

To: Enzo Quattrocioche
Secretary General
European Bank for Reconstruction and Development
One Exchange Square
London EC2A 2JN
United Kingdom

APPEAL

against denial of request for disclosure of project level environmental information

1. Igor Vejnovic hereby representing CEE Bankwatch Network, Aleksandra Bujaroska, representing *Environmental Citizens' Association "Front 21/42"*, and Davor Pehchevski, representing *Center for environmental research and information "Eko-svest"*, are members of the public concerned whose requests for information have not been satisfied by the bank.

2. The appeal concerns information requests regarding the EBRD-financed Krapska Reka hydropower plant, Macedonia. The Krapska Reka hydropower plant was one of the plants covered by a loan to Aktual Energy Group Doo signed on 3 November 2017 as an environmental Category B project via the Direct Finance Framework.

3. The EBRD has denied disclosure of documents, failed to respond to questions, and replied to questions with delays (including denials for disclosure of information) of well beyond the 20/40 day period for responding provided for by the Public Information Policy (PIP), namely:

On 26 March 2018 Aleksandra Bujaroska requested information about specific projects that are a part of the Aktual Energy Group Doo loan extended in November 2017.

On 9 April 2018 EBRD responded that the Bank is financing among others the SHPP Krapska and that EESD and an assessment of the aquatic biodiversity was done.

On 16 April 2018 Aleksandra Bujaroska asked for the studies and the assessment of the aquatic biodiversity.

On 15 May 2018 EBRD denied disclosure based on the categorisation of the project (B).

On 16 October 2018 Davor Pehchevski contacted the EBRD and submitted a photo-report from the location of the Krapska plant. He asked the EBRD, among other things, to:

- Verify the location of Krapska SHPP related to the Jakupica Emerald site and share the sources if EBRD's conclusions are different from ours.
- Disclose all the environmental studies done in the project appraisal process and start a public consultation on the project.

On 7 November 2018, having received no reply from the bank, Davor again contacted the EBRD and asked whether they had received the report.

On 13 November 2018 the EBRD responded that it was liaising with the relevant authorities and that it would need an additional 20 days to respond. In fact, this mail did not reach Davor Pehchevski, but only Igor Vejnović, in cc.

On 5 February 2019 the EBRD finally replied but did not confirm receipt of the report, did not provide any information about the co-ordinates of the project, and did not respond to the request for disclosure of the additional environmental studies.

Meanwhile, construction of the plant is at an advanced stage, and every delay in information disclosure reduces the chances of meaningful participation of the public in decision-making and making meaningful changes in the project that might help to mitigate its impacts.

4. The EBRD's refusal to disclose the additional studies and its failure to confirm the location of the plant is inconsistent with the basic principle of transparency, on which the bank's Public Information Policy is founded, and with its underlying presumption that *'information concerning the Bank's operational and institutional activities will be made available to the public in the absence of a compelling reason for confidentiality'*.

5. Furthermore, the appeal concerns project information, on a project's environmental impact. In its Public Information Policy (PIP) the EBRD recognises "*the importance of the principles, purpose and ultimate goals of the UNECE Aarhus Convention*" on access to environmental information, public participation and access to justice on environmental matters.

6. The EBRD is not a party to the Aarhus Convention, although many of its shareholders and countries of operation are. Thus it is unclear what exactly the EBRD's recognition and commitment to promote the Aarhus Convention should mean in practice with regard to its own disclosure practice when it comes to environmental information. In our experience the EBRD effectively discloses environmental information for category A projects, and confidentiality exceptions are not used to override the transparency presumption there. However, in category B and financial intermediary projects the bank fails to either disclose environmental information or to promote transparency and participation.

7. Bankwatch research has demonstrated that category B projects can have equally destructive impacts on the environment, biodiversity and water availability to local communities. Therefore the public, including impacted local communities, has significant interest in accessing environmental information about category B projects, including small and medium size hydropower plants. The Aarhus Convention would not distinguish between sizes and categories of projects, so the EBRD's discrimination on disclosure and public participation based on categorisation of projects is not justified.

