



To: Board of Directors
European Bank for Reconstruction and Development
London, UK

09 February 2021

Subject: Outstanding questions on the “South Mostar - Tunnel Kvanj” section of Corridor Vc in the Federation of Bosnia and Herzegovina.

Dear members of the EBRD Board of Directors,

This letter concerns the expected Board decision on the EUR 60 million loan for Tranche 2 of the Corridor Vc - Part 3 project in Bosnia and Herzegovina. A discussion is scheduled for the Board meeting agenda tomorrow, February 10th, 2021. We take the opportunity to thank you for your attention to the Bankwatch report “Connecting or Dividing”¹ and for the opportunity to have a number of calls to discuss the points raised in the report, as well as the concerns of local leaders from impacted communities in the South Mostar area.

Bankwatch has received a reply from EBRD Management on February 8th, 2021. We highly appreciate the additional information that Management provided. However, we want to point out the outstanding questions (and alleged breaches of EBRD’s ESP) with regards to the non-transparent route selection, absence of spatial plan consultations, sub-standard EIA consultations and impact assessment on biodiversity.

In view of the open questions, we want to reiterate our request that the Board gives time to the bank’s Independent Project Accountability Mechanism to conduct its compliance review of the project, as it can identify non-compliances that require redress. We should stress that for local people (and IPAM complainants), whose lives and heritage will be irreversibly harmed, this is an opportunity to receive redress and an opportunity to shape the project in a transparent, inclusive and democratic way.

¹ CEE Bankwatch Network, 26 January 2021, *Connecting or Dividing: The South Mostar section of Corridor Vc in Bosnia and Herzegovina*, <https://bankwatch.org/publication/connecting-or-dividing-the-south-mostar-section-of-corridor-vc-in-bosnia-and-herzegovina>

Spatial planning and route selection

The response sent by the EBRD claims that: *“Alternative alignments for the Tranche 2 section (Mostar South Interchange – Tunnel Kvanj) were assessed and were subject to consultation in line with national requirements through the Spatial Planning process and the alignment officially adopted prior to the EBRD’s involvement.”*

We strongly contest the claim that the alternative alignments for this section were subject to consultation in line with national requirements. The current routing of the section in question was incorporated into the Spatial Plan *without any public consultations*. This issue is explained in our report and has not been addressed by the EBRD’s response. As clearly stated in the project ESIA, FBiH parliament approved the Spatial Plan in December 2017 after public consultations in Mostar and Sarajevo in November 2011. During this six years gap there was one visualisations, in January 2017 in Blagaj, where people expressed their serious opposition (and fury), but their concerns were not taken into consideration in decision-making.

The claim by the bank that *“JPAC is obliged to implement any decision made by the FBiH authorities, including the finalisation of the Tranche 2 section, in line with the officially adopted alignment”* surely does not extend to implementing decisions made without following the legally binding procedures.

Finally, for the purpose of EBRD decision-making on Tranche 2, the EBRD needs to ensure compliance with its environmental and social standards. If there is a gap between the national legal requirements and the EBRD Environmental Policy, then the question is if the EBRD has analysed these gaps and is satisfied that they were addressed? The IPAM should be allowed to provide this answer, in order to prevent irreversible harm and to ensure redress for the failures of the public consultation process to date.

Social Impacts

The EBRD response states that the status of **vulnerability** was granted to *“mainly elderly persons, those with disability and the unemployed, of the communities living along the Tranche 2 section alignment [whereas] Serb Returnees were identified as a vulnerable group in the settlement of Ortijes due to their socioeconomic status”*.

The EBRD ESP 2014 defines ethnic minorities as vulnerable groups. Not poor, unemployed, elderly or disabled representatives of ethnic minorities. Vulnerability is not just an economic concept. Ethnic minorities have a lot wider needs and concerns, for example, with regards to heritage and access to natural resources, including agricultural

land. This aspect of vulnerability was completely neglected in the social impact assessment, in spite of the sensitivity of the issue in Bosnia and Herzegovina and the need to support peacebuilding efforts, not degrade them.

