



Energy Matters: the Vlorë coastal terminal

Fact-finding mission report on energy and industry developments in Vlorë, Albania

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Introduction



The American expressionist painter Philip Guston was famous for viewing art as illusion, where “what you see is not what you see”. A similar sensation of magic strikes you when looking into the development of energy and oil related projects on the coastline of Albania’s Vlora Bay, just four kilometres north of the town of Vlora.

In summer 2007, the construction works commenced on a thermo-power plant and a coastal hydrocarbons terminal in Vlora, Albania heating up local protests against the negative impacts of the projects on the local fragile ecosystems and on the economy that is sustained mostly by tourism. While people living in Vlora have been demonstrating almost every other week against the potential destruction of the Vlora Bay, the Albanian authorities and the international financial institutions (IFIs) cannot agree if the projects form a part of an energy and industry park and what type of park exists in Vlora, if it exists at all.

To gain better insights into the situation, CEE Bankwatch Network and its partner NGOs conducted a fact finding mission to Albania on October 22-25, 2007, visiting Vlora and Tirana and undertaking meetings with the Albanian authorities, the IFIs, investors and affected communities. The following report draws on the findings gathered during the trip, the aim of which was to investigate the environmental and social impacts of the industry park as well as allegations about its harmful influence on the local economy.

Due to the proximity of the project’s consideration for financing by the Board of Directors at the European Bank for Reconstruction and Development (EBRD), the report focuses on the Vlora coastal terminal. Due to concerns about the legality of the concession on the terminal, Bankwatch commissioned a legal analysis of the agreements. The analysis, prepared by Agron Alibali, LMM, is attached as an annex to this report.

The study argues that the project does not meet the EBRD’s core operating principles of additionality, transition and sustainable development.

In Bankwatch’s view, the investor is a renowned Italian company which has access to private sector funding on reasonable terms and therefore is not in need of public financing. This necessarily eliminates the fulfilment of the EBRD’s principle of additionality. Although the project might turn into an unprecedented modern and sound

gas and oil terminal, Albania's market conditions and the national energy strategy preclude that an operation of similar type is developed in the country. Furthermore, the example of the Porto Romano terminal in Durres, developed under a fast track regime, demonstrates clearly that Albanian investors and the authorities are determined to proceed with low regard for best practice.

The terminal is located within the boundaries of the former energy and industry park approved by the Albanian government in 2003. The EBRD provided EUR 40 million credit for the thermo power plant located in the park about two kilometres north of the terminal a year later. Although plans for the development of the coastal terminal and further energy and oil related facilities had existed at the time when EBRD engaged in the power plant in Vlora, the bank did not oversee the conducting of a strategic environmental assessment (SEA) that would consider significant environmental effects of the whole complex in an integrated way. It remains Bankwatch's belief that the EBRD has deployed the "salami approach", thus avoiding the conducting of an SEA while preferring to have independent assessments on each of the park components.

Moreover, the EBRD did not take the opportunity to get involved in the terminal project in the early phase and to influence the planning of the environmental impact assessment (EIA). Instead, the bank entered the project at the moment when the EIA had been prepared and approved by the Ministry of Environment which had also issued an environmental permit for the project.

While it is recognised that the EBRD contributed to the public consultations on the terminal's EIA, it has neglected shortfalls in the study as well as the deficiencies and mishaps that have occurred on the site. These include principally:

- The EIA lacks an assessment of resettlement and land property issues which have resulted in the relocation of at least three families under varying degrees of compensation. The relocation happened without observation of the international standards on involuntary resettlement.
- The EIA offers differing levels of mercury contamination in marine sediments than the levels provided by other sources. The study fails to propose long-term remediation with regard to mercury contaminated soil which has been removed to a deposit of limited lifespan. These two findings are alarming due to the limited monitoring capacities of the local regulatory authorities.
- The EIA lacks a rigorous Environmental Management and Monitoring Plan as well as a Spill Prevention Control and Countermeasure Plan which should be integral parts of the EIA.
- The EIA lacks a technical specification of the railway rehabilitation and management plan with the state authorities which would set out conditions for the railway freight transportation of products stored in the terminal.
- The EIA further lacks a socio-economic assessment with respect to fishing activities in the area of Vlora Bay and within Vlora Bay itself.

Finally, Bankwatch is seriously concerned about the lack of a coherent development strategy for Vlora district from the EBRD's side as well as the imbalance in the EBRD's overall lending portfolio in Albania which seems to favour energy, oil and heavy industry over agribusiness, tourism, energy efficiency and lending to small and medium enterprise.

The attached legal analysis of the Concession Agreements demonstrates breaches of the Albanian Constitution as well as several national laws such as the Law on Concessions, Law on Land and the Law on Environment. The analysis concludes that the agreements are designed in a favourable way to the concessionaire and grant limited discretionary powers to the public authority. The role of the affected public in the agreements is virtually non-existent.

Overview

When approving the concession agreements for the Vlorë coastal terminal in May 2004, the Albanian Council of Ministers declared the project to be of “strategic importance”, “national priority” and “an essential infrastructure for the energetic supply of the country”.¹ For its part, the Italian investor Petrolifera Italo Rumena promised to create a deep water terminal available to any qualified Albanian and international operator which would accommodate in a technically sound and safe way the expected higher demand for oil products and LPG.²

The terminal was proposed to provide a partial remedy to Albania’s growing dependence on imported oil products. In recent years, the demand for diesel and gasoline in the transport sector has increased beyond the production capacity of Albanian refineries and as a result oil by-products have been imported from Greece, Italy and Russia. In line with the priorities set out in the National Energy Strategy, the development of the Vlorë coastal terminal alongside a sister project in Porto Romano was expected to decrease the costs of imported products as well as to minimise environmental risks.³

According to the zoning maps and available information, the Vlorë terminal was to be sited alongside a thermo-power plant and the outpost of the AMBO trans-Balkan pipeline within the energy and industry park at the harbour town of Vlorë on the Adriatic coast.⁴ Some sources mentioned that the park was expected to host also a refinery, oil separation plant, industrial processing and manufacturing facilities⁵ and other thermo-power stations⁶.

The plans for the energy and industry park in Vlorë were sealed by the Albanian government via an approval from the National Council of Territorial Adjustment in 2003.⁷ At about the same time, the World Bank’s International Development Association, the EBRD and the European Investment Bank (EIB) confirmed their interest to finance the 97 MW, EUR 110 million power plant promoted by the Albanian Electrical Energy Corporation (KESH). Although the Albanian authorities approved the location of the power-plant within the energy and industry park boundaries in 2003, the IFIs have argued subsequently that the plant and the industry park are two unrelated projects⁸.

Ironically, the coastal terminal has also been presented as a specific project that was to be constructed and operated in an isolated way from the park as well as the power plant. In 2006 the Albanian authorities claimed that the “Petrolifera Project is not treated as an integral part of the Industrial Park”.⁹

If viewed from the perspective of the Albanian authorities and the IFIs, the energy and industry park started shrinking from its original oil and energy related components that were being built outside of its scope. If viewed from the eyes of the local community, the energy and industry park was seen as a megalomaniac project which continued posing threat to a local economy dependant on tourism and harm the fragile marine and

Vlorë Coastal Terminal at a glance

Project: A coastal hydrocarbons terminal (LPG, oil, its by products) and marine infrastructure (jetty and breakwaters).

Aim: Supply the Albanian market and the neighbouring countries through the European rail and road Corridor VIII.

Location: Vlorë, Albania (land area between the former PVC plant and the seashore, four km north of town).

Capacity: 1st stage: 300-400,000 tons/year for oil products; 50-60,000 tons/year for LPG; 2nd and 3rd stage: 64,000 cbm for oil products; 22,000 cbm for LPG.

Investor: La Petrolifera Italo Rumena S.p.A. (PIR) through its Albanian subsidiary company La Petrolifera Italo Albanese Sh.A. (PIA)

Concession Agreements: BOT (for the marine infrastructure); BOO (for the coastal terminal)

Contractor: ACMAR

Engineering: Enereco

Total project cost: EUR 50 million (EUR 49 850 000).

EBRD finance: Proposed loan of EUR 15 million.

Start of construction works: 19 September 2007

End of construction works: 15 January 2009

wetlands ecosystems. In 2005, a citizen initiative was formed under the name of Civic Alliance for the Protection of the Vlora Bay in order to defend sustainable development of the city.

Over the course of the coming years, the consequent central and local governments found themselves pressed between two mill stones. The public disapproval pushed from one side and caused fear of losing political power. On the other hand, the international financiers, investors and the multilateral agreements pressured Albania to open to investment opportunities. In March 2007, the news hit the country's media that Democratic Party government is not supportive of building a large scale zone for energy products in Vlora planned by the former Socialist government. Making a statement that it does not “intend to turn Vlora into an energy back yard for the Balkans”¹⁰, the government requested the National Council of Territorial Adjustment to review its decision. As a result, the status of the Vlora park was modified to exclusively industrial on May 22, 2007. Going against the logic of the industrial status of the park, major energy and oil related investments remained within the park boundaries.¹¹

Five months after the National Council revoked the decision, the EBRD announced it was considering financing the Vlora coastal terminal, thus signalling its position as the keenest international supporter of the energy and industry park alias the industry park.

Project at the EBRD

In accordance with its mandate, the EBRD is supposed to invest in projects depending on how they relate to its four operating criteria: transition impact; sound banking; additionality; and sustainable development.

The Project Summary Document (PSD) for the terminal highlights that the transition impact “is expected to be derived from client-oriented private operation of logistics facilities, services to international standards, demonstration of a model which can lead to replicable types of operation in the region, and market expansion of related business such as increased trading of oil products and LPG.”¹²

The question to be asked is to what extent the project can exercise a replication effect in the light of the Albanian national energy and transport priorities, current market dynamics and operating conditions.

The 2004 National Transport Plan Study suggests that Albania develops specific activities in the existing general cargo sea ports as follows: „Port of Shengjin - fishing port; Port of Durres - containers, general cargo and main ferry terminal; Port of Vlora - oil port and related industries; and Port of Saranda - tourism port for ferries and cruise ships”¹³. The study recommends to concentrate the oil related industry and infrastructure in Vlora, maintaining that “this specialisation would also eliminate the risk of duplicating large investments such as the construction of a new oil terminal for the port of Durres at Porto Romano while the same type of facility is considered at the port of Vlora as part of the AMBO project”.¹⁴ If the Albanian government respects these recommendations and keeps only one oil terminal and related infrastructure, there cannot be any replication effect from the Vlora coastal terminal.



Construction works at the coastal terminal site

In practice developments in Albania have gone in the opposite direction from the path laid down by the National Transport Plan Study and as such, this will not permit the replication effect desired by the EBRD. The National Energy Strategy¹⁵ also puts forward a different heading than the EBRD. The strategy recommends concentrating on only two storage facilities zones - Vlora and Bishti i Palles - drawing its recommendations from the findings of a study¹⁶ ordered by the former Ministry of Public Economy and Privatization in 2001.

Though smaller in scope, a competing project consisting of oil and gas storage installations and marine jetty has been developed in the area of Porto Romano on the outskirts of the city of Durres located about 90 km north of Vlora. The project has been promoted by the Romano Port sh.a. company, the domestic Rira Oil being its sole shareholder.¹⁷ As with the Vlora terminal, the Porto Romano terminal has been built under the BOT Concessionary Agreement.

Paradoxically, although the Porto Romano concession was approved the same year as the concession for the Vlora terminal¹⁸, the oil storage was deemed to be concluded in October 2007 just two years after the commencement of works. The fast-track advance of the Porto Romano terminal raises speculation about whether the project has received preferential treatment from the Albanian authorities in comparison to the Vlora terminal. The fact that Porto Romano oil installations project is led by a domestic investor and it is backed by a EUR 10 million syndicated loan from the American Bank of Albania, Emporiki Bank – Albania and Tirana Bank might have indeed open the door. In any case, the developments at Porto Romano demonstrate that the project set off on an independent track regardless of the potential replication effect from the Vlora terminal. At the same time, it indicates that the Albanian authorities and domestic investors may be stubbornly insisting on a doing it their own way approach.

Interestingly, the PIA concession agreement itself prevents the replication effect in the area as it deems PIA to be the sole operator in the Vlora Bay. This prevents a similar type of operation to be realised in the Vlora district and to generate competitive activities.

