

# The Aarhus Convention's principles in international financial institutions

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Learn more: [bankwatch.org](http://bankwatch.org)



# Key systemic challenges on implementation of the Aarhus Convention's principles in IFIs (EBRD, EIB)

*based on experience in CEE countries and Western Balkans*

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- **Providing access to information, public participation and a timely review procedure, *before* granting the loan to the promoter**
- **Early access to information** – ensures that **communities are equipped with the necessary information to substantively engage in the development processes that will ultimately shape their lives**
  - **the Environmental and Social Policy and the project categorisation. If a project is rendered Category B** (i.e. it is likely to result in future environmental impacts which are less adverse than those of Category A projects, taking into account their nature, size and location, as well as the characteristics of the potential environmental impacts), the documents are disclosed much later and have a shorter consultation period. Also, if a Category B project is implemented via a financial intermediary (a commercial bank), disclosing project documentation does not always happen.
  - If the voices of communities affected are not taken into account in the appraisal stage, when they do get to the phase of submitting a complaint, it is difficult to navigate among bodies of the IFI – eg. for failure to provide information, at the EBRD a complaint needs to be submitted to the Secretary General. In the case of EIB, to the EU Ombudsman .

## Key systemic challenges on implementation of the Aarhus Convention's principles in IFIs

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- **To be able to submit complaints before the loan was signed**
  - the complaints mechanism policy (EIB) or Project accountability policy (EBRD) - deals with both the Bank's compliance with its own policies (all of them) and with problem solving-cases (disputes between the public affected and the Bank's client) within a certain project (loan/ grant/ equity share) are verified for compliance by an **independent grievance body**. **The complaint can be submitted** to such a body **after** the loan/project has been signed. Chances of mitigating potentially harmful impacts are seriously reduced once the financing is disbursed.
- **To have shorter compliance review procedures**
  - the compliance review procedure could be long (1-2 years) and even if in the end the Bank or the Client is found non-compliant, most likely the loan is already repaying. So pecuniary measures are no longer applicable (eg. suspension of the loan).

## Positive Trends in implementation of the Aarhus Convention's principles in IFIs

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- The principles of the Convention are well mainstreamed in EBRD's and EIB's policies
- Both EBRD and EIB reflect the 3 pillars of the Aarhus convention in 3 different policies: (Access to) Public information policy, the Environmental and social policy and the complaints mechanism policy (EIB) or Project accountability policy (EBRD); **these policies are reviewed once every 5 years. EBRD just had its review this year;**
- The implementation of Aarhus Principles in the IFIs' policies, empower the public to ask for disclosure of the environmental information, to participate in the decision of the banks to grant loans and also provide for remedies, including complaints procedures against the banks
- The fact that EIB is bound to apply the Aarhus Convention in its Public Disclosure Policy, made it possible to appeal to the EIB, and push for HIGHER transparency and accountability standards of its Policy.

As a result of public resistance to small-scale hydropower projects in the Balkans, from the beginning of 2020, *the EBRD will ask commercial banks to refer all high-risk projects – including all hydropower plants – for additional checks. The EBRD also requires them to meet higher environmental standards than previously. The bank will ask that such projects are disclosed to the public on the financial intermediary's website, finally increasing disclosure on these otherwise hidden projects.* <https://bankwatch.org/blog/ebrd-tightens-standards>

# HBOR Case (Croatia) - access to information due to implementation of Aarhus Principles

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One of the EIB's financial intermediaries, the Croatian Bank for Reconstruction and Development (HBOR) has repeatedly refused to disclose to the public information about the specific projects that it is supporting, which members of the public considered to have an environmental impact and thus be subject to the Aarhus Convention.

HBOR even [launched a series of court cases against](#) the Croatian Information Commissioner ***who ordered the release of information to citizens.*** (HBOR has sued Information Commissioner Anamarija Musa no fewer than 23 times)

A recent ruling by *the Supreme Court of Croatia rejected HBOR's request* that asked the court to review the legality of the High Administrative Court rulings pertaining to the citizens' requests.

