

# BANKWATCH MAIL

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## Environmental navigation can steer paths through EU funds storm

**We should green our economy and aim for a carbon free future! The economic crisis provides an opportunity – if Lord Nicholas Stern and other climate luminaries have anything to do with it – to place our economic activities on a less climate intensive path of development! All very nice rhetoric but how is it being translated into concrete spending plans from the EU budget?**

The Structural and cohesion funds (EU funds), totalling EUR 347 billion for 2007-2013, constitute the second big-

gest lines in the EU budget that can stimulate low carbon investments through direct financial support for climate mitigation and adaptation measures, especially in the new member states which are the biggest net recipients of these funds. Within the European Economic Recovery Plan such measures gained even greater prominence at the end of 2008 in the pursuit of “smart spending” and low carbon pathways for development.

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## EU shadow banking sanctioned by the EU

**Compare and contrast. Just days away from an almost permanently damaging domestic firestorm overtaking his government, UK prime minister and former governor of the EIB Gordon Brown set out, in a Financial Times editorial of May 26 on ‘What Europe must do to build a recovery’, that: “First, the EIB should increase its lending to businesses and for critical infrastructure projects, including energy projects, by EUR 50 billion over the next two years, making more and better use of its existing capital; second, the EIB must be enabled to accelerate the rate at which it is lending to businesses...”.**

On the latter point, EIB loans to small and medium-sized enterprises via financial intermediaries cannot have been far from the beleaguered UK premier’s mind. It’s almost funny that he chose to specify “better use of its existing capital” in relation to direct EIB infrastructure projects, rather than the kinds of activities involved in the second point.

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## ENVIRONMENTAL NAVIGATION CAN STEER PATHS THROUGH EU FUNDS STORM

This all may sound promising but, on further inspection of the EU's follow up spending plans, it provides only half of the picture.

Parallel to the "green" stimulus measures, the EU has also recently changed its EU funds regulations in order to accelerate and frontload EU funding for major infrastructure projects so as to increase flexibility and liquidity in these times of crisis. The central and eastern European (CEE) member states will receive an additional 2 percent (on top of the 2 percent already foreseen before the recovery plan in 2009), equivalent to EUR 4.6 billion. Another more recent proposal aims to frontload funding for infrastructure by scrapping the national co-financing requirement and thus granting up to 100% of the total costs of chosen projects purely by EU money. In other words, a key measure to confront the consequences of the economic crisis is focused on speeding up – even fast-tracking – EU funding for major infrastructure projects.

A timely reminder, from CEE Bankwatch Network and Friends of the Earth Europe, of exactly what kinds of such projects can be in the running for EU billions was released in April this year. Drawing on local research across the region, we mapped out 55 major projects, the bulk of which are lined up for accelerated anti-crisis financing from the EU funds and/or the European Investment Bank.

All the projects detailed on the map ([www.bankwatch.org/billions](http://www.bankwatch.org/billions)) will cause significant harm to the natural and human environment, will irreversibly modify landscapes and cause biodiversity loss. The projects are also often economically dubious – their costs are higher than their benefits or they crowd out more cost effective alternatives. Moreover,

## EU SHADOW BANKING SANCTIONED BY THE EU

A couple of weeks on – almost a political eternity given what Brown endured in the intervening period – and Labour MP Kate Hoey was opining in the Guardian that: "Structurally, high street banks are now badly designed to help small and medium-sized businesses – they are not locally based; they don't know their customers; they have computer systems which calculate lending on banks' terms.

"Even when the European Investment Bank contributed EUR 30 billion to help small business at the end of last year, commercial banks simply either refused or did not have the local knowledge to publicise or hand over this money."

Would this be only the second (after a civil society article in European Voice in November last year public intervention to question the very basis of the EIB's 'global lending' approach, a mechanism that is being relied on ever more fundamentally to help dig the EU zone out of the economic crisis?

many of the projects are legally deficient as they breach national or EU legislation (e.g. with regard to environmental impact assessment or NATURA 2000 sites) and some are already the subject of legal complaints and court cases.

Not only do a lot of the featured projects face public opposition, usually from people living in their vicinity who would be most directly affected, importantly they will also lock regions into carbon emission scenarios which clearly undermine other efforts aimed at curbing emissions in these countries.

The 'Cohesion in crisis' map provides timely details about how projects – mainly motorways and waste incinerators – could be set to consume EUR 23 billion of public money in the CEE region. Of this total, at least EUR 12 billion stands to be paid via the EU funds or even more should the proposal noted above for scrapping the national co-financing requirement be approved.

