

# **European Bank for Reconstruction and Development London, United Kingdom**

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**Fier Bypass Project  
Environmental & Social  
Due Diligence  
Albania**

**EBRD Performance  
Requirements  
Compliance Assessment  
Executive Summary**

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**EBRD PERFORMANCE REQUIREMENTS COMPLIANCE ASSESSMENT  
FIER BYPASS PROJECT  
ENVIRONMENTAL & SOCIAL DUE DILIGENCE  
ALBANIA**

**EXECUTIVE SUMMARY**

**1 EXECUTIVE SUMMARY**

The European Bank for Reconstruction and Development (EBRD) is considering a sovereign guaranteed loan to the Government of Albania through the General Roads Directorate (GRD) of the Ministry of Public Works and Transportation of Albania for the construction of a new dual carriageway road bypass between the towns of Fier and Levan. The construction of the road benefits also from financing by the European Investment Bank (EIB). The bypass has a total length of approximately 22km and is part of an important corridor for Albania, from North to South (Lushnje to Vlore) for which some sections are already constructed or under construction. The alignment will tie into dual two lane carriageways: the Lushnje-Fier trunk to the North and the Levan-Vlore trunk to the South.

Apart from the first kilometre, where the alignment crosses a hill, the Project traverses flat low lying lands with several irrigation and drainage canals as well as numerous smaller irrigation and drainage structures. The initial alignment that passed within the designated protection perimeter of the cultural heritage site of Apollonia was modified and now makes a detour of about 2.5 km to pass away from the site.

The Fier Bypass has been classified by the EBRD as Category A Project. All potential adverse environmental and/or social impacts that may rise from the Project have largely already been assessed, and mitigation measures identified, through the Environmental Impact Assessment (EIA) study developed by EGIS. A specific Environmental and Social Management Plan (ESMP) and an Environmental Monitoring Plan (EMP) have been developed as part of the EIA currently in progress. However, the Project was assessed by EGIS based upon the EBRD 2003 Policy.

A first review of the Project's EIA has already been carried out by EBRD, and the following environmental and social issues have been preliminarily identified as sensitive:

- temporary disruption to irrigation and drainage structures during the construction phase and re-establishment of irrigation and drainage canals in the cultivated and irrigated area;
- possible intersection of the ancient harbour of Apollonia and other related archaeological sites;
- potential flooding risk at both the initial section of the Project (between the connection at the end of the Lushnje trunk and the Seman River crossing) and the area near the Apollonia hill;
- potential noise impacts where the proposed route runs close to houses and/or settlement;
- compensation for the agricultural land intersected by the Project;
- land acquisition and physical displacement issues at some residential structures affected by the Project.

D'Appolonia S.p.A. has been engaged by the EBRD to review the existing Project documentation and to assess the potential environmental and social impacts of the new

design for the Fier Bypass and the proposed mitigation measures in line with the EBRD's Environmental and Social Policy 2008. The main aim of the Environmental and Social Due Diligence (ESDD) is to identify any other additional gaps between the Project's documentation and EBRD Performance Requirements (PRs) and address the identified issues. The results of the ESDD are summarized in the following sections. In addition, a Resettlement Action Plan (RAP), and a Stakeholder Engagement Plan (SEP) have also been developed. Finally, all actions necessary to comply with the EBRD 2008 Policy are summarized in an Environmental and Social Action Plan (ESAP).

The following documents have been made available and analysed:

- Draft EIA(February 2011) made by EGIS, France;
- Minutes of Public Consultations (including Presentations)held in November 2010;
- Final Design of the Fier-Levan Road (Sintagma and SWS Consulting Engineers, May 2011);
- Minutes of meetings from the Public Consultation held in November 2010, together with photographic annexes and PP presentations by EGIS and by GRD to the audience;
- Law No. 8561 (22/12/1999), on Expropriation and Temporary Takings of Private Property for a Public Interest;
- Council of Ministers Decision (CMD) No. 127 (23/03/2000) on the "Content and procedures of submitting an application and the notification of expropriations and temporary takings of private property for a public interest";
- DCM No. 138 (23/03/2000) on "The technical criteria of Valuation and Computation of the amount of compensation for private property that is expropriated for a public interest, property that is devalued and the rights of third persons" with amendments: i) CMD amendment No. 662 (18/12/2002), ii) CMD amendment No. 872 (12/12/2007), CMD amendment No. 136 (23/02/2011);
- Other relevant laws on land rights and ownerships and on social assistance;
- Capacity Building for Resettlement in relation to Transport Projects in the Western Balkans - Legal Analyses and Capacity Building Programme (Link011, rePlan and InterSocial Consulting for EBRD, 2011).

