

The Trans-Adriatic Pipeline project: identified non-compliance with the Equator Principles



Author

Greig Aitken

Layout

Adriana Paradiso



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Introduction

This report assesses the compliance of the Trans-Adriatic Pipeline (TAP) project with the Equator Principles (EP), a well-established risk management framework currently adopted by 89¹ of the world's top commercial banks in order for them, as EP Financial Institutions (EPFIs), to assess and manage environmental and social risk when advising on or financing certain categories of projects.

Following years of preparatory work dating back to 2003, TAP construction formally started in May 2016. The project promoters, TAP AG, are working to a timetable which foresees TAP operations commencing in 2020, although work on the project's Italian section is stalled and behind schedule. To date, no third party financing for TAP from either public or private financial

institutions has been agreed but it is common knowledge that both public and private banks are assessing and considering finance for the project.

One commercial bank – Société Générale – has been providing financial advice and guidance to TAP since March 2013². The current version of the principles – EP III – describes as part of their scope “Project Finance Advisory Services where total Project capital costs are US\$10 million or more”.³ Therefore, Société Générale should be assessing whether the project is EP compliant, in order to advise on this. It is unclear if this is currently the case.

Beyond the advisory role of Société Générale, TAP AG signaled in December 2015, during a meeting attended by representatives from more than 20 leading project

1. <http://www.equator-principles.com/index.php/members-and-reporting>

2. http://en.apa.az/azerbaijan_energy_and_industry/trans-adriatic-pipeline-and-shah-deniz-consortium-members-select-soci-t-g-n-rale-as-financial-advisor.html

finance banks, that “it is planning to raise limited recourse financing from multilateral agencies, export credit agencies and commercial banks in 2016⁴.” No finance agreements were concluded in 2016 with any of these institutions. However, TAP AG’s stated intention to attract financing for TAP from potentially multiple commercial bank sources adds further relevance to this EP assessment.

This assessment finds that the TAP project is Category A, which would require prospective EPFI financiers to conduct appropriate environmental and social due diligence.

Assessment of the TAP project against the principles most directly relevant at the current stage of project preparation and implementation – namely EPs 2 (on ‘Environmental and Social Assessment’), 3 (on ‘Applicable Environmental and Social Standards’), 5 (on ‘Stakeholder Engagement’ and 6 (on ‘Grievance Mechanism’) – find it to be failing to meet the risk framework’s requirements in a number of ways.

This is evidenced by problems related to the TAP company’s community engagement efforts which do not match its website’s stated aspirations. These shortcomings are not being

tolerated by a variety of communities, groups and local authorities, most demonstrably in Greece and Italy, while in Albania uncertainty and confusion has been created for many people whose lives, land and livelihoods are being jeopardised.

Public grievances about the TAP project in the transit countries have already lead to the lodging of a significant number of complaints with the European Investment Bank (EIB) which, according to its website, has been assessing the project for financing since August 2015⁵. Thirteen such complaints is a considerable number when, at the time of publication, only approximately one third of the TAP routing in Albania and Greece has been graded and cleared. Stakeholder contestation of these preparatory activities by TAP contractors is ongoing and pronounced in Greece, as described below, and may intensify as construction efforts proceed into the spring of this year.

Moreover, a flawed and insensitive project design, coupled with a problematic environmental assessment process, has provoked extensive scrutiny of and opposition to the project from the public and local and regional authorities in Italy. The TAP

3. http://www.equator-principles.com/resources/equator_principles_III.pdf

4. <http://www.tap-ag.com/news-and-events/2015/12/18/tap-holds-bank-presentation>

5. <http://www.eib.org/projects/pipelines/pipeline/20140596?media=rss&language=en>

company has been unable to advance the project in Italy as per its intended schedule and stakeholders demand that it should not be permitted to proceed until it is willing and able to fulfil all pending requirements stipulated by the Italian environment ministry. Given this position held by local and regional governments, any intention on the part of the project promoter to conform progressively while 'doing' the project should be viewed by potential investors as high risk.

The website of the Equator Principles is unambiguous in spelling out that: "Equator Principles Financial Institutions

(EPFIs) commit to implementing the EP in their internal environmental and social policies, procedures and standards for financing projects and will not provide Project Finance or Project-Related Corporate Loans to projects where the client will not, or is unable to, comply with the EP."

Owing to the TAP project's non-compliance with the EPs, and the related challenges which the company does not appear capable of adequately overcoming as project timeline pressures mount, this report recommends that EPFIs do not involve themselves in project financing.