If the European Commission is serious about promoting a green economy and providing a financial stimulation to achieve it, it should step back and reconsider its immediate support for end-of-pipe, expensive and outdated technological waste solutions and road construction which will only add to the growing emissions being pumped out of these sectors.

If quality is not to be squeezed out by quantity and speed, the Commission should require the new member states to duly assess and prioritise greener, cost-effective and socially beneficial alternatives such as separate collection, recycling and reuse schemes as well as clean and efficient regional transportation systems. These measures can surely result in substantial benefits for local and regional development in the long run. And did we mention cooling the climate?

This kind of lending is now surely attracting more scrutiny, among governments that guarantee capital for the EIB and for those that pay money into the EBRD – at the latter, a paper thin memorandum of understanding is governing a recent EUR 450 million loan to Unicredit Bank for its operations in central and eastern Europe, though there is no legal requirement for Unicredit to disprove that such 'development' flows are not trickling back to its stressed-out balance sheets in Rome.

As Bankwatch's analysis of the economic crisis points out: "Despite the role private banks have played in misallocating credit and hoarding capital in the current crisis, the EIB has placed them at the centre of policies aimed at supporting SMEs and mid-sized corporations. A full 23 percent of all disclosed disbursements under consideration are to involve flows of capital to private banks."

Our analysis is based on data available in March this year. It may well be hopelessly out of date already. Indeed, pri-

ivate bank needs are bound to have grown since then. The question is: does anyone have a clue where EIB or other IFI loans to private banks are ending up? Where the EIB has been involved in the past (pre-crisis), the answer has been a resounding no. Nothing has yet to change that might quell any lingering doubts.

**Read more about public finance's role in the CEE economic crisis from the Bankwatch report 'Bubbling under the surface' at: <http://bankwatch.org/publications/document.shtml?x=2182582>**

## EIB transport lending off course thanks to climate and biodiversity blind spots

**The European Environment Agency (EEA) recently revealed in its 'Transport at a crossroads' report that greenhouse gas emissions from transport in the EU (excluding international aviation and marine transport) increased by 26 percent between 1990 and 2006. The European Investment Bank has played a role in this jump through its transport investments that extend to roughly one third of its overall portfolio. EIB investments for roads and aviation continue to make up a significant chunk of the bank's transport lending, especially in central and eastern Europe.**

A key message put forward by civil society organisations present at last month's transport workshop with EIB officials was that next year's review of the EIB's transport policy must see the EU's house bank responding to the main challenges facing mobility in Europe: climate change and biodiversity loss.

If the EIB is intent on helping to lead on the way to the EU achieving a 20 percent reduction of greenhouse gas emissions by 2020, it must change its operational behaviour and establish a transport financing policy that bypasses the current unsustainable norms. To date the EIB policy on transport fails to ensure that the EIB steers clear of projects with high climate impacts or, essentially, that the climate impact of the EIB transport portfolio will improve. The EIB also needs to consider nature protection in much stricter terms and not allow projects that will cause further biodiversity losses.

Concrete steps are required if the EIB wishes to reverse these negative trends. What we see is a bank reluctant to establish limits on highly inefficient transport modes, for instance hoping – against the background of the painfully slow progress actually being made on emissions reductions – that motorways will serve CO2-free cars in the future.

This is all coming into stark relief with a central plank of the EIB's 'economic crisis response', its lending for clean cars. On course to disburse ten percent of its expanded EUR 70 billion portfolio in 2009 on research and development into 20 percent cleaner cars, crucially the EIB seems reluctant (or unable) to analyse if (and secure that) the reduction in emissions will not be eventually swallowed

by yet more increased usage of individual cars, a negative trend that continues to be on the up in EU.

Undermining any clean transport intentions for now is the simple fact that the EIB is all about serving every transport demand if a project's economic rate of return is satisfactory rather than for actively shaping transport demands by well conceived interventions. Rather than making the most of its function as a trend-setting bank that should actively promote EU policy, and supporting only those very progressive and most deserving investments, the EIB's current insistence on financing all modes of transport in whatever proportions they receive applications for merely serves to preserve the unsustainable status quo.