8. While in some cases the EBRD may have compelling reasons for confidentiality, we believe that the bank has failed to balance properly between the interests of its clients to protect commercially sensitive information with the interest of the public in being informed and participating in decision-making on environmental matters in a meaningful way. If the EBRD can easily deny disclosure of environmental information without any or without strong justification for confidentiality, its policy's presumption of transparency as well as its recognition of Aarhus Convention ring hollow.

9. It is not clear why the Bank has decided that project documentation related to environmental and social impact assessment of category B projects is not subject to disclosure to affected people and interested stakeholders. Justification offered so far in our exchanges with the bank was on ESAPs specifically, claiming that they "*often contain commercially sensitive information*".¹ Even taken at face value, such a claim at least requires the Bank to justify what kind of commercially sensitive information the document contains to be exempt from disclosure.

Moreover, judging from the content of ESAPs for Category A projects, it would be hard to imagine what commercially confidential information is present in the case of Category B projects that is not the case in Category A ESAPs. The possibility to create and disclose

¹ This was part of a response on the Ternove and Rapuni hydropower plants in Albania, dated 15/11/2017

ESAPs for Category A suggests that this practice is feasible without endangering commercial interests that for sure also exist in the case of Category A clients.

Finally, if needed, commercially sensitive information can be redacted from the disclosed document, in order to protect the interest of the client. Similar practices have been employed by other institutions such as the European Investment Bank, which routinely shares commercial *contracts* with confidential sections redacted.

10. We claim that the argument above applies also either for documents drafted during the due diligence process or in the framework of concluding the financing contract as well during the project monitoring. Even when a project categorised as B is not a subject to environmental and social impact assessment under EBRD requirements, the client is required to “*undertake an environmental and social assessment that is proportionate to the project’s nature, size and location*” (ESP PR 1, requirement 11). Also the ESAP is in any case part of the financing agreement (ESP, page 11, footnote 3)

11. EBRD officials stated that “*During the due diligence stage, EBRD environmental specialist visited the site to further assess the potential impacts that the project could have. Following the site visit, we commissioned an independent aquatic biodiversity consultant to undertake a biodiversity survey through field research of the river, targeting aquatic and semi-aquatic species, and notably fish, amphibians & reptiles and macroinvertebrates and the potential project impacts to these species. The results of this study formed the basis for EBRD decision to proceed with the financing of the Krapska HPP after which the consultant designed detailed mitigation and monitoring measures to ensure the continued integrity of the aquatic ecosystem. We also included in the ToR for the Technical and Environmental due diligence consultant to confirm that the local EIA of the project had been approved by the competent authorities.*”²

12. Front 21/42 requested „the assessments of the aquatic biodiversity and relevant studies “*conducted for the project based on what EBRD formed the decision to finance the project due-diligence.*”³ The denial for the case B was justified by “EBRD does not disclose due diligence reports on category B projects.” The complainant was directed to contact the local EBRD staff that would, presumably, share the studies. This has not occurred.

13. On 24 July 2018 Eko-svest and Front 21/42 also communicated this issue during a meeting on the EBRD’s review of its Country Strategy for Macedonia and discussed it further with a representative from the EBRD’s Civil Society Engagement Unit, Ms. Luisa Balbi. During the meeting, head of the Skopje office, Ms. Anca Ioana Ionescu, requested Stefan Kostovski from the Skopje office to disclose the studies. However, despite repeated requests by Eko-Svest, this did not happen, as some new excuse always appeared why this would be delayed.

14. The claim that the EBRD does not disclose due diligence reports on Category B projects (from paragraph 10) only points to the prevalent practice within the Bank, not to any basis in the relevant Policies. It is hard to imagine that studies about biodiversity that informed the EBRD’s decision on the loan contain commercially sensitive information.