Project summary

The TAP project is the western extension of the Southern Gas Corridor (SGC). SGC is planned to export natural gas from the Shah Deniz II field in the Caspian Sea to western markets via the South Caucasus Pipeline extension (Azerbaijan to Georgia), on through the Trans-Anatolian pipeline (TANAP) stretching across Turkey, and then joining up with TAP at the border of Turkey and Greece.

With estimated construction costs of €5 billion, TAP is intended to run for 879 kilometres in total across northern Greece (545 km), Albania (215 km), the Adriatic Sea (105 km), make landfall in Italy at a small, popular beach in San Foca, and conclude with a short pipeline section (8 km). A further 55 km pipeline is planned to connect TAP to the Italian gas network.



The TAP route crossing northern Greece, southern Albania, the Adriatic Sea and terminating in southern Italy

According to the TAP AG website, the company's current shareholding is comprised of BP (20%), SOCAR (20%), Snam (20%), Fluxys (19%), Enagás (16%) and Axpo (5%).⁶ TAP AG has offices in Athens, Tirana, Rome and Lecce, and is headquartered and registered in the town of Baar, located within the Swiss canton of Zug which has garnered a reputation as a top destination for companies wishing to minimise taxation.

SGC has long been touted by the European Union as a means to diversify Europe's energy supply sources and bring new gas from new regions – officials regularly allude to the longer-term prospects for the pipeline infrastructure to transport gas from Turkmenistan, Iran, northern Iraq and elsewhere.⁷ If TAP is ready and operational by 2020, it will

have initial capacity of 10 billion cubic metres (bcm) of gas per year. The TAP website suggests a doubling of that capacity to 20 bcm "in future"; other figures, in excess of 20 bcm, and dates for the capacity increase appear regularly.⁸

Such concerted promotion of the need for additional gas imports to Europe, both in the short-term from the Caspian and in the long-term from unconfirmed other sources, is questionable as it not only undermines Europe's 2050 decarbonisation goals⁹ but also runs contrary to assessments that European gas demand will remain stagnant and is likely to decline further over the next 35 years.¹⁰ The stranded asset risk which accompanies TAP is one which potential investors would do well to consider.

6. <https://www.tap-ag.com/about-us> (accessed February 10, 2017)

7. 'Work begins on Trans Adriatic gas pipeline', Financial Times, May 17, 2016 <https://www.ft.com/content/da3ceeae-1c29-11e6-b286-cddde55ca122>

8. For example, 31 bcm of natural gas by 2026 is specified in 'As Russia's gas market gets weaker, Europe gets stronger', EurActiv, January 11, 2017 <http://www.euractiv.com/section/energy/opinion/as-russias-gas-market-gets-weaker-europe-gets-stronger/>

9. 'Europe's Keystone XL: Planned gas pipeline is reckless', Climate Home, April 14, 2016 <http://www.climatechangenews.com/2016/04/14/europes-keystone-xl-planned-gas-pipeline-is-reckless/>

The financing picture so far

Following extensive speculation throughout 2016 about the external financing by third parties of SGC's component pipelines, in late December 2016 funding decisions were taken on consecutive days by the World Bank and the Asian Infrastructure Investment Bank with their respective approval of US\$ 800 million and US\$ 600 million for the TANAP project.¹¹ These first two approvals for TANAP from public financial institutions may be followed by the EIB (potentially €1 billion¹²) and by the European Bank for Reconstruction and Development.¹³

The TAP project itself has been present on the EIB's 'projects to be financed' website since August

2015: the bank is considering a €2 billion loan¹⁴, the largest in its history. While specific details about TAP have not yet appeared on the EBRD's website, in public comments bank representatives have been more forthright about the prospects of financing TAP than they have about TANAP: €1.5 billion for TAP has been specified, comprising €500 million from the EBRD's own account (ie, public money) and €1 billion in a syndicated loan with private banks which the EBRD would try to arrange.¹⁵ Equity financing from the TAP consortium companies and contributions from unspecified national export credit agencies is foreseen to cover TAP's total estimated costs of €5 billion.

10. 'The Outlook for Natural Gas Demand in Europe', June 2014, The Oxford Institute for Energy Studies – <https://www.oxfordenergy.org/wpcms/wp-content/uploads/2014/06/NG-87.pdf>

11. <http://www.gtreview.com/news/asia/aiib-and-world-bank-lend-big-to-tanap-project/>

12. <http://www.eib.org/projects/pipeline/2015/20150676.htm>

13. <http://www.reuters.com/article/azerbaijan-tanap-ebird-idUSL5N18M37M>

14. <http://www.eib.org/projects/pipelines/pipeline/20140596?media=rss&language=en>

