

Draft recommendation to the European Investment Bank in complaint 244/2006/(BM)JMA

Recommendation

**Case 244/2006/(BM)(JMA)MHZ - Opened on 04/04/2006 - Recommendation on 08/07/2008
- Decision on 04/05/2009**

(Made in accordance with Article 3 (6) of the Statute of the European Ombudsman (1))

SUMMARY

The object of the complaint relates to the new high-speed railway project from Madrid to the French border via Barcelona, in particular the segment which will run through the centre of Barcelona between the stations of *Sants* and *Sagrera* .

In his complaint to the European Ombudsman, the complainant alleged that the agreement by the European Investment Bank ("the EIB") to finance the project was wrong, in view of the fact that the proposed route for the segment through Barcelona could have negative effects for the residents of the city. The complainant contested the legality of the process for the approval of the project, since, in his view, it was not subject to an appropriate environmental impact assessment ("EIA") as required by Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (2) .

The EIB argued that the lending agreement for the project had been approved according to the standard EIB appraisal process. It underlined that, following a thorough review of the EIA document pertaining to that part of the project, the EIB concluded that the EIA had been carried out correctly. The fact that alternative routes had been considered by the responsible national authorities formed part of this assessment.

In the context of an inspection of the file at the EIB's premises, the Ombudsman specifically asked to review any supporting evidence which showed that the EIB did in fact carry out a review of the EIA submitted by the Spanish authorities. To date, however, the EIB has not provided the Ombudsman with any document in relation to that review. In the absence of any supporting evidence which might establish that the EIB has in fact carried out a review of the EIA submitted by the Spanish authorities, on the basis of which it was able to conclude that the EIA of the segment in question met the EIB's environmental requirements, the Ombudsman has



no means of verifying whether or not the EIB has complied with due diligence with the legal obligations incumbent upon it. The Ombudsman therefore makes a draft recommendation that, before disbursing any financial assistance for the high-speed railway segment going through Barcelona, the EIB should formally and adequately record in the relevant file its review of the EIA prepared by the Spanish authorities, thereby permitting the Ombudsman to assess whether it has indeed complied with due diligence with its legal obligations.

THE COMPLAINT

Previous complaint: 2230/2005/BM

On 19 June 2005, the complainant submitted a complaint to the European Ombudsman against the European Investment Bank ("the EIB"), which was registered under reference 2230/2005/BM. The complaint concerned the EIB's failure to reply to the complainant's e-mail of 21 May 2005, in which he had requested information on the conditions to be met by projects financed by the EIB. From the available information, it appeared that the EIB decided to grant a loan to the Spanish authorities for the development of a high-speed railway connection between Madrid and the French border (*Madrid-Barcelona-Figueres*). The complainant opposed the proposed route for the segment of that project going through the centre of Barcelona, since that route would have required the construction of tunnels and would entail concomitant risks for private and residential buildings. In the complainant's view, it would be preferable to develop an alternative route closer to the coastline.

In the absence of a reply to his e-mail of 21 May 2005, the complainant submitted a complaint to the Ombudsman, in which he alleged that the EIB had failed to respond to his information request.

On 11 July 2005, the Ombudsman informally approached the EIB's services and requested that a reply should be sent to the complainant. On 15 July 2005, the EIB sent an acknowledgement of receipt to the complainant, a copy of which was forwarded to the Ombudsman. In that reply, the EIB explained that, for unknown reasons, it had not received the complainant's request for information, which it only learned about through the Ombudsman's request. It further noted that the query made by the complainant would be replied to shortly.

The Ombudsman considered that, since the EIB had replied to the complainant's e-mail of 21 May 2005, the case had been settled and he proceeded to close it by letter of 25 July 2005. In his letter to the complainant, the Ombudsman noted that his finding related only to the allegation of failure to reply, and did not involve a substantive evaluation of the answer sent by the EIB. The complainant was also informed that, if the EIB did not comply, within a reasonable time, with its undertaking to send him an answer on the merits, or if the information sent to him appeared to be insufficient, he could consider submitting a new complaint to the Ombudsman.

