

COMPLAINTS MECHANISM

SG/E/2021/24

PEDEMONTANA LOMBARDA TOLL MOTORWAY PPP (ITALY)

CONCLUSIONS REPORT

5 DECEMBER 2022





SG/E/2021/24

PEDEMONTANA LOMBARDA TOLL MOTORWAY PPP (ITALY)

Conclusions Report

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Disclaimers

The conclusions presented in this report are based on the information available to the EIB Group Complaints Mechanism up to 22 November 2022. The conclusions are addressed solely to the EIB.

The report is also published in Italian. In case of discrepancies between language versions, the English version prevails.

The EIB Group Complaints Mechanism

The EIB Group Complaints Mechanism

The EIB Group Complaints Mechanism is a tool enabling the resolution of disputes if any member of the public feels that the European Investment Bank (EIB) might have done something wrong, i.e. if it has committed an act of maladministration. The Complaints Mechanism is not a legal enforcement mechanism and will not substitute the judgment of competent judicial authorities.

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

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

Available remedy:

Complainants that are not satisfied with the conclusions report may file a complaint of maladministration against the EIB Group with the European Ombudsman¹.

¹ Available at: <https://www.ombudsman.europa.eu/en/home>.

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GLOSSARY

APL	Autostrada Pedemontana Lombarda S.p.A., the promoter
ARPA	Agenzia Regionale per la Protezione Ambientale, in Italian / Regional Environmental Protection Agency
CIPE	Comitato Interministeriale per la Programmazione Economica, in Italian / Inter-Ministerial Committee for Economic Planning
CIPESS	Comitato interministeriale per la Programmazione Economica e lo Sviluppo Sostenibile, in Italian/ Inter-Ministerial Committee for Economic Planning and Sustainable Development
CSO	Civil society organisations
E&S	Environmental and social
EIA	Environmental impact assessment
EIB	European Investment Bank
EIB-CM	EIB Group Complaints Mechanism
EMP	Environmental management plan
ESPS	EIB Statement of Environmental and Social Principles and Standards
IAR	Initial Assessment Report
ICMESA	Industrie Chimiche Meda Società Azionaria, in Italian
POB	Piano Operativo di Bonifica, in Italian / Operational Remediation Plan
PPP	Public-Private Partnership
PRMT	Programma Regionale della Mobilità e dei Trasporti, in Italian / Regional Programme for Mobility and Transport
SEA	Strategic environmental assessment
S.p.A	Società per azioni, in Italian / Joint stock company
NTS	Non-technical summary
TCDD dioxin	2,3,7,8-tetrachlorodibenzo-p-dioxin
TEN-T	Trans-European transport network

EXECUTIVE SUMMARY

This report concerns a complaint regarding the Pedemontana Lombarda Toll Motorway PPP project in Italy, partly financed by the European Investment Bank (EIB).

In November 2021, the EIB Group Complaints Mechanism (EIB-CM) received a letter from several civil society organisations and registered a complaint concerning the project. The project concerns the design, building, operation and maintenance of the B2 and C stretches of the Autostrada Pedemontana Lombarda toll motorway, including complementary roads, running through the provinces of Milan, Monza-Brianza and Bergamo in the Lombardy Region. The project promoter is Autostrada Pedemontana Lombarda S.p.A.

The EIB services appraised the project in 2020. The project was approved by the EIB's Management in July 2021, while the finance contract was signed in August 2021 without any disbursement to date.

The Initial Assessment Report (IAR) prepared by the EIB-CM in March 2022 identified the following allegation consisting of two elements:

Failure of the project to mitigate significant environmental impacts:

- (i) Failure by the Operational Remediation Plan to properly address the risk of TCDD dioxin² releases, including the lack of clarity on the monitoring plan and workers' protection; and
- (ii) Failure to comply with national legislation and landscape, soil and nature protection regimes during the environmental impact assessment procedure likely to cause further habitat fragmentation and damage to ecosystems and biodiversity.

Element (ii) regarding the EIB's alleged failure to comply with its environmental commitments and failure to address the climate emergency was dismissed at the stage of the IAR.

After conducting a review of available information, the EIB-CM established that at the time of the Conclusions report the EIB carried out its due diligence of the project as required by its environmental and social standards. It closes the case without any suggestions for improvement.

² TCDD dioxin is 2,3,7,8-tetrachlorodibenzo-p-dioxin.

1 BACKGROUND

1.1 The project

- 1.1.1 In July 2021, the EIB's Management approved financing of up to €550 million³ for the Pedemontana Lombarda Toll Motorway PPP⁴ project in Italy (hereinafter: "the project"), implemented as a PPP. The project has been developed and is being implemented by Autostrada Pedemontana Lombarda S.p.A. ("APL")⁵ (hereinafter "the promoter").
- 1.1.2 The project has been classified by the Inter-Ministerial Committee for Economic Planning (CIPE)⁶ as strategic infrastructure of major national interest since 2001. The project aims to shift traffic out of the Greater Milan area, thereby reducing congestion and increasing road safety. The project is a part of the **comprehensive** Trans-European transport network (hereinafter: "TEN-T"), Corridor 5⁷.
- 1.1.3 The Autostrada Pedemontana Lombarda toll motorway (**also known as motorway A36**) forms part of the Lombardy Regional Programme for Mobility and Transport, approved by the Regional Council in 2016. As part of the approval process, the Regional Programme for Mobility and Transport was subject to a strategic environmental assessment⁸.
- 1.1.4 The project involves the design, building, operation and maintenance of sections B2 and C of the motorway A36, including complementary roads, running through the provinces of Milan, Monza-Brianza and Bergamo in the Lombardy Region.
- 1.1.5 The project forms part of motorway A36 bypass north of Milan, which is being implemented in two phases (see Figure 1): Phase 1 was opened to traffic in 2015 (sections A and B1)⁹. Phase 2 starts with sections B2 and C and will be completed by section D¹⁰. The project (toll motorway with a total length of 26.2 km) includes the upgrade of the existing SS35 motorway over a distance of 9.6 km (section B2) and the construction of 16.6 km of new motorway (section C). About 40% of the alignment will consist of tunnels and is partially a greenfield development.

³ The project's description on the EIB's website is available [here](#).

⁴ PPP (Public Private Partnership).

⁵ More information can be found here: [Home — Autostrada Pedemontana Lombarda](#).

⁶ Inter-ministerial Committee for Economic Planning — *Comitato Interministeriale per la Programmazione Economica* (CIPE), in Italian. Its current name is *Comitato Interministeriale per la Programmazione Economica e lo Sviluppo Sostenibile* (CIPESS), in Italian.

⁷ The comprehensive network covers all European regions and is to be completed by 2050. A map of the comprehensive and core TEN-T network also showing Italy is available [here](#). Last accessed on 29 September 2022.

