

THE COST OF TURNING A BLIND EYE: EIB LENDING TO ISRAEL'S ICL

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The toxic wastewater spill from the Rotem Amfert plant that caused a severe environmental disaster in Ashalim Stream, Israel, in late June 2017¹ joins a long list of pollution events the company has been responsible for through the years. In fact, even its parent company, Israel Chemicals (ICL) has a particularly dismal environmental reputation that is known among both civil society circles and Israeli state authorities.

Nevertheless, in past years ICL has enjoyed generous support for its activities in EU public money in the form of loans from the European Investment Bank (EIB).

CEE Bankwatch Network, a group of civil society organisations that monitor the environmental and social impacts of EU investments mainly in central and eastern Europe since over 20 years², has obtained extensive documentation related to loans granted by the EIB to ICL in recent years, and examined them in light of Rotem Amfert's worrying environmental performance.

Rotem Amfert, which produces agricultural fertilisers and other chemicals, operates three plants in the Negev region: in Mishor Rotem, Zin, and Oron. The spill that caused

the environmental disaster in the Ashalim stream occurred in one of the wastewater pools of the plant in Mishor Rotem.

In November 2016 the EIB signed a loan that stood at about EUR 130 million which was intended for research, development and innovation (RDI) related to fertilisers and speciality chemicals for the years 2016-2019. Most of this sum – over EUR 92 million – was directed to activities in Israel³.

The amount awarded by the bank was in fact larger than the one originally proposed for EIB financing (EUR 119 million) for a project whose total cost was estimated at EUR 240 million.

The stated objective of this project explicitly mentioned improving the "environmental performance" of existing products and processes.

The EIB has also determined that the project does not require an environmental impact assessment. The reasons, as detailed in a document titled "Environmental and Social Data Sheet – ICL RDI" dated June 16, 2016⁴, are that "the project RDI operational activities that will be carried out in existing

¹ <https://uk.reuters.com/article/us-israel-environment-icl/tsunami-of-toxic-wastewater-kills-plants-animals-in-israels-desert-idUKKBN19P1P6>

² <https://bankwatch.org/about>

³ <http://www.eib.org/projects/loan/loan/20150669>

⁴ <http://www.eib.org/infocentre/registers/register/67287195>

facilities, located outside the EU (Israel) and inside the EU (Germany and Netherlands), without changing their already authorised scope. [...] It must also be noted that more generally RDI activities are not specifically listed in the EIA Directive 2011/92/EU as amended, and therefore Environmental Impact Assessments (EIA) would not be required under this directive even within the EU. A number of innovative products/processes being developed as part of the project will, if successful, reduce the environmental impact of various end products. Therefore, the project is acceptable for financing by the Bank.”

Under the headline "Environmental assessment" the same document also states that "ICL has a sound environmental policy including commitments to comply with legal requirements, prevent pollution, continual improvement, regular audits and annual report of its environmental performance. R&D facilities and practices are in compliance with national and EU relevant regulation and the promoter maintains adequate internal procedures and management practices.”

In response to Bankwatch questions, in October 2017 the EIB confirmed that "a small part of the EIB loan to the ICL RDI project would be allocated to finance RDI Operational expenditures of Rotem Amfert Negev Ltd (also called Mishor Rotem).”

It is indeed difficult to directly link the RDI activity to the June 2017 spill from Rotem Amfert's wastewater pool and the disaster in the Ashalim stream, but the objectives of the project explicitly mention improving the environmental performance of existing processes.

Moreover, it has become increasingly clear that the EIB, in deciding on whether ICL could be eligible for financing from the bank, had

failed to consider ICL's as well as Rotem Amfert's problematic environmental track record.

According to Israeli environmental law group Adam Teva V'Din, Rotem Amfert's legacy of environmental impacts can be traced back to 1980⁵. In addition, the Environmental Protection Ministry's 2016 Environmental Impact Index for public companies ranked ICL fourth of the most polluting public and state companies, and Rotem Amfert itself was ranked fifth among the industrial plants⁶.

In May 2018, in an unusual move, Israel's Nature and Parks Authority, with the support of the ministry, announced it is filing for a class action against Rotem Amfert for the damages caused to the Ashalim stream and the nature reserve as a result of the June 2017 wastewater spill⁷.

Yet, the document submitted by the EIB management to the bank's board of directors for consideration of this investment had no mention of past environmental incidents involving the two companies. Rather, this document states that "the promoter's operational risk is medium ... [and this risk is] mitigated by the promoter's compliance with stringent environmental procedures and stringent policies it has put in place. ... The foreseen environmental impact of the project itself is considered low."

The EIB's response to Bankwatch queries gives the impression that no edition of the Environmental Impact Index had been taken into consideration in the course of the bank's appraisal of ICL's ongoing project.

In fact, the EIB's response raises a serious concern that, despite the bank's policies, its appraisal for the project had relied mostly, or even exclusively, on information provided by the company.

⁵ <http://www.adamteva.org.il/uploads/imagesgallery/ratimeline.png> [Hebrew]

⁶ http://www.sviva.gov.il/English/env_topics/Sustainable%20Development/Environmental-Impact-Index/Pages/2015-

<Public%20Companies-Impact-Index.aspx>

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<http://www.sviva.gov.il/English/ResourcesandServices/NewsAndEvents/NewsAndMessageDover/Pages/2018/05-May/Economic-Opinion-Finds-Rotem-Amfert-Caused-Estimated-NIS-397m-in-Damage-to-Ashalim-Stream.aspx>

In its response to Bankwatch's queries, the EIB stated the following:

Of course, the Bank also checks in addition whether the promoter has appropriate operating standards and procedures in place. Based on the situation that could be observed during the Bank's appraisal visit in Israel, and on publicly available documents, such as for example the CSR report that is annually published by the promoter and was also discussed during the Bank's appraisal visit, the Bank's relevant services were in a position to indicate that ICL has a sound environmental policy including commitments to comply with legal requirements, prevent pollution, continual improvement, regular audits and annual report of its environmental performance.