15. Krapska was financed via a direct financing facility, which is processed through the **Small Business Investment Committee (SBIC)**. SBIC projects are not sent to the Board for approval and hence are not subject to the automatic requirement to release a PSD. This practice creates an accountability gap where there is no early and genuine public access to

² email communication between Ms. Aleksandra Bujaroska and Mr. Venermo Mikko on 15.05.2018

³ The study was important to gain as there is a reasonable doubt that the EBRD missed to register that the hydropower plant is located in the Jakupica Emerald site.

environmental information, which impedes the public's ability to meaningfully engage in decision-making.

The public can bring forward its comments only late in the process, after the loan is signed. In the case of Krapska, the project itself was not even named in the project list, only the name of the company receiving the loan, so further time was lost ascertaining what hydropower plant was actually financed.

Then the potential damage is already done, contravening the precautionary approach. In order to avoid this, the SBIC needs to start releasing publicly environmental information early and consistently. The new Access to Information Policy draft suggests that PSDs will indeed be published for such projects, which we very much welcome. However the draft still does not contain any explicit commitment to release environmental information (or information on social impact) for category B projects.

16. Therefore we are lodging a formal appeal to the EBRD's Secretary General on the bank's denial to disclose the requested information and failure to provide a satisfactory justification for the denial, and we kindly request that:

- The requested environmental information is disclosed.
- In case the Secretary General upholds the bank's decision to deny disclosure, that a more adequate justification for the denial is provided, in order to answer the questions and inconsistencies listed above.
- The Secretary General provides clarity on the EBRD's approach to the Aarhus Convention and how the bank, as a public institution, applies the Convention when deciding on disclosure of environmental information.
- The commitment to the Aarhus Convention is reinstated in the new Access to Information Policy
- The Secretary General takes arguments raised within these specific cases as a contribution for the dialogue on creating a robust and forward looking Access to Information Policy in the current revision process.

Best regards,

Davor Pehchevski
davor@ekosvest.com.mk
Center for environmental research and information "Eko-svest"
Ul. Kiril i Metodij 30/1-6, 1000 Skopje, Macedonia

Igor Vejnovic
igor.vejnovic@bankwatch.org
CEE Bankwatch Network
Heřmanova 1088/8, Prague 7, 170 00 - Czech Republic

Aleksandra Bujaroska
aleksandra.bujaroska@front.org.mk
Environmental Citizens' Association "Front 21/42"
Kliment Ohridski No.54/2-2, 1000 Skopje, Macedonia

Annex 1 E-mail communication between Front 21/42 and EBRD on Krapska

From: Venermo, Mikko [mailto:Venermom@ebrd.com]

Sent: вторник, 15 мај 2018 19:55

To: Aleksandra Bujaroska <aleksandra.bujaroska@front.org.mk>

Сс: Corbo, Francesco <CorboF@ebrd.com>; Kostovski, Stefan <KostovsS@ebrd.com>

Subject: RE: Request for clarification and information regarding HPP in NP Mavrovo - HPP No.7 RibnichkaRiver

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Dear Alexandra,

I have discussed with my colleagues and we have reviewed all our due diligence for Krapska HPP. Our initial screening indicated that Krapska HPP was planned potentially in close vicinity of the proposed Jakupica Emerald site. Therefore, we did a thorough review of the location of the project and the protected sites maps, including Emerald sites, published by EU/European Environmental Agency on the web. This review suggested that the Project is not located in a protected area (or proposed protected area, or proposed Emerald site). We also checked that the Project is not included in the Riverwatch list of HPPs in protected areas in the Balkans.

During the due diligence stage, EBRD environmental specialist visited the site to further assess the potential impacts that the project could have. Following the site visit, we commissioned an independent aquatic biodiversity consultant to undertake a biodiversity survey through field research of the river, targeting aquatic and semi-aquatic species, and notably fish, amphibians & reptiles and macroinvertebrates and the potential project impacts to these species. The results of this study formed the basis for EBRD decision to proceed with the financing of the Krapska HPP after which the consultant designed detailed mitigation and monitoring measures to ensure the continued integrity of the aquatic ecosystem. We also included in the ToR for the Technical and Environmental due diligence consultant to confirm that the local EIA of the project had been approved by the competent authorities.