According to the EEA "it is also obvious from previous experience that transport demand has to be tackled at the same time as promoting more technology-oriented supply-side measures". Typically insistent that it underpins EU policies, the EIB does not analyse whether its funding contributes to the realisation of the EU vision (on both transport and the overall emissions reduction agenda) or doesn't in fact counteract such efforts by financing everything requested by national governments and private sector.

Nor does the current EIB Transport Policy pay much attention to the problem of biodiversity loss caused by transport modes. As also discussed during last month's EIB-civil society workshop, while all transport modes may cause biodiversity loss it is road transport that contributes so much directly (via habitat fragmentation and species loss) and indirectly (via eutrophication and climate change) to this negative trend. The EU can lose biodiversity even in protected sites, and the Natura 2000 network is still often a battle zone when transport network planners refuse to properly acknowledge it.

The EIB policy response to biodiversity in its recently adopted Statement of Environmental and Social Principles and Standards may have seen some progress, yet the problem should be tackled on the sectoral policy level with as much urgency as the climate change issue.

Biodiversity protection is also an acute issue – though one in danger of being too often overlooked – when it comes to the public-private partnership (PPP) schemes that are be-

ing promoted by the European Commission and the EIB. Who finances nature protection, mitigation and compensation measures, and who bears the related risks while the private partner seeks to minimise or avoid “unnecessary” costs and burdens? The EIB must prepare a policy response to this question as well.

Positive institutional changes introduced in May, like the creation of the Environment and Social Office within the EIB structure, should be accompanied by enhancing the environmental appraisal process and abandoning the “presumption of legality” principle which permits the EIB to approve projects that in reality are not in line with the Habitat or EIA directives even if they are in possession of all the necessary permits.

Recently approved projects, like the D1 motorway in Slovakia or the A1 motorway phase II in Poland, which although

they affected Natura 2000 sites were not subject to appropriate assessments, show that the EIB must be stricter on legal compliance by not only ticking a box if all documents are provided but also actively assess their quality. Appropriate and good quality environmental procedures are a minimum standard for nature protection, especially if the bank intends to maintain its policy that sees borrowers being solely responsible for environmental assessment.

The EIB’s announcement of the revision of its Transport Lending Policy in 2010, following concerted calls for such from NGOs, is extremely welcome at such a cross-roads for EU transport. It is to be hoped that the new document will be alive to the range of vital cross-cutting issues like climate change, biodiversity loss and human health protection. The EIB is surely not blind to the main negative trends related to mobility demands across the EU – even if its lending behaviour up to now might suggest otherwise.

## Crisis loans set to dig more holes in Serbia

**Serbia and the European Investment Bank (EIB) have in recent weeks signed a loan agreement amounting to EUR 250 million for strengthening small and medium-sized enterprises (SMEs) and for priority projects, representing the first tranche of EIB-sponsored operations in 2009 and 2010 for Serbia worth EUR 1.4 billion.**

Serbia has been endeavouring for the last nine years to catch up with the rest of Europe, the goal supposedly being the development of a sustainable economic model. A wide range of reform goals have been shared by every successive government since the democratic changes in 2000: the adoption and implementation of EU legislation, the introduction of the rule of law, the fight against poverty, the development of a market economy, the restructuring of the public sector, and fiscal discipline.

Integral to this hoped for economic and social development has been every Serbian government’s intention to develop the industrial and banking sectors, the latter being seen as essential for the establishment of a competitive export-oriented economy. The recently announced EIB loan operations are intended to enhance these sectors and the associated projects in particular.

### Road out of crisis or the way to democratic bankruptcy?

Yet the current global economic crisis is clearly showing all the weaknesses of transition in Serbia and bringing to the fore the already “achieved” goals, especially in the infrastructure development and banking sectors. The current strong downturn in growth, budget deficits and in exports all provide acute evidence that Serbia is suffering from a lack of a sustainable economic strategy, one that should be based on innovation, new technologies, sustainable energy and transport infrastructure.

Foreign direct investment (FDI) into Serbia is viewed by experts and officials primarily as a role for expanding investments in transport infrastructure – more precisely in highway building. However, the development and implementation of such programs is restricted by concerns about the ability of the government – and its agencies and institutes – to technically and financially follow up and implement its programs.

A current striking example, according to unofficial sources, relates to the building of different parts of the highway Corridor X in Belgrade and in the southern parts of the country. Support from the international financial institutions (IFIs) for the construction of the different sections of Corridor X is said to be in doubt because of the project’s lack of technical readiness as well as unresolved problems with the related expropriations and resettlement programs.