On 3 August 2005, the EIB forwarded to the Ombudsman a copy of its reply to the complainant's query dated 20 July 2005, in which it explained that all projects financed by the



EIB must comply with EU policies, including the principles set out by national and Community rules. According to the EIB, projects were strictly analysed from a financial, technical and economic perspective. In addition, the EIB assessed their compliance with EU environmental and public procurement legislation. Furthermore, a favourable opinion from both the European Commission and the Member State concerned by the specific project was required for the EIB's final decision on financing.

Present complaint: 244/2006/(BM)JMA

On 22 January 2006, the complainant submitted a new complaint to the Ombudsman, concerning the financial assistance granted by the EIB for the project. Since his letter referred to both the EIB and "other EU institutions", the Ombudsman registered his allegations as two different complaints with separate reference numbers: (i) his allegation against the EIB was registered under reference 244/2006/BM, and (ii) that against "other EU institutions" which, in fact, referred to the Commission, was registered under reference 798/2006/BM. The Ombudsman has dealt with these complaints separately.

As regards the complaint against the EIB (reference 244/2006/BM), the facts of the case are, in summary, as follows:

In his complaint, the complainant questioned the EIB's decision to assist in the financing of the high-speed train project between Madrid and the French border, in particular as regards the segment of the project going through the centre of Barcelona. More specifically, he alleged that the above segment of the project going through Barcelona could cause serious social and environmental damage, including noise and vibrations, which might endanger the nearby buildings and be a nuisance for their inhabitants. The complainant explained that he would be one of the citizens whose home would be affected by the project.

The complainant argued that a number of viable alternatives to that route were available. In his view, any of the alternatives would be safer for the neighbourhood and indeed more economical. The complainant pointed out that the responsible authorities had nevertheless refused to consider additional safety measures. The complainant explained that a number of independent specialists had publicly classified the route chosen for the high-speed train through Barcelona as the worst possible option. In view of these considerations, the complainant took the view that the EIB should not grant financial assistance to the project, and asked the Ombudsman to halt it.

In his complaint to the Ombudsman, the complainant alleged, in summary, that, the EIB's agreement to finance the high-speed railway connection between Madrid and the French border (*Madrid-Barcelona-Figueres*), was wrong, in view of the fact that the proposed route for the project could have negative effects for the residents of the Barcelona area, including damage to private buildings and environmental pollution, in particular noise pollution, which were in breach of EU rules.

Additional information



The complainant sent additional information to the Ombudsman on 23 April, 11 May and 12 June 2006, which included press clips regarding the state of the project in question. In his letters, the complainant informed the Ombudsman that, on 10 May 2006, an environmental impact assessment ("EIA") for the segment of the project running through the centre of Barcelona (section between *Sants* and *Sagrera*) had been carried out by the Spanish authorities. The project had been subject to a public consultation, in the course of which the complainant had defended the use of an alternative route, namely, the one near the coastline. This option, however, had not been retained by the Spanish authorities.

The complainant underlined his concerns that the project would have negative effects for the citizens of Barcelona, and create unnecessary risks for nearby buildings. He asked the Ombudsman to take the proposed alternatives into consideration.

THE INQUIRY

The EIB's opinion

In its opinion, the EIB first described the facts of the case. It explained that the project in question involved the design, land acquisition, construction and commissioning of a new 744-kilometre high-speed railway line, linking Madrid and Barcelona and continuing further on to the French border. It was part of the trans-European railway network and, as such, the *Madrid-Barcelona-Perpignan-Montpellier* axis was one of the 14 priority trans-European Network projects identified by the Essen European Council in 1994 (3). Further, the project was reconfirmed as a European priority in the new Guidelines for the development of the trans-European transport network adopted by a decision of the Council and the European Parliament in 2004 (4). The EIB had lent EUR 2 500 million to the Spanish public enterprise "Gestor de Infraestructuras Ferroviarias", for the financing of 27% of the total cost of the project. It stressed that the other costs were to be financed by the EC Cohesion Fund and by Spain. Since 1 January 2005, the promoter of the project was a newly established public body, the so-called "Administrador de Infraestructuras Ferroviarias".

