

COMPLAINTS MECHANISM

SG/E/2021/26

M-BIRR MOBILE BANKING SERVICE (ETHIOPIA)

CONCLUSIONS REPORT

30 August 2023



M-BIRR Mobile Banking Service (Ethiopia) Conclusions Report

Complaint confidential: No

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Disclaimer

The conclusions presented in this report are based on the information available to the EIB Group Complaints Mechanism up to 7 June 2023. The conclusions are addressed solely to the EIB.

The EIB Group Complaints Mechanism

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

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

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

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GLOSSARY

| | |
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| AGM | Annual General Meeting |
| BoD | Board of Directors |
| EIB | European Investment Bank |
| EIB-CM | EIB Group Complaints Mechanism Division |
| EIC | Ethiopian Investment Commission |
| ERCA | Ethiopian Revenue and Customs Authority |
| ESPS | EIB Statement of Environmental and Social Principles and Standards |
| EU | European Union |
| EUR | Euro |
| GDPR | General Data Protection Regulation |
| ICT | Information and Communication Technology |
| MFI | Microfinance institutions |
| MoM | Minutes of Meeting |
| NBE | National Bank of Ethiopia |
| Operator | M-BIRR ICT |
| Project | M-BIRR Mobile Banking Service (Ethiopia) |
| Promoter | M-BIRR Limited |
| TSP | Technology Service Providers |
| VAS | Value Added Services |

EXECUTIVE SUMMARY

This report concerns a complaint regarding the M-BIRR Mobile Banking Service in Ethiopia (the project), financed by the European Investment Bank (EIB) through a direct equity investment.

On 3 December 2021, the Fraud Investigations Division of the Inspectorate General Directorate of the EIB referred a complaint in relation to the project to the EIB Group Complaints Mechanism Division (EIB-CM). The project concerns an equity investment contributing to the capital increase of M-BIRR Ltd. M-BIRR Ltd. is registered in Ireland, operating in Ethiopia via its subsidiary M-BIRR ICT that offers a platform processing mobile financial services transactions via its partner microfinance institutions.

The complaint is structured around three main allegations, as follows:

- i. **Health, Safety and Welfare.** The complainant contends that the M-BIRR Board failed to ensure safety measures for its staff in the workplace during the COVID-19 pandemic.
- ii. **Applicable Licence.** The complainant considers M-BIRR ICT was being directed and facilitated by its Irish parent to act as a financial services entity without the necessary regulatory approval.
- iii. **Personal Data Protection.** The complainant alleges that the company was “*retaining ownership of the hardware and retaining customer data in its Ethiopian HQ and Ireland*” without the necessary data protection and privacy measures in place and the regulatory approval to do so.

The compliance review by the EIB-CM assessed the complainants’ allegations in the context of potential Bank maladministration. After conducting a review of available information, the EIB-CM concludes the following outcomes for the three allegations.

| Allegation by theme | Outcome |
|----------------------------|------------|
| Health, Safety and Welfare | No grounds |
| Applicable Licence | No grounds |
| Personal Data Protection | No grounds |

1 BACKGROUND

1.1 The Project¹ concerned by the Complaint

- 1.1.1 On 18 July 2017, the European Investment Bank (EIB) Board of Directors approved financing of M-BIRR Mobile Banking Service in Ethiopia in the amount of up to EUR 4 million². At the time of approval, the project was being developed by M-BIRR Limited, a private limited company focusing on telecommunications and mobile financial services (M-BIRR Ltd. or the promoter).
- 1.1.2 The financing concerned an equity investment contributing to the capital increase of M-BIRR Ltd. M-BIRR Ltd. was incorporated and established in Ireland; it was operated in Ethiopia via its subsidiary M-BIRR ICT Private Services PLC (M-BIRR ICT).
- 1.1.3 In November 2010, M-BIRR ICT was established under the Commercial Code of Ethiopia of 1960 with a 99.99% stake of M-BIRR Ltd. M-BIRR ICT was running a platform that provided mobile financial services to microfinance institutions (MFIs) and money transfer services.
- 1.1.4 To avoid confusion between the mobile banking service brand and the company offering the IT services required for it, and on the advice of the Ethiopian regulator, trade names for the two companies were created: MOSS Technology for M-BIRR Ltd. and MOSS ICT Consultancy for M-BIRR ICT.
- 1.1.5 The equity investment was financed under the Impact Financing Envelope of the African Caribbean and Pacific States Investment Facility (also called Cotonou Investment Facility) and the transaction was 100% guaranteed by funds from the European Development Fund.
- 1.1.6 Due to difficulties resulting from the COVID-19 pandemic, political landscape in Ethiopia and the uncertainty regarding the privatisation of the telecom and banking sectors in Ethiopia³, M-BIRR Ltd. was placed into a creditors' voluntary liquidation. Simultaneously, the creditors decided to wind up M-BIRR ICT, given that the company could not continue its business, by reason of its liabilities. The project is therefore considered closed from an EIB monitoring perspective.