The growing number of pollution incidents in recent years prove that even if ICL has "sound policy," its implementation is lacking, and

the internal procedures and management practices in the company surely are not "adequate."

The loan signed in November 2016 was not the EIB's first time to support ICL's chemicals operations. In December 2009, the EIB signed another loan for ICL, worth EUR 100 million, for "RDI in the field of chemicals" in the years 2010-2014 as part of a project whose total costs was estimated at EUR 200 million. Also then, the lion share of the loan – EUR 56.3 million – was directed to activities in Israel⁸.

The description of the project said it focuses on "R&D related to speciality chemicals and fertilisers aimed at reducing the cost and environmental impact of production processes and at developing novel products." This project was also waived of an environmental impact assessment.

In response to Bankwatch questions, the EIB wrote in October 2017 that "Activities carried out in the R&D units of other facilities in Israel were limited and consisted of ad hoc testing of materials and measurements and analysis conducted on the production facilities (including, to a limited extent, on site at Rotem). We shall emphasize though that the loan was given to ICL corporate and not to its subsidiaries and that it is difficult to

distinguish by research line based on specific location." In addition, the project's completion report stated that "No significant environmental impact of the project activities has been identified."

The project's "Environmental and Social Completion Sheet" concludes that "the project has been implemented in line with EIB Environmental and Social Standards, applicable at the time of appraisal." Though, importantly, it does state that this assessment is based on reports from ICL.

In its correspondence with Bankwatch, the bank stated that "the reports received from the Promoter throughout the implementation of the project and upon its completion did not raise any issues related to the environment."

Data from the Environmental Protection Ministry, however, paint a very different picture about ICL's environmental performance in the period during which the project was carried out with support from the EIB.

The latest edition of the ministry's

⁸ <http://www.eib.org/projects/loan/loan/20090479>

Environmental Impact Index – which was published in June 2017, shortly before the disaster in the Ashalim stream – lists no less than 87 environmental infringements in ICL's various operations across Israel between January 2013 and December 2015, of which 12 environmental infringements in Rotem Amfert's Mishor Rotem plant where the spill that caused the disaster in the Ashalim stream occurred⁹.

While the EIB has repeatedly claimed that

Rotem Amfert's operations were expected to benefit from its loan only to a limited extent, it has not indicated that this has indeed been verified. In addition, in arguing that “the loan was given to ICL corporate and not to its subsidiaries and that it is difficult to distinguish by research line based on specific location,” the bank has ultimately failed to acknowledge ICL's well documented history of environmental offences.

CONCLUSION

The findings of Bankwatch's analysis suggest that the EIB did not take into account the poor environmental track record of both ICL and Rotem Amfert when considering its investment in ICL's industrial operations that amount to over EUR 230 million¹⁰ (nearly a billion shekels).

It is unclear whether ICL has informed the EIB about the Ashalim stream spill, or any prior environmental incident, as it had undertaken to do in the 2016 loan contract.

The loan contract also mandated ICL to “promptly inform the Bank of [...] any material action or protest initiated or objection raised by any third party or any genuine complaint received by the Borrower or any Environmental or Social Claim that it is to its knowledge commenced, pending or threatened against it; and [...] any material non-compliance by it with any Environmental or Social Standard.”

The environmental disaster in the Ashalim stream, widely considered one of the most serious in Israel's history, was met with broad public outcry as well as several civil initiatives for class action against the

company, but the EIB has not indicated in its correspondence with Bankwatch whether it has been informed by ICL about any of these.

It is similarly unclear whether the bank has taken any measures towards the company following the June 2017 spill incident, or in any of the earlier incidents.

The 2016 loan contract also recalls European Parliament and European Council decision under which the ICL project was financed by the EIB. This decision, quoted in the loan contract, instructs the bank to ensure thorough monitoring throughout projects' implementation and its various impacts. The bank is also meant to “verify on a regular basis” the information provided by the recipients of its loans.

The fact that the EIB agreed to grant ICL another loan in 2016, even though it had been ranked by the Israeli Environmental Protection Ministry among the worst polluting companies for several years prior and even gave such a positive assessment of the company's environmental performance, could indicate flaws in the appraisal and due diligence the bank conducts for every

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<http://www.sviva.gov.il/subjectsenv/businesslicensingindustry/environmentalratingpubliccompanies/documents/index2016/index-2016.pdf> [Hebrew]

¹⁰ In December 2012, the EIB signed another loan for ICL. This EUR 100 million loan was intended for building a gas-fired combined heat and power plant for ICL's Dead Sea Works: <http://www.eib.org/projects/loan/loan/20120160>

financial support it considers.

The EIB cannot afford putting awarding EU public money to companies with such legacy of disregard to the environment. If the bank decides to engage with such companies in order to help improve their operations, as the objectives of these two loans explicitly state, it has to acknowledge their poor environment performance thus far. In addition, loan contract must include clear and meaningful conditions to ensure these investments indeed contribute to improving the environmental performance of the borrower. Including such conditions in the ICL loan contracts, and enforcing them, could

have prevented or at least mitigated the environmental impacts of the company's operations. This is why the EIB also has to closely monitor these projects and the borrower's overall activities.

All of these are instruments the EIB already has in place and uses in other investments, but their absence is blatantly evident in the case of the bank's engagement with ICL.

The EIB makes sure to highlight its environmental standards on every opportunity possible. Yet, its continued support for ICL, despite the company's horrid environmental legacy, can be considered as effectively legitimising them.

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