Questions have also been raised about the additionality that the EBRD's involvement will bring to the project, in other words, to what extent the EBRD's role is decisive for project realisation and if the investor might access the private sector funding on reasonable terms elsewhere. Without such an explanation, the existing PSD signals that the EBRD would finance a corporation entering a low cost and high return operation and that the project could take place without EBRD support.

The following chapters look into the project standing with regard to the EBRD's principle of sustainable development.

Summary

- Certain aspects of the transition impact that are said to be demonstrated by the project, such as replicable types of operation, are questionable
- The project's compliance with the principle of additionality is unclear

Environmental due-diligence



Lime sludge near the site of the former PVC/soda factory

The EBRD's engagement in the Vlora energy development dates back to January 2002 when the bank along with the EIB and the World Bank's IDA expressed interest in financing the thermo-power plant (TPP).¹⁹ At that time, the Albanian government considered Vlora TPP as a part of a larger project for an Industrial and Energy Park in Vlora, giving the park a green light on February 2, 2003. The governmental waiver had been subject to an EIA procedure, which however failed to meet the standards for a publicly open process and requirements for strategic impact assessment.²⁰ As the Albanian government explained later "the EIA was not

detailed, because it was considered that the separate components of the proposed park would each carry their own more demanding EIA requirements".

It is astonishing that despite the engagement of three international financiers no Strategic Environmental Assessment (SEA) has been carried out overall on a project of such an extent and with all its likely significant environmental and social impacts.

The omission of the SEA is at odds with the provisions for strategic assessments in the environmental policies of the involved IFIs as well as with the European Directive 2001/42/EC on SEA.²¹ UNDP commented on the missing SEA rather laconically, stating that: "As it is, the industrial park represents a very high potential risks for both social and natural environment. The Environmental Strategic Assessment has been avoided. The EIA has been conducted only for one of the Thermo Power Station."²²

Missing SEAs on EBRD financed projects are not uncommon. Although the EBRD Environmental Policy provides provisions for SEA²³, the Environmental Policy review carried out by the EBRD Evaluation department in January 2008 criticised the EBRD Management for the repeated omission of conducting SEAs on infrastructure projects. The points raised in that critique are particularly applicable to the case of the Vlora industry park projects.²⁴

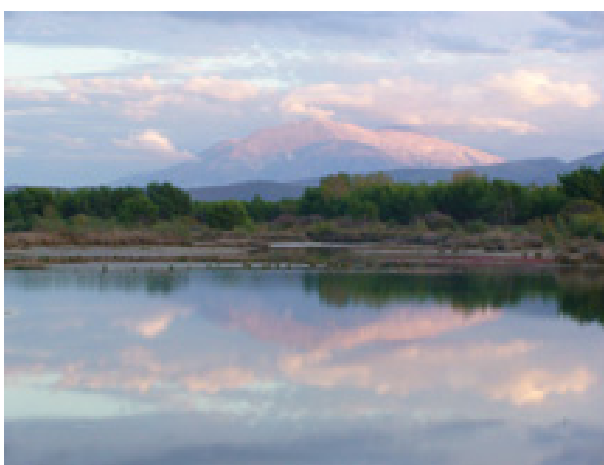
The EBRD stepped into the power plant at the moment when the Albanian government considered it as a part of an energy and industry complex of a large magnitude. By acknowledging that it would be funding only one of its parts (the plant), the EBRD divested itself of the responsibility for the strategic assessment of the other park components and referred only to the feasibility study and the EIA. All of this happened even though the EBRD's engagement in the process came in the early phase of the project when, according to the Evaluation department, the timing was suitable for conducting an SEA.²⁵ In addition to two separate EIAs on the power plant and the terminal, documentation for rebuilding a mooring station for oil imports for the thermal power plant is being developed by KESH and will be submitted to the Ministry of Environment.²⁶ The rebuilding of the mooring station for the purposes of the power plant should have been covered in the power plant EIA.

The EBRD insisted on its involvement in a single component of the park – the power plant – over the course of the following years, drawing a line between the plant and the rest of the energy and industrial park. In his letter to the Aarhus Compliance Committee from October 2006, Anthony Marsh, the EBRD Director of Power and Energy Utilities, highlighted that the EBRD "is providing financing only for the construction of a new

combined-cycle, oil fired, power station at Vlora [...] and we are not involved in the development of any proposed industrial park.”²⁷

While distancing itself from the Vlora energy and industry park as such, the EBRD refused for some time to acknowledge that it had pondered another of the park’s component – the coastal terminal – for at least the same period as the TPP. In the communication with the Aarhus Convention Compliance Committee, the EBRD Management admitted that “in 2003, EBRD was requested to consider financing the Vlore Power Plant, not an industrial park, refinery, or other projects mentioned, with the exception of the oil terminal”.²⁸

The information about the EBRD’s consideration of financing the Vlora terminal appeared in the EBRD Country Strategy for Albania from 2006.²⁹ The EBRD confirmed its intention to finance the coastal terminal to the general public on October 18, 2007 when releasing the project EIA Executive Summary. The approach taken leads us to conclude that the Bank’s Management used the “salami method” and instead of preparing a joint assessment on the TPP and the coastal terminal it has supported two independent EIA processes.



Unique wetlands at the Narta Lagoon

While the Albanian government issued an environmental permit for the terminal and port infrastructure on the basis of the EIA in April 2007³⁰, the EBRD released the project EIA for public comment on October 18, 2007. This means that the EBRD officially entered the project when an EIA had already been prepared and signed off by the national authorities. Thus the EBRD had known about the project since 2003, yet it decided to enter it only at the last stage of the due diligence process in late 2007. The EBRD’s influence over the ToR for the EIA was thus unfortunately limited.

While the construction works were officially launched on September 19, 2007, the EBRD Board is to discuss the project on May 28, 2008 in the advanced stage of the terminal construction. This leaves us with concerns about whether the EBRD’s support and leverage would not come retroactively and too late.

The EBRD issued an announcement about the investor’s submission of the project EIA for a 60 day commenting period on October 18, 2007.³² The PSD was released two weeks later on November 1.³³ The PSD informed the public of the basic project objectives and environmental impacts and identified the project as being in an advanced stage of the EBRD’s project pipeline. As of November, the project passed concept review and awaited the final review from the Operations Committee. Originally, the project was to be submitted to the Board on March 18, 2008. The Board date was subsequently postponed until May 28, 2008, most likely to accommodate the incoming public input into the EIA and the Board Paper.

The coastal terminal PSD is an example of how ascetic the EBRD can be on public information. The PSD neither provides details on the expected environmental and social impacts nor on the mitigation measures, referring the public to the EIA Executive Summary. In contrast to the terminal’s PSD, the PSD for the Vlora thermo-power plant, also an environmental category A project³⁴ offers a developed summary of environmental issues characterising the situation as well as the expected performance and mitigation. These two diverse approaches illustrate how EBRD PSDs vary in quality and suggest that the bank should consider standardisation of PSD formats, particularly of their environmental and social components.

Given the proximity and certain likely overlaps between the two projects, it is also striking that neither of the PSDs clarifies the link between the terminal and the power plant.

As for the EIA, the EBRD relied on the minimal requirements of the Environmental Policy and disclosed only its Executive Summary, referring to the full text EIA at PIR's website and the copies available at the Public Relations Office at the municipality of Vlora. During our visit to Vlora on October 22, Bankwatch failed to locate the paper copy of the EIA at the Municipality. The Albanian NGO representatives reported the same problems with retrieving the report in the following weeks. Stakeholders also faced difficulties accessing the electronic version of the English EIA at the PR website, failing to download the file.³⁵ The lesson learned once again is that the public consultations process would be reinforced if the EBRD published full text environmental assessments on its website in parallel to its client.

In line with the minimal requirements for the EIA consultations, the EBRD set the deadline for delivery of comments for December 18. The EBRD does not release public input on EIAs, so it is unknown what stakeholders delivered their input and what the nature of their comments was. To our knowledge the following stakeholders provided their comments: Civic Alliance for the Protection of the Vlora Bay, EDEN Centre and CEE Bankwatch Network through a commissioned quality review of the EIA.

The EBRD indicated to the participating stakeholders the requirement for the client to publish its response to public comments on the company's website for a period of 60 days before Board consideration. The summary of the public comments and EBRD Management's and sponsor's response to them should be integrated in the report for the Board of Directors. As it is a private sector project, Board papers are not made available to the public. There is thus no way the stakeholders will be able to check the consistency of the environmental and social concerns expressed in the Board paper.

Summary

- The EBRD has not ensured that SEA on the Vlora industry park and its components is conducted, which is in contradiction with the Environmental Policy
- The EBRD has used the salami method for approving projects' EIAs, which is in contradiction with the Environmental Policy
- The EBRD did not take the opportunity to get involved in the terminal project in the early phase and to influence the planning of the environmental impact assessment (EIA).
- The coastal terminal PSD is short on environmental and social information
- The EBRD should have disclosed the EIA for the terminal on its website to ensure proper accessibility of the study

Involuntary resettlement



Children playing near their homes at the PVC/soda plant

As a result of high unemployment and poverty in rural areas, Albania experienced massive migration from the countryside to towns in the early 1990s. The lack of housing opportunities led to the seizing of former industrial sites where whole families established their new homes. The plant facilities provided the squatters with housing space, construction material for new homes, and access to water and electricity. Many new residents had to cope with the environmental footprint and pollution left after the irresponsible and uncontrolled production; the ground they built on and used for gardens and grazing animals, the construction material, and their water supply were contaminated with toxic chemicals.

The PVC/Soda plant in Vlora, one of the Albanian hot spots identified by the United Nations Environment Programme (UNEP) due to heavy concentrations of mercury pollution,³⁶ experienced the same influx of people. The former chemical complex was squatted in several waves; first residents arrived after the plant had gone out of operation in 1992, others came fleeing the civil turmoil in 1997. The UNEP mission conducted to the site in 2002 reported that “families with domestic animals are living in extremely hazardous, mercury-contaminated conditions at the area of the former PVC factory”.³⁷ Similar findings were reported by scientists and engineers doing investigation and geochemical surveys at the factory site.

The Czech Geotest company that carried out a revitalisation project at the former PVC/Soda plant under the development aid program of the Czech government in 2002-2006 noted that there are families living at the site that are directly exposed to the mercury contamination.³⁸ The researchers from the Faculty of Natural Sciences at the University of Tirana concluded in their monitoring study that the “area presents an unacceptable threat to the environment and to health of the people living on and around the site” and therefore the “development of an environmental remediation plan should be a priority of Albanian government”.³⁹

The researchers from the Faculty of Natural Sciences at the University of Tirana stated that 180 families lived at the site in 2004.⁴⁰ According to the last census conducted in Vlora, the number of families living at or in proximity of the site is lower - 141 families. While there are no exact up-to-date figures on number of families residing in the site and on their exact distribution, the estimate is that several dozens of families remain living at the plant at the moment.

Although the UNEP mission noted that government efforts to relocate families living at the former PVC/Soda plant were ineffective”, Bankwatch’s mission noticed the hesitant attitude to resettlement from the Vlora Municipality. This is particularly alarming in light of the potential resettlement related to the PVC/Soda plant environmental clean-up project whose tender dossier is currently under preparation by the ASEA consultant company with financing from the European Commission⁴².

Despite the existing documentation on settlement in the terminal zone, the project planning had not addressed involuntary resettlement. The EIA submitted for public comments in October 2007 did not foresee any issues related to the displacement of residents or land uses⁴³.

The Bankwatch mission discovered, however, that at least three families were resettled in relation to the project. According to interviews undertaken with locals on October 23, the families lived at the terminal zone or in its proximity until summer 2007 when they all moved to alternative housing. Some of the families admit

having received symbolic compensation from the company, yet no financial or technical support from the Municipality. The PIR General Director confirmed that two families resident at the Petrolifera site were removed. The company assisted them with resettlement and paid three years of their rent.⁴⁴ Nevertheless, the rental costs are very high, thus the compensation might cover only two years of rent. One family commented that they had been deprived of the compensation.

Despite the EBRD Environmental Policy stating that “projects will also be structured to meet IFC Safeguard Policies on Indigenous Peoples, Involuntary Resettlement and Cultural Property, if they involve potential impacts related to such matters”, there is no evidence that the IFC OD 4.30 has been followed.