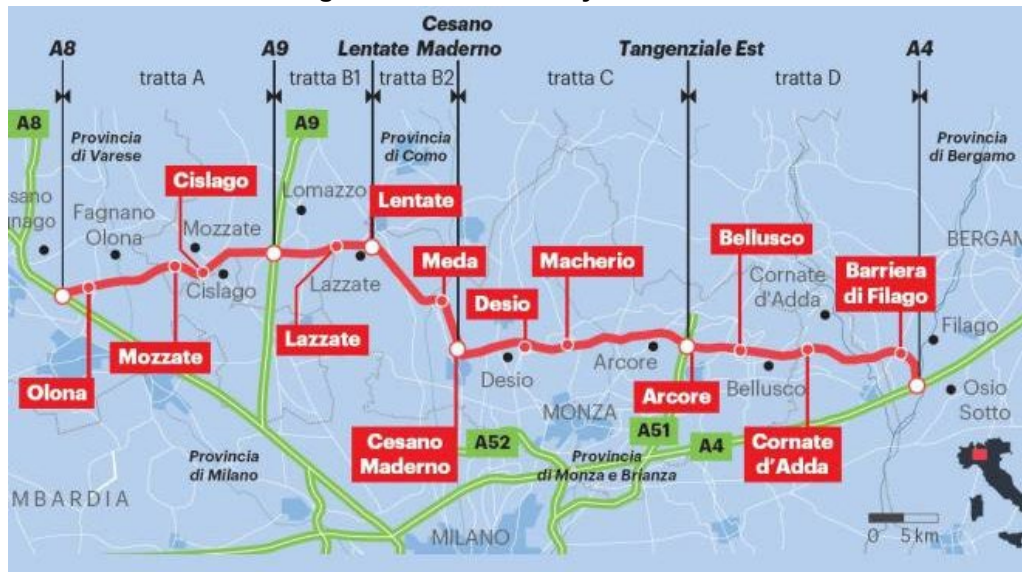
⁸ Assessment carried out under Decree No. 152/2006 enacting Directive 2001/42/EC (SEA Directive).

⁹ This included the bypasses of Como (A59) and Varese (A60) as well as 21 km of the Milan bypass of motorway A36.

¹⁰ Section D covers 16.6 km of motorway A36 and some national roads (14 km) and is expected to be implemented between 2025 and 2030.

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Figure 1: A36 motorway in sections



- 1.1.6 The project starts at the end of the existing part of motorway A36 near Lentate and connects to the A51 eastern bypass north of Vimercate. Section B2 is a 2x2 section between Lentate and Meda, and Section C — a 2x3 section from Meda to Cesano Maderno — is a 2x3 new motorway from Cesano Maderno to Vimercate. The project is mainly located in the province of Monza-Brianza.
- 1.1.7 Project implementation is expected to take place between 2021 and 2025. The EIB signed the finance contract with the borrower in August 2021.

1.2 Planning and permitting

- 1.2.1 The project was identified in the new national Transport Plan approved by Presidential Decree in 2001¹¹. The plan was adopted before the SEA Directive¹² came into existence. Motorway A36 became a part of the Lombardy Regional Programme for Mobility and Transport (PRMT), approved by the Regional Council in 2016, which is the first transport plan on a regional level¹³. As part of the approval process, the PRMT was subject to an SEA¹⁴.
- 1.2.2 The Environmental Impact Assessment (EIA) procedure for the whole A36 motorway started in 2004 via the first project submission to the competent authority. At the time, motorway A36 was subject to special legislation, which required the EIA at the preliminary design stage¹⁵. In 2006, CIPE¹⁶ approved the **project's first design stage and its EIA** (CIPE resolution 2006)¹⁷. Several elements of the EIA decision for the project required field surveys in order to verify the presence of residual TCDD dioxin¹⁸ in the areas where the motorway route crosses the site of the ICMESA accident¹⁹ (see more in section 1.3 on Remediation). In 2009, at the **second (final)**

¹¹ Decree of the President of the Republic of Italy. 'Nuovo Piano Generale Dei Trasporti E Della Logistica'; Istituto Poligrafico e Zecca dello Stato S.p.A.: Rome, Italy, approved on 14 March 2001, available [here](#), in Italian. Last accessed on 29 September 2022.

¹² Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, available [here](#).

¹³ Russo, F.; Rindone, C.: 'Sustainability 2021, 13, 9052', available [here](#), in English. Last accessed on 29 September 2022.

¹⁴ Information available [here](#). Last accessed on 28 September 2022.

¹⁵ Law No. 443 on the 'Delegation to the Government of strategic infrastructure and production facilities and other measures to revive productive activities', published in Official Gazette No. 299 of 27 December 2001. Available [here](#), in Italian. Last accessed on 28 September 2022.

¹⁶ Comitato Interministeriale per la Programmazione Economica, in Italian.

¹⁷ CIPE resolution No. 77 issued on 29 March 2006. 'Approvazione Progetto definitiva, Deliberazione no. 97/2009' of 6 novembre 2009. Preliminary design is 'Progetto preliminare' in Italian.

¹⁸ 2,3,7,8-tetrachlorodibenzo-p-dioxin

¹⁹ ICMESA is the company (Industrie Chimiche Meda Società Azionaria in Italian) where an industrial accident took place in 1976 causing a severe environmental pollution event.

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design stage, CIPE approved **the final design** for motorway A36 (CIPE resolution 2009), including the related EIA.²⁰

- 1.2.3 The 2009 approval included a total of 278 conditions and recommendations, of which 151 environmental conditions and recommendations, **including monitoring**, are applicable to the project, namely sections B2 and C, to be implemented during the final design and project execution stages. These conditions and recommendations concern design modifications (such as junctions and ramps), environmental mitigation measures, optimisation of the secondary road network, the Greenway, further surveys on impacts on groundwater and analysis regarding the contaminated land following the ICMESA accident.
- 1.2.4 The **third and last design stage**, the detailed design²¹ for sections B2 and C of motorway A36, is yet to be undertaken and submitted to the competent authority. According to the applicable national legislation, the competent authority will check that the detailed design complies with the conditions and recommendations of the 2009 EIA decision.

1.3 Remediation

- 1.3.1 The ICMESA accident unfolded on 10 July 1976 in Meda during which TCDD dioxin (see footnote 2) was released into the atmosphere and contaminated the area on the path of the toxic cloud carried by the wind in a south-easterly direction²².
- 1.3.2 Between 1977 and 1986, the Lombardy Region coordinated the soil remediation of the affected area. In order to evaluate the regulatory requirements and the methods to carry out the surveys requested by the CIPE resolution (2006), a number of meetings were held. The relevant regulatory framework consisted of Ministerial Decree No. 471/1999²³ establishing the validity of the remediation projects of polluted sites and Legislative Decree No. 152/2006 on environmental standards²⁴.
- 1.3.3 In 2007, the Lombardy Region decided that after the actions implemented following those decrees, in accordance with the current environmental regulatory framework, the sites which may be relevant to the project should be considered already reclaimed.
- 1.3.4 In April 2008, APL and Regional Environmental Protection Agency (hereinafter: “ARPA”) carried out a survey in the area of the project. The survey results showed the presence of TCDD dioxin beyond the thresholds set by law²⁵. During 2008, more surveys were carried out. Follow-up actions were **included in the final project design and approved by CIPE Resolution No. 97/2009**²⁶.
- 1.3.5 Regarding the sections proposed to be financed under this project, additional surveys and design changes have been undertaken since the 2009 EIA decision. In particular, such actions have been taken in relation to the ICMESA contaminated area affecting both sections B2 and C. Specific surveys were conducted to determine the current level of residual contamination following the initial decontamination activities (see the next sub-section).
- 1.3.6 In 2013, the Regional Council requested that a characterisation plan be conducted to comply with the latest environmental regulatory framework and that a remediation plan be prepared for polluted sites, aimed at the correct disposal of contaminated soil in proper landfills. In 2014, the Lombardy Region, at the request of the Regional Council, initiated a further survey **requested by CIPE (2009), effectively reopening the ICMESA remediation procedure**.
- 1.3.7 In 2015, APL sent the draft characterisation plan to the Lombardy Region and other competent authorities. The characterisation plan was approved by Regional Decree No. 8202/2015 and