1.2 The Complaint

- 1.2.1 On 3 December 2021, the Fraud Investigations Division of the Inspectorate General Directorate of the EIB referred a complaint to the EIB Group Complaints Mechanism Division (EIB-CM)⁴.
- 1.2.2 The complaint relates to the "M-BIRR Mobile Banking Service" project and is structured around three main allegations as follows:
- i. **Health, Safety and Welfare.** The complainant claims that the company failed to ensure the health, safety and welfare of its staff in the workplace during the COVID-19 pandemic.
 - ii. **Applicable Licence.** The complainant considers *"the Company was being directed and facilitated by its Irish parent to act as a financial services entity without the necessary regulatory approval"*.

¹ For the purpose of this report, the term "project" refers to the entirety of the investment (as provided for in the project summary, available [here](#)).

² Project description on the EIB website available [here](#).

³ An article in The Currency, dated 10 September 2021, available [here](#), refers to problems including delaying in tendering of telecom licences, confusion over the new financial regulation, political instability and the war in Tigray region.

⁴ The complaint did not fall under IG-IN's mandate. IG-IN closed the case as there was insufficient suspicion that Prohibited Conduct may have occurred.

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- iii. **Personal Data Protection.** The complainant alleges that the company was “*retaining ownership of the hardware and retaining customer data in its Ethiopian HQ and Ireland*” without the necessary data protection and privacy measures in place and the regulatory approval to do so.
- 1.2.3 The complainant further claims that the EIB, as shareholder, was made aware of the above issues and subsequently failed to achieve the required level of probity and standards required. The complainant requested the EIB to fulfil its obligations with the required standards, while financing this project.

Table 1 - Summary of allegations submitted by the complainant

| Allegation by theme | Description of the Allegation |
|----------------------------|---|
| Health, Safety and Welfare | Failure by the company to ensure the health, safety and welfare of its staff in the workplace during the COVID-19 pandemic. |
| Applicable Licence | Absence of the necessary regulatory approval for the company to act as a financial services entity. |
| Personal Data Protection | Absence of necessary data protection and privacy measures and the regulatory approval to retain customer data in both Ethiopia and Ireland. |

2 WORK PERFORMED

- 2.1.1 Upon admissibility of the complaint, the EIB-CM conducted an initial meeting with the EIB Services, and conducted a number of subsequent meetings with the complainant. In addition, the EIB-CM (i) reviewed relevant documentation, including that which was submitted by the complainant and (ii) corresponded with the liquidator (refer to paragraph 1.1.6).
- 2.1.2 Given the company’s state of insolvency, the EIB-CM was unable to assess opportunities for collaborative dispute resolution provided for by paragraph 2.2.5 of the EIB Group Complaints Mechanism Procedures⁵. For the same reason, it has also proven challenging to obtain relevant information in relation to the allegations raised in the complaint.
- 2.1.3 Over the course of the compliance review, the complainant informed the EIB-CM that two ongoing investigations involving the promoter were being undertaken by 1) the Irish Data Protection Commission regarding alleged violation of personal data and 2) the National Bank of Ethiopia (NBE) regarding alleged unlawful trading, corporate data & regulation issues.
- 2.1.4 The EIB-CM’s compliance review assessed the three allegations from the complainant in the context of potential Bank maladministration, including whether the Bank complied with the applicable regulatory framework and the EIB Group’s own policies, procedures and standards. Based on the collected and analysed information, the EIB-CM prepared this Conclusions Report.

3 REGULATORY FRAMEWORK

3.1 The EIB Group Complaints Mechanism

- 3.1.1 The EIB Group Complaints Mechanism Policy⁶ tasks the EIB-CM with handling complaints concerning alleged maladministration by the EIB⁷. Maladministration means poor or failed

⁵ Available [here](#).

⁶ Available [here](#).

⁷ § 5.1.3 of the EIB Group Complaints Mechanism Policy.

administration; this occurs when the EIB fails to act in accordance with the applicable legislation and/or established policies, standards, and procedures⁸.

- 3.1.2 The Policy specifies that the EIB-CM reviews the EIB's activities with a view to determining whether maladministration, attributed to the EIB has taken place⁹. Complaints against EIB Group counterparts such as borrowers/promoters are not handled by the EIB-CM¹⁰. However, in assessing the EIB's activities (at appraisal and during monitoring) in view of determining possible maladministration by the EIB, it is necessary for the EIB-CM to also review compliance of the operation concerned with the applicable requirements (see also paragraph 3.2.2).
- 3.1.3 There may be limitations in the handling of complaints submitted when the contractual relationship with the borrower/promoter no longer exists, as the EIB would not have any possibility to restore compliance¹¹.