The EIB argued that, after having followed the standard EIB appraisal process, it had approved the lending operation. It went on to explain that the object of the complaint before the Ombudsman was the segment of the project running through the centre of Barcelona, between the stations of *Sants* and *Sagrera*. No EIA had yet been completed with respect to that part of the work. The EIB underlined however that no formal decision had yet been taken by the Spanish authorities as regards the routing of the project going through the centre of Barcelona.

The EIB drew a distinction between its own responsibility and that of the Spanish authorities. Accordingly, whereas it was for the Spanish authorities to choose the routing for the project and to ensure compliance with EU policies and Community law, as well as with national law, it was the EIB's duty to ensure that the EIA of the project had been carried out with due diligence. The EIB stated that its policy is not to finance projects that conflict with EU environmental legislation.



As regards the specific segment of the project in question, the EIB noted that it had not yet disbursed its financial contribution, since, according to the Bank's loan contract conditions and its standard environmental procedures, disbursement is subject to the completion of the appropriate EIA, including public information and consultation. The EIB stated that the *Sants - Sagrera* segment was, as of the date of submitting its opinion, undergoing a public consultation process in Spain, which was started on 10 May 2006 and was to last for a period of 30 working days (5) .

The complainant's observations

In his observations of 29 June 2006, the complainant stressed that the development of the work would constitute a nuisance for the neighbours and insisted that, as illustrated by several independent studies, there were alternatives to the proposed route.

The complainant argued that the public consultation process carried out for the segment of the project in question lacked legitimacy, since it had not considered any of the potential alternatives, as required by national and Community legislation, in particular Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (6) . In addition, he referred to the lack of transparency as regards the way in which the EIA for this segment of the project had been carried out.

The complainant noted that many citizens' organisations, including representatives from Gaudí's "*Sagrada Família*" church, had submitted negative assessments of the current route, and had stated that it constituted an unnecessary risk. He was of the view that the Spanish authorities had neither properly assessed the impact of the project on the surrounding buildings, nor properly foreseen alternatives. The complainant took the view that, in light of the information provided, the EIB should re-examine the project and reconsider its financing of it.

The complainant attached to his observations several press articles concerning the potential consequences of the project on nearby buildings in the centre of Barcelona. He also sent a copy of the specific allegations which he had submitted on 13 June 2006, in the context of the public consultation process for the EIA.

The complainant sent additional information to the Ombudsman concerning ongoing work on the project on 14 and 19 July, 22 August, 25 September, 23 October, 8 and 17 November, and 10 and 11 December 2006. He also sent additional materials on 3, 5 and 15 January, 11 and 21 February, 9 and 13 March, and 16 April 2007.

FURTHER INQUIRIES

In view of the available information, the Ombudsman wrote to the EIB on 19 July 2007, requesting additional information on the following questions:

- Has the EIB received information from the Spanish authorities in relation to the definitive



approval of the segment through the centre of Barcelona?

- Has the EIB disbursed the loan portion relating to the segment under discussion? If so, has the EIB received and reviewed the EIA, which must have been carried out by the promoter and the Spanish authorities in relation to the segment under discussion? In this context, please explain the manner in which the EIB has carried out "a due diligence" on the EIA in order to confirm that the project is acceptable from an environmental perspective. For instance, has the EIB checked that the main alternative routes for the selected segment have been taken into account in the EIA? In this respect, the EIB is asked to please comment on the arguments put forward by the complainant in relation to alternative routes.
- If the EIA of the segment has not yet been received, can the EIB comment on how it plans to carry out its review of the EIA once it is received?
- Could the EIB comment on the way it deals with citizens' input in relation to EIA?

The EIB's second opinion

In its second opinion of 2 October 2007, the EIB addressed each of the questions asked by the Ombudsman in his request.

The EIB noted that, on 2 August 2007, the Spanish authorities had informed it that the segment through the centre of Barcelona, and the EIA for that segment had been approved. Both documents appeared to be accessible to the public.

As regards the funding of the project by the EIB, the Bank noted that it had not yet disbursed the loan portion relating to the segment in question, since the Spanish authorities had not provided the so-called NATURA 2000 certificates. The EIB went on to explain that, in line with its Environmental Statement 2004 ("the Statement"), the promoter is required to furnish an appropriate assessment of the biodiversity effects of a project, including a detailed assessment of any likely significant effect on the protected site and/or species. It further noted that, as set by the Finance Contract signed by the EIB and the promoter in this project, the issue of such certificates constitutes a contractual condition for the disbursement of the total amount of the loan.

