

COMPLAINTS MECHANISM

SG/E/2022/14

RAILWAY NIS-DIMITROVGRAD (SERBIA)

INITIAL ASSESSMENT REPORT

29 DECEMBER 2022



SG/E/2022/14

Railway Nis-Dimitrovgrad (Serbia)

Initial Assessment Report

Complaint confidential: No

External distribution

Complainants
Promoter

Internal distribution

Inspector General
Relevant EIB project team

Disclaimers

This report is based on the information available to the EIB Group Complaints Mechanism up to 16 December 2022.

In case of discrepancies between language versions, the English version prevails.

EIB Group Complaints Mechanism — Initial Assessment Report

The EIB Group Complaints Mechanism

The EIB Group Complaints Mechanism (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 may include the environmental or social impact of the EIB's projects and operations.

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

The initial assessment report

The initial assessment generally aims to¹:

- Clarify the concerns raised by the complainants and gain a better understanding of the complainants' position as well as the views of other stakeholders (e.g. project promoter, national authorities).
- Assess whether and how the stakeholders (e.g. the complainants, the relevant EIB Group project team and the project promoter) could seek resolution of the issues raised by the complainants.
- Determine if further work by the Complaints Mechanism is necessary and/or possible (investigation, compliance review or collaborative dispute resolution between the parties) to address the allegation or resolve the issues raised by the complainants.

¹ As outlined in § 2.2.1 of the EIB Group Complaints Mechanism procedures, available at: [EIB Group Complaints Mechanism procedures dated November 2018](#).

CONTENTS

1	PROJECT.....	1
2	COMPLAINT	1
3	WORK PERFORMED	1
4	REGULATORY FRAMEWORK.....	2
5	ASSESSMENT.....	2
6	WAY FORWARD	5

GLOSSARY

€	Euro
CFD	Central Feedback Desk
CoN	City of Nis
EIB	European Investment Bank
ESDS	Environmental and Social Data Sheet
ESMP	Environmental and Social Management Plan
Project	Railway Nis-Dimitrovgrad
Promoter	Serbian Railways Infrastructure LLC Belgrade
RAP	Resettlement Action Plan
RPF	Resettlement Policy Framework
SRI	Serbian Railways Infrastructure LLC Belgrade

1 PROJECT

- 1.1 On 1 December 2017, the EIB Board of Directors approved financing of the Railway Nis-Dimitrovgrad project (the Project) in Serbia in the amount of up to EUR 134 million (full loan amount). The Project is being developed by Serbian Railways Infrastructure LLC Belgrade (the Promoter). The Project consists of three components, the modernisation and reconstruction of the section Sicevo - Dimitrovgrad of the existing Nis-Dimitrovgrad railway line (approximately 82 km), the construction of a railway by-pass around the City of Nis (approximately 22 km) and the electrification of the Crveni Krst – Pantelej, Nis by-pass section and the Sicevo – Dimitrovgrad section.²
- 1.2 The finance contract for the full loan amount was signed on 31 January 2018 and the Project Implementation Agreement between the EIB, the Republic of Serbia and Serbian Railways Infrastructure LLC Belgrade (SRI) was signed in August/September 2018.

2 COMPLAINT

- 2.1 On 8 September 2022, the EIB Group Complaints Mechanism (hereafter “Complaints Mechanism”) received a complaint from a local resident of Nis (the Complainant) regarding the Project financed by the EIB. The Complainant claimed to be living in a building that is set to be demolished in order to construct the by-pass. The main allegation presented in the complaint regards the lack of an adequate housing alternative offered to the Complainant by the City of Nis (CoN). According to the information provided, a total of five families who are living in the building are in a similar situation. Contacts with the CoN and representatives of the Promoter had allegedly not led to an offer of alternative housing acceptable to the Complainant. The Complainant expressed fear of being evicted from the flat and remaining without housing.

