

# Civic Alliance for Protection and Development of Vlora Bay

# Aleanca Qytetare për Mbrojtjen dhe Zhvillimin e Gjirit të Vlorës

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Dear Mr. Wates,

We refer to your letter of 19 December 2007, which included certain questions and clarifications requested from the Committee.

We apologize for the delay and submit our answer below.

Thank you very much for your understanding.

Sincerely,

Lavdosh Ferruni, Dr. Ardian Klosi

Civic Alliance for the Protection of the Bay of Vlora

Tirana, Vlora, 20 August 2008

**RESPONSE OF THE COMMUNICANT TO CERTAIN QUESTIONS BY THE COMPLIANCE COMMITTEE RE ACCC/C/2007/21**

Please, find our answers below by numerical order of your questions:

1. “environmental information” requested, with particular reference to the Framework Agreement.

We believe that among the documents requested by the Alliance to the EIB, i.e. [(i) Finance Agreement and (ii) Framework Agreement] there is no question that the former contains “environmental information”.

Having finally being made aware of the Framework Agreement, we stipulate that the Finance Agreement:

* is widely referenced in the Finance Agreement between EIB and Albanian Energy Corporation (KESH)[[1]](#footnote-2) therefore it is essential to the implementation of the Vlora TPP project;
* deals generally with the status, rights, privileges and technical modalities of EIB operations in Albania;
* relates only remotely to “environmental information” by implication of Article 2 [Bank’s Activities], which refers to EIB’s “Statute” and Albania’s “laws and regulations”[[2]](#footnote-3).

We leave it up to the Committee to determine whether there is non-compliance with Article 4 with respect to the Framework Agreement.

We nevertheless believe that the EC/EIB violated Article 4 requirements of the Aarhus Convention because:

1. The Finance Agreement contains “environmental information” in the following form:
	1. As a direct and general “Borrower’s undertaking[[3]](#footnote-4)” which falls squarely within the definition of “environmental information” in Article 2.3 of the Aarhus Convention;
	2. As Condition of Disbursement to the Borrower which imposed a direct and specific obligation to provide “the licenses and permits necessary for the implementation of the Project as listed in Annex II”[[4]](#footnote-5); this falls within the definition in Article 2.3. (b) *“activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment…”*
	3. As an obligation towards the Borrower to provide to the lender general information on the environmental impact of the project[[5]](#footnote-6) as well as to give immediate notice in case of environmental related litigation[[6]](#footnote-7)Again, this falls within the general definition of Article 2.3.
	4. as “permits and licenses” necessary for the approval and implementation of the project, contained in Annex II of the Finance Agreement. These again fall within the definition of Article 2.3.(b).
2. The Civic Alliance requested such information from EC/EIB on 4 February 2008.
3. EC/EIB failed to provide this information on a timely fashion, in violation of Article 4.1.2.
4. As documents provided to the Committee show, the communicant itself has approached EIB in several occasions, including submitting the Request for Information of 4 February 2008.
5. We need some clarification on the first part of this question. We have pursued various legal avenues with the EBRD, but are not clear as the relevance of the question. As for the second part of your question, we received disclosure by the EIB on the Framework Agreement on 15 January 2008. As we have explained before, in several other occasions, we have approached other EU institutions concerning EIB’s general lack of compliance with respect to the Aarhus Convention in general and the Vlora TPP project finance in particular, but without success. Our latest effort was a complaint addressed to the EU Ombudsman on 18 May 2007. We have received no response from them since.
6. We believe that EIB has obligations under the Aarhus Convention. In the Finance Contract with Albania’s KESH, the EIB provides a series of safeguards that ensure general environmental compliance. EIB’s goal is clearly to secure the full return of the funds plus interest. On Article 6 compliance, -concerning the obligation of a third party such as the EIB on the permit issue- we believe that it may not directly conduct public participation procedures in the project on the ground per se, but it must ensure that the borrower complies with all its obligations in this matter. The recently disclosed Annex II, for example, suggests, for example that:

“The EIA has been subject of wide public discussion… [completed] in June 04]…”

However, facts contained in this statement have already been found in violation of Article 6 of the Aarhus Convention as stipulated in ACCC/C/2005/17.

