, the EIB-CM notes that the promoter approved a revised version of this policy in November 2017, i.e. before the finalisation of the EIB appraisal, and that this version of the policy was not shared with the EIB operational services.

- 6.5.5 The ESDS states that “Pier B in Terminal 2 is expected to be fully compliant with Nearly Zero Energy Building (NZEB) standards” (see paragraph 4.1.5) and that Budapest Airport is “implementing NZEB standards well ahead of the required schedule.” During the inquiry, the promoter informed the EIB-CM that the buildings built so far did not have to comply with the NZEB (see paragraph 3.2.23). Therefore, the ESDS’s statement that the promoter is “implementing NZEB standards” already and is doing so “well ahead of the required schedule” does not appear to be substantiated. Against this backdrop, the EIB-CM also notes that the European Commission launched an infringement procedure against Hungary for non-conformity with the Energy Performance of Buildings Directive (as amended), which provided the framework for NZEB.

Conclusions

- 6.5.6 The ESDS states that the project will not carry any significant adverse impacts. However, the EIB-CM’s inquiry shows that the EIB does not have evidence of an adequate assessment of the project’s impacts through an EIA screening process (see chapters 6.1 to 6.4) and the ESMP (see paragraphs 6.3.5 to 6.3.8).
- 6.5.7 When the Environmental and Social Data Sheet was published, information on NZEB was not supported by sufficient documentary evidence. Furthermore, information on energy efficiency published on the EIB website (e.g. the promoter’s Environment and Carbon Management Policy) was outdated.
- 6.5.8 Based on the above, the EIB-CM finds the allegation to be grounded.

7. RECOMMENDATIONS AND SUGGESTIONS FOR IMPROVEMENT

- 7.1 Based on its conclusions in chapters 6.1 and 6.2 of this report, the EIB-CM recommends that, prior to further disbursements, the EIB services request the promoter to provide the EIB with at least a screening determination for the project components enabling capacity expansion with a view to ensure an adequate assessment of the cumulative impacts of the project including the “Cargo City,” also in the light of the case-law of the CJEU referred to in paragraph 3.2.12 of this report.
- 7.2 Based on its conclusions in chapter 6.3 and 6.4 of this report, the EIB-CM recommends that the EIB services engage with the promoter in order to require that:
- The promoter (re)maps project affected stakeholders and adequately engages with them, including through the establishment of a comprehensive grievance mechanism in accordance with the EIB’s E&S standards 1 and 10 referred to in paragraph 3.4.17 of this report.
 - The current ESMP includes efficient and long-term mitigation measures for incurred negative social aspects, in particular noise pollution, of the project referred to in paragraph 3.3.8 of this report.

- 7.3 Based on its conclusions in chapter 6.5 of this report, the EIB-CM recommends that the EIB services:
- Update information contained in the ESDS in light of the EIB-CM’s findings and conclusions and reissue an updated version of the document.
 - Remove the current documents labelled as “Environmental and Social Impact Assessment” from the EIB’s project website.
- 7.4 The EIB-CM also suggests that, to the extent possible, with preference to complex projects, adequate technical (environmental and/or social) and linguistic expertise should be available to the appraisal and monitoring teams. This is necessary in order to grasp the complexities as well as to apply the requirements of EIB standards and EU law concerning project’s environmental and social impacts their mitigation and monitoring, as well as understanding and critically assessing project documentation.