A visit to the Project site has been conducted by D'Appolonia environmental and social experts' team, including a site survey of the road alignment and meetings with stakeholders to collect additional information and to identify any specific technical, environmental and/or social issue associated to the Project.

The following meetings have been carried out:

- GRD representatives (Fier Bypass Project Manager, Director of Expropriation Department, Environmental Department Expert);
- Sintagma Supervisor for the Fier Bypass Project;
- Representatives of the Irrigation and Drainage Board of Fier (including the Director);
- Fier Prefect;
- Fier District Municipalities' Mayors(both former and currently in charge);
- a few Head of Villages of the Fier District, for the communes involved in the Project;
- Technical Supervisor of the Levan-Tepelene road project;
- Director of the Apollonia Archaeological Park;

- some residents and farmers affected by the Project.

In the following, the key findings of the ESDD process are summarised.

#### PR 1: Environmental and Social Appraisal and Management

The potential environmental and social impacts associated to the Project have been initially assessed in an EIA developed in 2006 and approved by the Local Authorities. Updates of the initial EIA followed in 2008 and 2011 (this last version is still in process). The Project environmental and social impacts have been assessed and relevant measures summarized in an ESMP for all Project life stages including material supply and transport. Generally speaking, an adequate level of detail is ensured in the documentation developed for the Project, and most of the EIA and ESMP requirements have been already included in the Design documentation (i.e. Technical Specification with relevant Safety, Health and Environmental Regulations), which covers the majority of the gaps preliminary identified (e.g. irrigation and drainage channels diversion, archaeological survey, etc.). Finally, all Contractor's duties are listed in a clear and comprehensive Contractor's Site Check List, which only need to be updated with environmental and PR compliance requirements.

However, the former EBRD Policy (dated 2003) has been used as reference document for the EIA preparation; therefore some further specific measures identified as result of this assignment need to be included in the ESMP to comply with EBRD 2008 Policy.

D'Appolonia's assignment was limited to the issues related to the Fier Bypass Project. Therefore corporate level issues were not assessed in the present ESDD.

#### PR2: Labour and Working Conditions

The GRD complies with the Albanian Labour Law, and other relevant laws treating the worker's rights, Occupational Health and Safety (OHS) and worker's relationships, as well as gender equality. The same is requested to all contractors. The Albanian Labour Law meets EBRD, EU and ILO labour requirements. Albania has ratified the ILO conventions and these have been accordingly transposed into local legislation. Albania is obliged to implement ILO Conventions within its territory.

The relationships with Contractors are regulated by the FIDIC (*Fédération Internationale des Ingenieurs-Conseils*, International Federation of Consulting Engineers) Conditions of Contract and procurement procedures required by the EBRD and EIB.

So far, the Client has not developed a grievance procedure for managing workers grievances; as a matter of fact a conciliation procedure prior submitting complaint to the Albanian court is not mandatory. Therefore, the Client will develop and apply an internal grievance procedure to employ all meaningful efforts in resolving the grievances raised by the workers prior to submitting the official complaint to the Albanian court.

#### PR 3: Pollution Prevention and Abatement

The Project is designed in compliance with relevant Italian Standards<sup>1</sup> (fully compliant with EU regulations) as well as with applicable national laws. Potential environmental impacts are adequately assessed (in accordance with the European Directive 85/EEC/337 and subsequent amending acts and the Albanian Law on EIA No. 8990 of January 2003); relevant mitigation

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<sup>1</sup> The Final Design was developed by a joint venture of two Italian Companies (Sintagma and SWS Consulting Engineers)

measures are included in the ESMP and the EMP. Specific provisions for the Safety, health, welfare and the environment protection are included in the Technical Specifications and in the Safety, Health and Environmental Regulations developed as part of the Final Design. However, some further measures are needed to fulfil with EBRD 2008 PRs.