3 WORK PERFORMED

- 3.1 The objective of the initial assessment is to clarify the concerns raised by the Complainant and to understand the Complainant’s and other stakeholders’ positions. The objective of this assessment is additionally to determine if further work by the Complaints Mechanism is necessary and/or possible in order to address the allegation or resolve the issues raised by the Complainant³. The further work may include a compliance review or a collaborative resolution process (e.g. mediation). This report contains the results of the initial assessment by the Complaints Mechanism.
- 3.2 On 13 October 2022, the Complaints Mechanism acknowledged receipt and confirmed the admissibility of the complaint.
- 3.3 The Complaints Mechanism held two calls with the Complainant on 17 October and 3 December 2022, during which the Complainant further explained the situation and the allegations that had been presented to the Complaints Mechanism.
- 3.4 In addition, the Complaints Mechanism reviewed internal documents and had an initial meeting with the EIB services on 18 October 2022. The purpose of the meeting was to provide information on the complaint and the complaint handling process as well as to receive information on the status of the Project and the resettlement procedures provided for in the Resettlement Action Plan (RAP)⁴.

² [More information about the project is available here: RAILWAY NIS-DIMITROVGRAD \(eib.org\).](#)

³ § 2.2.1 of the Procedures.

⁴ [Resettlement Action Plan dated October 2019.](#)

EIB Group Complaints Mechanism — Initial Assessment Report

- 3.5 Furthermore, the Complaints Mechanism had a call with representatives of SRI on 19 October 2022.
- 3.6 On 11 and 12 December, the Complaints Mechanism held meetings in Nis with the Complainant, SRI, CoN and the administrator of MIN Holding in bankruptcy. MIN Holding owns the residential building, where the Complainant currently lives. The objective of these meetings was to obtain further information and clarifications from the stakeholders and to verify their willingness to engage in a collaborative resolution process.

4 REGULATORY FRAMEWORK

- 4.1 The Complaints Mechanism Policy and Procedures apply to complaints lodged against the EIB Group (Article 1.1 of that policy). In accordance with Article 5.3.2 of its Policy, the Complaints Mechanism, in cooperation with relevant internal and external stakeholders, will attempt to resolve problems raised by complainants through a consensual process. The Complaints Mechanism remains independent from operational activities in order to ensure that each complaint is dealt with in adherence to the highest standards of objectivity while safeguarding the interests of all the internal and external stakeholders of the EIB Group in accordance with Article 5.1.4 of the Complaints Mechanism Policy.
- 4.2 Article 6.2.4 of the Complaints Mechanism Policy provides that “whenever possible, and giving due consideration to the type of complaint, the Complaints Mechanism establishes a collaborative resolution process with a view to resolving the dispute by (i) achieving a better and common understanding; (ii) improving the degree of trust between the parties and (iii) seeking to identify a common agreed solution”. The Dispute Resolution Unit is in charge of designing and carrying out this collaborative resolution process.
- 4.3 As part of its initial assessment, the Complaints Mechanism identified the regulatory framework, relevant to the present complaint, including:
- i. laws and regulations to which the borrower, the Promoter or the Project are subject;
 - ii. the EIB Statement of Environmental and Social Principles and Standards⁵; and
 - iii. the EIB’s Environmental and Social Practices Handbook in the version dated 2 December 2013 (version 9.0⁶).

The following standards are applicable to the Project:

Standard 6: “Involuntary resettlement”,

Standard 7: “Rights and interests of vulnerable groups” and

Standard 10: “Stakeholder engagement”.

5 ASSESSMENT

- 5.1 During the initial assessment, the Complaints Mechanism learned that the residential building in which the Complainant lives is set to be demolished in order to complete the Project. The building was owned by MIN Holding, which went bankrupt in August 2019. The building contains 16 units: five apartments are unoccupied, while most of the remaining 11 are home to former employees of MIN Holding. Out of these 11 flats rented to former employees, six families regulated their relationship with MIN Holding and became owners of the respective flats, while five families remained tenants and do not own the flats.

⁵ Available at: [The EIB Statement of Environmental and Social Principles and Standards](#).

⁶ Available at: [EIB Environmental and Social Handbook](#).