²⁰ Final design ‘*Progetto definitivo*’, in Italian. CIPE resolution No. 97 issued on 6 November 2009, available [here](#).

²¹ Detailed design ‘*Progetto esecutivo*’, in Italian.

²² More information available [here](#), in Italian.

²³ Article 18 of Ministerial Decree No. 471 of 25 October 1999, available [here](#) (in Italian), lays down the validity of projects for the remediation of polluted areas.

²⁴ Legislative Decree No. 152 of 3 April 2006 on Environmental Standards available [here](#) in Italian. Last accessed on 28 September 2022.

²⁵ Legislative Decree No. 152 of 3 April 2006.

²⁶ CIPE prescription No. 3 requires the execution of further detailed surveys on the soils affected by diffuse dioxin contamination, in order to properly manage the excavated soil.

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published²⁷. Following additional meetings, surveys and agreements with the Lombardy Region, the characterisation plan was developed further. In 2019, the supplementary surveys were validated by ARPA Lombardia.

- 1.3.8 In 2019, APL initiated the preparation of a draft operational remediation plan (POB) for the project (sections B2 and C of Pedemontana motorway). The POB was sent to all relevant competent authorities for consultations. In October 2019, the Lombardy Region and ARPA approved the POB²⁸ with some provisions. The authorities' requests mainly concerned the increase in the number of samples to be taken for characterisation of the soil, certification of successful remediation, and the extension of some areas to be reclaimed. The POB was subsequently amended and its budget was increased to accommodate additional remediation and safety costs. The amended POB was again circulated among the competent authorities. In 2020, the Lombardy Region validated the POB²⁹.

1.4 Complaint

- 1.4.1 On 15 November 2021, the EIB Group Complaints Mechanism (hereinafter: EIB-CM) received a complaint regarding the project. The complaint was submitted by 16 non-profit civil society organisations³⁰ and voluntary organisations³¹ from the Italian province of Monza and Brianza.

Table 1 — Summary of allegations

Allegation	Description of the allegation
Failure of the project to mitigate significant environmental impacts	<ul style="list-style-type: none"> Failure by the Operational Remediation Plan to properly address the risk of TCDD dioxin releases, including the lack of clarity on the monitoring plan and workers' protection. Failure to comply with national legislation and landscape, soil and nature protection regimes during the environmental impact assessment procedure likely to cause further habitat fragmentation and damage to ecosystems and biodiversity.

- 1.4.2 An allegation made by the complainants regarding a failure of the EIB to comply with its commitment to direct its financing towards tackling the climate emergency in relation to the project was found to be ungrounded³². The project became part of the Bank's portfolio before the EIB's commitment to climate action came into effect, therefore the allegation was dismissed at the stage of the IAR.
- 1.4.3 After issuance of the IAR, the EIB-CM proceeded with the compliance review of the project in question, in particular with regard to the alleged failure of the project to comply with the EIB's environmental and social standards.

1.5 Work performed

- 1.5.1 The EIB-CM conducted an initial meeting with the relevant EIB services in December 2021. The EIB-CM also reviewed the available information and documents, such as the relevant parts of

²⁷ Regional Decree No. 8202 of 8 October 2015. Approval of the document "*Piano della caratterizzazione delle aree influenzate dall'incidente ICMESA, in conformità a quanto previsto dal d.lgs 152/2006*", in Italian, available [here](#). Last accessed on 3 October 2022.

²⁸ Regional Decree No. 14639 of 11 October 2019. Approval of the document "*Tratta B2 - C: progetto operativo di bonifica delle aree influenzate dall'incidente ICMESA*", Available [here](#), last accessed on 3 October 2022.

²⁹ The POB was published in the regional gazette (without annexes) and information on possible appeals (access to justices) was explained in the document.

³⁰ *Organizzazioni non lucrative di utilità sociale*, in Italian.

³¹ *Organizzazioni di volontariato*, in Italian. The complaint was submitted by the following organisations: Associazione Colli Briantei, Alternativa Verde Desio, Legambiente circolo Gaia Usmate e Velate, Legambiente circolo Laura Conti — Seveso, Legambiente Seregno aps — Seregno, Seveso Futura — Seveso, Coordinamento No Pedemontana, Comitato Ambiente Bovisio Masciago, Casa della Sinistra Seregno, Sinistra e Ambiente Meda, Impulsi Sostenibilità e Solidarietà Meda, ImmaginArcore, Gruppo Acquisti Solidali GAS Vitale Arcore, Passione Civica per Cesano — Cesano Maderno, Lista Civica Altra Bovisio Masciago, and Un Parco per Bernareggio.

³² This was communicated to the complainants by the EIB-CM's Initial Assessment Report in [March 2022](#).

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the EIA documentation and the decision, as well as other documents available at the EIB showing the due diligence process.

- 1.5.2 The EIB-CM contacted the complainants through an online meeting in February 2022 to obtain clarifications on the allegations. In March 2022, the EIB-CM issued the IAR establishing the allegations (see section 1.4)³³.
- 1.5.3 After the IAR was issued, additional information was received from the EIB services and further meetings were held with them. After careful considerations, the EIB-CM decided to carry out a compliance review without performing on-site assessments of the case, as it was considered that sufficient information was made available by the EIB services and the complainants. Online information and maps have also been used to corroborate the compliance review of this case. On the basis of the collected and analysed information, the EIB-CM prepared this conclusions report.

2 REGULATORY FRAMEWORK

2.1 The EIB Group Complaints Mechanism

- 2.1.1 The EIB Group Complaints Mechanism Policy³⁴ tasks the EIB-CM with handling complaints concerning alleged maladministration by the EIB³⁵. Maladministration means poor or failed administration³⁶. This occurs when the EIB fails to act in accordance with the applicable legislation and/or established policies, standards and procedures³⁷. Maladministration may also relate to the environmental or social impacts of the EIB's activities³⁸.
- 2.1.2 The EIB-CM is not competent to investigate complaints concerning international organisations, Union institutions and bodies, as well as national, regional or local authorities³⁹.
- 2.1.3 In the event that the allegations in the complaint concern a violation of EU legislation in projects located within the European Union, the EIB-CM may recommend that the EIB Group inform the Secretary General of the European Commission about the complaint and forward the final Conclusions Report⁴⁰.