With respect to the EIB's review of the EIA submitted by the Spanish authorities, the EIB explained that, as established in its Statement, it must ensure that environmental considerations are taken into account throughout the project cycle, from a first screening at the identification stage to an ex-post evaluation at the completion of the project. Accordingly, whilst carrying out "a due diligence" on the EIA approved by the competent national authorities, the EIB verifies that the latter have taken all necessary measures in order to ensure the assessment's compliance with (i) the EIB's environmental standards; as well as (ii) the relevant Community and national legislation, such as the setting up and the execution of a public consultation with all relevant stakeholders, and the carrying out of studies on alternative options.

The EIB underlined that, following a thorough review of the EIA document, it had concluded that the EIA for the segment under discussion had been carried out in accordance with the above requirements. The EIB noted that, since 2003, several rounds of public consultations had taken



place and that, in the context of these consultations, allegations made by the public, including those concerning alternative routes, had been taken into account when approving the final version of the EIA. Furthermore, the EIB pointed out that, in the past, it had refused to disburse loans in the event that the measures taken by the national authorities were insufficient and/or inappropriate, for instance, when the public consultation carried out had been insufficient.

The EIB added that, as set out in Article B.2.2 120 of its Environmental and Social Practices Handbook ("the Handbook"), the Bank is responsible for checking whether the promoter has fulfilled the following requirements: ensuring the existence of a full EIA process, including the public consultation and approvals/planning consent; identifying the impacts and appropriate measures designed to avoid, reduce or mitigate them; considering alternatives; proposing mitigation and compensation measures, as well as an associated Mitigation Plan; and providing for public disclosure. The EIB pointed out that it is not competent to exercise any value judgement with regard to the approval or refusal of alternative options whereas the evaluation of their feasibility falls solely within the competence of the national authorities. Thereby, if the national authorities ensure that the EIA takes into account such alternative options and provide adequate reasoning in support of their decision to reject these alternative options, the EIB does not pursue enquires with respect to the substantive grounds.

As regards the way in which the EIB deals with citizens' input in relation to EIAs, the EIB explained that, for all contracts for which its funding has been requested, the project promoter and the competent national authorities are responsible for the EIA and all related activities such as, for instance, the setting up and the carrying out of a public consultation and the gathering of observations from all stakeholders. The EIB further noted that, although the evaluation of the environmental impact falls within the competence of the national authorities and the EIB's role is limited to checking compliance with its requirements as well as with Community and national legislation, it endeavours to take into account all the inputs provided by the citizens and, whenever appropriate, it transfers them to the promoter for comments.

The complainant's observations

In his observations on the EIB's second opinion dated 25 October 2007, the complainant repeated the allegations made in his complaint. He also restated that the responsible authorities had committed a number of irregularities in the way they had carried out the EIA for the segment of the project in question, in particular as regards their review of the alternative routes proposed by the public.

The inspection of the file

After having carefully examined the available information, the Ombudsman concluded that it was appropriate to carry out an inspection of the file. The Ombudsman therefore wrote to the EIB on 24 April 2008, stating that, in accordance with Article 3(2), first indent, of his Statute, he considered it necessary for his services to inspect the file. In his letter, the Ombudsman noted that, in particular, he wished to see the documents on the basis of which the EIB's services had concluded that the EIA carried out by the Spanish authorities for the EIB's funding of the



development of a high-speed railway connection between Madrid and the French border had been carried out in accordance with the Bank's environmental criteria.

The inspection took place at the EIB's premises in Luxembourg on 23 May 2008. The EIB's file concerning the project, which contained numerous documents, was made available for inspection.

After a review of the documents, it appeared that there was no document drafted by the EIB's services bearing out the Bank's assertion that, following a thorough review of the EIA document, it had concluded that the EIA for the segment under discussion had been carried out in accordance with the EIB's environmental requirements.

The Ombudsman's services drafted a report to the Ombudsman concerning the inspection of the file, a copy of which was forwarded to both the EIB and the complainant on 10 June 2008.