15. <http://uk.reuters.com/article/uk-ebird-gas-idUKKCN0Y31S0>

BTC revisited

The EBRD's description of its potential involvement in TAP financing remains very general for now. However, in outline it echoes the financing structure of the Baku-Tbilisi-Ceyhan (BTC) oil pipeline project. Following a due diligence process, the rigour of which was contested by national and international NGOs, the EBRD and the International Finance Corporation (IFC) committed to

finance BTC, thereby ushering in the involvement of a syndicate of 15 commercial banks, including Société Générale, ABN Amro, Citigroup and Mizuho who acted as financial arrangers for €1.2 billion of syndicated loans. At the time, just shortly after the EP were launched with ten leading banks initially adopting them, NGOs documented the many ways in which the BTC project breached the EP.¹⁶



A farmer in the Greek province of Kavala pressed charges against a TAP contractor in October 2016 after finding bulldozers had entered his land. Image by Re:Common

The numerous BTC violations of the EP may have been tolerated or argued away by private banks owing to the novelty of the principles and the potential for them to raise consideration of environmental, social and corporate governance issues 'on the BTC job'.¹⁷ More than ten years on, however, **EPFI should not be prepared to tolerate demonstrable EP non-compliance during the**

pre-construction and construction phases of a major, high-profile project such as TAP. To do so would significantly tarnish the EP and undermine due diligence credibility. More crucially, it would also reduce the likelihood of the TAP company taking appropriate steps to remedy identified shortcomings, weaknesses and failures to abide by its stated commitments.

16. See: http://platformlondon.org/carbonweb/documents/Equator_Principles.pdf

17. A subsequent USAID report described, with reference to BTC project weaknesses, how public development banks have a responsibility to improve the quality of project environmental impact assessments by addressing key fundamental deficiencies. "These deficiencies are of concern if they have not been addressed prior to preconstruction or construction activities, because options for avoiding or mitigating potentially irreversible impacts might either not be identified, or if identified, may not be able to be implemented." See: http://www.baku.org.uk/USAID_MDB_report_Sept02-Oct04.pdf

The construction stage

In 2016 TAP construction work got under way in earnest following earlier work on the construction and rehabilitation of roads and bridges in Albania to access future pipeline construction sites – in Albania the project requires more than 57 km of access roads (newly built or updated), more than 40 refurbished and two new bridges, with an additional 125 km of road still to be refurbished.¹⁸

According to the TAP Twitter account in January 2017¹⁹, after eight months of work approximately one third of TAP's onshore route in Greece and Albania (250 km out of 765 km) had been graded and cleared; a November Tweet disclosed that 80 km of the pipeline had been welded in Greece and Albania.²⁰

A section on the TAP website devoted to the project's

construction²¹ immediately notes that: “Guided by the Environmental and Social Impact Assessments (ESIAs) in each host country, TAP's route has been selected to respect environmental, social and culturally sensitive areas wherever possible.” The caveat “wherever possible” reflects the scale of the project and, for example, the TAP website informs that “The project will affect approximately 19,060 plots of land: 10,170 in Greece, 8,700 in Albania and 190 in Italy. Also, it will affect approximately 45,000 land owners and users.”²² This current assessment's principal purpose is to identify where due respect for environmental, social and cultural requirements, as alluded to by the TAP website, has not been taking place during the consultation and early construction stages of the project.

18. TAP brochure, November 2016, available at: https://www.tap-ag.com/assets/07.reference_documents/english/brochure/TAP_brochure_Nov%202016_EN.pdf

19. See: https://twitter.com/tap_pipeline/status/821357349147463680

20. See: https://twitter.com/tap_pipeline/status/802107789673955328

21. <https://www.tap-ag.com/the-pipeline/building-the-pipeline>

22. See 'Land easement and acquisition explained' at: <https://www.tap-ag.com/land-access>

The TAP website further describes that compliance with the benchmark performance requirements of the EBRD is to underpin TAP’s development. These EBRD performance requirements are not dissimilar²³ to the IFC’s Performance Standards on social and environmental sustainability, which are the basis for the EPs.

The respective ESIA’s for TAP in Albania, Greece and Italy further refer to the EBRD performance requirements serving as the project’s ‘benchmark’ to “ensure that adverse impacts and risks to people, their rights, livelihoods, culture and environment is avoided or, where avoidance is not possible, minimised, mitigated, offset and/or compensated, and also where feasible, to identify and adopt opportunities to enhance environmental and social performance of the Project.”

Moreover: “This approach also provides for conformance with European Union (EU) Directives and further with the requirements of the Performance Standards (PS) of the International Finance Corporation (IFC) and other international project finance institutions (IFIs) who refer to these standards (e.g. Equator Principles).”