2.2 Project-applicable standards

- 2.2.1 The Project must comply with the project-applicable standards. These include the relevant international, EU and national law as well as the EIB's environmental and social (E&S) standards, which are referred to in the following paragraphs.

Environmental impact assessment and development consent

- 2.2.2 The SEA Directive requires draft plans and programmes to be subject to a strategic environmental assessment. The Member States have to demonstrate their compliance with the Directive as of 21 July 2004. Legislative Decree No. 152/2006⁴¹ (part II, as amended) transposes the SEA Directive⁴² into the national legislation.

³³ Initial Assessment Report case is available here in [English](#) and in [Italian](#).

³⁴ EIB Group Complaints Mechanism Policy, available [here](#).

³⁵ Paragraph 5.1.3 of the EIB Group Complaints Mechanism Policy.

³⁶ Paragraph 3.1 of the EIB Group Complaints Mechanism Policy.

³⁷ Paragraph 3.1 of the EIB Group Complaints Mechanism Policy.

³⁸ Paragraph 3.3 of the EIB Group Complaints Mechanism Policy.

³⁹ Paragraph 4.3.2 of the EIB Group Complaints Mechanism Policy.

⁴⁰ Paragraph 6.2.7 of the EIB-CM policy.

⁴¹ Decreto Legislativo 3 aprile 2006, n. 152 Norme in materia ambientale. (GU Serie Generale n.88 del 14-04-2006 - Suppl. Ordinario n. 96), available [here](#).

⁴² Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, available [here](#).

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- 2.2.3 The EIA Directive⁴³ requires the EU Member States to adopt all measures necessary to ensure that, before development consent is given, projects likely to have significant effects on the environment by virtue of their nature, size or location, among others, are made subject to a requirement for development consent and an assessment with regard to their effects on the environment.
- 2.2.4 The EIA Directive requires that, within a reasonable time frame and allowing sufficient time, the public concerned should receive any information gathered, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed and information which only becomes available after the time the public concerned was informed on the EIA report. The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures and shall be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken⁴⁴.
- 2.2.5 The EIA Directive is transposed by Legislative Decree No.152/2006 (as amended) of the Republic of Italy. Legislative Decree No. 104/2017 enabled the latest amendment of the act⁴⁵.

EIB environmental and social standards⁴⁶

- 2.2.6 The EIB's Statement of Environmental and Social Principles and Standards (ESPS) states that, where the business risks derived from E&S matters could seriously impair project performance, the Bank will only support the proposed project if appropriate mitigation and other arrangements for suitable risk management are developed by and agreed with the promoter in accordance with the relevant public consultation requirements of the Bank.⁴⁷
- 2.2.7 The ESPS also states that "*whereas the EIB finances projects for a number of EU policy reasons, among the priority lending priorities of the Bank in support of sustainable development is the protection and improvement of the natural environment and the promotion of sustainable communities*".
- 2.2.8 The ESPS must be applied by the staff of the EIB in all its operations. They also inform promoters, the public, affected communities and other stakeholders, including other EU institutions, in particular the European Commission, other multilateral financial institutions, financial and business partners, and representatives of civil society, including non-governmental organisations, as to the requirements of the Bank.

EIB Standard 1: assessment and management of E&S impacts and risks⁴⁸

- 2.2.9 Standard 1 outlines the promoter's responsibilities in the process of assessing, managing and monitoring E&S impacts and risks associated with the EIB-financed operation. It applies to all operations likely to have significant and material E&S impacts and risks. These impacts and risks need to be taken into account at the earliest possible stage in all technical planning and decision-making processes.
- 2.2.10 Standard 1 requires that the public sector promoters responsible for formulating, developing and implementing actions with long-term strategic objectives through planning and programme development that set up the framework for further projects as defined in this Standard, should apply a holistic approach in relation to environmental and social issues by implementing an SEA process at this level and ensuring that relevant environmental and social information is taken into account in the decision-making process.

⁴³ Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment (replacing the Council Directive 85/337/EEC of 27 June 1985), as amended by Directive 2014/52/EU of the European Parliament and of the Council, available [here](#).

⁴⁴ Articles 6(3), 6(4) and 6(6), EIA Directive 85/337/EEC (as amended).

⁴⁵ Legislative Decree No. 104 of 16 June 2017 is available [here](#), in Italian.

⁴⁶ EIB Statement of E&S Principles and Standards (ESPS, 2009), available [here](#). EIB E&S Standards (2018), available [here](#). Last accessed on 7 January 2022.

⁴⁷ Paragraph 4, ESPS (2009).

⁴⁸ Standard 1, the E&S Standards (2018).

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2.2.11 Regarding the promoter's responsibilities for the assessment of E&S impacts and risks associated with the operations, Standard 1 outlines the following⁴⁹:

- i. Identifying, describing and assessing both adverse and positive, direct, indirect and induced E&S impacts, cumulative and in-combination impacts/effects associated with the operation, its ancillary/associated facilities and the project area of influence.
- ii. Applying the mitigation hierarchy by identifying measures to be taken to avoid, reduce and, if required, compensate/remedy significant adverse residual effects on affected stakeholders and the environment, to contribute to the avoidance of any deterioration in the quality of human life, the environment and any net loss of biodiversity and ecosystems.
- iii. Putting in place its own systems that will allow for a comprehensive and rigorous E&S assessment of impacts and risks, using an integrated approach in order to achieve a high level of protection of the environment taken as a whole.

2.2.12 The EIB is required to submit projects it intends to finance to the European Commission for an opinion⁵⁰.

EIB Standard 3: Biodiversity and ecosystems

2.2.13 The EIB will only finance a project within a protected area, or **within a nationally or internationally designated or recognised area for biodiversity conservation**, if the promoter is able to demonstrate that the development is legally permitted and that the design of the project is consistent with any management plan for such areas. In the absence of such a plan, projects should be compatible with the achievement of the relevant conservation objectives used to designate the area in question.

2.3 Responsibilities of the EIB

2.3.1 In line with the EIB's ESPS, responsibility for compliance with the project-applicable standards lies with the promoters and local authorities⁵¹. However, the EIB will not finance projects that do not meet the project-applicable standards. The ESPS must be applied by the EIB in all its operations⁵². Whether the projects meet the project-applicable standards is established as part of the **EIB's due diligence carried out during the project appraisal and monitoring stages**.

2.3.2 Within the European Union, the EIB assumes that EU E&S law has been correctly transposed into national law and that national law is being enforced by the responsible authorities. The EIB's due diligence focuses particularly on countries and/or specific laws where there is evidence to suggest that these assumptions may be false⁵³.