Strangely, the settlement of the project zone was denied by Halim Dervishaj, the vice-mayor of Vlora, who said that to his knowledge no families lived at the PIA site⁴⁵. The overall position of the Vlora municipality to the potential resettlement of people living at the PVC/Soda plant is quite disturbing. Halim Dervishaj told Bankwatch that the “state has no responsibility for illegal settlers,” adding that, “the Municipality should not provide financial support to any potential resettlement”. When asked about his suggestion on how to resolve the relocation of people living illegally at the site he stated that “forced resettlement should be used”⁴⁶.

During the site visit, Bankwatch recorded the following testimonies describing the resettlement. The requests for the anonymity of interviewees were respected.

A married couple

A husband and wife living in a building next to the Petrolifera zone reported that the police came and gave them warning to move out. They found a new place to live inside the PVC factory. They submitted documents with the local authorities, they were promised to receive rights to hold the place, but they have been waiting for a sealed document for six years. The couple reports that other families that lived in the same place did not move voluntarily. They were relocated with police assistance; their property was damaged, TV broken.



Blocks of flats to which one family was resettled

A family living in the orange block of flats

One of the resettled families was a family consisting of three adults and several children now living in the orange block of flats and paying a rent of 60-70 USD/month for the apartment. The family moved to the old PVC-Soda plant about 10 years ago from Mallakstra. The family learned that their house will be demolished as a consequence of the construction works but refused to move out because they were not offered any compensation unlike another two families which received EUR 2000 each.

This is how the elderly lady described the resettlement: “Petrolifera guards came to see us when the construction work started. They told us that we had to leave. Then they asked if we had house ownership documents and told us to bring them to the municipality so that we would receive compensation. Although my son went to the municipality several times no one talked to him about compensation.”

The lady also mentioned that a representative of PIA visited the families and promised to grant them compensation. On the next meeting with PIA, they were told that it was too late to receive money.

An old lady

A 66 year old female resident and her 77 year old husband lived in the house close to the wall of the PIA zone for 13 years. The couple came from a village where there was no access to drinking water. The family grew their own grapes, peaches, olives and apples in the new place. In July 2007, the family received a notification that they had to leave their house. The notification was delivered by the PIA guard and contained no compensation proposal. The family moved out at the beginning of the construction works which brought a lot of dust and noise and cuts in the water and electricity supply. When leaving their house, thieves came and stole some property.



According to the elderly lady, two families and four households lived inside and in the close proximity of the PIA zone respectively. She claimed she was not aware that any of the families would be compensated financially.

The Begaj family

The Begaj family, comprising of three adults and two children, lived in the two storey house of an area of 300 square metres⁴⁷. The property included a garden of 1000 m² with fruit trees. The family also owned a cow. In July 2007, the family received a letter signed by the PIA engineer and delivered by the PIA guard notifying them that they need to vacate the place. No deadline for leaving the place was specified in the letter. When Mr. Begaj sought counselling from the municipality, the vice-mayor denied that the local administration would be involved in this issue. A company representative visited the family and paid them 240.000 Lek (EUR 2000 EUR) without a receipt. Due to the dust and noise produced by the construction and the cuts in electricity and water supply, the Begaj family moved out of their household on August 27, 2007, into a house they rent for 110 USD.

Summary

- EIA did not assess resettlement and land property issue
- At least three families were resettled involuntarily by the investor under varying degrees of compensation
- The EBRD failed to oversee implementation of IFC OD 4.30 on Involuntary Resettlement which is in violation with the EBRD Environmental Policy

Mercury contamination of the site



The PIA coastal terminal is sited at the waterfront next to the former chemical plant (the so called “Soda/PVC” plant), an area declared as one of the nine environmental hot-spots in Albania by UNEP.⁴⁸ The Soda/PVC plant which operated from 1967 to 1992 consisted of a chlorine alkali factory and units for the production of vinyl-chloride-monomer and polyvinylchloride. The complex also produced caustic soda, hydrogen, hydrochloric acid and other chemicals.

Due to the improper industrial practice used in the chlorine-alkali electrolysis factory, large amounts of mercury were released in the air, soil and underground water. The sludge material from the production process, assumed to contain high levels of mercury, was dumped in the area between the plant and the seashore.⁴⁹ Due to the high permeability of the local geology the contaminated groundwater penetrated easily into the sea.

Additionally, as the plant discharged all of its wastewater into the Bay of Vlorë without treatment, mercury entered marine sediments and the food chain. During the plant’s operation about 500 m³/hr of liquid wastes containing 1.1 mg Hg/L were released into the sea.⁵⁰

Only rough data on the level of the site contamination is available. It is estimated that between 350 and 570 tones of mercury are present in the vicinity of the factory.⁵¹ According to UNEP, the feasibility study stated that approximately 5-6 hectares of the former plant’s soil was contaminated with mercury to a depth of 1.0-1.5 metres below ground level⁵². In the terms of reference for the environmental clean-up of the PVC plant, the European Commission notes that geochemical investigation studies carried out in 2002 mapped soil contamination up to 2.0 metres deep and also observed the expansion of mercury contamination at marine sediments close to the plant⁵³.

In addition to mercury, it is quite likely that chlorinated hydrocarbons and other dangerous pollutants emitted by the PVC/Soda plant remain in the soil.

In 2001 the Czech government approved the allocation of CZK 20 000 000 (EUR 792 080) for the revitalisation of the mercury hotspot in the former PVC/Soda plant.⁵⁴ Over the course of the project lifetime (2002-2006) Czech GEOTest Brno, a.s. and German Research Centre for Biotechnology mbh., Braunschweig assessed the environmental contamination, designed decontamination methods and related technology and cleaned up the contamination epicentre – the electrolysis plant.⁵⁵ The contamination at the remaining parts of the plant and its vicinity was left without treatment.

Due to the likely contamination of the zone, the PIA carried out a chemical survey of soil, sediments and groundwater at the project zone as a part of the project’s environmental due diligence and concessions requirements in 2004. Due to the lack of uniform European standards, Italian legislation on soil and groundwater contamination and the German directive for dredged material management were used as benchmarks.⁵⁶

According to the EIA, the soil survey conducted at two stages entailed the collection of 36 soil samples at 18 sampling points and specific sampling at the area most polluted by mercury. The first round of soil chemical analyses revealed that in two areas the mercury and chromium concentrations exceeded the limit values for commercial and industrial use of the soil as put forward by the Italian law. The concentrations of mercury were detected to be up to ten times higher than the limit at the former waste dump area where excavated material had been placed during the construction of the petrol deposits. Sampling conducted in the second round at the most polluted point confirmed mercury contamination at two points, near the soil surface.⁵⁷

The EIA further reports that the groundwater analysis conducted on nine samples collected at nine sampling points proved contamination by vinyl chloride, trichloromethane and arsenic. Five groundwater samples exceeded the limit values of Italian regulation.⁵⁹

Lastly the EIA informs that chemical analysis of marine sediments was carried out on 32 samples collected at 16 sampling points. According to the EIA, the analysis showed that the average level of contamination of marine sediments was 0.04 mg/kg which implies that the dredged material extracted during the construction could be disposed at an offshore location in compliance with German standards for unrestricted aquatic disposal.⁶⁰

These findings however differ from the results of the investigation of mercury contamination in marine sediments undertaken at 18 sites near the PVC/Soda plant by the Faculty of Natural Sciences at the University of Tirana in 2004. The investigation paper reports that average concentration of mercury reached 0.314 mg/kg and the maximum level was found at 0.920 mg/kg.⁶¹ These values are much higher than the levels reported by the EIA.

Furthermore, the Albanian NRC Chemicals offers different concentration levels than the EIA: "Marine deposits at the sewerage outlet contain 2 010 µg Hg/kg, and levels are still 50 µg Hg/kg 550 metres from the shore. High mercury concentrations have also been detected in Vlora Bay water: 22.5 ng Hg/l compared with 2.8–6.8 ng Hg/l in the Adriatic Sea, and in sediment: 0.34 mg/kg compared with 0.05–0.1 mg/kg in other areas of the Mediterranean sea. Mercury concentrations in Vlora Bay mussel samples are 0.29 mg/kg, higher than those in other areas on the Albanian shoreline (0.02–0.04 mg/kg)."⁶²



Soil encapsulation at the Coastal Terminal Site

While PIA has conducted detailed chemical characterisation of soil, water and marine sediments, it lacks thoroughness about describing the contamination remediation measures. First, the EIA does not provide technical specification of the on-ground deposit of the contaminated soil. In order to avoid mobilisation of contaminants during the building works, the EIA proposes that PIA removes the most contaminated soil – about 33.000 m³ – and stores it under "identified areas that would be asphalt or concrete paved for operational purposes (parking areas, transit roads, etc.)".⁶³ It is unclear then what type of hazardous waste disposal facility and protection system PIA will use, how it intends to limit the penetration of precipitation and underground water into the repository, etc. The EIA quality review warns that "simply covering the contaminated soil with hard surface does not eliminate the possibility of contamination spread into the wider environment by the movement of ground-water."⁶⁴

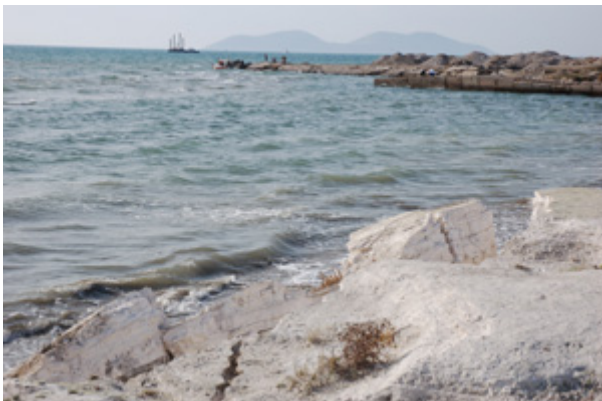
As documented by the photograph, PIA removed the contaminated soil into trenches insulated with polyethylene membrane in September 2007. This was confirmed to Bankwatch by the Managing Director during the site visit in October 2007. Bankwatch finds the burying of the mercury contaminated soil as an unsustainable method of dealing with the toxic contamination. As the polyethylene

membrane has only a limited lifespan, the burying of material in an insulated repository is only a temporary solution.

Summary

- The EIA and alternative investigations note varying levels of mercury contamination in marine sediments
- The EIA proposes insufficient remediation with regard to mercury contaminated soil which has already been exercised by the investor
- The burying of mercury contaminated soil does not provide a long-term solution

Monitoring



Erosion and contamination of soils at the beach near the terminal site

As determined by the EBRD's policy requirements, an Environmental Management Plan should be developed by the investor to "document key environmental issues, the actions to be taken to address them adequately, the implementation schedule and an estimate of the associated costs".⁶⁵ It would be expected that an Environmental Management Plan, one that identifies concisely the potential environmental and social impacts of the coastal terminal and recommend mitigation measures, has already been formulated and included in the project EIA.

Although the EIA contains a section entitled the "Environmental monitoring plan" that is divided into parts covering the construction and implementation phases, these include rather scattered commitments that are far from a concise plan. This was noted as a serious shortcoming by the authors of the EIA quality review who remarked that "construction phase Environmental Management and Monitoring Procedures should have been developed, together with a draft Environmental Management and Monitoring Plan that would be part of the ToR for the construction subcontractors, and part of the current EIA. Operation phase full Environmental Management and Monitoring Plan should have been integral part of the current EIA, and subject to approval from competent bodies."⁶⁶

The failure to incorporate a rigorous Environmental Management and Monitoring Plan into the EIA points to systemic failure on the part of the EBRD. As the EBRD Evaluation department notes: "there are some shortfalls in EIAs as they vary in quality, particularly related to coverage of social aspects and inclusion of environmental management plans (EMPs). As with other documents, standard ToRs and templates would assist with improving the quality of EIAs."⁶⁷ As indicated in the passage below, the lack of an Environmental Management Plan is alarming particularly bearing in mind the rather ineffective monitoring and enforcement capacities of the local authorities.

The project monitoring on the side of Albanian local authorities is exercised by the Regional Environmental Agency (REA) in Vlora. The REA office in Vlora is understaffed, it lacks qualified expertise and monitoring equipment. In an interview with Bankwatch, Niko Dumani, head of the Vlora REA admitted the lack of capacities, stating: "We are not specialists, we are just officials".⁶⁸

During discussions with Bankwatch, it emerged that the REA staff lacks good knowledge of the coastal terminal project. This might be caused by lack of environmental information on the project and insufficient communication with the parties involved. Mr. Dumani acknowledged having the "legal and technical documentation" on the project, yet he was unaware that the EIA for the coastal terminal had been prepared and that a copy of it ought to be available for public comment at the municipality where REA has its office. Mr. Dumani was not familiar with the EBRD's role in the project and claimed to have had no contact with EBRD staff. It is unknown to Bankwatch whether the EBRD ESD visited the project site during the due diligence phase and whether it paid a visit to the REA.