Head of Division
Complaints Mechanism
21.10.2021

Senior Complaints Officer
21.10.2021

Annex 1: Project development consent for Budapest Airport

| No | Component | Date | Ref. number | Issuing authority |
|----|--|-----------------|--|--|
| 1 | A new Pier B in Terminal 2: phases I and II (total <i>useful</i> area 12 908.57 m ²) | 1 March 2016 | BP-05/07/00042-7/2016 | BFKH ¹⁴⁰ No. V responsible for Budapest District XVIII ¹⁴¹ |
| 2 | Replacing 10 kV land cables (building Nos. 94, 74 and 30) | 21 August 2017 | BP-12/206/00938-9/2017 ¹⁴² | Technical Authorisation Department of Government Office No. XII |
| 3 | Replacing 10 kV land cables and laying new cables (building Nos. 82, 70 and 30) | 11 April 2018 | BP-12/206/00463-8/2018 | As above |
| 4 | Reconstructing an 11 kV land cable network related to cargo developments (building No. 75) | 5 October 2018 | BP-12/206/01128-8/2018 | As above |
| 5 | Reconstructing an 11 kV land cable network related to cargo developments (building Nos. 71, 72 and 73) | 12 October 2018 | BP-12/206/01129-23/2018 ¹⁴³ | As above |
| 6 | Reconstructing an 11 kV land cable network related to cargo developments (building No. 76) | 12 October 2018 | BP-12/206/01130-11/2018 ¹⁴⁴ | As above |
| 7 | Replacing a luminous cable network for the 13R, 31L runway | 11 June 2018 | RLH/21385-3/2018-NFM | Ministry of Innovation and Technology |
| 8 | Replacing 31L, 13L track end ILS equipment and antenna systems | 11 June 2018 | RLH/21372-3/2018-NFM | As above |
| 9 | New "Cargo City" warehouse with an office and three mechanical lifts (phase I: 177 m x 72 m plus later enlargement by 16 m; phase II: other buildings) (amended by Ref. BP-05/107/04339-14/2019 of 14 November 2019 and by Ref. BP-05/107/00253-28/2019 of 22 February 2019) | 1 March 2018 | BP-05/107/00049-28/2018 | BFKH Office No. V responsible for Vecses Municipality |

¹⁴⁰ Budapest Főváros Kormányhivatala (BFKH).

¹⁴¹ Decision No. KTVF: 1405-5/2008 issued by the Environmental Authority (Közép-Duna-völgyi Környezetvédelmi, Természetvédelmi és Vízügyi Felügyelőség) is referred to here, but was not provided to the EIB-CM.

¹⁴² PMK Érd District Office, Department of Environment and Nature Protection was consulted and provided expert opinion Ref. PE-06/KTF/27066-2/2017 dated 27 July 2017.

¹⁴³ PMK Érd District Office, Department of Environment and Nature Protection was consulted, Decision (preliminary) No. PE-06/KTF/28130-1/2018 of 1 October 2018. With conditions (including re. *Spermophilus citellus*).

¹⁴⁴ PMK Érd District Office, Department of Environment and Nature Protection was consulted, Decision (preliminary) No. PE-06/KTF/27947-2/2018 of 28 September 2018. With conditions (including re. *Spermophilus citellus*).

| No | Component | Date | Ref. number | Issuing authority |
|----|--|-------------------|-------------------------|---|
| 10 | New "Cargo City Forwarder" warehouse and an office building (total area 240 m long and 31 m wide) | 26 November 2018 | BP-05/107/03277-35/2018 | BFKH Office No. V responsible for Vecses Municipality |
| 11 | Construction permit for seven-floor multi-storey car park | 4 December 2018 | BP-05/107/04204-13/2018 | BFKH Office No. V responsible for Vecses Municipality |
| 12 | Construction of Phase 1 of a new passenger terminal related to the existing T2 (modified by Ref. BP-05/107/03760-23/2019 of 22 October 2019) | 19 July 2019 | BP-05/107/03005-24/2019 | BFKH Office No. V responsible for Budapest District XVIII |
| 13 | Construction permit for Terminal T2A extension | 11 September 2020 | BP/2603/00538-12/2020 | Department of Construction and Heritage Protection acting on behalf of the BFKH responsible for Budapest District XVIII |
| 14 | Construction of the new painting hangar (4 349.64 m ²) | 6 March 2020 | BP/2603/00008-2/2020 | As above |