2.3.3 The EIB E&S Practices and Procedures Handbook, Volume II (2013, Volume II) (hereinafter the Handbook)⁵⁴ explains how the EIB conducts their work on E&S matters throughout the project cycle:

- The Handbook⁵⁵ provides an overview of the EIB's **E&S standards, documentation and information requirements from the promoter and internal due diligence**. During appraisal, the EIB identifies the main environmental legal and regulatory framework relating to the project and any legal issues⁵⁶. The **EIB needs to take into account residual impacts**, such as adverse environmental impacts caused by the operation that will remain after mitigation and impact management measures have been applied⁵⁷.
- The EIB's role is to support sound operations that have been designed and structured so as to meet EIB E&S standards and requirements as well as international best practice. This includes,

⁴⁹ Paragraph 27, Standard 1, the E&S Standards (2018).

⁵⁰ Article 19 of the EIB Statute, available [here](#), accessed on 4 May 2022.

⁵¹ Paragraphs 2 of the ESPS (2009).

⁵² Paragraphs 6 of the ESPS (2009).

⁵³ Paragraph 20, Background, ESPS (2009).

⁵⁴ The Handbook (2013) available [here](#). Last accessed on 9 June 2022.

⁵⁵ Paragraph 28, section A.5 Environmental and Social Assessment – Guiding Principles of the Handbook (2013).

⁵⁶ Paragraph 90, indent 2 of the Handbook (2013).

⁵⁷ Paragraphs 221 and 222 of the Handbook (2013).

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among others, assessing the E&S institutional capacity of the relevant national authorities and agencies and providing technical assistance, if needed⁵⁸.

- The EIB's environmental and social experts support the EIB's appraisal teams in the E&S assessment of operations. Its level of intervention is determined by the level of E&S due diligence required, the significance and complexity of the potential impacts and risks identified at the pre-appraisal stage⁵⁹. Early involvement of environmental/social expertise, where needed, ensures the prevention of problems later in the due diligence process, which may cause significant delays for the project⁶⁰. The environmental and social due diligence is recorded in the Environmental and Social Data Sheet (ESDS)⁶¹.
- At the appraisal stage, the Bank determines and recommends contractual conditions to ensure the E&S acceptability of the project during implementation and operation. These include, among others: (i) **conditions for signature**, (ii) **conditions for disbursement**, and (iii) **particular undertakings**⁶².
- Specific finance contract conditions, in addition to the **general conditions that are part of the Master Finance Contract's wording**, should be composed to target: (a) legislative compliance, such as EIA completion subsequently; (b) project implementation and completion requirements, including all mitigation and compensation measures; and, finally (c) reporting required by the EIB as part of its monitoring of environmental and social impact management⁶³.
- Once the promoter signs the finance contract, the EIB is required to monitor the project. The monitoring aims to ensure the project's compliance with the EIB's approval conditions⁶⁴. The EIB monitors projects based on reports provided by the promoter, as well as EIB site visits and information provided by the local community, etc.⁶⁵.

2.3.4 The EIB's Transport Lending Policy⁶⁶ provides that:

- Transport project selection and appraisal at the EIB is performed via a multi-stage and multi-dimensional approach designed to maximise the value added of the **Bank's lending so as to best contribute to furthering EU policy**.
- The Bank's investments reflect one or more of these public policy goals, and the Bank finances transport projects to the extent that they contribute to meeting the objectives set in the Bank's Statute and Corporate Operational Plan. The project pipeline of the EIB reflects the investment needs of the promoters, who generate and implement projects.
- The EIB conducts an extensive technical due diligence exercise on all projects presented to it for funding. This appraisal process has certain common aspects for all sectors. In addition, each sub-sector has a number of specific considerations.
- Lastly, the **TEN-T projects are of common interest to several Member States and are fully in line with the objectives of the Bank set down in the Lisbon Treaty**.⁶⁷

3 EIB PROJECT CYCLE

3.1 Pre-appraisal

- 3.1.1 In 2021, as required by the EIB Statute, the services consulted the European Commission and received a positive opinion on the operation. The European Commission highlighted that the

⁵⁸ Paragraphs 8 and 73, 117 and 118 of the Handbook (2013).

⁵⁹ Paragraph 11, section A.3, Roles and Responsibilities of the EIB's E&S Practices Handbook (2013).

⁶⁰ B.1.1, Paragraph 31 of the Handbook (2013).

⁶¹ Paragraph 346 of the EIB's E&S Practices Handbook (2013).

⁶² B.2.11, page 146, Paragraphs 262 and 263, 256, indent 2 of the Handbook (2013). It is worth noting that E&S conditions may be addressed to the promoter, borrower, environmental authority or ministry. In some cases, the E&S conditions will need to be in separate legal agreements in order to be applicable to a third party, which will fulfil the E&S condition.

⁶³ B.2.11, page 146, Paragraph 258.

⁶⁴ Paragraph 270 of the EIB's E&S Practices Handbook (2013).

⁶⁵ Paragraph 8 of the ESPS (2009).

⁶⁶ EIB's Transport Lending Policy (2011), applicable at the time, can be found [here](#).

⁶⁷ Paragraph 66, EIB's Transport Lending Policy (2011).

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competent authority had not reviewed the changes to the detailed design. The process of the preparation of the detailed design will take into account modifications (since the CIPE resolution 2009) and the proposed methodology to treat soil contaminated by dioxins and avoid the risk of the release of pollutants into the atmosphere during construction activities. These updates and design modifications will only be reviewed by the competent authority when the detailed design is ready.

- 3.1.2 Already at this stage, the EIB recognised the high environmental risks of the project and contracted an environmental specialist for the project team to support the due diligence process.

3.2 Project appraisal and approval

- 3.2.1 In June 2021, the EIB services completed the project's appraisal. At the time, as is the situation during the drafting of this report, the validation of the environmental prescriptions in the detailed design is still pending⁶⁸.
- 3.2.2 In July 2021, the EIB approved financing of the project⁶⁹. The approval noted that the project constitutes strategic infrastructure of major national interest since 2001 and forms part of the comprehensive TEN-T road network. Approval noted three grounds of disbursement conditions and undertakings: (i) mentioned in the ESDS; (ii) standard for a finance contract; and (iii) from stage II assessment.
- 3.2.3 The approval noted that the EIA procedure for the project started in 2004. On 29 March 2006, CIPE granted the first approval to the project and on 6 November 2009⁷⁰ the final design ('*progetto definitivo*', the second design stage) for the A36 motorway was approved with an EIA. The detailed design ('*progetto esecutivo*', third and last design stage) of sections B2 and C is yet to be undertaken and submitted to the competent authority for compliance checking in accordance with the conditions and recommendations of the 2009 EIA decision.
- 3.2.4 The ESDS for the project noted that the conditions and recommendations for the project include those aimed at design modifications, environmental mitigation, surveys on impacts on groundwater and analysis regarding the land contaminated following the ICMESA accident. Some surveys in relation to the ICMESA contamination incident and design changes have been undertaken since the 2009 EIA approval, as required. The surveys were aimed at determining the current level of residual contamination and the affected volumes on the relevant sites.
- 3.2.5 The ESDS stated that a so-called characterisation plan was prepared in 2015 (updated). Based on this plan, an Operational Remediation Plan was prepared and approved by the Lombardy Region in 2019 (amended twice). **However, in line with construction practice, some surveys and design changes will only be completed at the detailed design stage and will be undertaken by the general contractor.**
- 3.2.6 The approval noted that the project neither crosses nor has negative impacts on any Natura 2000 sites or [national] protected areas. The Lambro Valley Regional Park (400 m away) is mentioned as the closest point (separated by a built-up area) of national interest. Based on the information available, the temporary impacts during construction are expected to be noise, emissions, land occupation and risk of accidental pollution, in particular related to the handling of polluted soils. The ESDS stated that the 2009 EIA provided for appropriate mitigation measures and monitoring in line with the applicable legislation.
- 3.2.7 In terms of making information available to the public, the ESDS noted that the design changes undertaken and to be undertaken by the promoter to comply with the 2009 EIA conditions and recommendations had not yet been presented to the public. It further stated that the competent authority had not assessed whether further public consultations were required. The EIB received confirmation from the Ministry of Environment of the Republic of Italy in May 2021, that (a) the EIA procedure carried out so far was in accordance with the requirements of national legislation; (b) as part of the next steps of the approval procedure, the competent authority would validate the detailed design (*progetto esecutivo*)'s compliance with the conditions and