REA's control function over the project should stem from the site visits and the investor's monitoring reports. The REA inspector visited the Petrolifera site once at the beginning of construction in September. During his visit he did not record any shortcomings.

As for the investor's reporting obligations, the REA representative declared that PIA is expected to submit quarterly environmental monitoring reports "once the project enters the operation phase and that there are no monitoring requirements towards the investor during the construction phase".⁶⁹ Given that the investor's monitoring procedures and plan during the construction phase do stay largely unspecified in the EIA and that the EBRD stepped into the project late so that its client-oriented requirements towards the annual monitoring would come in force only at the end or after the termination of the construction, the monitoring during the construction phase has so far been minimal. If we consider that operations that have serious environmental and social implications, such as the manipulation with the contaminated soil or resettlement have already taken place, this is quite an alarming situation.

The aforementioned shortfalls leave serious doubts about Vlorë REA's overall abilities to oversee these kinds of large scale energy developments in Vlorë. This being the case, the EBRD should use its donor potential and finance the monitoring capacity development of the local authorities as recommended by its Evaluation department.⁷⁰

Summary

- A rigorous Environmental Management and Monitoring Plan is missing from the EIA
- The monitoring capacities of Vlorë REA are insufficient (and the EBRD should consider strengthening these through a devoted TC programme)

Transboundary impacts and oil spill



The coastal terminal is located on the seashore of the Bay of Vlorë, a bay that is 36 km long and 10 km wide. The Vlorë Bay presents the natural boundary between the Adriatic and the Ionian seas and it is regarded as one of the most representative bays of the eastern coast of the southeastern Adriatic Sea.⁷¹

To the north and the south of the bay are the Narta Lagoon and Karaburuni Peninsula, respectively. The Narta lagoon forms a part of the Vjosa-Narta Landscape Protected Area (IUCN category IV), a wetland complex which covers an

area of 19,412 hectares and includes 18 villages with a total population of 24,000 inhabitants.⁷² The Karaburuni peninsula has the status of Managed Nature Reserve (IUCN category IV) and it has been proposed to be upgraded to National Park status.

While both areas are characterised by their biological diversity and richness in flora and fauna species, they suffer from man-made ecological deterioration. The Narta lagoon suffers from “eutrofication, pollution from industrial and urban activities overfishing, overhunting, water disbalance, absence of fresh water entrances, etc”.⁷³ Due to the presence of the military base, the Karaburuni Peninsula has been less affected by human disturbance.

The coastal terminal EIA offers a reasonably thorough description of the biological resources of both areas, acknowledging their uniqueness as well as their environmental degradation. It is therefore disappointing to see how the EIA underestimates the project’s potential impacts on the areas through possible oil spills and cumulative impacts.

While the EBRD PSD informs that cumulative impacts have been assessed as part of the EIA process, the EIA is quite restrained on these, stating that the only cumulative impacts that could be evaluated are the ones with “KESH power plant [...] since no other industrial activity is active or planned to start in the short time in that area”.⁷⁴ As for cumulative impacts during the operation phase, those impacts are considered “negligible since the typology of PIA Terminal’s emissions and emissions from KESH Power Plant cannot produce a cumulative impact”. As to marine traffic, both those anticipated for PIA Terminal and KESH Power Plant are rather low. Some cumulative impacts of field works are acknowledged during the construction phase.⁷⁵

As the authors of the EIA quality review argue, there is no mention of the current plans to develop the area around the PIA terminal as an industrial park. They add: “Furthermore, cumulative impacts as a rule do not develop in ‘short time’ but over the long periods in any case. Thirdly, it is stated that the PIA terminal and the KESH power-plant cannot develop cumulative impacts since they have emissions of different nature. However, other types of cumulative impacts should have been considered such as land-use traffic (especially in case of second and third phase of the onshore PIA facilities that envisage road and rail traffic supply facilities).”⁷⁶

The authors of the EIA quality review also argue that the EIA report underestimates the importance of the Narta Lagoon and the Karaburuni Peninsula in light of the potential negative impacts connected with oil spills. They point to the EIA Executive Summary which mentions that potential environmental impacts to the Narta Lagoon in case of oil spills is to be considered negligible.⁷⁷ Finally, they highlight that the EIA lacks a Spill

Prevention Control and Countermeasure Plan (SPCCP) which should form an integral part of the EIA study before it is subject to approval by the Albanian authorities or international financiers.⁷⁸

It is not only the EIA which does not reflect on requirements for oil spill prevention, preparedness and response; the Concession Agreement also lacks such specification.

Summary

- The EIA underestimates the cumulative impacts of the existing and future projects within the industry park
- The EIA and the Concession Agreement lack an oil spill response plan which would reflect on the local oil spill response capabilities

Railway transport assessment

The coastal terminal's connection to the rail and road infrastructures of the Pan-European Corridor VIII is presented as one of the added values of the project. According to PIR, the rail connection will help reduce the congestion on Albanian roads and diminish the risks related to tanker lorries carrying dangerous goods.⁷⁹ Such a plan however does not correspond to the crude reality of Albanian railways and the project EIA shortfalls discussed below.

Approximately 280 km of rail track of the Albanian railway network correspond to the alignment of the Corridor VIII along the lines Durres – Qafe Thane and Durres – Vlore. The whole network, however, “requires a radical reconstruction, for the purpose to comply to the European Standards, or with the demands of a Pan-European Corridor”.⁸⁰ The Albania National Transport Plan, produced by Louis Berger S.A, describes the poor situation of the national railway infrastructure concisely thus: “train crossing points out of use, major crossings without communication links, derelict condition of the permanent way across the whole system, continuous safety hazard, severe lack of maintenance and bad drainage of bridges or viaducts, ineffectual track drainage systems, etc.”⁸¹

It is apparent that freight traffic from Vlora along the railway Corridor VIII is not feasible without sustainable development and a management plan and financing for the rehabilitation of the infrastructure.

The Louis Berger study is not optimistic about railway rehabilitation, referring to a quite disproportionate allocation from the national budget for the different transport sub-sectors. In 2001-2003, the Ministry of Transport budget contributed 80.6 percent for roads in contrast to 6.3 percent which went for support of the railways. Interestingly, the study comments on the role of international lending in this budgetary imbalance: “This distribution is mainly following the amount of the international funding and the related counterpart funds from the Government, available to these sectors, with the notable exception of the Railways which almost receive no international funding.”⁸²



Railway station, Vlora

Albanian Railways estimate the costs for modernisation of the 85 km Vlora-Rrogozhine railway line, a part of the Corridor VIII, at EUR 96.5 million.⁸³ Although the modernisation of the railway corridor VIII is the priority project on the list of the Albanian Ministry of Public Works, Transport and Telecommunication, the European Union is ready to promote rehabilitation only of that part of the line bordering with Macedonia.⁸⁴

Given this unfavourable situation, the terminal EIA's lack of assessment of railway transport options is quite startling. The EIA presents railway connection among the proposed measures aimed at reducing the traffic of tank lorries and mitigating combustion and fugitive dust emissions. Although, the EIA study puts down a detailed plan of railway and access roads at the site in Annex V, admitting that “the existing dirt access road to the site and rail connection will require a substantial revamping”,⁸⁵ it fails to identify under what investment and how the revamping will happen, neither does it specify what party will take care of the essential services such as railway maintenance. The EIA does not assess the connectivity and operating of the freight transport on the existing railroad infrastructure either.

Without such an assessment, and agreement on terms of cooperation with the state authorities and substantial international financing, the connection of the terminal to the railway network runs the risk of remaining just a paper project.

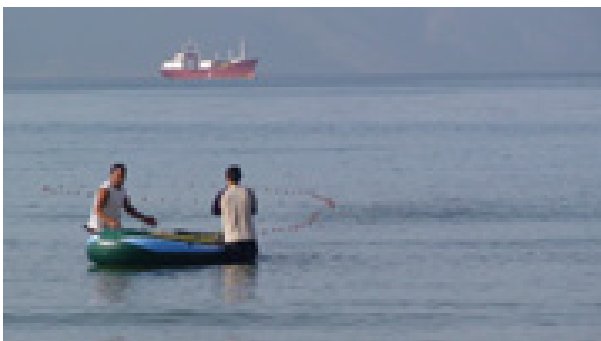
Summary

- The EIA lacks an assessment of the railway transportation scheme
- The EIA misses technical specification of railway rehabilitation and terms of cooperation with state authorities
- Railway freight transportation will be impossible without international financing (EBRD should consider financing the Albanian railway rehabilitation, particularly along the Pan-European Corridor VIII)

Fishing

Fishing constitutes an important economic activity for the local population in Vlora. It is practiced in the Bay of Vlora as well as within the Vjosa-Narta Landscape Protected Area. The fishing at the Narta lagoon, Kallenga lagoon, Vjosa River, the littoral as well as other water sources inside the protected area employs 50-100 people. Apart from legal licensed fishermen, the Narta lagoon is used for fishing by about 30 illegal fishermen. The fish are sold mainly to restaurants in Vlora and Fier; a small part is used for family consumption.⁸⁶

At the end of the 1990s, out of the 31 marine fishery vessels registered in Vlora, 18 were multipurpose, six purse seine, six small fishery and one is a trawl fishing vessel. The Vlora marine fleet employed 125 people.⁸⁷ This official data however excludes small vessel and unlicensed fishermen fishing mostly inside the Vlora Bay. The Vlora Fishery Management Organization registered under the Ministry of Environment, Forestry and Water Administration's Directorate of Fisheries Policies has more up-to date information on the number of fisherman. The organisation unites 250 members operating 70 vessels practising trawler, small pelagic and artisanal fishing. Several hatcheries, fish farms and processing factories operate in Vlora district. Many stopped operations after they had been privatised.⁸⁸



Fishing in the Old Harbor, Vlora

Various sources agree that illegal fishing methods such as not licensed fishing, fishing mesh size, dynamite fishing, coastal fishing by large boats in shallow sea depth have been seriously damaging fishing resources in the Vlora area and that as a result the volumes of catches have declined. Despite the decline in catch, fishing still provides a significant source of income for many families. As revealed in Bankwatch interviews with the local fisherman, during a successful catch a boat crew can earn as much as EUR 1200 per 36 hours trip; an

individual can earn up to EUR 65. Smaller boats fishing along the coast in the entire bay can make up to EUR 450 a day.

Although the EIA recognises the contribution of fishing to the local economy and notes the detrimental impacts of illegal fishing, it neglects to show up to date data on fishing. The EIA expects the terminal to "influence a sea area within the bay and close to shore" and it concludes that because this is a place of "very limited fishing activity" the interference with fishing will be none. The EIA also mentions that "it should also be considered that this area is in the vicinity of a major shipping lane, which has already reduced the local fishing value. Given that the area required for dredging and disposal is relatively small, in a relatively large overall area of low fishing value, it is considered that the impacts associated with the short term dredging and disposal activities are negligible".⁸⁹ Bankwatch believes that the EIA should include a more thorough socio-economic assessment of the potential impacts of the terminal on fishing activities.

Summary

- The EIA lacks a socio-economic assessment with respect to fishing activities

Tourism

Although 18 years have now passed since the country emerged from isolation, Albania still remains one of Europe's most undiscovered countries. The alpine ridges and 362 kilometres of coastline let the government, investors and international financiers fantasise about capitalising on the untapped tourist potential. The EBRD is no exception to this rule, recommending that the country focuses “on the development of the tourism industry to help the country’s potential materialise.”⁹⁰ The oil and energy-oriented development in Vlorë promoted by the bank, however, reveals a major imbalance between the recommendations on paper and the deeds.

According to the World Travel & Tourism Council, tourism in Albania is expected to generate USD 1,845 million and 149,000 jobs (11.9 percent of total employment) in 2008. Albania's travel and tourism will account for 14.7 percent of GDP.⁹¹ To stimulate investment in tourism, the Albanian government offers no restrictions on foreign ownership of property, there is no capital gains tax, no withholding tax, no inheritance tax, no value added tax on property purchases, no state or wealth taxes nor a transfer tax.⁹² Furthermore, the government launched an initiative of “Albania for €1” under which publicly-owned land and assets are made available to investors for a symbolic price, with the intention that this would spark increased foreign direct investments in travel and tourism.