The LALRP in the part on gap analysis (p.31) states that “*EBRD requires appropriate **disclosure of information and involvement of all affected population** from the earliest phase and during resettlement activities in order to facilitate their early and informed participation in the decision-making processes in relation to resettlement.*” The impact assessment is heavily focused on expropriation and limits the affected community to property owners affected by expropriation: 572 properties in total, of which 506 privately owned, of which 106 agricultural plots.

Local people claim that the number of impacted individuals is at least three thousand, referring to the 2017 petition against the valley route of Corridor Vc South Mostar. However, the consultations and direct negotiations have completely marginalised people, whose village will be split by an international transport corridor. They realistically expect that many more properties will be impacted by both the temporary occupation of land for construction purposes² (short-term) and the operational phase of the motorway (long-term), such as reduced market value of the property, noise, vibration, air pollution. As negotiations for expropriation have been the focus of project promoters, the rest of the community is left without answers to their concerns.

ESIA consultation remains unsatisfactory

We note the explanation provided on the public hearing on the ESIA in Mostar, but the local people’s perception is still very different to that of the bank’s. First, the issue remains that this hearing was not held when all options were open, as required by the Aarhus Convention. The route had been decided without public consultation on the relevant sections of the spatial plan, as mentioned above, and people were presented with a fait accompli. Therefore the public participation also does not satisfy the EBRD’s requirement for the consultations to be meaningful.

Second, on the EIA hearing itself, the bank’s response states that “*the EBRD representative noted that all members of the public who turned up in person were able to access to the meeting.*” With all due respect, we are not sure that an EBRD representative who was inside the building was fully able to see what was going on outside the entrance. Moreover, out of a limit of 50 participants, 10 were clearly marked as JP Autoceste employees on the attendance list, and local people say that in reality, many more of the people present were JP Autoceste employees. This does, in our opinion, indicate an attempt to limit participation by the general public.

² The LALRP states that “*additional access roads are also yet to be designed*” (p.12)

Finally, the Board should seek clarification on the EBRD answer that “*opportunity for participation via private video link (which was utilised) and the option to organise another meeting if needed*”. Local people who were not able to access the consultation strongly contest this and these factors assure us that the public consultations on the project indeed did not meet the requirements of the EBRD’s PR 10. Alternatively, the IPAM should be allowed to get to the bottom of this issue and review the adequacy of the ESIA consultation.

Critical habitat conditions not met

The response sent by the EBRD staff has unfortunately changed little with regard to the biodiversity issues we raised. It in no way justifies construction in a critical habitat and, moreover, by emphasising mitigation measures, suggests a fundamental misunderstanding of EBRD’s Environmental and Social Policy. We underline that the EBRD’s Policy states that in critical habitats, the client **will not implement any project activities** unless a series of conditions are met:

- *no other viable alternatives within the region exist for development of the project in habitats of lesser biodiversity value;*
- *stakeholders are consulted in accordance with PR 10;*
- *the project is permitted under applicable environmental laws, recognising the priority biodiversity features;*
- *the project does not lead to measurable adverse impacts on those biodiversity features for which the critical habitat was designated as outlined in paragraph 13;*
- *the project is designed to deliver net gains for critical habitat impacted by the project;*
- *the project is not anticipated to lead to a net reduction in the population of any endangered or critically endangered species, over a reasonable time period; and*
- *a robust and appropriately designed, long-term biodiversity monitoring and evaluation program aimed at assessing the status of critical habitat is integrated into the client’s adaptive management program.*

This means that the first step after recognising a critical habitat must be to assess whether the above conditions are met. In the ESIA and accompanying documentation, these have not even been assessed, let alone met.

The above conditions have not been fulfilled. As well as the fact that public participation has not been implemented in line with PR 10, other reasons include:

Viable alternatives exist. An alternative routing, the ridge route, which between 2011 and 2016 was considered viable, certainly exists. In the multicriterial analysis, the ridge route was also considered more environmentally favourable. This alone should stop the EBRD from approving construction in a critical habitat.

The project is not designed to deliver net gains for critical habitat and there is no scientific proof that it would not lead to **measurable adverse impacts** on those biodiversity features for which the critical habitat was designated, namely *Salmo obtusirostris* and possibly others.

Merely repeating that no construction activities will take place in the Buna and Bunica river beds, including the key spawning grounds of the endangered *Salmo obtusirostris*, and that the bridges will be constructed without any disturbance of the river bed or spawning grounds is simply wishful thinking, which will be exposed as soon as construction starts.