⁶⁸ See data cut-off date at the disclaimer on page ii.

⁶⁹ ESDS is available [here](#).

⁷⁰ Decision was made available in the 'Supplemento ordinario alla "Gazzetta Ufficiale n. 40 del 18 febbraio 2010 - Serie generale', provided [here](#).

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recommendations of the CIPE resolution (2009) if there were no significant changes compared to the final design (*progetto definitivo*); and (c) currently, to the Ministry's knowledge the competent authority had not received any proposals for significant changes to the project compared to the 2009 EIA decision.

3.2.8 The approval of the EIB's financing of the project was accompanied by five conditions and two undertakings. The ESDS noted the following conditions prior to the first disbursement:

- (i) An updated assessment of the potential impacts of the project on the environment following the changes introduced since the 2009 design and the monitoring requirements for implementation of the project.
- (ii) Confirmation, from the competent authority, that the design changes and related impacts do not require further public consultation or, if required, proof of such consultation being completed.
- (iii) Information on the measures to be taken to establish and minimise the release of substances into air, water or land and ensure **adequate disposal of waste** containing said substances as mentioned under Regulation (EU) 2019/1021 (in particular, under the provisions of Article 6 on persistent organic pollutants).
- (iv) An **independent assessment of the monitoring requirements** during construction activities involving the movement of the ICMESA contaminated soil, aimed at ensuring that compliance with Regulation (EU) 2019/1021 is achieved and dioxin or any other dangerous pollutants for human health are not released during construction activities, as confirmed by the competent authority.
- (v) The **outcome of the compliance check carried out by the competent authority on the conditions and recommendations** included in the 2009 EIA approval required prior to construction and approval of the detailed design by the competent authority.

3.2.9 The ESDS noted the following undertakings:

- (i) The promoter will implement all the envisaged mitigation and compensation measures related to the Pedemontana Lombarda sections, even if not part of the two EIB-financed sections, **within five years of the start of the project's operation**; and
- (ii) The promoter will provide the Bank with the outcome of the environmental monitoring during project implementation and **during the first year of operation**.

3.2.10 The Bank's Stage II appraisal was completed on 13 August 2021. This stage resulted in an undertaking for the promoter to inform the EIB and obtain the Bank's prior approval before any significant change to the current scope of agreement took place.

3.3 Signature of the finance contract

3.3.1 The project finance contract was signed in August 2021, albeit no disbursement has yet taken place⁷¹.

3.3.2 The environmental and social conditions and undertakings defined during the appraisal period (see §§ 3.2.8 and 3.2.9) have been integrated into the common terms agreement and the finance contract together with other general conditions that are part of the Master Finance Contract (see § 2.3.3).

⁷¹ For the cut-off date, please see disclaimers on page (ii) of the report.

4 ANALYSIS AND FINDINGS

The overall allegation is a failure of the project to mitigate significant environmental impacts (see § 1.4.1). It is analysed in two sub-sections below.

4.1 Operational Remediation Plan

- 4.1.1 The sub-allegation concerns a failure of the Operational Remediation Plan (POB)⁷² to properly address the risk of TCDD dioxin releases, including the lack of clarity on the monitoring plan and workers' protection.
- 4.1.2 The EIB-CM established that pollution which may be caused by the project's development in the area affected by the ICMESA accident is directly linked to the project. The project-applicable standard, which deals with pollution stemming from associated works in the project area of influence, is environmental and social standard 1 (see §§ 2.2.10, 2.2.11).
- 4.1.3 In the EIA for the final project design (2009), the ICMESA accident was acknowledged, its residual impacts were analysed and measures such as additional and follow-up surveys requested and monitoring requirements established⁷³ (see § 1.3.4) were proposed⁷⁴. Since 2009, a number of surveys of the conditions of soil and the habitats along the project's planned alignment have been carried out. In 2015 APL prepared a draft characterisation plan, which was further modified and elaborated also based on additional sampling (see § 1.3.7).
- 4.1.4 In 2019, APL initiated the preparation of the draft POB (see § 1.3.8). The preparation process included a discussion between the public and the local administration about the contaminated areas. A technical panel with the ARPA⁷⁵ was also initiated. The meeting resulted in some mitigation measures, which were passed to the Lombardy regional office. The measures became the POB, which was validated by the Lombardi Region in March 2020. The latter published it in the regional gazette. The document contains information on appeals (access to justice) and about the fact that its annexes were not published⁷⁶.
- 4.1.5 Implementation of **mitigation measures**. After the initial POB and relevant locations identified in the process of its development, some areas have not been added because there are not studied yet, these are areas with difficult access (e.g. an escarpment). The process of decontamination should be described in the detailed design and its implantation plan, which should include appropriate Environmental Monitoring Plan (EMP) (as also prescribed by the EIA of 2009)⁷⁷. ARPA was requested to monitor the EMP and the implementation of the mitigation measures of the EIA
- 4.1.6 POB has evolved during the project preparation. The promoter provided information regarding the locations and the amounts of soil to be reclaimed and treated based on the POB. There are eight lots identified with some 40 000 m³ of contaminated earth to be exported. Most of the soil will be deposited in non-hazardous landfills (70%), 25% of soil will be deposited in inert waste landfills and 5% will be sent to hazardous waste landfills. The above way of handling contaminated soil of different intensity contamination is one of many ways⁷⁸. As noted in the ESDS, in line with construction practice, **the general contractor will complete some additional surveys and design changes at the detailed design stage** (see § 3.2.5). The contractor will be responsible for the decontamination activities under monitoring of ARPA (see above paragraph). In line with the EIB environmental and social standards, the EIB from established conditions and undertakings enabling the monitoring of the situation and the implementation of the POB (see §§ 3.2.8, 3.2.9 and sub-section 4.3).

⁷² POB - Piano Operativo di Bonifica, in Italian.

⁷³ CIPE prescriptions such as No.3.