3.2 Responsibilities of the EIB

- 3.2.1 The project must comply with the EIB's environmental and social framework. This includes, but is not limited to, the EIB's policies, procedures and standards, and national legislation and international conventions and agreements ratified by the host country.
- 3.2.2 In line with the EIB Statement of Environmental and Social Principles and Standards (ESPS)¹², the responsibility for compliance with the project applicable standards lies with the promoter and local authorities¹³. However, the EIB will not finance projects that do not meet project applicable standards¹⁴. Whether the projects meet the project applicable standards is established as part of the EIB's project appraisal and monitoring.
- 3.2.3 The ESPS requires the EIB to appraise projects it finances¹⁵. The appraisal takes place prior to signature of the finance contract¹⁶. The appraisal aims at, inter alia, assessing the project's impact and whether the project complies with the project applicable standards. Sometimes, the appraisal results in conditions for disbursement. The promoter must complete these conditions to the satisfaction of the EIB prior to the disbursement of the EIB financing¹⁷.
- 3.2.4 Once the promoter and the EIB sign the finance contract, the EIB is required to monitor the project. The monitoring aims at ensuring compliance of the project with the EIB's approval conditions¹⁸. The EIB monitors projects based on reports provided by the promoter, as well as EIB site visits, information provided by the local community, etc.¹⁹.
- 3.2.5 The above requirements apply, as relevant, to a direct equity investment.

⁸ § 3.1 Ibid.

⁹ § 5.3.3 Ibid.

¹⁰ § 4.3.2 Ibid.

¹¹ § 4.3.13 Ibid.

¹² Available [here](#).

¹³ Paragraph 2 of the ESPS Statement.

¹⁴ Paragraph 6 of the ESPS Statement.

¹⁵ Paragraph 17 of the ESPS Statement.

¹⁶ Project cycle available [here](#).

¹⁷ Volume II, Paragraph 256, indent 2 of the EIB's 2013 Environmental and Social Practices Handbook.

¹⁸ Volume II, Paragraph 270 of the EIB's 2013 Environmental and Social Practices Handbook.

¹⁹ Paragraph 8 of the ESPS Statement.

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3.3 Health, Safety and Welfare

- 3.3.1 In line with the requirements of EIB Standard 9 on Occupational and Public Health, Safety and Security²⁰, the International Labour Organisation (ILO) Guidelines on Occupational Safety and Health Management Systems, related guidance of international (World Health Organisation) and European Union (EU) organisations, the EU Occupational Safety and Health Framework Directive 89/391/EEC²¹, and the respective national legislation – promoters are required to ensure that the workplaces, machinery, equipment and processes under their control are safe and without risk to the health of workers²².
- 3.3.2 Exclusively in response to the COVID-19 outbreak crisis, the EIB produced a guidance note targeting EIB promoters (the 'guidance note') which acknowledges the challenges faced by both public and private sector promoters alike.²³
- 3.3.3 According to the guidance note, promoters should consider developing specific procedures and measures to be prepared for identifying, preventing, mitigating and responding to instances of COVID-19. These should take into account the different types of personnel the promoter may be employing²⁴.
- 3.3.4 The guidance note also includes recommendations aimed at supporting promoters in managing health and safety-related challenges during the COVID-19 crisis, bearing in mind that all actors, including businesses, have a role to play in stopping the spread of the disease. Specifically, it includes focus on effective communication, basic measures to prevent COVID-19 spread and employees' wellbeing²⁵.
- 3.3.5 As in the case of all EIB-financed projects, EIB promoters are required to comply with national laws and regulations. They are expected to also be aware of any new national legal requirements to respond to COVID-19. The promoters should continue to follow all applicable national laws, rules and regulations related to labour, occupational and public health and safety²⁶.
- 3.3.6 At national level, the Ethiopian Ministry of Health issued a Directive for the Prevention and Control of the COVID-19 Pandemic No. 30/2020²⁷. This Directive defined all the national laws and measures against COVID-19. The Ministry updated this directive in 2021²⁸.

3.4 Applicable Licence

- 3.4.1 The NBE is the central bank of Ethiopia, responsible for regulating the financial sector²⁹.

²⁰ The 2013 EIB Environmental and Social Standards (Volume I of the EIB's 2013 Environmental and Social Practices Handbook). The 2013 version of the Environmental and Social Standards is not available online anymore but the 2018 version (which is almost identical) is available [here](#).

²¹ Council Directive on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC), available [here](#).

²² P. 1 of the Guidance note to EIB promoters on environmental and social performance in EIB-financed operations in response to the COVID-19 outbreak crisis, available [here](#).