- **The Supreme Court found that HBOR should disclose information about loans because of an overriding public interest.**

## The Castor Project (Spain) – a storage facility financed by EIB

**The first project financed under the Europe 2020 Project Bond Initiative - €1.7 billion EUR - Castor underground gas storage plant off Spain's Mediterranean coast.**

Works started in summer of 2013 but in mid September they had to stop due to 220 mini earthquakes in less than a month.

Plataforma Ciutadana en Defensa de les Terres del Sènia has filed a complaint to the EIB Complaint Mechanism alleging the environmental and social impacts of the project as well as the way the public consultation was carried out and about the risks associated with the induced seismicity of the project as well as other industrial risks.

The outcome of the complaint to the EIB Complaints Mechanism (CM) on the Castor project formulates two important recommendations for the EIB:

- “The Bank should establish an appropriate guidance to be used when carrying out the assessment of the meaningfulness of the public consultation process. **This guidance should be based on the implementation and best practices including those of the relevant Aarhus Convention bodies...**”
- “The Bank’s services should verify that the concerns and risks flagged as part of the Stakeholder Engagement process are adequately assessed and addressed, as relevant, by the promoter. The Bank’s services should also adequately document the outcome of their analysis and the appropriate action that needs to be taken for an informed decision making process.”

<https://www.eib.org/en/about/accountability/complaints/cases/castor-underground-gas-storage.htm>

# A historic ruling against the World Bank

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The World Bank can be sued when its overseas investments go awry. And so can some other international organizations.

The precedent was set in the **case of the coal-fired Tata Mundra power plant in western India**, which was financed by a branch of the World Bank. A group of farmers and fishermen sued, claiming that contamination of local water sources has disrupted their livelihoods.

**The decision of the US Supreme Court overturns a decades-old presumption** dating to the founding of the World Bank in 1945 — that the IFC, a Washington, D.C.-based branch of the World Bank Group that finances private-sector projects in developing countries, and other bank-affiliated organizations **are fully immune from such suits.**

<https://www.npr.org/sections/goatsandsoda/2019/03/07/699437482/supreme-court-rules-that-world-bank-can-be-sued?t=1559571874780>

# Best practice – EBRD - The loan for the Turceni Coal power plant (Romania)

- 150 million loan in 2008 for the rehabilitation of units 3 and 6 at the Turceni TPP, a project that was never carried through.
- In early 2013, the EBRD decided to restructure and re-finance the loan arranged for the Turceni project, which turned into a EUR 200 million syndicated loan meant only for unit 6.
- In this case all the access to information, the public participation and complaints mechanisms were respected and applied according to the Aarhus principles, so that finally **EBRD has suspended the loan.**
- the public's complaints related to the **number of legal challenges on environmental grounds and investigation of the Romanian authorities on several allegations of corruption at the plant.**



## Negative trends in implementation of the Aarhus Convention's principles in IFIs

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- Disclosure of environmental information and social action plans is still an exception in the case of Category B projects or via financial intermediaries
- Very few projects are providing explanation of adverse environmental and social impacts and share measures to mitigate these risks
- Lack of information on how and when a community member can engage with a project
- Analysis of the EBRD's new Access to Information Policy, prepared by the International Accountability Project and CEE Bankwatch revealed that
  - **only 6% of the 195 projects analysed** (between Nov 2017-Nov 2018) **disclosed environmental and social action plans**
  - **only 34% of the 195 projects analysed provided a clear explanation of adverse environmental and social impacts**
  - **only 48% shared measures to mitigate these risks**
  - EIB policy requires the intermediary or fund manager to publish environmental and social information on specific loans, which would in turn also reveal the clients. In reality, the EIB does not include this requirement in financing contracts [and it is not done in practice.](#)

## The Krapska hydropower project in North Macedonia

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After almost a year of struggling to get basic environmental information from the EBRD about the Krapska hydropower project in North Macedonia, Bankwatch has submitted an official complaint to the bank's Secretary General.

Until we get the information, a precious river valley has been irreversibly damaged.