⁷⁴ CIPE prescriptions such as No.3, 4, 153, 159 and 185.

⁷⁵ ARPA - Agenzia Regionale per la Protezione Ambientale, in Italian.

⁷⁶ Decree refers to the requirements laid down in Articles 26 and 27 of Legislative Decree No. 33/2013 available [here](#).

⁷⁷ CIPE prescriptions such as No.12, 65 and 102.

⁷⁸ Cappucci, S. & Carloni, A. & Maffucci, M. (2012). Tecnologie per la Bonifica e Riqualificazione. Available [here](#). Last accessed on 4 October 2022.

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- 4.1.7 In terms of **workers' protection**, the EIA of 2009 contains the requirement to prepare and implement the Safety and Coordination Plan to prevent and protect the health and safety of workers⁷⁹. The concerns and protection from exposure, the risk of which is high during the handling of polluted soil, should be addressed through the said plan. The general contractor will adopt and, where needed, amend and complete the exiting Safety and Coordination Plan during the detailed design stage. The Plan will be monitored during the implementation.
- 4.1.8 The EIB received confirmation from Ministry of Environment that (a) the EIA procedure carried out so far was in accordance with the requirements of the national legislation; (b) as part of the next steps of the approval procedure, the competent authority will validate the detailed design's compliance with the conditions and recommendations of the 2009 EIA approval, if there are no significant changes compared to the 2009 design.
- 4.1.9 Based on the current status of the project (detailed design is not yet drafted), the EIB-CM reviewed the environmental conditions and undertakings identified during the appraisal phase (see §§ 3.2.8-3.2.9). The listed conditions and undertakings ensure the review of the remaining project environmental appraisal and decision-making steps, require the promoter to inform the EIB about the compliance and enable the monitoring of the project implementation.

4.2 Environmental impact assessment and national protection requirements

- 4.2.1 This sub-section presents analysis and findings regarding an alleged failure to comply with national legislation and landscape, soil, and nature protection regimes during the environmental impact assessment procedure likely to cause further habitat fragmentation and damage to ecosystems and biodiversity.
- 4.2.2 In terms of compliance with environmental impact assessment, the project should comply with Bank's environmental and social standard 1, which describes the key requirements for SEA and EIA procedure (see §§ 2.2.2-2.2.5). The EIB-CM would like to note that no relevant infringement has been identified in terms of the national law transposing the SEA or EIA directives.
- 4.2.3 Transport planning is a long-term planning process and it is very likely that during the development of a project new studies and plans come to life. The complainants pointed at the National Recovery and Resilience Plan⁸⁰, which was prepared after the project was approved. It is expected that the national legislation would have a way to incorporate and treat new requirements in the plans and project when revisions take place. The EIB's strategy to facilitate the reduction of the CO² emissions has been adopted in the form of the Bank's Climate Roadmap, the applicability of which to the project was clarified in the Initial assessment report⁸¹. At the same time, the EIB supports the completion of TEN-T, as presented in its Transport Lending Policy (see § 2.3.4).
- 4.2.4 **The planning documents show that the project was identified more than 20 years ago** (see § 1.2.1). Around 2001, the Italian Government **proposed the project to be part of the comprehensive TEN-T network** (see § 1.1.2). At the time, the SEA Directive was still in its infancy and was not transposed into the national law. Noteworthy, the first strategic document for which an SEA was carried out with the project included, was the Lombardy Regional Programme for Mobility and Transport (2016), which came late in the project life (see § 1.2.1).
- 4.2.5 The project already received its approval by CIPE (2009), so the alignment was decided before the Regional Programme was prepared (see § 1.2.2). Any major modification of the alignment of the project or change of the type of the project would require a full EIA.

⁷⁹ CIPE prescriptions such as No.162, 163 and 164.

⁸⁰ Piano Nazionale di Ripresa e Resilienza, in Italian. Available [here](#).

⁸¹ Available [here](#). Also see footnote 32 for the link to the IAR, which clarifies the compliance.

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- 4.2.6 The complainants point at the density of roads in the area of the project. As the project is a part of strategic plans on the national and regional level, the justification for the roads is provided in those documents. The EIB is not a part of the planning process. The EIB standards require to ensure that projects comply with laws, relevant international standards and frameworks respected by the promoters (see § 2.2.1). The EIB promotes the application of SEA as a tool for identifying and evaluating potential impacts of plans and programmes (see § 2.2.10). The ESDS pointed at the SEA of the PRMT (see § 1.2.1). The mentioned procedure was yet another possibility to review the plans, especially for projects the implementation of which have not started yet at the time.
- 4.2.7 **As regards the project's environmental footprint**, during the EIA of 2009, landscape assessment was carried out with a list of critical impacts identified. The project was planned to cross some green areas and local parks. Among others, the 2009 decision contains measures for the Park Bosco delle Querce di Seveso e Meda⁸², and areas within key building blocks of the Provincial Ecological Network, such as the forest areas of Mozzati and Lomazzo, the Lura and Seveso valley, the Bassone plain⁸³, requirements for **careful design** of viaducts and reduced number of structures **in order to safeguard the green areas**⁸⁴. The measures aimed at reducing and mitigating negative environmental impacts on those areas are guiding measures the implementation of which in the detailed design will have to be verified at the last stage of decision making.
- 4.2.8 The development consent procedure for the project in question, once completed, will consist of three stage approval process (see sub-section 1.2). The EIB-CM would like to point out that the conditions/ prescriptions of the EIA in question will be reviewed by CIPESS. Also, as **additional surveys** have been also requested by the CIPE in 2009, those will have to be **taken into account** when preparing the detailed design (see § 3.2.4). The ESDS notes that it is expected that the procedure will **validate the detailed design's compliance** with the conditions and recommendations of the 2009 EIA decision (see § 3.2.3)⁸⁵.
- 4.2.9 As regards **stakeholder communication**, the complainants pointed out that information on the project is limited from the Ministries responsible. The main contact point was the administration of the Lombardy Region through the Council of Local Autonomies⁸⁶. The EIB-CM would like to point out that any complaint is analysed as an alleged maladministration by **the EIB Group in its actions and/or omissions**. The EIB-CM takes note that this matter concerns an action or omission by mentioned national intuitions, which falls outside the scope of the EIB-CM (see § 2.1.1).
- 4.2.10 In 2021, the EIB was not in a position to verify the EIA procedure in relation to public consultations and assessment of project modifications. The **latest public consultation was carried out during the 2009 EIA procedure while the project modifications were proposed between 2009 and 2019**. To EIB's knowledge the project's detailed design was not finalised yet, therefore any modifications were not (yet) subject to verification, additional assessments, if needed, and/ or public consultations.
- 4.2.11 Once the development of the detailed design is concluded (still in progress, may be implemented in phases to speed up the process of approval, as it is a complex project), the promoter will submit the documentation to the appropriate environmental authorities to undertake the verification of the detailed design and any modifications. The promoter could only state that, if authorities consider the changes to the project to be significant, in line with national law and the EIA Directive, a new EIA will have to be carried out (see § 1.2.4).
- 4.2.12 The **EIB is monitoring the situation, the progress of preparation of documents and will be able to confirm if project modifications have no significant additional environmental impacts, compared with the 2009 design**, only when the above-mentioned authorities will finish the works. Depending on the modifications, additional public consultations may be

⁸² CIPE prescription no. 140.