Notably, the present government is experiencing growing problems, with debts totalling almost EUR 200 million being owed to the companies that are building Corridor X. Given that there are legal cases against the former management of the public road company for corruption, the misuse of money and bad quality of works, there is a concern that Serbia will be taking IFI loans to cover debts and to finance political parties and corrupted companies instead of developing priority projects of interest for the population of Serbia.

Milutin Mrkonjic, minister for infrastructure from Serbia’s Socialist party, is clear about finalising the project with IFI assistance. Responding recently to a media question concerning the problems related to expropriation along the routing of corridor X in Serbia, the minister put it thus: “First of all we need much stronger cohesion and complementarities among the road planning institutions. We should harmonise some of our legal norms in the field

of expropriation, especially concerning those projects of over-arching national importance.”

Unfortunately past experience with the fulfillment of government obligations in line with standards and EU regulations on social and environmental issues are far from encouraging. Thus there is a need to establish clear and functioning mechanisms for monitoring and the control of fulfillment of best standards and practices in the implementation of financially and socially risky projects, as infrastructure projects tend to be.

Mrkonjic further elaborates: “Our task is to be much better organised across all the political structures, and to establish much more functioning unity among different ministries. It does not matter who is the owner of the land of the route – the land should be expropriated in this or that way. But previous officials weren’t ever courageous and able to enforce everything necessary to finalise these negotiations.”

In times of crisis, when keynote strategic steps are taken with potential major consequences, notorious issues of ‘national interest’ along with the interests of big business influencing the formulation and implementation of transport and energy strategies are never far away – nor, often, is their conflict with real local and regional interests.

The decisions and development of projects in Serbia continue to progress far from public scrutiny, with an ever-growing tendency for avoiding consultations, transparency and – in general – democratic processes.

Indeed Mrkonjic further expanded on new measures to be taken, commenting that: “to tell you sincerely, the state will never again commit the same mistake and disclose that any project is under preparation, and especially the exact route of it, until the project is finalised.”

Thus the interests of local communities look set to be terminally ignored, at least in the short-term. The interested public is to be blocked from expressing opinions and providing alternative views about the role of Serbia in the global effort against climate change and the potential for reducing transport related emissions, inefficiencies and bottlenecks that can so handicap communities and economies.

### Sound banks in a sound economy?

A essential sign of a country’s macro-economic health should be the soundness and liquidity of the banking sector. However, these days in Serbia we have a more than liquid banking sector and a tremendously illiquid real sector – the potential for an enormous social crisis is great. In the last quarter of 2008, Serbia recorded an unemployed rate of 14-15 percent, and in early 2009 the signs are that more than 21 percent of the population is out of work. At the same time, the high street banks are proving to be

miserly in providing loans, those loans that should be a lifeline for the economy.

More than 60,000 legal persons – mostly SMEs – have had their accounts blocked, even for the smallest margin of debt. This has led to the destroying of credibility in negotiations with the banks, thus the banks are using the capital gained from governmental support and the high thresholds of profits for buying out state bonds. Consideration for the Serbian economy has been incidental – in one month more than EUR 200 million of state bonds have been bought out by the banks.

Whether foreign banks are particularly inclined to boost a local economy in difficulty such as Serbia’s is open to some doubt – also open to doubt is the EIB’s ability to monitor and account for the millions it will be providing to its financial intermediaries (the banks) in Serbia.

And of those SME beneficiaries, it is well known that due to low profit levels and high levels of inefficiencies they are systematically breaking regulations on health and pension taxes. Therefore blind faith in SMEs as the only solution for the crisis in Serbia should be avoided. Together with the publicly owned companies, SMEs currently owe to the State pension fund more than EUR 2.5 billion. If they were unable to do so in the times before the economic crisis, what are the chances of SMEs pulling up their social and environmental socks now?

Under the USD 3 billion agreement recently signed with the IMF, Serbia is obliged to further cut its ‘social spending’ and further ease its so called tax burden – socially ‘irresponsible’ business looks set to result. All such measures will further worsen the already very weak social and health system in Serbia. How reasonable is it to cut social cohesion funds when the state is covering 48 percent of the money necessary for paying minimal pensions to pensioners, and industry and other parts of the economy are racking up enormous debts towards the state pension fund.