²³ Guidance note to EIB promoters on environmental and social performance in EIB-financed operations in response to the COVID-19 outbreak crisis, May 2020, available [here](#). The EIB Guidance note applies to this complaint as the complainant raised concerns dating from May/June 2020.

²⁴ P. 2 of the Guidance note to EIB promoters on environmental and social performance in EIB-financed operations in response to the COVID-19 outbreak crisis, available [here](#).

²⁵ P. 1 of The Annex 1 – Health and Safety of the Guidance note to EIB promoters on environmental and social performance in EIB-financed operations in response to the COVID-19 outbreak crisis, available [here](#).

²⁶ P. 2 of the Guidance note to EIB promoters on environmental and social performance in EIB-financed operations in response to the COVID-19 outbreak crisis, available [here](#).

²⁷ Ethiopian Directive for the Prevention and Control of the COVID-19 Pandemic No. 30/2020, available from the Ethiopian Ministry of Health [here](#).

²⁸ Ibid.

²⁹ Official website of the National Bank of Ethiopia, available [here](#).

- 3.4.2 Amongst other powers and duties, its mandate particularly includes licensing, supervising and regulating the operations of banks, insurance companies and other financial institutions³⁰.
- 3.4.3 Without the prior written approval of the NBE, no bank can, inter alia, introduce new banking services³¹.
- 3.4.4 The NBE defines banking business as, inter alia, receiving funds from the public through means authorised by the NBE, using said funds for loans or investments in a manner acceptable to the NBE, the transfer of funds to other local and foreign persons, and any other activity recognised as customary banking business which a bank may be authorised to undertake.³²

3.5 Personal Data Protection

- 3.5.1 One of the most important pieces of EU legislation on the control and protection of personal data is the General Data Protection Regulation (GDPR)³³, which entered into force in 2016. As of 25 May 2018,³⁴ all organisations covered by its scope were required to be GDPR compliant. The purpose of the GDPR is to protect the personal data belonging to EU citizens and residents.
- 3.5.2 Article 4 of the GDPR sets out some important definitions including:
- i. **'Controller'** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law;
 - ii. **'Personal data'** means any information relating to an identified or identifiable natural person (**'data subject'**); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
 - iii. **'Processing'** means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
 - iv. **'Processor'** means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.
- 3.5.3 The **material scope** of the GDPR is set out in Article 2 whereby the Regulation applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system³⁵.
- 3.5.4 The **territorial scope** of the GDPR is set out in Article 3. The Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the EU, regardless of whether the processing takes place in the EU or not (Article 3.1). The Regulation also applies (Article 3.2) to the processing of personal data of data subjects

³⁰ More details about the mandate of the National Bank of Ethiopia may be found [here](#).

³¹ NBE banking business proclamation No. 592/2008, available [here](#).

³² NBE banking business proclamation No. 592/2008, available [here](#).

³³ Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). Available [here](#).

³⁴ Article 99.2 of GDPR.

³⁵ Certain exceptions to this scope are set out in Article 2.2-4 of GDPR.

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who are in the Union by a controller or processor not established in the EU, where the processing activities are related to: (a) the offering of goods or services to such data subjects in the EU; or (b) the monitoring of their behaviour as far as their behaviour takes place within the EU.

- 3.5.5 Of relevance may also be the Ethiopian Financial Consumer Protection Directive³⁶. Article 4.4 requires financial service providers to keep the financial consumers' data that they collect confidential and secure. Article 5.4 requires the financial service providers to put in place, and apply, policies and procedures to ensure the confidentiality and security of the financial consumers' data.

4 FINDINGS

4.1 The project

- 4.1.1 M-BIRR ICT was running a platform that provided mobile financial services to financial institutions and money transfer services. As of 2017, five of the largest microfinance institutions (MFIs) were using M-BIRR ICT services to reach their clients. Thus, M-BIRR ICT was not providing mobile financial services, but was providing the MFIs the IT platform, as a technical service provider (TSP), to enable them to provide mobile banking services.
- 4.1.2 The actual provision of the mobile financial services was being managed by these MFIs that are also held responsible by the NBE regarding the Anti-Money Laundering and Combating the Financing of Terrorism Act.

4.2 EIB Appraisal

- 4.2.1 The Bank undertook an appraisal of the project in 2017 which included a meeting at M-BIRR Ltd. in Dublin and a mission to Ethiopia in March 2017.
- 4.2.2 The Bank's competent services gave a favourable opinion. The Bank's appraisal notes the following:
- The investment from the Bank is proposed to go to M-BIRR Ltd. to fund the operations of M-BIRR ICT in Ethiopia. A legal review on this mechanism would be required before the investment;
 - The Bank could use M-BIRR operation as a pilot project allowing the Bank to learn from this first fintech investment;
 - It was recommended that an EIB staff member attend M-BIRR board meetings as an observer^{37 38};
 - There would need to be satisfactory due diligence;
 - There would need to be satisfactory legal opinions from Irish, Ethiopian and English counsels;

³⁶ National Bank of Ethiopia Directive No. FCP/01/2020, available [here](#)³⁷ An EIB observer in principle acts as a representative of the Bank, without any decision-making or other intervention powers. His or her role is limited to a strictly passive one, to listen to the deliberations in the respective meetings and to receive relevant information.