Impact on rivers does not only depend on construction in the riverbed. Bridge supports and other infrastructure, even outside of the watercourses, can have a significant impact on riverine and riparian habitats during construction and exploitation, for example, via construction waste reaching the river, impact on underground waters, through noise and vibration, and by degradation of riparian trees and other vegetation.

In addition, damage to the riverbank is highly likely during construction works, whether intentional or not. An example can be found a few kilometres away at the construction site of another section of the Corridor Vc at Počitelj, crossing the Neretva (see images below). Between August 2019 and October 2020, not only was a temporary bridge built across the river, with all the vibrations and noise that entails, but significant damage is visible along the right bank in the lower image. The Buna, as a smaller river, and an extremely sensitive critical habitat, will likely fare even much worse than this during construction.



The project **cannot be said to be permitted under applicable environmental laws, recognising the priority biodiversity features**. As well as the violations on public consultation during the spatial plan development and EIA process, as we previously mentioned, the EIA itself is not in line with the EU EIA Directive, and thus the EBRD's

own Environmental and Social Policy, as the “salami slice” approach is being used – an ESIA should be done of a meaningful section of the motorway, not only of this 9 km stretch.

As well as the need to carry out an Appropriate Assessment due to the potential impacts on species like *Salmo obtusirostris* which migrates between the Buna and Natura 2000 sites downstream in Croatia, such an assessment should also have been done on species and habitats from Annex 1 and 2 of the Habitats Directive and Resolution 4 and 6 of the Bern Convention before approval of the ESIA because of the Buna-Bunica’s own value.

Although Bosnia and Herzegovina is not an EU country, the EBRD’s Environmental and Social Policy states that the Bank, as a signatory to the European Principles for the Environment, is committed to ensuring that projects are structured to meet EU environmental principles, practices and substantive standards, where these can be applied at the project level, regardless of their geographic location. This clearly includes the Habitats Directive, which can be applied both to Emerald sites under the Bern Convention, and to potential Natura 2000 sites.

In this case, the lack of Appropriate Assessment is a violation of the Habitats Directive, because the motorway passes through the potential Natura 2000 site Buna-Bunica impacting at least 8.43 ha (passing over the Buna and Bunica streams and through the woodland and garrigue areas of Hodbina Hill). Scientific data was gathered for the potential Natura 2000 site during the project “*Support to the implementation of the Birds and Habitats Directives in Bosnia and Herzegovina*”.³ 122 Natura 2000 sites were proposed with List of sites, codes, areas, species, Standard Data Forms and were endorsed by the relevant beneficiaries.⁴

According to the European Court of Justice,⁵ this means that deterioration of those sites must be avoided according to Article 6 of the Habitats Directive in order to be able to comply with Article 4 and propose the sites later.

According to the Bern Convention biogeographical seminars⁶ for habitats and species for Bosnia and Herzegovina, many of the species potentially impacted by the project,

3 Service Contract No.: 2012/294-821, Client: Delegation of the European Union to Bosnia and Herzegovina, Consultant: Prospect C&S s.a., Belgium.

4 Ministry of Foreign Trade and Economic Relations (MoFTER), FBiH Ministry for Environment and Tourism, RS Ministry of Physical Planning, Civil Engineering and Ecology, FBiH Ministry for Agriculture, Water Management and Forestry, RS Ministry of Agriculture, Forestry and Water Management, Department for Spatial Planning and Environment, Brčko District Government, FBiH Environmental Fund, RS Environmental Protection and Energy Efficiency Fund.

5 ECJ cases: C-374/98, para 43-57; C-96/98; C-117/03, para 25-29; C-244/05

6 <https://www.coe.int/en/web/bern-convention/conclusions-of-the-biogeographical-seminars>

including Eurasian otter, 10 fish species, 4 amphibian species and 2 reptile species, are assessed as Insufficient Major, ie. there are no Emerald sites proposed for them.⁷ Buna-Bunica proposed Natura 2000 site should be included in the list of Emerald sites for at least part of them.