More generally across the national economy, asset-stripping of companies is fast becoming a prevailing tendency for the purpose of buying cheap locations for real estate developments. It is therefore now more necessary than ever to establish strong mechanisms that will fund and support only sound and sustainable business ideas, such as are supportive of the idea of social cohesion and respecting the necessity of establishing a clean, environment friendly economy.

In tandem with the IFIs, the Serbian government is, however, intent on planning for the development of a fossil fuels-based energy and transport sector in Serbia, and on supporting industry that systematically avoids paying social cohesion taxes. Familiar scenarios are falling into place for Serbia – once again western development money looks set to come with a hefty price tag for people and their environment.



## Croatia to become dumping ground of Europe?

**Croatian NGOs Green Action, Green Istria and Sunce have expressed their opposition to the latest proposals to change the Croatian Law on Waste, proposals that would allow the import of all kinds of waste, including hazardous waste. The move comes in spite of the fact that up to two thirds of Croatia's own hazardous waste is officially missing while the country has no facilities for treating most kinds of hazardous waste.**

Explaining the apparent reasons behind the proposal, Marijan Galovic, Waste Programme Co-ordinator of Green Action, said: "Now that we have a recycling plant for tyres in Croatia it seems that the cement kilns want to import them from elsewhere to burn as cheap and dirty fuel, and this law would allow that as well as any other hazardous waste imports."

"This law is a big step backwards for Croatia's attempts to approximate its legislation with the EU Acquis," added Green Action's lawyer Zeljka Leljak Gracin. "The proposed law is out of line with the revised EU Waste Framework Directive, which privileges recycling over so-called 'energy recovery', otherwise known as incineration, and sets targets for recycling municipal waste. The Croatian proposal doesn't even distinguish any difference between recycling and 'recovery', so any reference to targets is meaningless."

Civil society groups are also concerned that household waste could be imported from other EU countries if the

series of new regional waste management centres being co-financed by the EU IPA fund have excessive capacity.

Some of these centres, such as the one planned in Istria, appear to have been developed without adequate prediction of the amount of waste to be produced and recycled on the municipal level. This has the potential to lead to the plant operators importing waste in order to increase their income from the gate fees.

It is still not certain when the legislation is due for approval. Meanwhile NGOs are asking the European Commission to ensure that the proposed law is in line with the revised Waste Framework Directive and to be alert to the potential for EU funds being misused in order to create extra capacity for European waste.

The groups maintain that using the waste management centres in order to treat imported waste would bring in extra money for the plant operator but completely disregard the principles of self-sufficiency or proximity enshrined in EU legislation, which stipulate that waste must be treated as near as possible to its site of origin.

**More details about the controversial waste proposals in Istria are available at: <http://www.bankwatch.org/newsroom/highlights.shtml?x=2122077>**

## Real costs of nukes in central and eastern Europe unleashed

**One long overdue consequence of the global economic crisis is that the financing of proposed new nuclear reactors across central and eastern Europe is being exposed to some reasonable scrutiny. Already sky-high costs at such projects as Belene in Bulgaria and Mochovce in Slovakia continue to mount, as project promoters and financiers feeling the effects of the credit crunch start to publically wonder what they have allowed themselves to get involved in. One such case involves the Cernavoda 3 and 4 reactors in Romania, with a lot of 'heavy water' intrigue – and murky waters generally – running through the controversial project.**

Two CANDU reactors, a technology that dates from the 1960s, are planned in Cernavoda, southeastern Romania, roughly 100 kilometres away from the highly seismic region of Vrancea. In 2006, when the Romanian government took steps towards completing two more nuclear reactors at the Cernavoda nuclear power plant, the project was estimated at EUR 2.2 billion. The costs were revised

to EUR 4 billion within a year. At the beginning of May this year, Stockwell Day, the Canadian Minister of Foreign Affairs and International Trade, estimated that the Cernavoda reactors 3 and 4 would cost EUR 5 billion.

CANDU reactors would not be allowed by regulators in Germany, France, Bulgaria and other countries because of their inherent safety risks. With the Romanian state holding 51 percent, a project company has been established and includes Electrabel (Belgium), Enel (Italy), Iberdrola (Spain), CEZ (Czech Republic), Arcelor Mittal (Romania) and RWE (Germany). These investors don't seem to have a problem with using double standards when it comes to the safety of Romanians.

The Romanian government is planning to breach EU competition provisions by providing over EUR 1.2 billion direct state subsidies to the Cernavoda 3 and 4 project, along with state guarantees for the loans that the Romanian nuclear company would contract; these efforts are currently being analysed at Directorate General Competition.