I trust the above shows that we followed a duly diligent approach to check that the project is not located in or could have significant impact on the proposed Emerald site.

As you may know, EBRD does not disclose due diligence reports on category B projects. However, you may contact my colleagues Stefan and Francesco in the Skopje office who have agreed to meet with you to discuss the project, show you the study and address any other further requests you may have.

Please do not hesitate to come back to me should you have concerns that are not addressed.

Kind regards,
Mikko

From: Aleksandra Bujaroska [mailto:aleksandra.bujaroska@front.org.mk]
Sent: понеделник, 16 април 2018 11:49
To: 'Venermo, Mikko' <Venermom@ebrd.com>
Сс: 'Corbo, Francesco' <CorboF@ebrd.com>; 'Kostovski, Stefan' <KostovsS@ebrd.com>
Subject: RE: Request for clarification and information regarding HPP in NP Mavrovo - HPP No.7 Ribnichka River

Dear Mr. Venermo,
Thank you very much for the clarification. I will send letter to the Macedonian Government based on your input.

I wanted to draw your attention to the potential conflict with the protected area in the case of HPP Krapaska.

According to our database this plant is situated in the area of proposed Emerald site MK0000017 "Jakupica"

*(1) The location of the powerhouse of Krapaska HPP is 7527576, 4601753 in Gauss Kruger coordinates according to the **MoEPP (2013) Feasibility Study on Awarding a Concession for Using Water for Production of Electricity by Constructing Small Hydro-power Plants , Volume 1, page 29, Ministry of Environment and Physical Planning, Skopje.** (attached, in Macedonian)*

*(2) The source for the area of the Emerald site is **MoEPP (2008). Development of National EMERALD Network in Macedonia, Report. Ministry of Environment and Physical Planning, Skopje.***

The vector/shapfile for Jakupica Emerald site is not publicly available. You may want to request it from Macedonian Ministry of Environment. However, you can preview how the Emerald sites look like in the official online tool of the European Environmental Agency. <http://emerald.eea.europa.eu/>

(3) The current temporary feed-in tariff registration does not include the precise cadastral parcel where the plant is located, but in any case identifies that the plant is located in the Cadastral Municipality Krapaska that is by large extent inside the area of the proposed Emerald site.

I would like to remind you that the according to the article 19 of the PR 6 of the EBRD Environmental and Social Policy "(w)here the project occurs within or has the potential to adversely affect an area that is protected ...and/or is internationally recognised, or proposed for such status by national governments, the client must identify and assess potential project-related impacts and apply the mitigation hierarchy"

Can you please share the assessments of the aquatic biodiversity and relevant studies with us so we can compare data on the HPPs?

Thank you.

Best regards,
Aleksandra

From: Venermo, Mikko [mailto:Venermom@ebrd.com]
Sent: понеделник, 09 април 2018 15:25
To: Aleksandra Bujaroska <aleksandra.bujaroska@front.org.mk>
Cc: Corbo, Francesco <CorboF@ebrd.com>; Kostovski, Stefan <KostovsS@ebrd.com>
Subject: RE: Request for clarification and information regarding HPP in NP Mavrovo - HPP No.7 Ribnichka River

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Dear Aleksandra,

EBRD provided financing to Aktuel Energy for the Project that consists of the construction of four SHPPs: SHPP Krapaska 45 located on Krapaska river, and three SHPPs located on Kovacka river (in form of a cascade): SHPP Kovacka 21, SHPP Kovacka 22, and SHPP Kovacka 23.

The environmental and social due diligence (ESDD) verified that all of these four hydropower plants are outside planned or protected areas and concluded that the locations are in a scarcely inhabited catchment area. The ESDD was undertaken together with hydrobiology scientists who carried out an assessment of the aquatic biodiversity in Krapaska endorheic river system, and confirmed the absence of protected or endangered species.