In particular, the road drainage should be upgraded, including closed system and first rain water treatments at least at sensitive locations (like rivers and main drainage/irrigation channels). At present the road drainage consists in an open system directly discharging road runoff to surface water bodies; only the two information and touristic areas planned at km 15 and 18 foresee a first rain water compact treatment system (equipped with oil separator). Furthermore, the drainage system of the bridges is a sealed drainage system but a dedicated water treatment is not foreseen.

Mitigation measures for solid and domestic waste as well as hazardous waste and materials are included in the ESMP and in the Safety, Health and Environmental Regulations, but specific plans for waste and hazardous materials management should be developed at further Project stages. Tender documentation should also clearly require disposing of all waste generated by the Project in licensed disposal sites.

Finally, several locations potentially impacted by noise from vehicular traffic have been identified by the EIA and the ESDD, and a detailed Noise Study (not yet developed) to verify potential impacted location and define adequate noise barrier protections should be requested in the Tender documentation.

#### PR 4: Community Health, Safety and Security

Similarly to PR3 findings, risks and potential impacts to the health and safety of the affected communities have been assessed in the EIA for all stages of the Project. Mitigation measures are included in the ESMP and in the Technical Specification and the Safety, Health and Environmental Regulations included in the Final Design. However, some few remaining issues should be included in the future design and implementation steps to fully comply with the 2008 EBRD's policy.

The Project has organized public meetings in 2006 and 2008 and public consultations in 2010 and a last round of public consultation is scheduled for later July, 2011. However, the GRD should provide all relevant information related to the Project to the public and specific meetings should be organized to disclose the potential risks and proposed mitigation measures also at Communes level.

One of the main issues (highlighted also by the previous gap analysis) for community health and safety is the potential increase of the flooding risk and the temporary disruption of the irrigation channels for of agricultural land.

Drainage and irrigation structures have already been identified by the designer, and more than 80 culverts are foreseen in the Final Design to completely reinstate the irrigation and drainage network. Furthermore, the Technical Specification explicitly requires Contractors to take all necessary measures to effectively drain the original ground in cooperation with competent authorities. The Contractor shall temporary support or divert, and subsequently reinstate all such services and structures.

A meeting with the Irrigation and Drainage Board (IDB) of Fier held during the ESDD confirmed that no major concerns are expected from the Project.

#### PR 5: Land Acquisition, Involuntary Resettlement and Economic Displacement

The ESDD resulted in various gaps which need to be fulfilled to comply with EBRD requirements. Following the ESDD visit, the Client has promptly updated the census list which will be shortly published in the newspapers, therefore establishing the cut-off-date for expropriation. Land and properties registration/legalisation is on-going: this is a dynamic process often interrupted due to bureaucratic problems or difficulties of attribution of property ownership. Nevertheless the Client is utilising a fast track mechanism, free of costs for the expropriated person, and the process should proceed as quickly as possible.

For the expropriation process to proceed, there is the need to promptly update the methodology to establish cash compensation, the single major concern of Project Affected Persons (PAPs).

### ***Project Design***

Albanian legislation specifies the purposes for which properties and assets can be expropriated on the basis of an established “public interest”. It has no special requirement for avoiding or minimizing physical and/or economic displacement. However in practice, this is pursued anyway as a mean for minimizing costs. Specifically, in the Fier Bypass Project, five alternative options were considered and the selected one appears to be the best alternative in technical terms (geometrical and safety standards) as well as for minimizing social and environmental impact. In order to avoid possible impact to the Apollonia Archaeological Park, a modification to the original design has been done with a detour from the Park of 2.5 km which requires passing from the Pojani site.

### ***Consultation***

The Albanian Expropriation Law does not require public consultations to be held with PAPs prior to expropriation. Once the expropriation process is initiated, only those with formal legal rights are consulted through a one on one negotiation process.

Nevertheless in 2006 and in 2008 public meetings were organized, mainly with national and local authorities; in 2010 public consultations were held including also a few representatives of PAPs. PAPs are generally informed through head of villages.

The information collected during the ESDD indicates that although everybody “knows about the Project”, many PAPs are not adequately informed and mainly received detailed information through the technical staff of the design Project when they visited their properties for measurement purposes. In order to be compliant with EBRD PR, the Client should additionally approach and consult all stakeholders during all expropriation stages; this will be specified in the RAP. Specific attention will have to be paid to possible vulnerable groups which could result during the monitoring of the implementation of the RAP.