As if all of this wasn't outrageous enough already, recent reports indicate that the state plans to erase a EUR 1.5 billion debt of three Romanian energy companies (two coal companies and a nuclear company). The nuclear company in question, RAAN, that produces the heavy water for the Cernavoda reactors (heavy water is the moderator and coolant) and no stranger to state subsidies over the years, would have some EUR 60,000 debt erased. RAAN would then be able to provide the subsidised heavy water for the Cernavoda plant.

The price of the electricity currently delivered by the Cernavoda nuclear power plant does not include the reactor decommissioning costs, nor those related to radioactive waste management and cleaning up the uranium mines – thus, nuclear energy is promoted as a cheap source of energy. These clean-up costs, however, would be supported by the state budget eventually, possibly to the advantage of investors in the Romanian nuclear programme.

With the effects of climate change more and more visible in the country (flooding, droughts, desertification), the problem of cooling water from the Danube should also be regarded as a serious issue. The first reactor had to be stopped in 2003 due to low water levels. Hydro-technical works are included in the Cernavoda 3 and 4 project to determine a higher level of the Danube. This may not help much in controlling nature – but it would add significant costs to the project.

This will be yet another case of external costs, along with other planned monstrosities such as a EUR 1.2 billion hydro pumped storage project to handle the nuclear electricity and a submarine electricity cable to Turkey. The costs and the nightmares are stacking up remorselessly around Cernavoda.

**A short video clip from Bankwatch about the Cernavoda project's violation of EU competition laws can be viewed at: [http://www.youtube.com/watch?v=aVW7-HxN1Ec&feature=channel\\_page](http://www.youtube.com/watch?v=aVW7-HxN1Ec&feature=channel_page)**

## The road to cyanide gold is paved with abuses

**Weird and not so wonderful abuses of democracy continue to afflict Bulgaria despite its status as an EU member state. The recent European elections there were dogged by a litany of troubling peculiarities (to use some very diplomatic language). Major investment projects in Bulgaria are also no stranger to curious arrangements, in particular when EU law is involved.**

Bankwatch recently alerted the European Commission to the Chelopech Mining project which we consider to be a project with potential severe environmental and social impacts in breach of EU law. Given what we believe to be the violations of EU law that have occurred in the process of the project's development and its Integrated Pollution Prevention and Control (IPPC) procedure, an infringement procedure via the Commission may be required if appropriate steps are not taken by the Bulgarian government.

The Chelopech Mining project proposes the introduction of cyanide technology for the expansion of metals extraction in the biggest gold and copper mine in Bulgaria. The proposed method of cyanide leaching for gold extraction is not currently in use in Bulgaria and represents a number of major risks both for the environment and inhabitants. The project is situated near the Chelopech village. However, all the potential impacts from the mine could result downstream of the Topolnitsa River which is the tributary to the biggest inland river in Bulgaria: the Maritsa River. Maritsa runs through the most valuable land of the Bulgarian Thracian Valley from where much of the country's horticultural production is sourced.

The environmental impact assessment (EIA) of the project was approved by the Minister of Environment and Water in July 2008 in spite of a lack of proper information and

consultations with communities living downstream from the mine along the Topolnitsa and Maritsa Rivers. After the approval, Bankwatch consulted with the Commission on the fact that the project had been approved without meeting the requirements of the relevant European environmental directives. However, as the procedure started before the accession of Bulgaria to the EU, the Commission responded that it was not in fact necessary to follow the European directives concerning access to information and public participation on EIA.

After Chelopech Mining's project obtained the EIA approval, the company applied for an IPPC permit in March 2009. Unfortunately, the IPPC procedure also failed to comply with European law – new breaches of public participation rights occurred.

According to Article 15 of the IPPC directive which transposes the provisions of the Aarhus convention into the IPPC procedure at the European level, member states shall ensure that the public concerned is given early and effective opportunities to participate in the procedure for issuing an IPPC permit for new installations. According to Point 3 of Annex 5 of the IPPC directive, the public concerned shall be entitled to express comments and opinions to the competent authority before a decision is taken. Naturally, this is conditioned by the fact that the public concerned has enough information about the procedure, and the IPPC directive explicitly lists a range of information to be disclosed to the public.