³⁷ An EIB observer in principle acts as a representative of the Bank, without any decision-making or other intervention powers. His or her role is limited to a strictly passive one, to listen to the deliberations in the respective meetings and to receive relevant information.

³⁸ Ultimately, the EIB did not exercise its contractual right to appoint an "observer" to attend board meetings, therefore the Bank only participated in such meeting occasionally as an ad hoc "invitee".

- M-BIRR Ltd. and M-BIRR ICT are TSPs, and M-BIRR ICT has received all required approvals from the NBE to operate as a TSP for MFIs. The actual provision of mobile and agent banking services is currently managed by the five MFIs that use the M-BIRR mobile banking platform;
- The Ethiopian investment regulation allows for profits repatriation for foreign investors, which M-BIRR technology qualifies for. A Technology Transfer Agreement was signed between M-BIRR Ltd. and M-BIRR ICT, and validated by the Ethiopian Investment Agency, which allows for the payment of a software licence fee by M-BIRR ICT to M-BIRR Ltd. for the use of its mobile money platform.

4.2.3 Based on their assessment, the EIB competent services recommended a number of conditions for disbursement, including satisfactory legal opinions from Irish, Ethiopian and English legal counsels. The requirement for these legal opinions was included in the Share Subscription Agreement dated 28 November 2017, as conditions precedent.

4.3 Due diligence

4.3.1 A technical due diligence was carried out, and the Bank obtained the legal opinions required by the appraisal. Neither the technical due diligence nor the legal opinions gave rise to any issues of concern for the Bank.

Technical due diligence

4.3.2 An M-BIRR technical due diligence was carried out by an independent Finnish company providing consultancy services for telecom operators and regulators in network strategy, design and quality assurance. The due diligence report was addressed to a company shareholder. The report notes, inter alia, that the IT architecture follows legal requirements, and that best practice is used. All data is stored in Ethiopian Data Centres (two centres) and no customer data is stored outside of Ethiopia. The data centres are geo redundant and hosted / co-located in Ethio Telecom's premises under strict security. The technical due diligence report concludes that it does not foresee any significant technical risks in the M-BIRR platform architecture, system scalability and security.

Legal due diligence – Ethiopian legal counsel

4.3.3 A legal due diligence report relating to M-BIRR ICT was prepared by an Ethiopian legal counsel (an external and independent corporate law office based in Ethiopia) for both the EIB and another of the company's shareholders. The legal opinion aimed at gaining legal advice about the investment and M-BIRR's compliance with national regulations, in particular in the Information and Communication Technology (ICT) sector.

4.3.4 The EIB therefore received the required reassurance from the Ethiopian legal counsel, who concluded that M-BIRR ICT had been duly incorporated and was validly existing under Ethiopian law and was in compliance with the law with respect to its licences. The VAS Licence enabled the company to provide services including mobile money transfer, m-banking and m-commerce. The Ethiopian legal counsel confirmed that there were no company restrictions on the proposed subscription of shares of M-BIRR Ltd. by the EIB and one of the other company's shareholders.

Legal due diligence – Irish and English legal counsels

4.3.5 A legal opinion was provided to the EIB and another of the company's shareholders by a firm of solicitors (external and independent commercial law firm) in Ireland. Another legal opinion was provided by an external and independent commercial English firm of solicitors. Neither legal opinion raised any concerns related to the scope of their due diligence nor to the allegations that are the subject of this report.

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- 4.3.6 It appears that neither the technical nor legal due diligence reports specifically considered the implications (or otherwise) of personal data protection aspects of the project. The EIB-CM also notes that there is currently little guidance available to the EIB relevant services to carry out the required due diligence in relation to personal data protection in ICT operations.

4.4 EIB Monitoring

- 4.4.1 As per its contractual obligation, the EIB received project progress reports from the promoter between 2018 and 2021. In addition, and of particular relevance to this complaint, additional monitoring of this investment was carried out by the EIB through its attendance at M-BIRR Ltd. and M-BIRR ICT board meetings as an “invitee” (i.e. on an ad-hoc basis rather than on the basis of an appointment in a formal role with contractually pre-agreed duties and limitations).