Since such Annex is an integral part of the Financial Contract between EIB and KESH, it goes without saying that the EIB was aware of public participation requirements under the Aarhus Convention with respect to the Vlora TPP project from site selection till – at least – the issuing of the environmental permit “when all options were open” since the time the Convention became effective within the EC.

While permitting procedures generally fall under the power of national authorities, a special international bank like the EIB cannot close its eyes when its counterpart fails to comply with the Aarhus Convention.

We believe that the Bank should have developed a specific “control” procedure in this regard. As co-lenders in the Vlora TPP project, both the World Bank and the EBRD did establish and conduct - however unsuccessfully - some sort procedural effort to make sure that the project sponsor was following international environmental law.

As a party to the Aarhus Convention, the EIB should have done even more. For example, it should have established - and conducted - its own independent, prevention-oriented, compliance, analysis and evaluation review instrument. Unfortunately, such obligatory model that any such institution should follow in order to fulfill its Aarhus obligations did not either exist or was not triggered. An “indirect and passive” obligation for EIB - for example, would have been the simple step of supervising the actions of the beneficiaries on the ground.

EIB has furnished proof that it has been moving in this direction, for example, by citing a letter of Albania’s Ministry of Culture of 17 March 2006[[7]](#footnote-8). However, this was too little, too late of an effort. As stated above, EIB’s main concern is ensuring that it is paid back its funding plus interest. However, money is indeed fungible, but environment is not. That is why, EIB should have ensured its own independent compliance review and appraisals of Aarhus Convention safeguards and guarantees in projects that it is funding.

1. As we have explained earlier, a series of decisions taken by the borrower, and included the Vlora TPP Licenses/Permit List [Annex II of the Finance Agreement) fall within the scope of the Aarhus Convention. Most of them have been taken after the date of 17 May 2005 [See for example, ACCC/C/200512, para 82, referring to the environmental permit; the Permit Decision of Distrit Territory Regulation Council of 1st August 2007; the decision of Council of Ministers of 5th September 2007 for “Passing to KESH (State Electro-Energy Corporation) of the Area for the Construction of one Power Plant in Qender Commune, in North of New Port of Vlora]
1. Preamble, 8-10. [↑](#footnote-ref-2)
2. ##  ARTICLE 2

## Bank's Activity

The Bank may freely pursue within the territory of Albania the activities envisaged by its Statute, including the borrowing of funds under the laws and regulations of Albania, by means of all instruments permitted thereby. In particular it may, on the basis of its appraisal of a Project, decide whether, and on what terms and conditions, to grant credit in support of it. [↑](#footnote-ref-3)
3. Vlora TPP Finance Contract between EIB and KESH, Final Version, as released by EIB, page 17.

**6.08 Environment**

The Borrower shall implement and operate the Project in conformity with those laws of the European Union and Albania, of which a principal objective is the preservation, protection or improvement of the Environment, and includes legislative provisions giving effect to international agreements concerning the Environment; for which purpose “**Environment**” means the following, in so far as they affect human well-being:

(a) fauna and flora;

(b) soil, water, air, climate and the landscape; and

(c) the built environment and cultural heritage; and

and shall, prior to the commencement of operation of the plant which is the object of the Project, establish an Environmental Management Plan in terms complying with those provisions and shall implement it in a timely manner; [↑](#footnote-ref-4)
4. Idem, Article 1.04.3, p. 9 [↑](#footnote-ref-5)
5. Article 8.01 (i) [↑](#footnote-ref-6)
6. Article 8.02. (iii). c [↑](#footnote-ref-7)
7. Submission of EC to the ACCC re: ACCC/C/2007/21, page 2-3. [↑](#footnote-ref-8)