Thus TAP AG refers rather clumsily to the EP in its key ESIA



Roadside signs heralding TAP construction works. Buzuq, Albania. CEE Bankwatch Network

documentation, suggesting that the EBRD performance requirements will allow for ‘conformance’ with them. This corresponds – narrowly – to the EP requirement (contained in EP ‘Preamble’) concerning Project Finance Advisory Services that “we request the client explicitly communicates their intention to comply with the Equator Principles”. However, it is worth emphasising that the TAP company is compelled to comply directly and explicitly with the EP in light of Société Générale’s already existing advisory role for the project, which requires the bank to assess whether the project complies, or can be brought into compliance, with the EPs.

23. EBRD describes its Environmental and Social Policy as ‘aligned with’ IFC/Equator Principles Performance Standards – EBRD ‘Focus on Environment’, November 2016, page 7: <http://www.ebrd.com/focus-on-environment.pdf>

Country level conflicts and criticisms

Over the last few years, TAP has aroused controversy in Albania, Greece and Italy to varying degrees. However, as pre-construction and construction processes have escalated over the last 18 months and involved/provoked a range of problematic issues, conflicts and criticisms of the project have intensified in all three countries.

The fact that at least 13 complaints – ten from Albania, two from Greece and one from Italy – about the project have been submitted to the EIB from members of the

public and associations bears this out. This is a notably high number of complaints provoked by a project which is still only being considered for finance by the EIB. It reflects stakeholder dissatisfaction with the TAP company's management of the project, including its external relations with the public. It may also be indicative of a lack of confidence in the TAP company in the respective countries – significantly, the EIB has already become a last resort contact point for affected stakeholders.

Albania

The TAP investment has been welcomed by authorities at all levels in the least developed of the three transit countries, particularly as it runs through some of Europe's most impoverished rural areas. The Albanian ESIA was approved by the Ministry of Environment, Forests and Water Administration in April 2013, followed by official granting of the Environmental Permit.

Villages along the TAP route are dotted with scores of olive trees, orchards, pastures and fields providing subsistence for local inhabitants. Two fact-finding missions carried out in 2016 by NGOs (July: 32 villages visited²⁴; August: 30+ villages visited²⁵) unearthed extensive community discontent concerning involuntary resettlement, compensation for loss of land and property, damage to property (during the construction of a TAP access road) and the engagement methods being used by TAP's Albanian contractor ABKons.

TAP established the involuntary resettlement process, and compensation outcomes under its Land Easement and Acquisition (LEA) process are based solely on

the company's assessment. The set of notably open-ended principles to which TAP is committed for LEA and compensation (applicable to all the transit countries) includes the blunt contingency option "Expropriation and compulsory easement to be used if attempts at reaching an agreement fail."²⁶ The TAP grievance mechanism in Albania is barely known about or registering with affected people, while there is almost universal scepticism about the Albanian legal system's fitness to provide an alternative means for seeking redress.

Although collective resistance to TAP in Albania is much less marked than in Greece and Italy, the August 2016 fact-finding mission reported that: "Farmers in the village of Cangonj, about eight kilometres from the border with Greece, have decided to fight back. They have organised and sent a letter to the management of TAP in Switzerland protesting the plan to build the pipeline through their plum plantations. No less than 120 people had signed the letter, **but more than six months later they still got no response** [emphasis added]."²⁷

24. Findings available in the July 2016 fact-finding mission report 'We have no other option', available at: <http://bankwatch.org/sites/default/files/no-other-option-TAP-FFM-Albania.pdf>

25. See 'Last harvest looming for Albanian farmers along pipeline route' based on joint fact-finding mission conducted by the Albanian Helsinki Committee and CEE Bankwatch Network, available at: <http://stories.bankwatch.org/albanian-farmers-fear-last-harvest-along-pipeline-route>

26. See 'Land easement and acquisition explained' at: <https://www.tap-ag.com/land-access>

In response to the July fact-finding mission report, which contains a set of recommendations for public and private investors aimed at rectifying the compensation, LEA and grievance gaps and abuses uncovered in Albania, the EBRD notified NGOs in September 2016 that its environmental and social specialists would be undertaking site visits to affected areas in order to speak with affected communities. It is not known if these EBRD visits have taken place.

Greece

The TAP company has been engaging with stakeholders in Greece since 2008, and one comment, cited in the Greek ESIA documentation, capturing stakeholder sentiment is instructive: “A general scepticism regarding proper management of compensation issues and impact mitigation was expressed.”²⁸ Public rallies and organised resistance to TAP in north-east Greece duly sprang up in 2011-2012 as concerns grew during the project’s contested ESIA process.