M-BIRR Board Meetings

- 4.4.2 M-BIRR Ltd. and M-BIRR ICT held joint Board of Directors (BoD) meetings (as M-BIRR Group) on a regular basis. Reference is made to such meetings between 2 April 2019 (an Annual General Meeting (AGM)) and 29 July 2021. The Bank services provided information on some, but not all Board Meetings to the EIB-CM. The following observations have been made:
- i. There were 15 meetings for which some information was made available to the EIB-CM;
 - ii. Two were for the AGMs for M-BIRR ICT, the rest were combined Board of Directors meetings for M-BIRR Ltd. and M-BIRR ICT;
 - iii. For three of the meetings, only the agendas were made available to the EIB-CM, for the other 12 meetings the Minutes of Meeting (MoM) were made available to the EIB-CM;
 - iv. Based on the MoM made available, the EIB was known to be present at 7 of the meetings as an “invitee”³⁹;
 - v. Based on the information available to the EIB-CM, the Covid 19 situation in Ethiopia (relevant to allegation 1) was discussed at one Board meeting (16, 17 & 22 April 2020) and was on the agenda of one further meeting (17 September 2020);
 - vi. Based on the information available to the EIB-CM, the regulatory changes in Ethiopia (relevant to allegation 2) were discussed at one Board meeting (16, 17 & 22 April 2020) and was on the agenda of one further meeting (17 September 2020);
 - vii. Based on the information available to the EIB-CM, the allegation of personal data protection (allegation 3) was not on the agenda nor in any of the MoMs of any of the meetings for which there was information.
- 4.4.3 The EIB-CM notes that the Bank seems to have attended between half to two-thirds of the BoD meetings of which information was made available, and that MoMs were not readily available within the EIB for all BoD meetings that took place since the signature of the Share Subscription Agreement.

4.5 Health, Safety and Welfare

- 4.5.1 According to the complainant, M-BIRR Ltd.’s Board failed to ensure safety measures for its staff in the workplace during the COVID-19 pandemic.
- 4.5.2 On a number of occasions during the conduct of this compliance review, the EIB-CM requested additional information and documentation from both the complainant and the EIB, notably in relation to activities/measures in the context of COVID-19. Where there were gaps in information, the EIB-CM approached the liquidator who was not able to provide any further

³⁹ During the consultation of this report with the EIB relevant services, the EIB-CM was notified of the EIB presence at 10 board meetings.

information. Paragraphs 4.5.3 through 4.5.4 describe the limited information which was made available by the parties.

- 4.5.3 On 24 March 2020, the MOSS CEO sent a message informing M-BIRR ICT staff to start working from home in stages from 25 March 2020 to ensure the safety of MOSS staff against COVID-19 spread. According to the message, this began with a two-week work-from-home period with possibility of extension depending on developing circumstances. Additionally, the MOSS CEO provided staff with a Contingency Plan. This included a staff work-from-home plan as well as proposed measures against COVID-19 spread.
- 4.5.4 As mentioned above, the M-BIRR Ltd.'s Board held regular meetings, as per the Share Subscription Agreement. Regarding the health situation of workers (COVID), the available and reviewed documents on the BoD's meetings (see paragraph 4.4.2(v)) show the Board discussed the COVID situation and its impact on the company's business in both Ireland and Ethiopia in April 2020, and it was on the agenda for the September 2020 meeting. The April BoD MoM indicate that "for the last few weeks" the entire M-BIRR Ltd. team was working from home, while in Addis Ababa all M-BIRR ICT departments had been set-up to work from home for "the last two weeks." The agenda for the September BoD meeting included an item on general Ethiopian business update including COVID-19.
- 4.5.5 The complainant provided information that suggests that in June 2020, internal M-BIRR discussions were held concerning a return of the staff to office, i.e. a return to work in the call centre.
- 4.5.6 The available and reviewed documents on the BoD's meetings (i.e. one BoD MoM and one agenda referring to COVID-19) provide no further information pointing to any possible shortcoming(s) in terms of measures taken regarding the health of workers between 16 April 2020 and 29 July 2021. It should be noted that these minutes clearly indicate the EIB attended the Board meetings as an "invitee" (and not as a Director or as an observer).