I hope you find the above clarification satisfactory, but in case you have further enquiries, I would like to encourage you to contact my colleagues Stefan and Francesco in the Skopje office.

Kind regards,
Mikko

From: Aleksandra Bujaroska [mailto:aleksandra.bujaroska@front.org.mk]
Sent: 26 March 2018 12:20
To: Venermo, Mikko
Subject: RE: Request for clarification and information regarding HPP in NP Mavrovo - HPP No.7 Ribnichka River

EBRD SECURITY NOTICE: BE AWARE! THIS EMAIL ORIGINATED FROM OUTSIDE THE BANK.

Dear Mr. Venermo,

Thank you very much for the information.

I did not response to your email till now because I was waiting for the official information/statement from the Macedonian Government. The information provided by the government states different from what you are stating in your email.

According to the official record from the 47th session of the Macedonian Government held on January 4th 2018 Aktuel Energy Group requested transfer of the concession contract to the to EBRD with proposal for direct contract between the MK Government and EBRD. This request is approved by the Government and the Ministry of Environment is authorized to sign the contract.

Here is what is officially disclosed by the Macedonian Government (pg. 15 in the attached document):

“Точка 17 Владата ја разгледа Информацијата во врска со доставено барање за пренос на Договорот за концесија за користење на вода за изградба на мали хидроелектрични центри за локацијата бр.7 на река Рибничка на концесионерот Актуел Енерџи Груп

ДОО Скопје и склучување на Директен договор со Европска банка за обнова и развој („ЕБОР“), со Предлог – одлука (нов текст) и ја усвои со следниве заклучоци: 1. Ја донесе Одлуката за давање согласност за пренос на Договорот за концесија за користење на вода за производство на електрична енергија од мали хидроелектрични 15.- центри, МХЕЦ РИБНИЧКА реф. бр. 7 со бр. 11-4342/1 од 7.5.2015 година, во предложениот текст. 2. Се овластува министерот за животна средина и просторно планирање, Садула Дураки, во име на Владата на Република Македонија како концедент да склучи Директен договор со Европска банка за обнова и развој, како средство за обезбедување на исполнување на обврските од страна на концесионерот „Актуел Енерџи Груп“ ДОО Скопје”

Also, on your webpage there is a project for Direct Finance Framework:

<http://www.ebrd.com/work-with-us/projects/psd/direct-finance-framework.html>

In the Sub-projects signed under this framework it is stated that EBRD signed contract with Aktual Energy group on November 3rd 2017:

Project Name	IFC ID	Country	Sector	Entity	Start Date	Currency	Amount
DFF - Aktual Energy Group	48111	FYR MACEDONIA	Power and Energy	AKTUEL ENERGY GROUP DOO	03 Nov 2017	EUR	4,000.0

Can you please again confirm that EBRD is not involved in the HPP project Ribnicka?

Also, can you please inform us which is the project of DFF Aktual Energy Group that EBRD approved on November 3rd under the direct financing framework?

Best regards,
Aleksandra

Annex 2: Communication between Eko-Svest and the EBRD on Krapska

----- Forwarded message -----

From: **Davor Pehchevski** <davor@ekosvest.com.mk>

Date: Tue, Oct 16, 2018 at 11:28 AM

Subject: Photo report regarding SHPP Krapska reka - ref. no. 45, Makedonski brod municipality, Macedonia

To: <Venermom@ebrd.com>

Cc: <boydcarh@ebrd.com>, <clarka@ebrd.com>, <BalbiL@ebrd.com>, Igor VEJNOVIC | Bankwatch <igor.vejnovic@bankwatch.org>

Dear Mr Venermo,

Please find attached a photo report resulting from the field visit of the Eko-svest staff to SHPP Krapska project in Macedonia that was financed through the EBRD's Direct Finance Framework and that is currently in construction. The report highlights construction practices that are contrary to the mitigation measures listed in the Environmental 'Elaborate' for the project. We assess that these practices are also going against provisions of the EBRD Environmental and Social Policy.