In September 2014, Greece’s Ministry of Environment, Energy and Climate Change formally approved TAP Greece’s ESIA, a

decision challenged by farmers and citizen committees concentrated in the Eastern Macedonia and Thrace region through which the pipeline is planned to operate. The installation permit, formally allowing the commencement of construction work, was granted by the same ministry in June 2016.²⁹

These procedural hurdles may have been cleared by the TAP company, but discontent about the project was not and has not been quelled in the region. Following the ESIA approval in 2014, more than 400 people residing in the prefecture of Serres together with the municipal authorities of Serres and Emmanouil Pappa lodged challenges to the ministry decision at Greece’s Supreme Court. Similar challenges have been lodged by the municipalities of Kavala and Doxato.

At issue is the routing of the pipeline section Kavala-Serres-Thessaloniki, 113 kilometres in length, which would disrupt fertile agricultural land and present threats to various villages, and the location of a compressor station in the Serres plain.

Supreme Court judgments on the cases brought have been heavily

27. Quoted from ‘Last harvest looming for Albanian farmers along pipeline route’, see: <http://stories.bankwatch.org/albanian-farmers-fear-last-harvest-along-pipeline-route>

28. See ‘TAP’s Environmental and Social Impact Assessment (ESIA) process in Greece’ at: <https://www.tap-ag.com/our-commitment/to-the-environment/esia-greece>

29. ‘TAP gets green light in Greece’ – <http://www.naturalgaseurope.com/tap-gets-green-light-in-greece-30022>

delayed. The latest postponement, announced on February 2 this year, is the ninth so far, with a new date now set for May 5. This prolonged delay at the Supreme Court is viewed by people in the region as excessive and abnormal, leading to fears that judgments may only arrive after the pipeline is constructed.

In August 2015, a farmers' group, the Agricultural Association of Kavala, alerted the EIB to a range of problematic issues including inappropriate consultation methods deployed by TAP, instances of threats and malfeasance connected with land acquisition and concerns over safety and security issues for villages located less than a kilometre from the TAP route. They allege that in the Kavala area, rich in agricultural land, TAP has been unable to buy or rent 70% of the land required by the project – approximately 200 farmers are unwilling to settle terms with the company. Stand-offs between the company and farmers have resulted in police interventions, with farmers confronting TAP workers who have arrived on their land without permits or consent, according to the farmers. In October 2016, after various delays, an EIB delegation finally travelled to meet and discuss separately with the Agricultural Association of Kavala and a citizens' movement in Serres which is opposed to the

current TAP routing. The outcomes of this visit are unknown.

Also in October, and with TAP construction work under way, an NGO mission³⁰ to the Kavala province visited two locations where explicit land violations had recently been carried out by the JP Avax company, a TAP sub-contractor. One of the violations, on private land close to the village of Zygos, resulted in damage to the land by bulldozers which had entered without informing or consulting with the landowner, a local farmer, who subsequently pressed charges against the company. Another violation in September 2016 in the village of Lachanas (Thessaloniki prefecture) saw a landowner requesting police intervention to stop work by the TAP sub-contractors Bonatti-JP Avax on his land; however, after the landowner and the police departed the scene, the company proceeded to damage the land. In 2017, and the mayor of the municipality of Nea Zichni (in the prefecture of Serres) brought a case in January against Bonatti-JP Avax in a local court due to damage caused to public roads.

The mayor of Doxato has also taken action to stop the closure of a road by Bonatti-JP Avax after the sub-contractors damaged the local water mains, cut an electricity line and were preparing

30. See 'When Athens can't tell a Trojan horse': <http://stories.bankwatch.org/when-athens-cant-tell-a-trojan-horse>

to enter municipality property without permission.

TAP's ESIA for Greece declares that "Agreements on land purchase and easement rights will be made well in advance of construction start."

Italy

By far the shortest TAP section, the project's proposed eight kilometres, along with the construction of a Pipeline Receiving Terminal (PRT), in the province of Lecce, south-east Italy, is proving to be the most contentious by some distance.

The level of disruption and potentially harmful impacts that TAP would bring directly to the touristic and olive-growing town of Melendugno and to the wider Puglia region has been challenged for several years now by local communities and the municipal and regional authorities. Two hundred or so families, local fisheries, approximately 10,000 olive trees and a burgeoning local tourism sector are directly affected by the project proposal. TAP opponents are calling for the pipeline's construction to be stopped and question the wider benefits which the promoters claim it would deliver. The president of the Puglia region is calling for the pipeline to land further up the coast at Brindisi,

where it would be able to connect directly to the gas network and project impacts could be minimised. As of early 2017, TAP construction has not commenced due to ongoing legal processes.

