

Lessons learned from EIB Group CM's handling of climate-related complaints

The TAP/TANAP case

Task Force on Access to Justice

Geneva, 4-5 April 2023



The Complaints Mechanism of the EIB Group

The Complaints Mechanism of the EIB Group is a citizen-driven accountability mechanism consisting of:

- An internal tier (**the EIB-CM**) placed within an independent Inspectorate General of the EIB
- An external tier (**the European Ombudsman - EO**)

To understand the Complaints Mechanism's mandate - important to recall:

- The concept of Maladministration
- Art. 41.2 of the European Charter of Fundamental Rights (Right to Good Administration)

Features of the EIB Group Complaints Mechanism

The two tiers of the Complaints Mechanism of the EIB Group have common features:

- Free of charge
- Wide accessibility (*Actio Popularis* + MoU between the EIB and the EO + principle “*iura novit curia*”.)
- Administrative review (prior administrative approach, effectiveness criteria)
- Non-binding nature of the outcome process (consultative decision-making process)

Internal tier - SG/E/2019/02 – TAP/TANAP

Case received on 7 February 2019

Complainant: CEE Bankwatch Network - Counter Balance - Friends of the Earth Europe - Re: Common

Allegations: Focus on the climate impact assessment, the assessment of GHGs and the carbon footprint of the Projects. In essence, the complainant alleged:

1. The EIB's failure to require project promoters to provide climate impact assessment for the projects within their entire area of influence
2. The respective ESIAs' failure to include fugitive emissions of GHGs
3. The EIB's failure to conduct an accurate assessment of GHGs emissions for its loans for the Southern Gas Corridor (SGC)
4. Non-compliance of the Projects with EIB policies, procedures and standards as well as with the provisions of UN Framework Convention on Climate Change

Internal tier - SG/E/2019/02 – TAP/TANAP

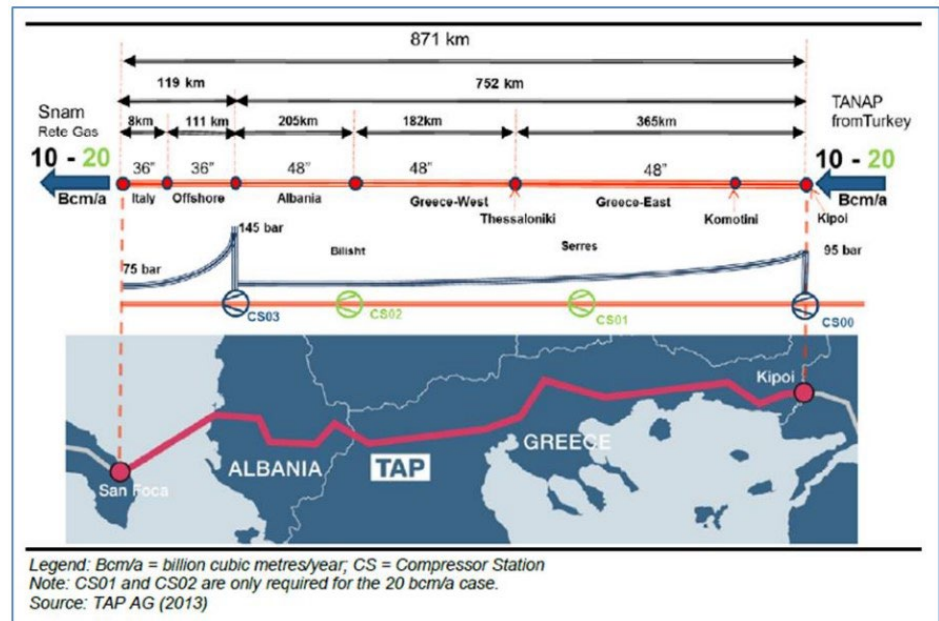
The projects concerned 1 - TAP

Project of Common Interest (PCI)

Construction of the Trans Adriatic Pipeline, the western part of the SGC. Phase 1 of TAP for a capacity of 10 bcm/y.