### ***Grievance Mechanism***

The national legislation has no formal requirements for establishing an independent Grievance Mechanism. The Law foresees the rights of affected persons (those with formal legal rights) to appeal to courts against the decision of expropriation passed by the Council of Ministers but only concerning the amount of compensation they are entitled to. The expropriated property may only be used for the initially proposed purpose; should this be changed, the expropriation shall be cancelled.

The Albanian law and the common practice of responsible institutions at state level envisage a mechanism which is effective only after the publication of the official census list in the newspapers. Grievances are received for a period of one month after the expiration of a two-weeks period from the public announcement of the census list containing: name of the owners, legal status, type and size of property subject to expropriation and the amount of compensation to be received for the fully or partially affected properties. Grievances are

received only with regard to the established amount for compensation but do not impede the expropriation process.

According to common practice, responsible institutions deal with grievances related to legal properties even after the set period. This is very important in a dynamic and complex situation, as the Albanian one, where the process of land tenure ownership after 1991 when state land has been redistributed, is yet incomplete and faces different problems in the attribution of ownerships as well as bureaucratic obstacles.

In conclusion, there is no grievance mechanism set in place and communicated to the stakeholders in line with the PR 10. The Client will have to comply with provisions made in both the RAP and the SEP concerning the grievance mechanism.

### ***Resettlement Planning and Implementation***

The census for the Fier Bypass has been updated in July 2011, following the ESDD site visit. The redesign of the bypass route in the location of Pojani is now reflected in the census; agricultural land concerned is supposed to be of low value as the presence of the swamp makes it saline and therefore less valuable from an agricultural point of view.

The expropriation involves 835 PAPs, according to the 2008 data collection; the July 2011 census indicated only 626 (dated 2011) remaining cases subject to land acquisition and resettlement as 209 cases have already been expropriated - due to the fact that in the two extremities of the Fier Bypass, namely the south side Levan-Vlore and the north side Lushnje-Fier, the expropriation process has already been completed under the corresponding sections of the road construction; therefore about 50 owners located in the commune of Mbrostar Ura have already been expropriated as well as all owners corresponding to the Commune of Levan, previously included in the list. Changes in the status of land titles due to the official registration and legalization of ownership of previously state-owned land to private persons is also partly reflected; however, as already mentioned, the process is dynamic and will be on-going even after the publication of the list.

People in the affected communities have constructed after 2007 without the legal permit required by Law (these structures would not be entitled to any kind of compensation, according to Law 9482 mentioned above); however it is unlikely that PAPs along the envisaged Fier Bypass road are concerned as they have known since 2005 about the Project and were discouraged from any further investment. Should such buildings be present, for the purpose of this RAP they would still be entitled to compensation as a cut-off-date was never communicated to PAPs nor the census list has still been published.

The socio-economic survey prepared under the EIA was a general study of the area. A more tailored one to the concerned PAPs was lacking; following the due diligence visit, the Client has prepared a questionnaire with the assistance of the ESDD experts' team and is currently undertaking a socio-economic study covering all affected households (in terms of physical structure) and a sample of PAPs totally or partially losing agricultural land. Possible cases of vulnerability have to be identified. A cut-off date has not yet been established; the cut-off date will be the date of the publication of the census on the newspapers.

### ***Compensation and Benefits for Displaced Persons***

The Albanian legislation does not envisage compensation in kind and therefore of the provision of adequate housing with security land tenure. Neither relocation costs nor specific assistance to vulnerable people are foreseen.

Cash compensation is offered only to those having legal titles to land and properties. However, in the practice of the current situation in Albania where the land tenure system and the legalization process which followed the 1991 land redistribution is still incomplete,



everybody is given the possibility to register their agricultural land (in the Immovable Property Registration System) and legalize their properties (with the Agency for the Legalization, Urbanization and Integration of Illegal Property - ALUIZNI) for constructions built before 2007. According to the law, buildings constructed after 2007 without a legal permit are subject to demolition. In cases of expropriation for road construction, the registration and legalization process follows a fast track mechanism and costs are not requested to PAPs.