<https://bankwatch.org/blog/macedonian-hydropower-complaint-highlights-ebrd-s-enduring-opacity>



# New financiers in the Western Balkans and CEE countries, not playing by the same rules

No less than 21 new coal power plants are planned to be built in 5 countries of the Western Balkans.

As the international financial institutions have phased out direct coal financing, most of the plants are slated for loans from the state-owned China Eximbank or China Development Bank (or Industrial and Commercial Bank of China).

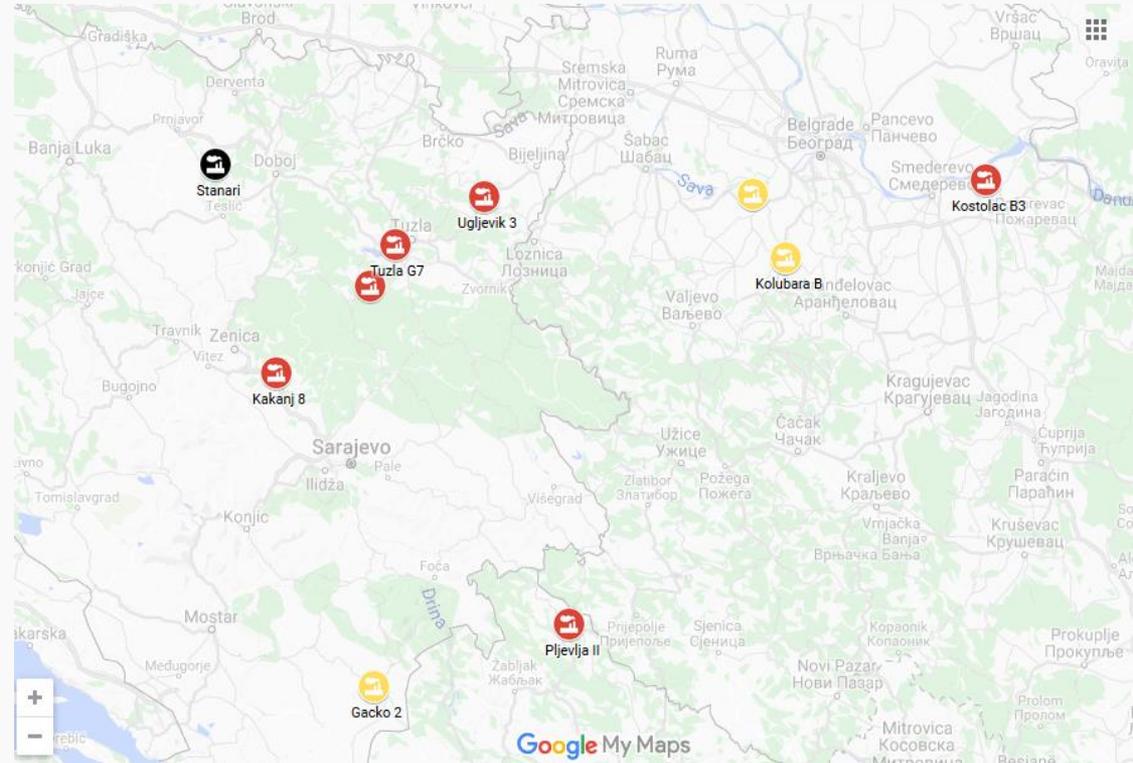
**Up to 3.5 GW of coal plants may be built in southeast Europe with Chinese financial support.**

The financiers supporting these projects cannot be held accountable to any policy and disputes are usually to be solved in arbitration courts in Beijing.

**None of these Chinese policy banks has Environmental and Social or Access to Information policies,** that reflect the principles of the Aarhus Convention

The financier supporting these projects projects cannot be held accountable to any policy and disputes are usually to be solved in arbitration courts in Beijing.

## Planned coal capacity in the Western Balkans



\*Stanari is already built, China Development Bank loan

\* With the exception of Ugljevik 3, all other are supposed to receive loans from Chinese policy banks

# Thanks for your attention!

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