Approximately 878 Km long, the pipeline starts at the Turkish border near Kiopi in Greece, crosses Northern Greece, Albania, and ties in to the Italian Gas transmission network near Lecce in Southern Italy.

Operation approved in February 2018



Internal tier - SG/E/2019/02 – TAP/TANAP

The projects concerned 2 - TANAP

Construction and operation of the Trans-Anatolian Natural Gas Pipeline in Turkey. TANAP is part of the SGC development, linking Azerbaijan's Shah Deniz gas field to Turkey and Europe. Phase 1 of TANAP for a capacity of 16 bcm/y.

Operation approved in March 2018



Figure 2-1: TANAP project site location map, showing the southern gas corridor the South Caucasus Pipeline(SCP), TANAP and TAP (Source: TANAP Project's Executive Summary of ESIA and Supporting Environmental and Social Safeguard Documents 22 July 2016)

Internal tier - SG/E/2019/02 – TAP/TANAP

EIB-CM conclusions on Allegation 1 (ungrounded)

The TANAP project had not provided the EIB with supplementary information to assess cumulative GHG emissions. Additional studies, realized by the TAP Project upon EIB's request, provided complimentary information on GHG emissions contributions from other SGC projects. Furthermore, the EIB performed an assessment of the GHG emissions from other SGC projects during its due diligence process.

EIB Standard 4 listed the need of a carbon footprint assessment among EIB's responsibilities when assessing new projects but did not impose a requirement on promoters as claimed by Allegation 1. The EIB had performed and disclosed these assessment for both Projects.

Internal tier - SG/E/2019/02 – TAP/TANAP

EIB-CM conclusions on Allegation 2 (ungrounded)

Fugitive and venting emissions were included and calculated in the projects' ESIA's. The EIB-CM found evidence that calculation of all contributing GHG emissions for the whole SGC project was undertaken by EIB as part of the carbon footprint assessment.

The EIB underestimated fugitive and venting GHG emissions. However, such underestimation is to be considered not material (< 1%) and these emissions are minor when compared to the total combustion emissions in the Projects.

In line with the best practices set by the IPCC in the fifth assessment report in 2014, the version of the EIB Methodologies (V 11, 2018) refers to a GWP value for CH₄ of 28.

Internal tier - SG/E/2019/02 – TAP/TANAP

EIB-CM conclusions on Allegation 3 (ungrounded)

The EIB underestimated fugitive GHG emissions for both Projects due to the use of outdated GWP values for methane included in the EIB Methodologies. This had an impact on the accuracy of GHG emissions assessments for both Projects. However, the overall impact on EIB GHG emissions calculations for both Projects was below 1% and thus was not significant when compared to projects GHG combustion emissions.

The EIB calculations for the carbon footprint assessment were aligned with project financing objectives for Stage 1. Any eventual financing opportunities (Stage 2 and further Stages) would have to undergo a dedicated appraisal by the EIB.

With regard to the baseline scenario, the EIB carbon footprint assessments and the outlined EIB baseline scenarios alternatives to SGC projects were acceptable in technical terms (economic and regulatory terms criteria including socioeconomic tests and economic rates of return, legal requirement tests and life-expired asset tests considerations).

Internal tier - SG/E/2019/02 – TAP/TANAP

EIB-CM conclusions on Allegation 4 (ungrounded)

With regards to the UNFCCC, Albania had no legislation defining reporting obligations for the GHG emissions but needs to take project carbon emissions into consideration when preparing the National Communication under the Kyoto Protocol. Moreover, when reviewing the ESIA of the Albanian section of the TAP, the EIB-CM noted that the impact on GHG emissions for Albania does not refer to installations envisaged as part of Stage 1 of the Project.