4.6 Applicable Licence

- 4.6.1 The complainant alleges M-BIRR ICT was being directed and facilitated by its Irish parent to act as a financial services entity without the necessary regulatory approval.
- 4.6.2 The EIB appraisal notes (see paragraph 4.2.2) that a Technology Transfer agreement was signed between M-BIRR Ltd. and M-BIRR ICT and validated by the Ethiopian Investment Agency to allow for the payment of a software license fee by M-BIRR ICT to M-BIRR Ltd. for the use of its mobile money platform.
- 4.6.3 The review of the EIB appraisal (see section 4.2) notes that the assessment was based on, inter alia, (1) M-BIRR Ltd. and M-BIRR ICT are TSPs, (2) M-BIRR ICT has received all required approvals from the NBE to operate as TSP for MFIs, and (3) the MFIs provide the actual banking services.
- 4.6.4 The technical due diligence report (see paragraph 4.3.2) notes that the IT architecture follows legal requirements.
- 4.6.5 The legal due diligence report from the Ethiopian legal counsel (paragraph 4.3.4) concluded that M-BIRR ICT held all the necessary licences required by Ethiopian law.
- 4.6.6 The MoM of the combined BoDs meeting on 16, 17 and 22 April 2020 (see paragraph 4.4.2) indicated that the regulatory changes in Ethiopia were seen in a positive light from MOSS's point of view and offered a number of new opportunities.
- 4.6.7 According to the EIB competent services, M-BIRR ICT had received all required approvals from the NBE to operate in the country. It had established important partnerships with Ethio Telecom,

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the telecommunications operator providing the network services to M-BIRR, and a number of MFIs offering the M-BIRR service to their clients.

- 4.6.8 In addition, the EIB had put the necessary safeguards in place related to the applicable licences of the company. The Share Subscription Agreement refers to the conditions and/or obligations for the EIB disbursement. The conditions include “*the delivery to the Investors of a legal opinion from i) their English law counsel, ii) their Irish law counsel and iii) their Ethiopian law counsel, in the agreed form*”.
- 4.6.9 The complainant alleges that he had a formal meeting with NBE, the national banking regulator, in February 2020 where the company was asked to desist acting unlawfully. He claims that a later report from the NBE was said to have been sent to M-BIRR ICT, their MFI customers, and their transfer system (and received in or around December 2020), and allegedly concluded that M-BIRR ICT (as TSP) has unlawfully engaged in financial business and that M-BIRR provided the Ethiopian subsidiary with the authority, funding and technology to do so⁴⁰.

4.7 Personal Data Protection

- 4.7.1 The complainant alleges that the company was “*retaining ownership of the hardware and retaining customer data in its Ethiopian HQ and Ireland*” without the necessary data protection and privacy measures in place and without the regulatory approval to do so.
- 4.7.2 The complainant alleges that the purported NBE report (see paragraph 4.6.9) supports this allegation. The complainant further alleges that the Chairman of M-BIRR Ltd. (Ireland) confirmed to him that M-BIRR Ltd. did have access to the data of the clients of the financial institutions.
- 4.7.3 It is recalled that the technical due diligence check (see paragraph 4.3.2) stated that the IT architecture follows legal requirements, that all data is stored in Ethiopian Data Centres and that no customer data is stored outside of Ethiopia.
- 4.7.4 It is necessary to consider who are the customers whose data is alleged to have been held by M-BIRR ICT and M-BIRR Ltd. According to the EIB appraisal, (i) the financial access will bring a number of benefits to rural communities, (ii) the proposed operation is expected to expand financial inclusion also in communities where no financial services were available before, notably in remote areas where poverty is widespread. It was also noted that the operation was expected to provide access to finance to at least 2 million previously unbanked bottom-of-the-pyramid clients until 2021.
- 4.7.5 The GDPR does not appear to apply to any alleged holding of customer data by M-BIRR ICT in Ethiopia (see paragraphs 3.5.2 – 3.5.4).
- 4.7.6 The Ethiopian Financial Consumer Protection Directive (see paragraph 3.5.5) does not appear to apply as M-BIRR ICT was not a financial service provider. Even if the directive did apply, the directive requires that the data be kept confidential and secure, and the allegation does not allege that data was not so kept (only that it was kept at all without approval).

5 CONCLUSIONS

- 5.1.1 The EIB-CM has examined the complainant’s allegations in light of possible maladministration attributable to the Bank and the alleged non-compliance with the Bank’s policy framework concerning (i) health, safety and welfare, (ii) applicable licence and (iii) personal data protection.

⁴⁰ The legitimacy of this alleged report could not be substantiated and, thus, is not considered further in the conclusions in this report. The alleged report was not dated, had no headings to show it came from the NBE.