At the consultation stage for the Italian ESIA, the municipality of Melendugno established a Technical Commission comprised of engineers, biologists, geologists, economists and academics. The Commission's view was that the preliminary project documentation was both inaccurate and lacking in numerous aspects. Substantial revisions to the ESIA were subsequently made by the TAP company. The Melendugno municipality and the Puglia region both issued negative opinions of the revised ESIA. Under Italian law, the Ministry of Environment cannot refuse to approve a project's submitted environmental assessment, and in September 2014 the environment minister approved the TAP Italy ESIA. At the same time, however, the ministry attached 58 mandatory provisions for TAP to fulfil before the beginning of construction.

This level of mandatory provisions for a single project is unusually high, and the Ministry of Cultural Heritage and Activities and Tourism also insisted on the fulfilment of a further six provisions. The TAP company is

understood to have so far provided documentation adequate to fulfilling **only three of the mandatory provisions** and is said to be seeking final authorisation to proceed on the basis of fulfilling the missing provisions only during its implementation of the project . This is an alarming intent, one which should set off alarm bells among responsible responsible potential investors.

In spite of objections from local and regional authorities, the Italian government granted the project a 'special decree' authorisation in May 2015, permitting the commencement of construction by May 2016 if the necessary provisions were fulfilled. The Puglia regional authorities are legally challenging this authorisation, asserting that a comprehensive, fit for purpose executive project, which would provide the basis for comprehending fully how TAP will be implemented, is currently not available for due scrutiny and dialogue. The temporary removal of economically and culturally

vital olive trees, one of the most acute project tensions, continues to be highly contested – the regional authorities point out that there is no permit for the operation, and the project stands to be beset by further delays if the sensitive removal operation does not take place before the legal time window for doing so closes on April 30, re-opening again only in November 2017.

The original TAP ESIA documentation noted that “olives are the most important crop in the area with 81.1% of land in Melendugno ... used to cultivate olives for olive oil production.” From the outset, TAP’s determination to proceed with its preferred routing in Italy thus involved steep challenges, albeit in a highly focused, proposed zone of operations. However, as evidenced by the strength of opposition from local people and various authorities, TAP has so far not been able to convince that it can adequately and responsibly meet these challenges.

TAP's non-compliance with the Equator Principles

This section, drawing on much of the evidence described above, clarifies the TAP project's Category A status under the EPs, and then explains how the project is failing to comply with EPs 2, 3, 5 and 6, as well as an IFC Performance Standard applicable to Albania only.

PRINCIPLE 1: REVIEW AND CATEGORISATION

The EIB's project page for TAP³¹ notes: "By virtue of its technical characteristics, the TAP project falls under Annex I of the Environmental Impact Assessment (EIA) Directive 2011/92/EU (as amended by Directive 2014/52/EU)." As described by the European Commission's

Directorate-General for Environment in notes on Environmental Impact Assessment (EIA),³² "all projects listed in Annex I are considered as having significant effects on the environment and require an EIA".

Accordingly, TAP's scale, complexity, its direct and long-term disruption of hundreds of people's lives, and its EIB categorisation would also make it a **Category A project in all the transit countries** for the EPs.

For EPFIs which may choose to become involved in TAP, the project's Category A status would require them to conduct "environmental and social due diligence ... commensurate with the nature, scale and stage of the Project, and with the level of environmental and social risks and impacts."³³

31. See: <http://www.eib.europa.eu/projects/pipelines/pipeline/20140596>

32. See: <http://ec.europa.eu/environment/eia/eia-legalcontext.htm>

33. EP III, page 5

PRINCIPLE 2: ENVIRONMENTAL AND SOCIAL ASSESSMENT

Requirements: The EPFI will require the client to conduct, to the EPFI's satisfaction, an Assessment process of the relevant environmental and social risks and impacts of the proposed Project. An ESIA is required for all Category A projects. This principle notes that the specific risks posed by a Category A project may also require more specialised studies to be undertaken. Further, the assessment is required to be "an adequate, accurate and objective evaluation and presentation of the environmental and social risks and impacts, whether prepared by the client, consultants or external experts." Assessment documentation "should propose measures to minimise, mitigate, and offset adverse impacts in a manner relevant and appropriate to the nature and scale of the proposed Project."

The assessment process and documentation for TAP remain so deeply contested, unclear and unresolved in Italy (as outlined above), and have been subject to significant stakeholder unease and requests for alternatives in Greece (also outlined above), such as to make it impossible for any EPFI to consider the project as being in compliance with this principle. In both countries the legality of the

the project is being contested, and final legal judgments are still pending.

Furthermore, in Italy, safety and environmental/touristic concerns raised by stakeholders have not been adequately addressed by the company, and a long list of mandatory provisions attached to the ESIA are still unfulfilled. These include engineering studies on how drilling work is to be carried out, assessments on impacts to the seabed and independent studies on species impact. A number of the provisions attached to the EIA refer to the construction of a 'micro-tunnel' planned to pass under the beach in San Basilio, in the locality of San Foca. The executive project for such a micro-tunnel has not been presented by the project promoter so far, and neither of the attached provisions have been fulfilled. TAP company circumvention of these obligations, attempting to conform in the process of implementing the project, would constitute an explicit violation of the EP.