THE DECISION

1 Preliminary remark

1.1 To avoid misunderstanding, it is important to recall that the EC Treaty empowers the European Ombudsman to inquire into possible instances of maladministration only in the activities of Community institutions and bodies. The Statute of the European Ombudsman specifically provides that no action by any other authority or person may be the subject of a complaint to the Ombudsman.

1.2 The Ombudsman's inquiries in this complaint have therefore been directed towards examining whether there has been maladministration in the activities of the European Investment Bank ("EIB"). The Ombudsman has no competence to inquire into the complainant's allegations against the Spanish authorities and whether or not actions by these national authorities, in particular as regards the manner in which they carried out the relevant environmental impact assessment ("EIA"), complied with the applicable Community provisions. The Ombudsman points out that the complainant may address his allegations against the national authorities to the Spanish ombudsman who has the powers to start an inquiry into this aspect of the case.

2 The EIB's financing of the high-speed railway project Madrid-France

2.1 The object of the complaint relates to the new high-speed railway project which will connect Madrid and Barcelona and will continue further onto the French border, in particular the segment of these works which will run through the centre of Barcelona, between the stations of *Sants* and *Sagrera*. This initiative is one of the projects included in the trans-European Network programme, and was to be partly financed by the EIB, which agreed to lend EUR 2 500 million to the Spanish authorities.



The complainant alleges that the EIB's agreement to finance the high-speed railway connection between Madrid and the French border (*Madrid-Barcelona-Figueres*) was wrong, in view of the fact that the proposed route for the project could have negative effects for the residents of the Barcelona area, including damage to private buildings and environmental pollution, in particular noise pollution, which were in breach of EU rules.

The complainant argues that the route chosen for that part of the project which goes through the city centre of Barcelona, by means of several tunnels between the stations of *Sants* and *Sagrera* , would cause serious social and environmental damage, and would have negative effects for the residents of the area. Further, in his view, there are a number of safer and more economical alternatives, which the responsible authorities have refused to consider. He therefore questions the EIB's decision to give financial assistance to the project and claims that the EIB's financial assistance should be halted.

2.2 In its opinion, the EIB argues that the lending agreement for the high-speed railway project between Madrid, Barcelona, and further on to the French border, was approved after having followed the standard EIB appraisal process. As regards the project in question, namely, the railway segment going through Barcelona, between the stations of *Sants* and *Sagrera* , the EIB first noted that it was being subject to an EIA, whose public consultation process was launched on 10 May 2006. Thus, no formal decision had been adopted by the Spanish authorities at that time as regards the exact routing.

The EIB points out that it has not yet disbursed its contribution, since the disbursement, according to both the loan contract conditions and the Bank's standard environmental procedures, is subject to the completion of the appropriate EIA, a process which must include public information and consultation. The EIB notes that, on 10 May 2006, the Spanish authorities launched a public consultation procedure for the *Sants - Sagrera* segment of the work.

The EIB underlines that it is responsible for carrying out, with due diligence, an EIA, and that, as part of its policy, it does not finance projects that are in conflict with EU environmental legislation.

2.3 In his observations, the complainant contests the legality of the process opened for the public consultation of the project, since no alternative studies have been considered by the responsible authorities. Accordingly, he argues that the project has not been subject to an appropriate EIA as required by the applicable Community legislation.

2.4 In its second opinion, the EIB explains that, on 2 August 2007, it was informed by the Spanish authorities of the final approval of both the segment in question and the completion of the EIA corresponding to that part of the work. As regards the Bank's review of the EIA issued by the Spanish authorities, the EIB underlines that it was carried out in accordance with both its first Environmental Statement 2004 (7) ("the Statement") and its Handbook. In line with its Statement, the EIB carries out "a due diligence" on all EIAs, and verifies that the responsible authorities have taken all necessary measures in order to ensure the compliance of the EIA with



the EIB's environmental standards, as well as with the relevant Community and national legislation. Moreover, pursuant to Article B.2.2 of its Handbook, the EIB is responsible for checking whether the promoter has fulfilled the following requirements: ensuring the existence of a full EIA process, including the public consultation and approvals/planning consent; identifying the impacts and appropriate measures designed to avoid, reduce or mitigate them; considering alternatives; proposing mitigation and compensation measures, as well as an associated Mitigation Plan; and providing for public disclosure. As regards alternative options, the EIB argues that it is not competent to exercise any value judgement with regard to the approval or refusal of alternative options, given that this falls within the competence of the national authorities.