SG/E/2022/14 — Railway Nis-Dimitrovgrad

- 5.2 Furthermore, the Complaints Mechanism learned that a Resettlement Policy Framework (RPF) was prepared in September 2017 jointly by SRI and CoN. An RPF is a document that is prepared when the exact physical and/or economic displacement is unknown due to a project's nature (existence of multiple components or sub-projects) and/or stage of development. The RPF provides the framework for mitigating negative impacts and for compensation in the event that involuntary resettlement is required during project implementation. The RPF lays out CoN's responsibility to implement the RPF as far as resettlement is concerned. Furthermore, the RPF lays out the basis for the development of the RAP.
- 5.3 The RAP⁷ was adopted in October 2019 by CoN and SRI. According to EIB approval documents, the RAP shall ensure the improvement or at least the restoration of the pre-project level livelihood for all project-affected persons. Furthermore, the RAP is expected to be developed in consultation with all project-affected persons to ensure acceptance of the proposed mitigation measures and facilitate the involuntary resettlement process⁸.

The RAP provides for a settlement arrangement for the five families with tenancy residence in the building owned by MIN Holding. The objective of this arrangement was to enable the families to buy the flats by implementing the following steps:

1. *“Determine the balance of debts of all 5 families towards MIN Holding in bankruptcy, in the name of unpaid rent to MIN Holding in bankruptcy,*
2. *Reach an agreement with Bankruptcy Agency in the function of the bankruptcy administrator on the write-off of a part of the debt of all 5 families by at least 50% with the approval of the Board of Creditors (already agreed in a framework),*
3. *CoN will settle the rest of the obligations of all 5 tenants from social funds for displacement as it is about former MIN workers who are in poor material condition,*

- 5.4 After settling obligations and bringing the debt of all 5 families to the "0" state, each tenant signs a contract for the purchase of an apartment with MIN Holding in bankruptcy, and the same is notarized. The deadline for the purchase of apartments cannot be less than 5 years nor longer than 15 years, which will be regulated between the Tenant and MIN Holding in bankruptcy by the purchase agreement. CoN and SRI will monitor and control the entire procedure and provide every type of assistance to the tenants through the Central Feedback Desk (CFD)⁹.
- 5.5 After the conclusion of the contract, the tenant-owners acquire the right to enter the expropriation procedure and the right to compensation for expropriated apartments, according to the findings of the experts.

“The procedure will be regulated by a special agreement between MIN Holding in bankruptcy, on the one hand, and tenants, CoN and SRI on the other. (...) There is a prior consent for this kind of action, and CoN and SRI will initiate activities to complete this within 2 months upon the adoption of the plan”.

The RAP clarifies that the resolution is of the utmost importance for SRI and CoN. *“Their status will be settled in agreement with the Bankruptcy Agency, the Board of Creditors and the Bankruptcy Judge with the support of the SRI and CoN. It is a goal to create the conditions for these 5 families to buy apartments, thus removing formal legal obstacles for their status to be the same as the status of other tenants.”*¹⁰

The RAP does not identify any project-affected persons to be vulnerable.

⁷ [Resettlement Action Plan dated October 2019.](#)

⁸ [Environmental and Social Data Sheet dated 20 November 2017.](#)

⁹ The CFD provides an additional opportunity to protect the rights of all dissatisfied Project Affected Persons as a project grievance mechanism.

¹⁰ [Resettlement Action Plan dated October 2019.](#)

EIB Group Complaints Mechanism — Initial Assessment Report

SRI is acting as the plan developer, CoN as the plan development coordinator. The RAP has been adopted by the developers of the plan, the SRI Steering Committee and the CoN Council.