Although the development of tourism is high on the central and local governments’ agenda, the willingness to regulate the often wildcat construction that accompanies such development is far less. The developers often lack legal permits and pay scant regard to water supply or sewage systems. The lack of good infrastructure and the absence of urban development plans hold Albania back from meeting its full tourism potential.⁹³

Vlorë is no exception in this trend, suffering from both poorly regulated real estate development and an outdated urban development plan which dates from January 1996. According to the zoning map in the Vlorë urban development regulatory plan, the area currently occupied by the terminal was reserved as an area for warehouses.

The frenetic construction of tourist resorts running in parallel to the development of the coastal terminal and the thermo-power plant has shown that neither the central nor the local governments have a clear strategy about tourism development in Vlorë.⁹⁴ The EBRD’s role in the Vlorë projects only adds to the overall confusion and escalates the contradictory dynamics.

On one hand, the EBRD investment strategy for Albania, as laid out in the Country Strategy from 2006, acknowledges the breaks to the development of tourism and gives hopes for the EBRD’s support for sustainable forms of tourism: “There is little progress in the restructuring and expansion of the tourism sector, including introducing new products and financing methods. The coastal areas suffer from pollution and unregulated construction activities. Lack of infrastructure provision hinders the development of the tourism sector.”⁹⁵

On the other hand, the investment objectives for Vlorë listed in the same country strategy reflect the bank’s contradictory position to Vlorë’s development: “The Bank will continue to play a major role in promoting private sector development and FDI’s inflows over the strategy period through financing of existing companies, greenfield, or acquisition projects such as a new oil and gas storage facility in Vlorë. It will support projects in retail industry as well as other possible proposals in the agribusiness and



Church at the Karaburuni peninsula

tourism industry.”⁹⁶ Moreover, the contrast between the strategy and the project portfolio reveals the EBRD’s empty promises. Other than the coastal terminal and the Vlora-Levan motorway, the current EBRD project pipeline features no projected investment in the tourism sector in the Vlora region or elsewhere.⁹⁷

Traditionally Vlora has been renowned for its tourism potential and acted as the holiday centre since the Second World War. During communist times, Vlora was the national holiday resort, with domestic tourists seeking retreat at the “Old Beach” (beach stretching north from Vlora to the new harbour) and the “New Beach” (the Municipal beach located at the centre of the town) and the villas and summer resorts built in the area of Uji I Ftohte. The opening of the country that arrived with the collapse of Communism saw a boom in business activities in Vlora. Countless bars, restaurants and hotels have been built in the city and along the bay coastline south towards the town of Orikum. The tourism facilities have been hosting mostly domestic tourists and Albanian season guests from Kosovo and Macedonia. The city also attracts one day foreign tourists, mainly Italians from the Mediterranean cruise ships harbouring in Vlora.

As of the end of 2007, there were 1 500 companies working in the tourism sector in the Vlora district, most of them operating hotels and restaurants and employing 5 000 people. Last year saw an increase in the number of tourists visiting the town, from 200 000 in 2006 to 280 000 in 2007. The influx of tourists has attracted foreign companies from Italy, France and Israel eager to invest in the tourism development.⁹⁸



Narta lagoon near Zvernec

In 2000, UNDP and the Government of Albania started developing the Conservation of Wetland and Coastal Ecosystems in Mediterranean (MedWet) project which was aimed at the sustainable management of wetlands of biological diversity and the development of an adequate legal and regulatory framework and networking and capacity-building of the implementation bodies. As an outcome of this cooperation, the Narta Lagoon was declared a protected area in 2004 and the Management Plan for the Vjose-Narta Landscape Protected Area was released in 2005. The document characterised the Vlora project area as one which “offers great potentials for

tourism and leisure activities [...] The site has great natural and cultural assets, sufficient to sustain numerous ecotouristic activities such as hiking (Kallenga and Nature Managed Resources of Poro) birdwatching (in Narta lagoon and salinas) and cultural tourism (in historical sites of Zverneci and Treporti).”⁹⁹ In light of the tourism potential foreseen by UNDP, the governmental decision to establish an industrial park in Vlora was considered to be one which jeopardises the city’s expectations for tourism development.¹⁰⁰

A similar critical position towards the energy development has been taken by the Vlora business community, particularly by that part connected with the tourism development. According to the Chairman of the Chamber of Commerce and Industry Vlora, foreign companies are wary of the energy projects too, hoping that these will not be realised.¹⁰¹ The majority of Vlora tourist enterprises find the current siting of the Vlora thermo-power plant and terminal as environmentally inappropriate and thus threatening the tourist potential of the town. The Chairman of the local Chamber of Commerce and Industry commented: “We are not against the development of these facilities as long as they are built at another site chosen by specialists”.¹⁰²

The opposition of the business community dates back to May 4, 2005, when 43 representatives of the Vlora enterprises signed a resolution addressed to the Albanian Parliament and local government calling for a referendum on the energy and industry park. The local Chamber of Commerce and Industry claims that the Vlora tourist enterprise raised its concerns and complaints regarding the thermo-power plant and terminal with the decision makers on other occasions, but the results were like talking to a brick wall. In 2007, the enterprise

representatives submitted two written requests to the local government; however there has been no response to them.¹⁰³

In response to the commencement of works at the terminal site, 25 business representatives approached the Chamber of Commerce and Industry for support to protect their investment in the tourist industry and prevent the potential harm of the projects. On October 22, 2007 Vlora businesses presented their concerns in a joint position letter to the municipality and the prime minister. On the same occasion, a study proposing alternative development of the terminal site was presented to the City Council and the Albanian government. The plan, which has involved contributions from 128 businesses leaders in Vlora, centres on light industry (food, services) in the area and the development of a new commercial harbour.¹⁰⁴

The terminal project has also caused conflict with businesses in other sectors. Sulo Shehu - the owner of the prominent Kolacem cement-trading company - claims he bought a lot within the current PIA zone for EUR 3 million in 2000 with the aim to operate four tanks for oil products built with help of Russians and Romanian in the area. According to the entrepreneur, Shehu did not receive a permit to use the tanks so he kept a lot comprising approximately 30 percent of the current PIA site idle. Mr. Shehu reported that his tanks were demolished by a gang one night in August 2007. He reported this to the state prosecutor but he received no help.¹⁰⁵

Local business is also asking what benefits the project will bring to the local community and whether the profit will outweigh the possible economic losses connected with tourism decline. They point to the scarce employment opportunities related to the project, the non-transparent management of the Vlora eco-fund to which the local industrial polluters should contribute and unpaved road to Zvernec. PIA plans to open up to 60 and 50 working opportunities for the land and marine constructions works. In the operation phase, the terminal will employ around 35 management, administrative and technical people.¹⁰⁶ The local entrepreneurs argue that this number can hardly compare with the number of people working in tourism.

Summary

- The development in Vlora is out of synch with expectations for tourism development as put forward by UNDP and a local business initiative
- The EBRD should formulate a clear development strategy for Vlora district, involving the participation of local interest groups
- Land ownership issues at the Petrolifera zone still may be unresolved
- Local businesses argue that the project will bring little benefits to the local community and lower the profits coming from tourism

Public participation

Concerns about the sustainable development of Vlora date back to when the plans for the Vlora energy and industry park emerged in 2002-3. Due to the fact that the information on the development was rather technical and the channels for wide public participation were closed, the first to respond to the plans were environmental scientists, academics, intellectuals, and experts largely based in Tirana. Local response to the project rose in Vlora in 2004 and formalised as the Civic Alliance for the Protection of the Vlora Bay (the Alliance) in March 2005. From the outset, public concerns about the advisability of the Vlora terminal and the power plant have intermingled with the concerns about the whole energy and industry park, including other oil related developments in the town such as the AMBO pipeline.

The Alliance sought redress through the national mechanisms, requesting a local referendum on the energy and industrial park and the coastal terminal in Vlora in 2005 and 2007, respectively failing in both instances on formal grounds.

In 2005, the Alliance collected 14,000 signatures – 10 percent of the electorate in Vlora – under a petition against the energy and industrial park. Even though this was a sufficient amount for organising a referendum according to the Albanian constitution, the state Central Electoral Committee rejected the request on 25 November 2005. The Alliance appealed to the Supreme Court in Tirana but the appeal was rejected in December 2006.



Protest of the Vlora Alliance

The second request for a referendum was submitted on the hydrocarbons terminal by the City Council of Vlora in October 2007 after massive public protests held regularly at the construction site since the launching of the building works in September. The State Central Electoral Committee repeatedly rejected the referendum on formal grounds.

On 27 April 2005, the Alliance submitted a communication to the Aarhus Convention Compliance Committee (ACCC) alleging a violation by the Albanian government of its obligations under several articles of

the Aarhus Convention.

The communication alleged that the Party concerned had failed to notify the public properly and in a timely manner and to consult the public concerned in the decision-making on the planning of the industrial park. In its final report from July 2007, the Compliance Committee found that Albania failed to implement requirements on the relevant decision-making process and thus was not in compliance with Article 7 of the Aarhus Convention.¹⁰⁷

With regard to the approval of the construction site for a proposed coastal terminal for storage of oil and by-products and associated port infrastructure, the Committee claimed to receive insufficient information for it to evaluate the quality of the public participation process in the relevant decision-making.¹⁰⁸ The Committee however did not preclude that the Albanian government had violated rules on public participation over the terminal. It stipulates that given insufficient information on public consultations during the EIA process and the fact that the issues raised with regard to the government's decision on the terminal "appear to considerably resemble" those in Decisions on the energy and industry park and the thermo-power plant, "as well as the interest in not further delaying the presentation of its findings with respect to those two decisions", the Committee decides not to further consider a decision over the coastal terminal at this stage.¹⁰⁹

In contrast to the Aarhus Compliance Committee findings stand the words of the investor and the EBRD who claim that all the required EIA consultation meetings over the project were carried out in 2004, 2005 and 2007. The investor has moreover conducted “a very intensive informative campaign, through national and local press and TV networks, by means of a number of illustrative articles, spots and interviews, took place during the last two months of 2005, with a wide and positive involvement of the public both at national and local level”.¹¹⁰

A lack of public participation opportunities as well as environmental controversies surrounding the thermo-power plant project were also the core of complaints the Alliance lodged with grievance panels at the World Bank and the EBRD in April 2007. Both institutions approved investigations into the complaints, the results of which are pending.

Since October 2007 up to the time of writing this report, the Alliance has organised a series of protests and rallies against the terminal backed by the Vlora Student Movement. With frustration growing, the protests have been radicalised. The Student Movement interrupted the public meeting organised by Petrolifera at the University grounds on 21 November, throwing eggs, fish and used diesel at Gazmend Shalsi, Petrolifera's representative.¹¹¹ The protests escalated at the turn of the year when people blocked the access road to the construction sites thus preventing further progress on both sites. The protest saw the arrests of 20 people, including five members of the Vlora Student Movement.¹¹²

Two Albanian NGOs – Civic Alliance for the Protection of the Vlora Bay and EDEN Centre – used the opportunity to provide input on the project EIA during the consultations promoted by the EBRD in December 2007 which reflects EBRD's efforts to promote the commenting process.

Summary

- Likely deficiencies in the public participation process over the terminal project in 2004 and 2005 identified by the Aarhus Convention Compliance Committee..

Conclusions

When it opts to get involved in high-risk projects, the EBRD tends to justify its presence by saying that without its involvement the hydrocarbons terminal project might risk being an environmentally and socially questionable endeavour. Although we can presume that the EBRD played an important role in the due diligence process by stimulating the public consultations in autumn 2007, the bank has failed to ensure compliance with its own environmental standards during the EIA process. Furthermore, the evolution of the Vlora industry park leaves a bad taste in the mouth about the EBRD's (and all the other official stakeholders) strategy for this seashore resort. There is an abiding suspicion that the EBRD (and other IFIs) have avoided conducting a strategic assessment and used the "salami method" of separating the industrial project into isolated pieces. There are also indications that the EBRD chose to step into the terminal project at a late stage missing thus the important chance to influence the EIA planning and overseeing the construction works. Finally, the EBRD has also failed to provide legitimate reasons for supporting this kind of project with public funds.