The EIB underlines that, following a thorough review of the EIA document submitted to it, it concluded that the EIA for the segment under discussion had been carried out in accordance with the above requirements. It goes on to point out that, in the past, it had refused to disburse loans in the event that the measures taken by the national authorities were insufficient and/or inappropriate, for instance, when the public consultation carried out had been insufficient. In this case, however, the EIB argues that, since 2003, several rounds of public consultations had taken place and that, in the context of these consultations, allegations made by the public, including those concerning alternative routes, had been taken into account by the Spanish authorities when approving the final version of the EIA.

As regards the funding by the EIB, the EIB noted that it had not yet disbursed the loan portion relating to the segment under discussion, since the Spanish authorities had not provided the so-called NATURA 2000 certificates which should assess the biodiversity effects of the project.

2.5 In order to review whether the EIB acted properly in granting financial assistance to the project, the Ombudsman considers it necessary to identify the responsibilities of the EIB as regards environmental considerations when granting loans. There are certain rules, principles and guidelines that should be considered in trying to identify these responsibilities.

The Ombudsman notes first that, as set out in Article 12 of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (8) ("Regulation 1260/1999"), operations receiving assistance from the EIB must be in conformity with the provisions of the Treaty and with instruments adopted under it, as well as with Community policies and actions, including the rules on environmental protection. One of the most important Community legislative instruments in the environmental area is Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (9). Article 5(1) of the Directive requires Member States to ensure that the developer supplies the information specified in Annex III, which includes " *an outline of the main alternatives* " and " *an indication of the main reasons of his choice, taking into account the environmental effects* ". Furthermore, Article 6(2) of the Directive states that,

" *Member States shall ensure that:*

- *any request for development consent and any information gathered pursuant to Article 5 are*



made available to the public,

- the public concerned is given the opportunity to express an opinion before the project is initiated. "

The Ombudsman further notes that the EIB has issued two policy documents which lay down the environmental standards the Bank applies to its lending: (i) the Statement and (ii) the Handbook (10) .

The EIB's Statement is a policy note covering the Bank's objectives, operations and approach in the field of environment which was adopted by its Board of Directors on 5 May 2005. According to the Statement, projects financed by the EIB must comply with the principles and standards set by both EU and national environmental legislation (11) . Among these principles and standards, the need for an EIA in certain projects appears to be of primary importance. The Statement indicates that,

" The EIB requires that all projects likely to have a significant effect on the environment be subject to an Environmental Impact Assessment (EIA), according to the definitions and requirements of Directive 85/337/EEC, amended by Directive 97/11/EC (...). The EIA, which includes public consultation, is the responsibility of the promoter and the competent authorities. It should be completed and its main findings and recommendations must satisfy the requirements of the [. The [EIB] prior to disbursement EIB] may request more studies if necessary. " (12) (Emphasis added).

The EIB's internal processes and practices to deal with environmental concerns are described in detail in its Handbook, which devotes a whole chapter (Chapter B.2) to the procedures to be followed by the Bank's services for the review of an EIA. In this regard, paragraph 114 of the Handbook states that,

" [F]ormally, the EIA should be completed to the satisfaction of the [EIB] and should be a condition of loan signature or disbursement. " (13)

In order to judge the quality of an EIA for EIB purposes, paragraph 120 of the Handbook requires that the responsible EIB's services, namely, the Projects Directorate (PJ), must ensure that the following aspects have been adequately covered in the EIA:

- " 1. The EIA process, including the public consultation and approvals/planning consent.*
- 2. The identification of the impacts and appropriate measures to avoid reduce or mitigate them; all impacts must be examined and this may include project elements not under control of the Promoter, for example, access roads/rail to an airport.*
- 3. Consideration of alternatives.*
- 4. The proposed mitigation and compensation measures and associated Management Plan.*



5. Public disclosure, notably "how was this done and when", and "How were stakeholders informed about the consultation process". " (14)

2.6 Against this background, the Ombudsman concludes that, when granting a loan, it appears to be the EIB's responsibility to check whether a proper EIA has been carried out for the project.