Our understanding is that the EBRD claims that this project is outside of the Emerald zone. For that reason, we made efforts to confirm the location of the plant. The location of the powerhouse (41.558393, 21.324443) and the intake (41.578905, 21.342323) was verified by GPS on the ground. Eko-svest has requested data/shape files of the Jakupica proposed Emerald site from the Ministry of Environment by FoI request on 13.07.2018. In response on 14.08.2018, Ministry claimed that they 'have lost the data' and referred Eko-svest to use the data from Macedonian Ecological Society (MES) a partner organization of the Ministry that was also involved in designating Emerald sites. Shape file obtained from MES is attached. Comparing these two sources, **we concluded that Krapska River as well as the powerhouse, pipeline and the intake of the Krapska SHPP (in construction) are located inside of the Jakupica Emerald site.** If we are right, this amounts to a serious error in the due diligence process.

We think that Krapska SHPP case highlights risks that the current EBRD approach is bringing by assigning such projects as Category B and not conducting a comprehensive, publicly available and publicly consulted EIA. Since the project has been approved by the Small Business Investment Committee (SBIC) and there was no public consultation on studies done before the decision to finance the project, we are only able to intervene now when the damage is already done.

We request that the EBRD:

1. Verify the location of Krapska SHPP related to Jakupica Emerald site and share the sources if EBRD's conclusions are different from ours.
2. Disclose all the environmental studies done in the project appraisal process and start public consultation on the project.
3. Send an urgent field mission to Krapska SHPP site and if possible include someone from our staff in the mission. The report and potential mitigation and restoration measures should be publicly available.
4. Consider stopping disbursements and canceling the project if findings confirm that the project is contravening the provisions of the EBRD Environmental and Social policy.

Kind regards,

--

Davor Pehchevski
Mobile: +389 71 264 087
Skype: davor.pehcevski

Center for environmental research and information "Eko-svest"
Ul. Kiril i Metodij 30/1-6, 1000 Skopje, Macedonia
Tel/fax: + 389 (0) 23217 247
www.ekosvest.org.mk

From: Davor Pehchevski [mailto:davor@ekosvest.com.mk]
Sent: 07 November 2018 09:42
To: Venermo, Mikko
Cc: Boyd-Carpenter, Harry; Clark, Alistair; Balbi, Luisa; EBRD Civil Society; Igor VEJNOVIC | Bankwatch
Subject: Fwd: Photo report regarding SHPP Krapska reka - ref. no. 45, Makedonski brod municipality, Macedonia

EBRD SECURITY NOTICE: BE AWARE! THIS EMAIL ORIGINATED FROM OUTSIDE THE BANK.

Dear Mr. Venermo,

I hope this email finds you well.

I am writing to inquire about my request related to the Krapska river HPP sent on 16.10.2018 (email copied below).

Regretfully, I have not received confirmation for the receipt as well as your response.

I hope to hear from you soon and expect confirmation of receipt of this message.

Thank you in advance,
Davor Pehchevski
Mobile: +389 71 264 087
Skype: davor.pehcevski

Center for environmental research and information "Eko-svest"
Ul. Kiril i Metodij 30/1-6, 1000 Skopje, Macedonia
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On 5 Feb 2019, at 11:19, EBRD Civil Society <csso@ebrd.com> wrote:
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Dear Mr Pehchevski,

Thank you for your email dated 7 November. We apologise for the delay in answering, which was mainly related to the time required in carefully looking at the issues of concern you raised. We were informed that the main construction works of SHPP Krpa are finished and testing is underway. To date, remediation of the housekeeping issues is completed and post construction land rehabilitation is underway.

Regarding the location of the SHPP, we are looking forward to receiving information from the Ministry of Environment on the original Emerald site and subsequent changes. Works on land rehabilitation will continue and be finished as soon as possible. We also expect to conduct a site visit in 3-4 months from now.

We count to provide you an update on the status of your query by June.

Best regards,
Luisa Balbi

EBRD Principal Manager
Civil Society Engagement Unit