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Annex I- Vlorë industry park (including coastal terminal and power plant) chronology

January 2001	Study on “the determination of appropriate locations for the construction of coastal terminals for oil, liquefied gas, oil and their by-products” ordered by the former Ministry of Public Economy and Privatisation. It identifies Soda/PVC plant in Vlorë and Porto Romano Bishti i Palles in Durrës as the most appropriate sites for building new coastal storages ¹¹³
2001	Montgomery Watson Harza Consulting company is selected by the Government of Albania to prepare siting, feasibility and EIA studies for the power plant financed by the United States Trade and Development Agency (USTDA) ¹¹⁴
29 April 2001	Coastal storages study and area approved by the Council of Ministers ¹¹⁵
January 2002	EBRD, EIB and IBRD express interest in financing the power plant ¹¹⁶
19 July 2002	La Petrolifera submits to the Albanian Ministry of Industry the proposal for an “unsolicited offer” for the project ¹¹⁷
July 2002	PIA sh.a. is founded in Tirana
July – October	PIA makes contacts with the Albanian authorities, EBRD, World Bank, Simest, “to determine necessary steps for the swift implementation of the project”. ¹¹⁸
21 October 2002	Final Siting study and Feasibility study on the power plant ¹¹⁹ are completed recommending Vlorë „as the best site and distillate oil-fired, base load, combined cycle generation allowing for conversion to natural gas as the best generation technology”. ¹²⁰
21 December 2002	Vlorë District Council of Territorial Adjustment approves the site for the power plant ¹²¹
19 February 2003	National Council of Territorial Adjustment approves site of the Vlorë Industrial and Energy Park ¹²²
19 February 2003	National Council of Territorial Adjustment approves site of TEP in Vlorë within the Industrial and Energy Park ¹²³
12 March 2003	La Petrolifera submits to the Albanian Ministry of Industry the “updated” proposal for an “unsolicited offer” for the project ¹²⁴
8 May 2003	Council of Ministers approves a concession procedure to the benefit of the Italian-Romanian company La Petrolifera ¹²⁵
6 October 2003	Final power plant EIA ¹²⁶

26 March 2004	Government Decision No. 171 on terminal concession agreement ¹²⁷
12 May, 2004	Government Decision No. 278 on terminal concession agreement ¹²⁸
24 May 2004	Signing of BOO and BOT Agreements
11 February 2005	The Council of Ministers approves registering of the zone land in the name of PIA ¹²⁹
January 2006	Ministry of Environment issues an environmental consent for construction of the terminal
16 February 2007	Ministry of Environment issues an environmental consent for construction of the power plant ¹³⁰
3 March 2007	Ministry of Environment issues environmental license for the construction and operation of the power plant ¹³¹
13 April 2007	Ministry of Environment renews an environmental consent for construction of the terminal ¹³²
22 May 2007	National Council of Territorial Adjustment of Albania modifies destination of the Vlora park to industrial ¹³³
22 May 2007	Terminal construction permit ¹³⁴
August 2007	KESH commences works at the power plant site
19 September 2007	PIA commences works at the terminal site
18 October 2007	Terminal EIA at EBRD website
28 May 2008	EBRD Board meeting on the terminal

Annex II- A legal commentary on the Petrolifera Concessionary Agreements

By Agron Alibali LLM¹³⁵

Introduction

This analysis focuses on the Petrolifera Agreements¹³⁶ and their compliance with the Albanian Constitution, with international environmental law, and with the Albanian legal framework in general.

In May 2004 the Albanian government approved Law No. 9231, which ratified two concessionary agreements between the government and La Petrolifera Italo-Rumena (PIR), an Italian company based in Milan and Bologna, for the construction and operation of several oil storage facilities and one marine terminal at the historic and environmentally sensitive Vlora Bay, in Vlora, Albania.

Construction at the designated site commenced on 19 September 2007 despite the lack of a permit from Vlora local government authorities. Meanwhile the company has applied for a credit to the European Bank for Reconstruction and Development [EBRD], which will be reviewed by the EBRD Board of Executive Directors in May 2008¹³⁷.

The Petrolifera project has raised serious and intense concern from the affected community and the general public in Albania. The Civic Alliance for the Protection of the Bay of Vlora, a local NGO based in city of Vlora [hereinafter Civic Alliance], brought a case against the Albanian government at the Aarhus Convention Compliance Committee in Geneva, which after carefully reviewing the matter issued a ruling in favor of the affected community¹³⁸. Meanwhile, in a show of popular opposition to the Petrolifera project, two requests for a local referendum have been submitted before Albania's Central Electoral Commission. The first one, initiated in the summer of 2005 by the Civic Alliance, requested a referendum on the Energy/Industrial Park at Vlora Bay – which includes La Petrolifera project. Supporters were able to gather more than 14,000 signatures. Their request to hold the referendum was however rejected by the Central Electoral Commission, a decision, which was later challenged before the Constitutional Court and the Ombudsman for alleged invalid arguments and procedures¹³⁹. The second request for a referendum on La Petrolifera project was initiated in late 2007 by the Vlora City Council and was again denied by the Central Electoral Commission¹⁴⁰.

The Constitution

The Petrolifera Agreements raise several constitutional concerns.

First, an essential principle in the Constitution of Albania is the right to direct democracy¹⁴¹. In the local level, this right is exercised through local referenda¹⁴².

This important constitutional prerogative acquires an important dimension with respect to environmental issues because it specifically grants to the “public and non-for-profit organizations” the power to “general or local referenda on environmental issues”¹⁴³.

However, both Concession Agreements have been drafted and structured in such a way that leave little room for the exercise of this important constitutional right.

Indeed, the Agreement in essence creates an obligation on the part of the government towards PIR to “provide all relevant licenses, permissions, authorizations and concessions...”¹⁴⁴ It is clear that this obligation may well come into conflict with the constitutionally mandated sovereign right of the people to participate in the decision-making on issues of environment via a local referendum. Indeed, it is the Constitution that trumps the Concession Agreements, and not the other way around.

Second, the Constitution of Albania provides for the right of everyone “to be informed on the status of the environment and its protection”¹⁴⁵. The Petrolifera Project has a significant impact on the environment over the entire Bay of Vlora. Therefore, it triggers the right of “everyone” to be informed “on the status of the environment and its protection”. This right, however, is effectively hindered by the significant gaps, lacunae and lack of information with respect to the Project.

Concomitant to the right to environmental information, broadly defined, the Constitution provides for the obligation of public authorities to publish all laws and normative acts of the Council of Ministers, ministers or other central state institutions, because those acts “acquire judicial force only after they are published in the Official Journal”¹⁴⁶. A sound interpretation of the Albanian Constitution might be that any law, which is not published duly and in its entirety, may thus lack the full force of law.

Therefore, the right of the public to be informed on issues of environment [environmental information] is somehow facilitated by the obligation of any public authority to publish all information related to a particular project as approved by law, and which may have normative impact on the environment. The obligation to publish any relevant environmental information becomes particularly important in light of the Parties’ obligations towards the Aarhus Convention as well as the Constitutional requirement that all laws must be published entirely and completely in order to have full force ad effect.

The Petrolifera Agreements, however, fail to fulfill this constitutional requirement because several legal acts that are part to and/or relevant to such Agreements have not been published, thus raising serious questions on their validity and enforceability.

For example, Law No. 9231, dated 13.05.2004 incorporates a number of unpublished legal acts. They are, for example, Decision No. 171 dt. 26 March 2004 of the Council of Ministers; Decision No. 278, dt. 12 May 2004 of the Council of Ministers. These Decisions have not been published in the Albanian Official Gazette. In addition, it is stated in the BOO Agreement that these decisions are “all attached as Annex A”, but neither this Annex exists in the legally required published form¹⁴⁷.

Another important unpublished document is a January 2001 detailed study on “the determination of appropriate locations for the construction of oil and liquefied petroleum gases sea terminals” sponsored by the formerly Ministry of Public Economy and Privatization, currently Ministry of Industry and Energy¹⁴⁸.

This manifest absence of legal transparency violates another important principle of the Albanian concession regulations, more specifically the principle of “open, transparent and easily verifiable procedures,” thus creating another cause of concern with respect

The Law on Concessions

Petrolifera Agreements derive from the Law No. 7973. dt. 26.07.1995 On Concessions and Private Sector Participation in Public Services and Infrastructure [Hereinafter “Concession Law”]. However, Petrolifera Agreements fail to abide by this law in several aspects.

Structuring of La Petrolifera companies is as follows: La Petrolifera Italo-Rumena, S.p.A. [PIR] is “a company organized and existing under the laws of Italy”. It has a registered office in Milan and administrative offices in Bologna, Italy¹⁴⁹.

La Petrolifera Italo-Albanese, sh.a. is a “company founded by PIR, organized and existing under the laws of Albania, with registered office in Tirana¹⁵⁰.” PIR is the “controlling company of PIA”¹⁵¹. In the Petrolifera Agreements they are both represented as Concessionaires and share the same Managing Director and General Director respectively.¹⁵²

While this is not an uncommon structure, it may nevertheless raise questions regarding their corporate legal status, their individual and joint operations, their legal obligations under Albanian law, Italian law and/or EU law, as well as taxation issues and so forth.

Moreover, both BOO and BOT Concessions grant to the Concessionaire a “special investment protection regime¹⁵³” which however unusual, cannot be construed and interpreted as some sort of “extraterritoriality” regime in the Bay of Vlora. Again, the Concessionaire may not and cannot claim to be placed above the Albanian Constitution and laws especially in case its activities run counter to Albanian law or international environmental law.

The legal definition of “Concession” in the Albanian Concession law precludes permanent private ownership of a permanent nature over public property¹⁵⁴. This shows, at least, a certain degree of reluctance on the part of the Albanian legislators to grant concession agreements on indefinite terms.

Interestingly, the scope of the law as initially approved by the Albanian Parliament precluded the oil industry from concessionary agreements¹⁵⁵. This is another evidence of the original hesitancy of the Albanian legislators to grant concessions on such an important area of the national economy.

The oil industry was only later included in the scope of the Concession Law and this was done through Presidential Decree¹⁵⁶.

The legal requirements for any “unsolicited proposal” are that the project proposal must:

- have a national priority, i.e. “be a project of national importance and should conform with the national development goals”;
- be unique, i.e. not be part of a competing bid; and
- have low cost, including the least financial support from the government and the highest norm of profit.

Once an “unsolicited proposal” fulfills such conditions, the government must then approve it and the next procedural steps are similar to “solicited projects”¹⁵⁷.

One of the procedural steps required for both “solicited projects” and “unsolicited projects” is the “letter of intent” [Letër Mirëkuptimi] of the government authority, which contains a formal assurance to engage on the project and, if needed, a preliminary exclusivity during the negotiations¹⁵⁸.

There is no evidence that the Concessionaire and the Government of Albania did ever utilize a letter of intent as required by law.

Other instances of the Concession Agreement’s non-compliance with the law are evident in the structure of the concession agreement itself, which is strictly defined in Albanian law.

Indeed, some of the obligatory provisions that must be included in the Concessionary Agreement are, inter alia, as follows:

- Definition of “material breach” in the agreement¹⁵⁹;
- Description of prices, professional fees and other applicable tariffs for the implementation of the project¹⁶⁰;
- Provisions related to inspection of designs, equipments, implementation and completion of the project¹⁶¹.

However, there is no definition of “material breach” in any of the Concession Agreements. Description of prices, etc., is very limited throughout the agreements, whereas inspection provisions are vague, minimal or favorable to the Concessionaires¹⁶².

Another interesting requirement under Albanian law is that, within 30 days after the signing of the Concession Agreement, the Concessionaire shall set up and register a concessionaire company to operate in Albania. Therefore, Albanian law provides for the establishment of the concessionaire company only after the signing Concessionary Agreement, and not before it.

In our case, the Concessionary Agreement was entered on 24 May 2004. La Petrolifera Italo Rumena (PIR) is the foreign Concessionary, which is the parent company of La Petrolifera Italo-Albanese (PIA). However, the latter was not founded in the next thirty days from 24 May 2004, but much earlier, more precisely at the end of July 2002¹⁶³.

In this case, PIR may have complied in good faith with a separate but directly applicable government decree, which requires a company applying to build a coastal terminal for transportation and storage of oil, gas and by-products, to register as legal personae in court¹⁶⁴.