In other cases, there is No Data (in the Emerald network assessment), but according to available scientific data on the white-clawed crayfish (*Austropotamobius pallipes*) - globally Endangered species, is highly possible that this species is living in the project area⁸. Likewise there is No Data or the assessment is Insufficient Moderate in the Emerald Network assessment for the greater short-toed lark (*Calandrella brachydactyla*) which has an important population in the project impacted area, and other 19 bird species protected in the Birds Directive and Bern Convention⁹ which are most probably using the project area for breeding, migration or wintering. Insufficient Moderate means that there are some Emerald sites for these species but Bosnia and Herzegovina needs to propose new sites or expand existing ones.

The claim in the EBRD's response that ornithological field work taking place in June was sufficient is not justified. Field work was only 2 days and most of the impacted areas were not accessed. There are serious limitations as described by the author of the field research: "*Since the survey did not cover all ornithological aspects, and due to the lack of bibliographic data of the researched area, therefore additional research in spring would need to take place from March to April to cover early spring migrations with regard to Falconiformes species, Charadriiformes and Anseriformes species, as well as to sensitive species Short-toed Lark (Calandrella brachydactyla) and Calandra lark (Melanocorypha calandra)*".

Nor does the information provided on gravel extraction add anything to what was already said in the ESIA. The approach that if a gravel supplier is licensed then their gravel is extracted in an environmentally acceptable way from an environmentally acceptable site is naïve at best. As our report explained, this is not even the case in neighbouring Croatia despite it being in the EU. The extraction of such a large volume of materials therefore needs to be assessed in advance for its impacts.

⁷ 10 fish species of the lower Neretva Basin: *Petromyzon marinus*, *Lethenteron zanandreaei*, *Alosa fallax*, *Salmo marmoratus*, *Alburnus albidus*, *Rhodeus sericeus amarus*, *Cobitis taenia*, *Aphanius fasciatus*, *Pomatoschistus canestrini*, *Padogobius panizzae* (syn. *Knipowitschia panizzae*); 6 amphibians and reptiles: *Proteus anguinus*, *Bombina variegata*, *Testudo hermanni*, *Emys orbicularis*; *Elaphe quatuorlineata*, *Elaphe situla*; Eurasian otter (*Lutra lutra*)

⁸ Nusrat Dreskovic et al., Natura 2000 u Bosni i Hercegovini, Sarajevo, 2011, p.371-372

⁹ *Phalacrocorax pygmaeus*, *Ixobrychus minutus*, *Ciconia nigra*, *Ciconia ciconia*, *Aythya nyroca*, *Buteo rufinus*, *Pernis apivorus*, *Accipiter brevipes*, *Bubo bubo*, *Caprimulgus europaeus*, *Alcedo atthis*, *Dendrocopos medius*, *Melanocorypha calandra*, *Lullula arborea*, *Anthus campestris*, *Sylvia nisoria*, *Lanius collurio*, *Lanius minor*, *Emberiza hortulana*

All of the above mean that there is no way to exclude impacts on critical habitats in the scope of the current project variant, and the first move needs to be to examine the viable alternative, the ridge route.

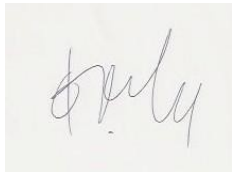
Conclusion

A viable people-friendly and nature-friendly alternative to the South Mostar section of Corridor Vc does exist – it is on the ridge above Neretva river valley. The EBRD Board should not approve a project without a careful consideration of the route options, especially as the selected valley route is bound to harm communities and biodiversity, in breach of the EBRD's standards.

In view of the above open questions, we want to reiterate our request that the Board gives time to the bank's Independent Project Accountability Mechanism to conduct its compliance review of the project. We should stress that for local people (and IPAM complainants), whose lives and heritage will be irreversibly harmed, this is an opportunity to receive redress and an opportunity to shape the project in a transparent, inclusive and democratic way.

Thank you again for your attention and time!

Sincere regards,

A handwritten signature in black ink, appearing to read 'Fidanka', is centered on a light gray rectangular background.

Fidanka Bacheva-McGrath
CEE Bankwatch Network

Copy: Manuela Naessl
EBRD Head of Bosnia and Herzegovina
Sarajevo Resident Office

Copy: Victoria Marquez-Mees
IPAM Managing Director
EBRD Chief Accountability Office