In Greece, while numerous meetings have taken place between stakeholders and the company regarding concerns over safety for residents and impacts on agricultural land as a result of pipeline routing and the location of associated infrastructure, there is widespread sentiment that the

TAP company has presented the project and the chosen routing as a fait accompli.

Major concerns relate to pipeline integrity in the acutely flood-prone region of Tenagi in Kavala, the routing through high productivity agricultural zones in Serres and Kavala and the proposed site location of a compressor station in the plain of Serres. TAP's Greek section plans one compressor station near Kipoi appropriate for initial transportation of 10 bcm of gas, and an additional compressor station near Serres should, as is being suggested, TAP's capacity be upgraded to 20 bcm. One technical study³⁴ presents four alternative locations for the Serres compressor station, deemed necessary as the area is seismogenic and because of the proximity of TAP's three proposed locations "to a large number of villages and settlements, accident risks and other negative environmental impacts". This technical study concludes that these risks and impacts "are assessed rather inadequately in the present TAP Environmental Impact Assessment Study."

PRINCIPLE 3: APPLICABLE ENVIRONMENTAL AND SOCIAL STANDARDS

Requirement: For projects located in EP 'designated countries' (such as Greece and Italy), the borrower's assessment process must address compliance with "relevant host country laws, regulations and permits that pertain to environmental and social issues". For projects located in EP 'non-designated countries' (such as Albania), the IFC's Performance Standards are the applicable standards which have to be complied with.

The ongoing legal uncertainty affecting the TAP project in Italy makes it non-compliant with this principle. In 2016 the regional authority of Puglia withdrew authorisation for the project and is legally challenging the Italian government's 'special decree' authorisation for the project of May 2015. Further complaints related to ESIA administrative procedures are to be heard in Italy's Supreme Court in March this year.

To ensure that the TAP project conforms with the highest safety and environmental standards,

34. http://www.counter-balance.org/wp-content/uploads/2017/02/TAP_Compressor-station_Greece.pdf

35. According to the ESIA for TAP Italy: "Note that the Project does not fall into Seveso III Directive (Directive 2003/105/EC) because: as stated by Article 4, Clause (d): 'the Directive shall not apply to the transport of hazardous substances in pipelines, including pumping stations, outside establishments covered by this Directive'; the Pipeline Receiving Terminal would not store large volumes of natural gas or other dangerous substances."

stakeholders in Greece and Italy have pointed out that it must comply with the EU law known as the Seveso Directive pertaining to the control of major accident hazards involving dangerous substances. The TAP company does not view the Seveso Directive as being applicable to the project³⁵ – this view is also being challenged in the Italian courts.

From an EP perspective, the situation in Albania, a so-called ‘non-designated country’, differs from the situations in Greece and Italy, so-called ‘designated countries’.³⁶ Under EP3, a number of IFC Performance Standards are the applicable standards for Albania, a ‘non-designated country’. Based on an NGO fact-finding mission conducted in July 2016, TAP is not in compliance with the IFC’s Performance Standard 5 (PS 5) on ‘Land Acquisition and Involuntary Resettlement’.

As described to NGO investigators by a range of affected people along the pipeline route, compensation negotiations and offers (and the confusing, at times obfuscating manner in which the process has been conducted) have resulted in widespread dissatisfaction, with some families confirming they had refused to sign lease contracts for their properties, while many insist that they had little option but to sign.

The fact-finding mission report recounts that the resettlement process has “apparently not ensured that resettlement measures were designed and implemented via a participatory process – we did not encounter any person who was aware of any discussion about how the resettlement ought to be organised. Affected people reported that they were merely informed about the project at community meetings and the [resettlement] mechanism was designed by the company. Furthermore, when they received compensation offers, a number of them were of the impression that their only option was to accept the offer made or face expropriation.”³⁷

One man facing TAP construction on his vineyard told NGO investigators, “They tell us they will compensate us with 200 lek (EUR 1.50) per square meter ... [t]he price of a cup of coffee per square meter.”³⁸ Many inadequacies and inconsistencies with compensation have been recorded, suggestive of systemic problems rather than individual ‘hiccups’. The company’s insistence that compensation can only be paid into accounts held at one designated bank – Intesa Sanpaolo Bank – is viewed by stakeholders as problematic, inconvenient and insensitive.