The Ombudsman notes that, as regards the part of the project which is the object of the present complaint, namely, the high-speed railway segment going through Barcelona, between the stations of *Sants* and *Sagrada*, the EIB emphasised that, after a thorough review of the EIA document pertaining to that part of the project, it concluded that the EIA had been carried out in accordance with the Bank's own requirements, including the consideration of alternative routes by the responsible national authorities. However, notwithstanding the specific request made by the Ombudsman in the context of his inspection of the file at the EIB's premises, on 23 May 2008, the Bank has been unable to provide any document, such as an appropriate note for the file, which may support its position that it carried out a thorough review.

2.7 To date, the Ombudsman has not received any supporting evidence which might establish that the EIB did in fact carry out a review of the EIA submitted by the Spanish authorities, on the basis of which it was able to conclude that the EIA of the segment in question met the EIB's environmental requirements, as laid down in Article 12 of Regulation 1260/1999, its Statement, and the rules set out in paragraphs 114 and 120 of its Handbook. In the absence of such supporting evidence, the Ombudsman has no means of verifying whether or not the EIB complied with due diligence with the legal obligations incumbent upon it.

The Ombudsman has therefore concluded that the EIB's failure to record properly both the manner in which it carried out its review of the EIA for the segment in question and the reasons which led it to consider that that EIA met the EIB's environmental standards constitutes an instance of maladministration. A draft recommendation will thus be made in this regard by the Ombudsman.

3 Conclusion

In view of the above, the Ombudsman makes the following draft recommendation to the EIB, in accordance with Article 3 (6) of the Statute of the Ombudsman.

The draft recommendation

Before disbursing any financial assistance for the high-speed railway segment going through Barcelona, between the stations of *Sants* and *Sagrada*, the EIB should proceed to review the EIA prepared by the Spanish authorities for that project, in order to verify whether or not the EIA in question meets the environmental requirements incumbent upon the EIB, as laid down in Article 12 of Regulation 1260/1999, its Statement, and the rules set out in paragraphs 114 and 120 of its Handbook.



The EIB should formally and adequately record in the relevant file its review of the EIA prepared by the Spanish authorities, thereby permitting the Ombudsman to assess whether it has indeed complied with its legal obligations with due diligence.

The EIB and the complainant will be informed of this draft recommendation. In accordance with Article 3(6) of the Statute of the Ombudsman, the Bank shall send a detailed opinion before 30 September 2008. The detailed opinion could consist of the acceptance of the Ombudsman's draft recommendation and a description of how it has been implemented.

Strasbourg, 8 July 2008

P. Nikiforos DIAMANDOUROS

(1) Decision 94/262 of 9 March 1994 of the European Parliament on the Regulations and General Conditions Governing the Performance of the Ombudsman's Duties, OJ 1994 L 113, p. 15.

(2) See OJ 1985 L 175, p. 40, as amended by Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ 1997 L 73, p. 5) and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ 2003 L 156, p. 17).

(3) European Council, 9 and 10 December 1994, Essen.

(4) Decision 884/2004/EC of the European Parliament and of the Council of 29 April 2004 amending Decision 1692/96/EC on Community guidelines for the development of the trans-European transport network (OJ 2004 L 167, p. 1).

(5) The consultation process was published in the Spanish Official Gazette ("*Boletín Oficial del Estado*"), n° 111 of 10 May 2006, p. 4767, reference 25.874/06.

(6) See OJ 1985 L 175, p. 40, as amended by Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ 1997 L 73, p. 5) and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ 2003 L 156, p. 17).

(7) The Environmental Statement 2004 is available on the EIB's website:



<http://www.eib.org/about/publications/environmental-statement.htm> [Link]

(8) See OJ 1999 L 161, p. 1.

(9) See footnote 5.

(10) The Environmental and Social Practices Handbook is available on the EIB's website:
<http://www.eib.org/about/publications/environmental-and-social-practices-handbook.htm> [Link]

(11) The Statement, cited above, p. 3.

(12) The Statement, cited above, p. 4.

(13) The Handbook, cited above, p. 38.

(14) The Handbook, cited above, p. 39.