The methodology for calculating the price of affected structures, in accordance with the Albanian legislation, is outdated and does not foresee compensation for loss of assets at full replacement costs. The legal owners of the structures are compensated solely for the direct costs of construction material, with depreciation.

The prices of the land are based on a fixed unit value for different categories of land. They are reported to be below the market value of the land and constitute the major concern of PAPs.

Compensation for temporary use of land is envisaged but apparently there will be no such need in the Fier Bypass Project.

#### ***Economic Displacement***

The Expropriation Law does not envisage compensation or livelihood restoration assistance beyond the compensation paid to those showing legal rights to land and assets. No category of PAP is entitled any cost for re-establishing commercial activities, lost net income, transitional support, transport or equipment or other targeted assistance.

Fruit trees and seasonal crops are compensated to those with legal titles. The value of these assets is established in a second stage of development of the expropriation process.

The RAP will include measures to ensure seasonal products are saved as much as possible during construction.

The socio-economic census is under way. Important lacking information concerns the percentage of land lost by each PAP with relation to their total land property and if agricultural land provides their main income. Generally people express the desire to remain in the area even if a large quantity of their land is lost, considering that the presence of the new road will increase the value of their remaining land.

The RAP includes measures for the restoration of livelihoods. Careful monitoring of the process will have to be ensured and any observed cases of hardship resulting from displacement be addressed.

#### **PR 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources.**

The EIA carried out for the Fier Bypass has identified the baseline conditions for the ecologic and biotic resources along the road alignment. Potential impacts have been assessed and mitigation measures, where required, have been proposed.

As the Project area is characterized by agricultural land or settlements, it can be considered of low importance from the point of view of biodiversity and natural resources. There are no protected species defined under the IUCN list potentially affected by the Project, and no protected areas are located within or near the road alignment. Therefore, no further assessment is necessary and the Project can be considered fully adequate to PR 6 requirements.

#### **PR 7: Indigenous People**

Not applicable.

#### PR 8: Cultural Heritage

Due to the importance of the archaeological site present near the road alignment (the Apollonia Archaeological Park) and the high possibility of related archaeological findings, particular attention needs to be placed on the cultural heritage issue.

The initial road alignment that passed within the designated protection perimeter of the Apollonia site was modified to take account of objections from the Ministry of Culture as well as from the local population and public Institutions and Authorities, which are now satisfied with the new alignment. However, both the EIA and the Director of Apollonia site (interviewed during the ESDD) raised the concern that potential remains could be present between km 11 and km 18 of the road alignment (an archaic temple and a roman necropolis were found in 2004-2005 near Pojani, while the old Apollonia harbour is expected at the foot of the Apollonia hill near km 18 of the alignment). Furthermore, the road could intersect ancient roads near Mbrostar and on the left bank of the Seman River. These areas need therefore to be subject to archaeological investigations prior to road construction, and the Project documentation correctly requires that prior the start of the earthwork activities, the Contractor shall carry out archaeological investigations along the road trunk located closer to the archaeological site of Apollonia. Furthermore, the Project requires that an experienced local Archaeologist supervise the construction works. However, due to the importance of the involved cultural heritage, a specific management plan for archaeological and cultural sites and a Chance find procedure should be required for the Project.

Finally, some concerns related to the two service areas foreseen around km 15 and km 18 of the road and the risk of buildings proliferation near the new road (affecting the current view from Apollonia site) was raised by the Apollonia Director. These aspects need to be discussed in detail between GRD, the Apollonia Director and other relevant Authorities.

#### PR 9: Financial Intermediaries

Not applicable.

#### PR 10: Information Disclosure and Stakeholder Engagement

A Stakeholder Engaged Plan (SEP) has been developed on the basis of the EBRD requirements. Affected and potentially interested parties have been identified and included in the SEP.

Vulnerable people or group have not been identified for the Fier Bypass Project. The socio-economic survey and data collected during interviews and confirmed during the due diligence indicate that there are no ethnic minorities. The Roma population in Levan is not affected by the bypass.

On the other hand the presence of elderly people or women headed households have not been identified. The presence of unemployed people is confirmed; their situation may worsen off as a result of expropriation, especially if they live out of the produce of their land.

Information disclosure and meaningful consultations are still inadequate and needs to be done according to EBRD requirements as suggested in the SEP. Corrective measures are envisaged in the ESAP.