The EIB Standards require promoters in candidate countries to perform an environmental impact assessment in compliance with the EIA Directive. In this regard, the EIB-CM noted that, in addition to the ESIA for the Albanian section of TAP, the Promoter was expected to develop an operational phase GHG management plan as part of the Environmental and Social Action Plan (ESAP) for Project Finance Disclosure.

The EIB-CM did not detect the alleged failure to comply with the applicable requirements. Furthermore, the EIB-CM found that a GHG management plan was intended to address the residual impacts and provide mitigation controls and safeguards.

External tier - 2030/2020/NH – TAP/TANAP

Case received by the European Ombudsman (EO) on 24 November 2020

Notification of the case to the EIB on 28 May 2021

Complainant: same as SG/E/2019/02

Allegations: the EIB had allegedly failed to ensure that the impact on the environment of the projects concerned had been assessed appropriately, in particular as regards the calculation of greenhouse gas emissions and the impact of associated and ancillary projects.

The detailed allegations (as well as the Ombudsman's findings and conclusions on each of them) are reported in an Annex to the [EO's decision](#).

Outcome: Having analysed the EIB-CM's Conclusions Report as well as the EIB's clarifications and the additional documents obtained in the course of its inquiry, the Ombudsman found that there was **no maladministration** by the EIB in the case.

External tier - 2030/2020/NH – TAP/TANAP

Highlights from the EO's decision 1 – major changes since the approval of TAP/TANAP

10. [...] [T]he EIB presented the main changes in its practices between 2018 (when TAP and TANAP were financed) and [2021] [...]. The major change took place in November 2019, when the EIB adopted its new Energy Lending Policy, [...] designed to ensure that the Bank's activities in the energy sector are consistent with and supportive of EU energy and climate policies, as well as of the goals of the Paris Agreement. [...]

11. The EIB has since then developed a series of guidance notes for project promoters, including on stakeholder engagement, hydropower development and COVID-19 related projects.

12. The EIB has also revised its rules for project financing (the EIB's Environmental and Social Policy Framework) following a public consultation in 2021, in which the complainants participated. In particular, the EIB updated the 2013 Environmental and Social Standards (in force when TAP and TANAP had been financed) [...]

External tier - 2030/2020/NH – TAP/TANAP

Highlights from the EO's decision 2 – complexity and EIB's value added

17. The EIB was not the only international financial institution providing funding [...] [T]he promoters had to respect the environmental and social criteria of several financing institutions, not just the EIB's. Since the pipelines crossed several countries, some of them EU Member States, different EU and/or national legal requirements applied.

20. The environmental impact assessments prepared by the TAP and TANAP promoters presented certain shortcomings [...]. However, the EIB noticed these flaws and took appropriate action as part of its due diligence process. It requested the project promoters to draft additional impact assessments. The EIB also devised its own carbon footprint assessment to ensure a proper overall assessment of the projects. The Ombudsman finds that the EIB acted reasonably in the circumstances.

21. [...] [T]he EIB's due diligence process is not designed to substitute the environmental assessments of the promoters; it is rather a stand-alone process, conducted independently to verify whether financed projects comply with the EIB's rules. In the case of TAP and TANAP, the EIB required the promoters to conduct additional studies or provide complementary information as part of its due diligence process. [...]

Lessons learned by the EIB-CM

Access to in-house/ external expertise is crucial to ensure timely and adequate handling of technical allegations (empowering non-judicial review mechanisms)

Identification of the applicable regulatory framework (including EIB standards) at an early stage of the complaint-handling process (initial assessment)

Constructive cooperation with internal/external stakeholders during compliance review helps in identifying and promptly addressing (as part of the inquiry) possible shortcomings (problem-solving function)

Existence of (i) openly accessible and (ii) fully independent appeal mechanisms fosters constructive cooperation of internal/external stakeholders

Mandate Limit: concerns-based complaints vs. policy-oriented complaints

THANK YOU

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