⁸³ CIPE prescriptions no. 42 and 43.

⁸⁴ CIPE prescriptions no. 27, 28 and 29.

⁸⁵ The procedural step of verification of the project's detailed design (*progetto esecutivo*, in Italian) will be finished with reasoned conclusions (*verifica di attuazione*, in Italian) with or without mitigation measures. If there is a major change of the design as compared with final project, an EIA will have to be carried out.

⁸⁶ Consiglio delle Autonomie locali, in Italian (CAL). It is a body composed of representatives of local authorities (Municipalities, Provinces, Mountain Communities), as they can intervene in these matters

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required. The promoter plans to submit the project to the competent authority for compliance check when the detailed design is ready.

4.3 Analysis of the EIB's compliance with applicable standards

This sub-section presents the analysis and findings regarding the Bank's due diligence during the project's cycle.

- 4.3.1 The EIB-CM reviewed the due diligence of the EIB performed during project appraisal and after the signature of the finance contract during a so-called monitoring phase (see section 3). The EIB's role is twofold: the due diligence towards the actions performed by the promoter related to the project initiation and implementation, and the Bank's own duty of care.
- 4.3.2 The EIB services appraised the project before the EIB's decision to approve the financing of the project taking into account EU law, the EIB's E&S standards (see sub-section 2.2) and the EIB's Transport Lending Policy (see § 2.3.4). Relevant extracts from the EIB's compliance check are described in section 3 of this report, as project information is typically complex.
- 4.3.3 In the projects it finances, the EIB, require the promoter to comply with applicable national law, EU law and/or good practices concerning technical project implementation. Since remediation of contaminated areas associated with the project is a part of the project, as also identified by the EIA procedure, it formed a part of due diligence.
- 4.3.4 The EIB environmental procedures and standards entail that, besides the demands for compliance, EIB services may offer technical assistance, if the promoter wishes so or if technical services of the Bank consider it necessary to complement or reinforce the capacity of the promoter (see § 2.3.3, point 2). The EIB-CM established that said technical assistance (such as, advisory services) was not requested.
- 4.3.5 During its investigation, the EIB-CM established that, as required by the EIB's Statutes (see § 2.2.12), the EIB informed the European Commission regarding the promoter's request to finance the project. The services received a positive opinion on the project financing though they were also informed of the risks of release of pollutants in the atmosphere during construction activities (see § 3.1.1).
- 4.3.6 The EIB procedures and standards enable the engagement of the EIB's environmental specialist to provide back-up support to the project team (see § 2.3.3, point 3). Such an expert has been assigned to the team early in the project appraisal process following the recognition of the high environmental risks (see § 3.1.2). The EIB services requested and received project documentation such as EIA reports and approval documents from relevant environmental authorities.
- 4.3.7 In order to provide its opinion on the project's compliance with the ESPS, as required by the same standards (see § 2.3.3, point 3), the EIB services prepared the environmental and social data sheet (ESDS), which was provided to the Bank's Management for decision making about the support to the operation. The said ESDS was also published on the EIB's project website (see footnote 69)
- 4.3.8 The EIB-CM established that the Services set up a rigorous project environmental assessment, as provided by the EIB's E&S standards, and established a number of environmental conditions and undertakings in the financial contracts signed to date (see §§ 3.2.8 and 3.2.9). Appropriate conditions before the first disbursement and continuous undertakings enabling the project follow up also during the project operation were established for the project in question.
- 4.3.9 Finally, the EIB-CM reminds that, prior to disbursement, the promoter is required to comply with a number of environmental requirements, which may include, *inter alia*, an updated evaluation of the environmental impacts following the modifications to the 2009 final project, an assessment regarding possible new public consultations⁸⁷, as well as a third-party evaluation of any new monitoring requirement. The promoter engaged with the Bank to take steps in this

⁸⁷ Subject to evaluation from competent authorities (i.e. variations to the project with severe environmental effects).

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direction. The EIB competent services confirmed that the requirements would be closely monitored before disbursement. (see §5.1.6).

5 CONCLUSIONS AND OUTCOME

5.1 Conclusions

Compliance of the project with the project applicable environmental and social standards

- 5.1.1 The EIB services received information from the promoter regarding the POB, which was drafted and approved in 2019. It was validated in 2020 (after modifications) (see § 4.1.4). It will be integrated in the detailed project design for the construction of sections B2 and C of Pedemontana motorway (see § 4.1.6).
- 5.1.2 The POB and its requirements will be assessed by competent authorities during the compliance check of the detailed design (see §§ 4.1.6, 4.1.8). This is also ensured by the conditions imbedded in the EIB finance contract. The promoter committed to the EIB to transferring the POB to a general contractor as soon as one will be engaged to be able to start working on the detailed design and processes (see § 4.1.9).
- 5.1.3 Information on the compliance will be made available to the public as enabled by the EIA procedure for this stage of the approval of development consent. In case the significant changes of the project occurred since the 2009 approval of the EIA and the detailed design, the procedure of a full EIA should take place. During the EIB's due diligence, the compliance with national law and the implementation of the POB for the areas associated with the project will be verified (§ 4.1.9).
- 5.1.4 The project stems from a long-term transport planning process and has been subject to EIA. To the EIB-CM knowledge, the EIA of the final design approved in 2009 is valid and has not been questioned in an appeal procedure.
- 5.1.5 Since 2009, a number of additional surveys have been carried out, also in relation to the Operational Remediation Plan which is to be applied to the detailed design and the project (see sub-section 4.1). Once the development of the detailed design is concluded (still in progress, may be implemented in phases to speed up the process of approval, as it is a complex project), the appropriate environmental authorities will undertake the verification of the modifications since the 2009 EIA. If the changes to the project are found to be significant, in line with the EIA Directive, a new EIA will have to be carried out.
- 5.1.6 Information gathered by the EIB-CM shows that the **EIB is monitoring the project, as well as the progress of preparation of documents and will be able to confirm if project modifications have significant additional environmental impacts, compared with the 2009 design, only when the above-mentioned authorities will finish their work.** Depending on the design modifications, additional public consultations may be required. The promoter plans to submit the project to the competent authority for compliance check when the detailed design is ready. Therefore, the EIB-CM concluded that the project is in compliance with the Bank's applicable environmental and social standards.

Responsibilities of the EIB

- 5.1.7 The EIB-CM considers that thus far the EIB services carried out their due diligence as required by the EIB standards. It closes the case without recommendations or suggestions for improvement.

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5.2 Outcome

- 5.2.1 At the time of the issue of the Conclusions report, the project was found to be compliant with the EIB's environmental and social standards. In light of the reported findings and conclusions, the reviewed allegation (see table 1) is found ungrounded. Therefore, the complaint is closed with no maladministration established and without any suggestions for improvement.

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