In case of conflicts of laws, the hierarchy of laws places Acts of Parliament above Government Decrees. Therefore, an early registration of the company may seem in breach. The analysis here, however, should not interpret this legal conflict on hierarchic grounds only, but also based on principles of fairness and reasonableness. Seen in the best light to the private entity, this breach of law is minuscule and irrelevant. However, the eventuality that it might bring about unexpected legal ramifications in the future cannot be discounted¹⁶⁵.

By far, one of the most important obligations of the Concessionaire under Albanian law is its “duty to abide by all laws in force and effect” in Albania¹⁶⁶. This is relevant, because as it will be discussed here, there are many binding requirements upon the Concessionaire deriving from Albanian environmental laws, zoning laws, insurance laws, maritime laws and so forth. However, some of the provisions of the Concessionary Agreement vest the Concessionaire with rights and prerogatives that may circumvent or contravene Albanian law.

Another very important principle of Albanian Concession Law is that of “public policy”. “Ensuring the protection of public interest” is essential in any Concessionary Agreement under Albanian law¹⁶⁷. This provision may give rise to significant discussions on the relevance of the Petrolifera project over “public interest” or public policy.

While such debate falls outside of the scope of this analysis, it may still lead to unpredictable legal ramifications in the future for both Parties, as well as for any potential creditor.

Furthermore, the BOO Concession Agreement is “ultra vires”, i.e. it exceeds the authority granted to the Concessionaire by the Concession Law. The Concession Law provides for concessions to be granted for “supply of natural gas, oil and its by-products, including transport, distribution and storage”¹⁶⁸. The Law does neither include the term “chemical products” in this particular provision, nor in any other provisions.

Moreover, the specific law granting the concession to PIR/PIA makes reference to “chemical products” neither in its title, nor in Article 1¹⁶⁹.

However, from the beginning, the Concessionary Agreements make it very clear that the concession includes “chemical [and other] products” as well. Indeed, “other products”, although not defined, are in the definition of “Coastal Terminal” as provided for in the BOO Agreement¹⁷⁰ as well as in the BOT Agreement¹⁷¹.

“Various chemical products”, on the other hand, are referred three times in the Annex B and C of the BOO Concession Agreement¹⁷². Unidentified Annex at Fletorja Zyrtare 40/2004, page 2870-2871¹⁷³ provides a non-exclusive list of various chemical products expected to be included “in the strategic interest of Albania” in the third stage of the BOO and BOT Concession Agreement, such as polyurethanes, glycols, methanol, sulphuric acid and styrene.

By exceeding the powers, authorizations and permissions that may be granted to them through Albanian law, the Concession Agreements raise further questions over their compliance with Albanian law as well as on potential future legal ramifications.

Finally, Government Decree No. 358, which is a key regulation governing the Concession Agreements, provides some other important provisions and principles, which highlight further discrepancies of these Agreements with Albanian law¹⁷⁴.

An essential principle of Albanian concession regulations is the “authority of the government to abolish the concession permit.”¹⁷⁵ However, the maximum power that Concession Agreements recognize to the Government is “the right to temporarily substitute itself to the Concessionaire,¹⁷⁶” which is substantially far below to what the cited Government Decree provides.

The absence of the power to cancel in the Concession Agreements cannot be interpreted that the public authority does not have this power. Confronted with the sovereign power to cancel, this appearance of extra territoriality may nevertheless bring about situations of significant legal uncertainty or conflicts over the entire life of the Concession Agreements.

Law on Land

Through Petrolifera Agreements, Petrolifera assumes several important land property rights in Albania. These include the right to fully own a coastal terminal area of approximately 183,000 square meters;¹⁷⁷ the exercise of several easements and access rights;¹⁷⁸ and quasi-exclusive rights over a buffer zone of at least 500 meters distance in radius from the boundaries of the Zone, which significantly increases the size of the area under exclusive use by the Concessionaire¹⁷⁹. According to an estimate the buffer zone will add up to 65 hectares to the Concession Zone, thus totaling 68,5 hectares [18.3 + 65]¹⁸⁰.

However, these right are in conflict with several provisions of Albanian law, thus creating a situation of potential legal conflicts and collisions:

First, the Concession Agreements are in conflict with the right to purchase land, as provided for by Law No. 7980, dt. 27.7.1995, because the land which is the object of the sale may be subject to an absolute exclusion from any conveyance.

Indeed, the Zone, as defined by the Terminal Concession Agreement, is a prime coastal area in the Bay of Vlora and a Mediterranean beach, in close proximity with the City of Vlora and within near distance from the protected Narta Lagoon. Despite its special environmental value, the area was subject to significant abusive and harmful industrialized use by Albania's Communist regime in the decades of 1970-1990. Two industrial and chemical factories were constructed in this beach and forest area, thus causing severe pollution. The fall of the Communist government in 1991 brought about the end of such harmful industrial activity. Studies and work commenced immediately to rehabilitate this area. Its special environmental value was known to the Concessionaire well before the Agreement. A UNEP paper titled "Post Conflict Environmental Assessment and State of Environment Report" quoted in the Terminal Concession Agreement provided an estimated cost of approximately 6 millions USD "for the rehabilitation of the entire area of the former Soda and PVC factory¹⁸¹". The government of a EU Member State was engaged from 2002 – 2006 in assisting Albania for the "revitalization" of the area and the technology line was put in place for "the whole decontamination of the industrial site¹⁸²" at the chemical plant in Vlora.

In fact, Law No. 7980, dt. 27.7.1995, excludes from any sale and/or conveyance of a land, which has a "special environmental value¹⁸³".

Second, the land provisions of the Concession Agreement are in conflict with the Law On Immovable Property of the State¹⁸⁴. Since the area of concern used to be a chemical factory, it falls under the definition of non-public state-owned immovable property. This category includes any state owned immovable property that is not public property and encompasses land and buildings of state enterprises. Legally this property is treated similar to private property under the rules of the Civil Code of Albania, provided that "it is not subject to special legal provisions¹⁸⁵".

Law No. 8905, dt. 6.6.2002 "On the Protection of the Marine Environment from Pollution and Harm" provides such special treatment. Indeed, Article 4 of such law provides that "the Marine Environment of the Republic of Albania is inalienable state-owned property". The definition of "Marine Environment" includes "the coast, beaches, ports, quays and their land territories"... Evidently, the Zone as defined in the BOO Concession Agreement is part of the "coast", if not a "beach" that was in process of full rehabilitation. Therefore, its ownership status cannot be altered as a result of the BOO Agreement, because it is an inalienable state property.

A third argument derives from the Concession Law itself, which grants to the Authorized State Body the right "to retain ownership over main assets.¹⁸⁶" Although the term "main assets" is not defined in the law, one could make the strong argument that real estate cannot be excluded from the scope of this term.

The provisions of the relevant government's decree regulating construction and use of coastal terminals further reinforce this argument¹⁸⁷. Indeed, Decree No. 358, dt. 27.05.2001 provides that, contrary to terminal infrastructure, coastal infrastructure "remains state property" and interested subjects could rent it. Clearly, title over land in both instances remains unquestionably with the state¹⁸⁸.

As a consequence, the Concessionaire's acquisition of ownership or title over the Zone is dubious at least, because it is in evident conflict with the Concession Law. Indeed, the Concessionary Agreement derives from the Concession Law and it cannot exceed or go beyond its authority or power (*Ultra Vires*).

The Law on Environment

Due to their significant impact on the environment, the Petrolifera Agreements are covered by provisions of Albanian environmental law. This is a fundamental requirement deriving from the specific body of law that regulates the oil and gas industry¹⁸⁹.

The main legislation in the field is the 2002 Law On the Protection of Environment. The Law makes the protection of environment a “national priority” and with its wide scope, the law is mandatory over “all state bodies, physical and juridical persons, domestic or foreign, which exercise their activity in Albania¹⁹⁰.”

The law lays out the following relevant fundamental principles governing environmental protection in Albania:

- (a) sustainable development;
- (b) care;
- (c) prevention;
- (c) polluter pays;
- (d) repair and rehabilitation;
- (dh) liability;
- (e) protection on the highest level;
- (f) awareness and public participation in environmental matters;
- (g) transparency in environmental decision-making¹⁹¹]

In many respects the Petrolifera Agreements fail to abide by such principles. For example, the Petrolifera project undertakes to build in an area, which was already under “repair and rehabilitation.” In addition, they minimize the liability of the Concessionaire and never acknowledge the principle “polluter pays”.

Moreover, they sidestep the important principles of public participation and transparency. Indeed, any “public and private project...that might affect the environment is subject to an environmental impact assessment, before their approval and implementation¹⁹².” [Emphasis added]. Moreover, any project applicant is required to present the project to the local government, the public and environmental NGO “in no less than two options.¹⁹³”

There is no evidence that the Concessionaire has implemented these provisions of law. Indeed, no exhibit, annex or other documentation that could be represented as an environment impact assessment study by the Concessionaire exists in a published form prior to the date of approval of the Project, i.e. by 29 April 2001 (date of the government Approval of the Terminal Study and Area) or by 24 May 2004 (date of the signing of the BOO and BOT agreements), at the latest. Nor there is any information that the Concessionaire has contacted prior to the approval of the project any local government body in Vlora, any members of the public or any environmental NGO submitting to them a description of the project “in no less than two options”.

For projects of similar magnitude, public participation is an essential aspect of the EIA process under Albanian law. This process is regulated by Law No. 8990, dt. 23.01.003 On the Environmental Impact Assessment¹⁹⁴.

According to the Albanian law, representatives of the “interested public” and environmental NGOs “participate in all stages of the EIA process, including in the decision-making¹⁹⁵.” There is no evidence that this binding requirement has been implemented in the case of the BOO and/or BOT Concessionary Agreement. Post-factum efforts, although important, cannot make up or replace timely and necessary procedures mandated by law.

Finally, it is noteworthy a relevant decision of the Aarhus Convention Compliance Committee with respect to Communication ACCC/C/2005/12 initiated by the Civic Alliance for the Protection of Bay of Vlora as Communicant against the Government of Albania as Party Concerned. Their Final Findings and Recommendations are relevant to this analysis because they concern the Industrial and Energy Park in the Vlora Bay, an important part of which is the PIR/PIA oil storage terminal and port infrastructure¹⁹⁶.

Albania ratified the Aarhus Convention in October 2000¹⁹⁷, therefore its requirements were fully effective and applicable during the entire period of planning and implementation of the PIR/PIA Concessionary Agreements.

In this regard, with respect to the Industrial and Energy Park, the Aarhus Convention Compliance Committee found that Albania “failed to implement [the] requirements [of Article 6, paragraphs 3, 4 and 8] in the relevant decision-making process and thus was not in compliance with Article 7” of the Aarhus Convention¹⁹⁸.

Although this finding only indirectly affects PIR/PIA project, it does however raise further questions over its compliance with international environmental law and its legal viability to potential challenges in the future.

The Aarhus Convention Compliance Committee was able to establish that the maximum capacity of the PIR/PIA terminal is 170.000 tons and that an environmental permit for the terminal and the port infrastructure was issued in April 2007¹⁹⁹. There is no evidence that there was any public participation with respect to the issuing of such environmental permit.

Its established capacity at 170,000 tons triggers a thorough Environmental Impact Assessment study under Annex I.39 of the Albanian EIA Law. However, as discussed above, there is no evidence that such a thorough EIA study was conducted in a timely fashion²⁰⁰.

As a conclusion of this chapter, a strong argument is made that the Concession Agreements run counter to Mediterranean Action Plan of the Barcelona Convention, more specifically the general obligations of member states as contained in the revised Article 4 of the Convention²⁰¹.

Zoning Laws

The Concession Agreements may be in conflict with Albanian Zoning Law as well as with the Regulatory Urban Plan of the City of Vlora. The Zone as defined in the BOO and BOT Agreements falls within the legal boundaries of the City of Vlora [the so-called “yellow line” or “vija e verdhë” in Albanian]. In other words, the Zone is an urban area of the City of Vlora according to the Regulatory Urban Plan [RUP] for the city of Vlora approved since 1996²⁰².

Essentially, with respect to the Zone, we are faced with a situation of conflicting and overlapping regulation, where an area normally under the purview of RUP is, instead, treated as an industrial zone. Indeed, the only licensed body qualified to carry on such urban studies is the Institute of Urban Studies and Plans in Tirana,²⁰³ whereas the study for the Industrial and Energy Park was carried out by another institution in Fier²⁰⁴.