Further, the IPPC directive states in Point 5 of the Annex 5 that the detailed arrangements for informing the public and consulting the public concerned shall be determined by the member states. As an example of informing the

public, the directive speaks of bill posting within a certain radius or publication in local newspapers. As an example of consulting the public concerned, the directive mentions written submissions or a public inquiry. It is also stressed that the public concerned should be given sufficient time to prepare and participate effectively in the procedure.

Notwithstanding the mentioned provisions, the concerned public was informed insufficiently during the IPPC procedure on the Chelopech Mining project so that it could not exercise its right to participate in environmental decision-making guaranteed by the European Directives and the Aarhus convention. Thus, Bankwatch's conclusion that the IPPC permit could be granted in breach of Community law and that, as a result, the project will shortly be put into operation.

The main breach of the public participation rights stems from the fact that the competent authorities failed to notify any NGO significantly concerned with the protection of the environment that an IPPC procedure was commenced. This happened in spite of the fact that a number of NGOs, including Bankwatch member groups in Bulgaria, participated in the previous stages of the Chelopech cyanide gold project, namely the EIA procedure.

The coalition of NGOs was in contact with the Bulgarian Ministry of Environment as well as with the company itself and submitted two petitions to the European parliament. Nevertheless, neither the authorities nor the Chelopech Mining company invited NGO comments. There was no doubt that they were the "public concerned" in terms of the IPPC directive and the Aarhus convention. Nor were the population living downstream of the Topolnitsa and Maritsa rivers, those most threatened by the project, properly notified.

Indeed, there was only a very brief notification published on the websites of the Environmental Executive Agency (a subdivision of the Ministry of Environment, responsible for conducting the IPPC procedure) that the IPPC documentation for the Chelopech Mining project was made available to the public. Such a notification cannot meet the requirements set out for consulting the public concerned by the IPPC directive (Annex 5, Point 5).

The manner the Bulgarian public concerned (or potentially concerned) was notified about the Chelopech Mining project was not in line with the principles formulated by the Compliance Committee. Given the seriousness of impacts that the project may bring about, and the number of people potentially endangered, the information was

clearly insufficient and did not meet the requirements of the IPPC directive and the Aarhus convention.

Further, the project documentation was made available to the public only in two places: at the Ministry of Environment in Sofia, and in the Information center of the company Chelopech Mining in Chelopech in limited office hours. There was only one copy of the documentation in each of the two places and the public was not allowed to get or make copies of the documentation or even of a part of it. It was not even possible to access the relevant information via the internet. Such a request by NGOs was initially refused by the Ministry of Environment with reference to the Bulgarian IPPC legislation which merely required that the documentation was "available". After an official request was filed, the ministry provided access to the documentation four days before the deadline for comments.

Due to pressure from NGOs, a very curious attempt to remedy the situation was made by the Ministry of Environment and Waters. Two weeks after the deadline for comments to the IPPC application, the time for public commenting was extended by a further month. The announcement was published in daily newspapers, as is the required minimum under Bulgarian law, but again NGOs were not informed about this extra "opportunity".

In the Chelopech case, the relevant information was not effectively disclosed by the Bulgarian competent authority. The public access was very limited. If people from the most affected and potentially endangered areas wanted to comment on the procedure – in case they somehow learned that the IPPC procedure had started – they had to take a day off work and spend money and time to travel to one of those places where the documentation was made available.

The conclusions to be drawn in this case are unavoidable: the concerned public was not allowed to exercise its right to examine the "information relevant for the decision-making". Meanwhile there are strong possibilities that the Chelopech cyanide gold project will shortly obtain an IPPC permit in spite of the breaches of public participation rights and in spite of the severe environmental risks involved.

Given such sharp, inadequate practice, the Bulgarian government must take steps to remedy the breaches before the IPPC permit is issued for the project. Once again in Bulgaria, respect for international agreements is at stake – as are potentially horrific consequences for upwards of one million people living downstream of the Chelopech mine.

**Editorial board: Greig Aitken, David Hoffman, Klara Sikorova, Petr Hlobil**

**Contributors: Ionut Apostol, Pippa Gallop, Zvezdan Kalmar, Keti Medarova-Bergstrom, Daniel Popov, Ania Roggenbuck**

**Newsletter of CEE Bankwatch Network on international financial flows**

**Address: Na Rozcesti 6, Prague 9, 190 00, Czech Republic, Tel/fax: 420-274 816 571  
Email: [main@bankwatch.org](mailto:main@bankwatch.org)  
Website: [www.bankwatch.org](http://www.bankwatch.org)**