- 5.6 In the EIB approval documentation, the Environmental and Social Data Sheet (ESDS) clarifies that “prior to any disbursement of funds for financing works of a particular component, the promoter shall submit to the Bank for this component, and to the Banks satisfaction, an approved RAP and Environmental and Social Management Plan (ESMP), evidence that RAP and ESMP are being properly implemented, including completion of resettlement and execution of all compensation payments and livelihood restoration measures to the relevant stakeholders prior to commencement of works. The Promoter shall undertake to implement the project in accordance with RPF, RAP and ESMP and not to commence any resettlement before agreement of the Bank to the corresponding RAP.”¹¹
- 5.7 Several meetings between the stakeholders (the five families, CoN, SRI and the administrator of MIN Holding) took place. The Complainant learned that CoN was not implementing the solution as provided for in the RAP but offered an alternative social housing as an alternative.
- 5.8 The Complaints Mechanism understands from its exchanges with the Complainant and the review of relevant documentation that:
- i. Five tenants in the building were not able to buy their respective flats due to financial constraints. The lease increased repeatedly, from 7 000 dinars to up to 24 000 dinars per month over the years. As the Complainant was not able to pay the lease, the debt accumulated over the years.
 - ii. The Complainant has been living in buildings owned by MIN Holding for more than 30 years and in this specific building since 2010.
 - iii. The family (four adults) lives in a 37.2 square meter flat.
 - iv. The Complainant was involved in the RAP process. The settlement arrangement represented therein regarding the five families had been communicated to them at the time the RAP was being drawn up by an employee of the CoN.
 - v. According to information provided in a claim for eviction filed with the Commercial Court in Nis (dated 14 September 2022) by the administrator of MIN Holding, the lease agreement was terminated due to the accrued debt of unpaid rent and the Complainant was informed of the termination on 29 August 2019.
 - vi. In September 2022, with the claim for eviction, the administrator of MIN Holding filed a request with the Commercial Court in Nis for the Complainant to vacate the flat within 15 days of the judgement becoming final and binding.
 - vii. The Complainant has recently received a written invitation (dated 8 December) to attend a meeting on 16 December at the CoN offices to discuss the terms of the alternative social housing.
 - viii. The Complainant emphasised the need for a long-term solution for the family, providing enough space and stability for all family members.
- 5.9 During the calls and meetings held, SRI informed the Complaints Mechanism that:
- i. The resettlement process is governed by Serbian national law, including the law on land acquisition, valuation and resettlement, e.g. the Law on Expropriation. The Law on Housing and Maintenance of Buildings regulates the issue of the right to purchase flats in public ownership, which is the case for flats of MIN Holding (which was a publicly owned company at the time in question). According to SRI, the possibility of buying up

¹¹ [Environmental and Social Data Sheet dated 20 November 2017.](#)

council flats pursuant to this law is linked to a legally effective lease contract for the flat in question.

- ii. SRI is trying to avoid the resettlement being carried out during the winter months. The Promoter is open to negotiating further and to attempting to find a solution acceptable to all parties.
- iii. The building was expropriated on 5 September 2022 based on determined public interest to implement the railway by-pass around Nis. The ownership over all flats in the building passed onto SRI. However, for the transfer of ownership to become legally effective, all participants in the expropriation procedure must have received the expropriation decision by post. SRI then provides an offer to all flat owners and once the agreements between SRI and the flat owners have been concluded, SRI will become owner of the building.

During the meeting with the representatives of CoN and the administrator of MIN Holding, the Mayor of Nis underscored the importance of the Project to the local population. CoN's representatives emphasised their willingness and perceived moral obligation to help facilitate a solution that would be acceptable to all parties. It was furthermore conveyed that CoN was trying to help find a solution quickly and was not exerting pressure.

According to the administrator of MIN Holding, the residents have no legal grounds for residing in the flats any longer. The administrator has indicated that the lessor cancelled the lease agreements with the affected persons due to the outstanding lease payments that have accumulated over the years. Claims for evictions have been filed against them.

6 WAY FORWARD

- 6.1 Paragraph 2.2.5 of the Procedures states that the Complaints Mechanism should identify relevant stakeholders who are to be involved in a possible collaborative resolution process and should understand their views and willingness to resolve the issues. Based on the information received and the discussions during its visit with the stakeholders in December, the Complaints Mechanism notes that the parties are open to engaging in facilitated dialogue to address the issue. The Complaints Mechanism therefore proposes to proceed with a collaborative dispute resolution process.
- 6.2 The outcome of the collaborative dispute resolution process will be communicated in a dispute resolution report.