- 5.1.2 **In terms of due diligence at appraisal stage**, the EIB-CM acknowledges that a technical due diligence was carried out (see paragraph 4.3.2) and that the Bank required satisfactory legal opinions from Ethiopian, Irish and English counsel (see paragraphs 4.2.2 and 4.2.3 and section 4.3). In the EIB-CM's view, these important actions constitute an integral part of the Bank's due diligence.
- 5.1.3 **As regards the first allegation related to health, safety and welfare**, it has not been possible for the EIB-CM to establish, to any substantive degree, (non) compliance with EIB Standard 9 specifically in response to the COVID-19 outbreak crisis. There are several constraints that have had implications for the conduct of this compliance review, the principal among them being the scarcity of documentation made available by both the complainant and the EIB services to the EIB-CM. Among the limited documents reviewed, the EIB-CM notes that M-BIRR ICT staff was directed by the MOSS CEO to begin working from home from 25 March 2020. The EIB-CM also notes that the M-BIRR Ltd. and M-BIRR ICT Boards subsequently discussed the COVID-19 situation and its impact on the company's business in both Ireland and Ethiopia in April 2020. Nevertheless, the EIB-CM notes neither the BoD's meetings related documents, nor any other available documentation, provide further insight into the company's actual response to the crisis from April 2020 onward. In addition, there is no evidence to suggest that EIB shared the guidance note to EIB promoters⁴¹ with the M-BIRR BoDs, which could have been useful at a time of such unprecedented crisis.
- 5.1.4 **As it relates to the applicable licence**, the EIB-CM concludes this allegation has **no grounds**. The EIB had fulfilled its responsibilities to ensure M-BIRR ICT complied with national regulations in Ethiopia (see paragraphs 4.6.5 and 4.6.8). Evidence shows that M-BIRR ICT obtained the licence from the NBE to operate in Ethiopia, as a TSP (see paragraphs 4.6.5 and 4.6.7)⁴².
- 5.1.5 **With respect to the third allegation related to personal data protection**, based on the information made available for review, the EIB-CM finds **no grounds**. There is no independent evidence that either M-BIRR ICT or M-BIRR Ltd. stored customer data (i.e. data on the customers of the MFIs) in either Ethiopia or in Ireland (see paragraphs 4.7.3 and 4.7.6). As a result, the EIB-CM is not in a position to detect a possible breach of the EU-GDPR.
- 5.1.6 Although the technical due diligence stated that no customer data was stored outside Ethiopia (see paragraph 4.3.2), **it would have been useful if the EIB had assessed the risks and impacts of the project in terms of data protection and privacy, including possible implications of the GDPR on the project**. The customer data was stored in data centres hosted / co-located in Ethio Telecom's premises (see paragraph 4.3.2). The EIB-CM considers that it would have been useful had the EIB services assessed the implications of this with regard to Ethiopian data protection legislation and the potential for government access to such personal data.
- 5.1.7 The ICT sector is a developing and growing sector, and the Bank has been steadily increasing its activity in the digital sector economy⁴³. This provides an opportunity to promote fundamental values such as inclusiveness, rights-based, human-centric digitalisation and the responsible use of technology⁴⁴. The fundamental user rights contained in the GDPR can be seen as an instrument of best practice. The Bank is becoming increasingly aware of the risks involved in investing in the sector. However, there appears to be little guidance available to staff for the due diligence required in relation to data protection in proposed ICT projects.

⁴¹ Guidance note to EIB promoters on environmental and social performance in EIB-financed operations in response to the COVID-19 outbreak crisis, May 2020, available at: https://www.eib.org/attachments/covid19_guidance_note_to_promoters_en.pdf. The EIB Guidance note applies to this complaint as the complainant said to have raised concerns in May/June 2020.

⁴² And no independent evidence to the contrary.

⁴³ See for example, The rise of Africa's digital economy, February 2021, available [here](#).

⁴⁴ Ibid in Chapter 1.

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5.1.8 **In terms of EIB monitoring:** The Bank only had “invitee” status. It did not attend all the BoD meetings, and not all MoMs were readily available to the EIB-CM for review (see paragraphs 4.4.2 and 4.4.3). Some lessons learnt in this regard are discussed below.

6 OUTCOME

6.1.1 The role of an EIB “invitee” to promoter board meetings is an informal, passive role where the invitee listens and observes but cannot intervene, and where invitation to board meetings and receipt of promoter board documents (agenda, minutes of meetings etc) are at the discretion of the board. The EIB views attending board meetings as an “invitee” as an additional monitoring tool, considered especially useful where other monitoring is inadequate or identifies potential issues.

6.1.2 The more formal EIB observer role is relatively new and was not available at the time of approving this equity investment. The aim of the observer in the relevant corporate bodies is to increase the quality and timeliness of information received by the Bank, allowing the Bank to take a more pro-active monitoring approach, promptly taking measures to protect its investment. As a lesson learnt (based on the EIB-CM’s findings, particularly in relation to the scarcity of documentation available), the EIB-CM encourages the Bank to make increasing use of the observer role and include it in any relevant contract - in preference to an “invitee” role.

6.1.3 Moreover, the EIB-CM takes note that the Bank is in process of developing guidance to its staff for assessing data protection related risks of operations related to the provision of ICT services (including of private operations).

Complaints Mechanism

Available remedy:

Complainants that are not satisfied with the conclusions report may file a complaint of maladministration against the EIB Group with the European Ombudsman⁴⁵.

⁴⁵ Available at: <https://www.ombudsman.europa.eu/en/home>.