Another important legal argument relates to the potential violation of the powers and authority of the local Vlora City Council. The Zoning Law grants important regulatory and decision-making powers to the local government with respect to the functional destination of areas dedicated to construction or building, which are located within their jurisdiction²⁰⁵. Apparently, the PIR/PIA Concessionary Agreements and related regulations without the prior approval of the Vlora City Council, therefore they were carried out in violation of the law.

Conclusions²⁰⁶

The Concession Agreements analyzed herewith represent a challenging body of law to regulators, the affected public and potential third parties and creditors. The Agreements are designed in a favorable way to the Concessionaire, granting it significant exclusive rights that may extend for at least 60 years on the sole discretion of the Concessionaire. They also appear to grant to the Concessionaire permanent ownership rights over a relatively large area of land in the City and Bay of Vlora.

Contrary to established practice, the present concession grants limited discretionary powers to the public authority. Permanence and indefinite right of ownership are further compounded by the government’s apparent

limited authority even during the licensing stage²⁰⁷. The Concession Agreements turn the government's licensing authority into a blind mechanism to produce licenses and permits while the law provides otherwise. The role of the affected public is virtually non-existent.

In the present form, both Concession Agreements raise significant questions with respect to their non-compliance with the Albanian Constitution, with the Albanian legal framework in general and that concerning the environment in particular. In the international legal arena, they present significant non-compliance issues with respect to the Aarhus Convention, the Barcelona Convention and may raise serious issues with respect to the United Nations Convention on the Law of the Sea²⁰⁸.

As a conclusion, it could be stated that the Concession Agreements would not have survived a judicial review on constitutional or other legal grounds in a country with a sophisticated legal system and an independent judiciary.

In the case of Albania, it would be advisable for the Agreements to be re-negotiated. However, the best scenario for the Concessionaire would be to exercise his virtually unconditional right to opt-out²⁰⁹. The government in return could waive its subsequent claim to a financial indemnity if withdrawal is exercised before 31 December 2010.

Otherwise, the Concession Agreements contain significant legal shortcomings that could cause costly and protracted litigation before Albanian courts. Although not yet to the level of professionalism and independence as seen elsewhere in Mediterranean Europe, Albanian courts may nevertheless play an increasingly active and qualified role in potential future litigation. Indeed, while both the Government and the Concessionaire have chosen arbitration before the ICC Court of International Arbitration in Paris as a way to resolve disputes between them, they do not have and cannot claim immunity against lawsuits from third parties²¹⁰.

Finally, the right to a local or national referendum remains always a valid and perfectly legitimate option to ensure public participation or to overturn the Concession Agreements.

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40/2004, at 2850; BOT Agreement, FZ 40/2004, at 2880;

153 BOO Article 8, FZ 40/2004, at 2857; BOT, Article 7, FZ 40/2004, at 2886. Although both provisions refer to the right of the Concessionaire to be “Sole Operator”,

154 Article 2.4. Definitions: “Concession is a type of contract and agreement by way of which a non-state juridical person or physical person is granted the right to obtain from the authorized state body in the form of a concession an asset (pasuri) in order to perform specified services for a long period of time through one of the forms foreseen in this law. The subject receiving the concession is responsible for the financing of the specified new investments during the concession period. At the end of the Concession, the new assets created [by the Concessionaire] are transferred to the state sector”. [Emphasis added]. Law No. 7973, dt. 26.07.1999, FZ 19/1996, at 805.

155 Article 3, Law No. 7973, dt. 26.07.1999, FZ 19/1996, at 807.

156 Decree No. 1628, dt. 17 October 1996, FZ 27/1996, at 941.

157 Article 7 of the Concession Law, FZ /1995, at 809.

158 Ibid., Article 6, FZ /1995, at 808.

159 Article 10.7, FZ / 1995, at 810.

160 Article 10.13; Article 11.5., FZ / 1995, at 810.

161 Article 10.15, FZ / 1995, at 810.

162 Article 10 of the BOO Agreement, FZ 40/2004, at 2858 and Article 9 of the BOT Agreement, FZ 40/2004, at 2887.

163 Annex B of the BOO Concessionary Agreement, FZ 40/2004, at 2862.

164 Decision of the Council of Ministers, No. 358, dt. 27.05.2001, paragraph 7, FZ, 2001, at 1119.

165 Another requirement for the applying company is that at the time of the application, it must show through a bank certificate that it has minimum capital of no less than 300,000,000 lekë, [FZ 2001, at 1120], which in 2001 could amount up to approximately \$3,000,000.

166 Albanian Concession Law, No. 7973, dt. 26.7.1995, Article 11.6., FZ/1995 at 810.

167 This principle is often referred in French as “ordre public.” The relevant Albanian provisions states that the Parties “shall communicate regularly and continuously in order to ensure the protection of public interest” [do të komunikojë vazhdimisht dhe rregullisht për të siguruar mbrojtjen e interesit publik’] Article 15. FZ 1996, at 812.

168 Article 3.7 of Law on Concessions and the Participation of the Private Sector in Public Services and Infrastructure [Hereinafter Concession Law], No. 7973, dt. 26.7.1995, as amended.

169 Law No. 9231, dt. 13.05.2004, on the Ratification of the “BOO Concession Agreement for the Construction and Operation of the Coastal Terminal, For the Storage of Oil and its By-Products in the Bay of Vlora”, as well as on the Ratification of the “BOT Concession Agreement” on the Construction and Operation of the Marin Infrastructure Serving the Coastal Terminal in the Vlora Bay”, FZ

170 Article 1 of the BOO Agreement, FZ 40/2005, at 2851.

171 Article 1 of the BOT Agreement, FZ 40/2005, at 2881.

172 Annex B, FZ 40/2004 at 2862-2863 and Annex C, FZ 40/2004 at 2864.

173 No number or letter has been provided for this Annex in the official published source.

174 Decision of the Council of Ministers, Nr. 358, dt. 27.05.2001, On the Procedures and Conditions for Granting of Permits for the Construction and Use of Coastal Terminals for Transportation and Storage of Oil, Gas and Their By-Products. FZ. 2001/1119.

175 Ibid., Art. 8.b). See also Decision of the Council of Ministers, Nr. 553, dt. 12.08.2004 On Procedures and Conditions for Granting of Concession Permits for the Construction and Use of Refineries, Oil and Gas Pipelines, Paragraph 9(g) [requiring that the Concession Permit must include the government’s power to abolish the concession] and Paragraph 13 [specifically acknowledging the government’s power to abolish the concession permit for “violations ...of the concession permit,...violations of environmental norms ...as well as of other obligations ...as provided by the laws in force”.] FZ 2004, at 3840-3841.

176 BOO, Art. 10.3) and BOT, Art. 9.3).

177 See definition of Zone, FZ 40/2004, at 2852; Article 6.I.(ii) of the Terminal Concession Agreement, FZ 40/2004, 2855; Article 1, 4, 5, 6, of the Deed, FZ 40/2004, 2876-2877

178 See Article 6.1.(i) of the Terminal Concession Agreement, FZ 40/2004, 2854; Article 6/e of the Deed, FZ 40/2004, 2877-2878.

179 Article 6.1.(vi) of the Terminal Concession Agreement, FZ 40/2004, 2854; Article 6/e of the Deed, FZ 40/2004, 2877-2878; Article 6/b of the Deed, FZ 40/2004, at 2877.

180 Letter of Pirro Stefa, member of Albania’s Architect Association, submitted to the EBRD, 15 December 2007.

181 Article 3.c of the Terminal Concession Agreement, FZ 40/2004, 2853;

182 See <http://www.geotest.cz/engl/aalban.htm>

183 Article 7 of Law No. 7980, dt. 27.7.1995 provides that: “land which contains cultural heritage (museum), archeological and historical value; national parks; floral and fauna protected areas [reservation]; land of special environmental value and those of a military character are excluded from sale to foreign physical and juridical persons. [Përjashtohen nga shitja per personat fizikë dhe juridikë të huaj trojet që përmbajnë vlera muzeore, arkeologjike, historike, parqet kombëtare, rezervatet e florës dhe të faunës, trojet me vlera të veçanta ambientale dhe ato me karakter ushtarak.]

184 Law No. 8743, dt. 22.02.2001, FZ 2001/255.

185 Ibid., at 256.

186 Law No. 7973, dt. 26.07.1995 On Concessions, Article 13.2. “Organi i autorizuar shtetëror do të ruajë ligjërisht pronësinë mbi mjetet kryesore.” FZ 1995 at 811.

187 Decision of the Council of Ministers, Nr. 358, dt. 27.05.2001, On the Procedures and Conditions for Granting of Permits for the Construction and Use of Coastal Terminals for Transportation and Storage of Oil, Gas and Their By-Products. FZ. 2001/1119.

188 Ibid., Art. 3.

189 “The provisions of the Albanian legislation for the protection of the environment govern the activities covered by this law”. Article 5, Law No. 8450, dt. 24.02.1999, On the Processing, Transportation and Trading of Oil, Gas and Their By-Products. www.qz.gov.al

190 Article 2. FZ 60/2002, at 1673.

191 Ibid., Article 4, at 1676.

192 Ibid., Article 26.1, at 1681.
193 Ibid., Article 26.2.
194 Ligi Nr. 8990, dt. 23.01.2003 Për Vlerësimin e Ndikimit në Mjedis., FZ. 5/2003, at 135. Art. 4, Art. 17- 20; Art. 26; Annex 1.29 and 1.39 (Criteria triggering a thorough EIA for ports and oil storage terminals of a capacity beyond 100,000 tons); Annex 3.2. [Criteria for selection, location of the project, where special emphasis is placed to lagoons, coastline, urban areas, etc.)
195 Ibid., Article 26.1, FZ 5/2003 at 143.
196 See ECE/MP.PP/C.1/2007/4/Add.1. As further evidence of the PIR/PIA project being part of the Industrial Energy Park see the limitations and exclusions to the Sole Operator protection clause, at Art. 8 of the BOO Agreement and Art. 7 of the BOT Agreement, FZ 40/2004 at 2857-2858 and 2886. See also the study referred to at Infra Note 70.
197 Law No. 8672, dt. 26.10.2000 on the Ratification of the Aarhus Convention on Access to Information, Public Participation and Access to Justice on Environmental Matters. FZ 35/2000 at 1705.
198 ECE/MP.PP/C.1/2007/4/Add.1. at 22.
199 ECE/MP.PP/C.1/2007/4/Add.1. at 12-13.
200 Supra Note 60.
201 Some of these obligations are already part of the Albanian Environmental law. Albania became a Contracting Party to the Barcelona Convention and its six Protocols by virtue of Law No. 8690, dt. 16.11.2000. FZ. 2000/43, at 1935. See <http://www.unepmap.org/index.php?module=content2&catid=001001004>
202 Decision No. 5, dt. 01.11.1996 of the National Zoning Board [KKRrT].
203 Article 13 of the Zoning Law.
204 Dr. Kristaq Muska et al. "Determining of the boundaries and the geological-technical conditions of the Vlora industrial energy park", 01.06.2004, Albanian version. "The area of the Industrial and Energy Park is no longer agricultural land, but it has been converted into an urban area", at 9.
205 Article 39 and 40 of the Zoning Law.
206 This legal opinion is not exhaustive. Only the main pieces of the relevant Albanian legislation and international environmental law have been researched and analyzed. Other areas of law might reveal further discrepancies between the Concession Agreements and Albanian law.
207 Pierre Guislain and Michel Kerf, Concessions – the way to privatize infrastructure sector monopolies. The World Bank, Note No. 59. October 1995.
208 See for example, Section 4, Articles 204-206 and Section 5, Articles 207-212, <http://www.un.org/Depts/los/index.htm>
209 BOO Article 9, Right to Withdrawal; BOT Article 8.
210 A strong argument can be made even for bringing a case against Albania as a party to the Concession Agreements before the European Court of Human Rights in Strasbourg, especially through the Court's case law. See Daniel Garcia San Jose, Environmental Protection and the European Convention of Human Rights, COE Publications, Human Rights File No. 21, Strasbourg 2005.

“ There is serious concern about the lack of a coherent development strategy for the Vlora district in the EBRD's lending approach as well as an imbalance in their overall portfolio in Albania which seems to favour energy, oil and heavy industry over agribusiness, tourism, energy efficiency and lending to small- and medium-enterprise.”



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