36. See: <http://www.equator-principles.com/index.php/ep3/90-ep-iii>

37. See: <http://bankwatch.org/sites/default/files/no-other-option-TAP-FFM-Albania.pdf>

38. Quoted in ‘Last harvest looming for Albanian farmers along pipeline route’: <http://stories.bankwatch.org/albanian-farmers-fear-last-harvest-along-pipeline-route>

The following two recommendations regarding compensation³⁹ are included in the fact-finding mission report:

1. Require TAP AG to provide additional compensation in cases where the conducted compensation procedure has not ensured at least livelihood restoration.
2. Require TAP AG not to commence pipeline construction on land plots where compensation has not been fully settled – including the final transfer of all agreed compensation sums.

At a minimum, and as detected by the fact-finding mission, in Albania TAP is not fulfilling the following key requirements of the IFC's PS 5:

- Take possession of acquired lands and related assets only after compensation has been paid (or, in exceptional circumstances such as disputes over ownership, has been deposited in an escrow or similar account);
- Ensure compensation standards are transparent and applied consistently to all displaced communities and people;
- Provide displaced communities and persons compensation for loss of assets at full replacement cost and provide other assistance to improve or, at minimum, restore their former standards of living.⁴⁰

PRINCIPLE 5: STAKEHOLDER ENGAGEMENT

Requirements: The EPFI “will require the client to demonstrate effective Stakeholder Engagement as an ongoing process in a structured and culturally appropriate manner with Affected Communities and, where relevant, Other Stakeholders.” Further, for projects with “potentially significant adverse impacts on Affected Communities” – such as the TAP project – the EPFI will also require the client to conduct an Informed Consultation and Participation process. Principle 5 also requires that the consultation process be “tailored” to the risks and impacts of the Project and should be “free from external manipulation, interference, coercion and intimidation.”

TAP is failing to comply with these requirements in all three host countries – relevant failings in Albania are outlined in the country section and the section on Principle 3 above. The company's failure is most marked in Italy where trust between the company and much of the affected community in Melendugno, as well as other stakeholders (i.e., local and regional authorities), has reportedly broken down.

39. See: <http://bankwatch.org/sites/default/files/no-other-option-TAP-FFM-Albania.pdf>

40. See: http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES

A public consultation in December 2013 on the project ESIA was deemed by local stakeholders to be a failure. Taken together with a compensation process widely characterised as ‘take our offer or we will expropriate’, affected people were thus compelled to self-organise and establish a local resistance committee. Local fishermen are organised in two main co-operatives, one of which has refused to reach agreement with TAP. The other co-operative has agreed compensation for reductions in fishing activity during project preparation but has yet to receive compensation. As tensions mount amidst the ongoing uncertainty which hangs over the project’s preparedness, the mayor of Melendugno, Marco Poti, has recently reflected on the deterioration in relations with TAP over the last few years: “At (sic) the beginning, we even welcomed them, but when we saw their misleading techniques, we ended any type of relationship.”⁴¹

In Greece, where the routing of the pipeline is planned to traverse wide tracts of high value agricultural land, farmers’ groups have compelled the company to engage in additional stakeholder meetings in order to air concerns – according to the farmers, at these meetings the company has often been high-handed and unwilling to listen. The increasingly tense

situation in the Kavala region, visited by an NGO team in October 2016, has seen coercion and intimidation aimed at breaking the resolve of farmers who are holding out against the project. During its visit, the NGO team found itself under 24 hours a day surveillance from Greece’s secret police, on the instruction of the government.

PRINCIPLE 6: GRIEVANCE MECHANISM

Requirements: The EPFI will require the borrower to establish a grievance mechanism “designed to receive and facilitate resolution of concerns and grievances about the Project’s environmental and social performance” in all Category A projects. The grievance mechanism must be scaled to the risks and impacts of the project and “seek to resolve concerns promptly, using an understandable and transparent consultative process that is culturally appropriate, readily accessible, at no cost, and without retribution to the party that originated the issue or concern.”

TAP has initially complied by establishing individual grievance mechanisms in each of the three host countries. CEE Bankwatch Network’s fact-finding mission in

41. Reported in ‘Azerbaijan: Energy Hopes vs. Italian Olive Groves’, January 20, 2017 – <http://www.eurasianet.org/node/82061>

July 2016 found very limited public awareness of TAP's grievance mechanism in Albania, in spite of widespread stakeholder grievances. It found instances of complaints – not lodged formally with the grievance mechanism but with project staff members – about compensation that had been handled poorly and to the dissatisfaction of complainants. The official Land Easement and Acquisition booklet, distributed to all stakeholders expected to be impacted, notably makes no mention of the Albanian TAP grievance mechanism. This report has not obtained information about the workings of these mechanisms in Greece or Italy.

In light of the fact that stakeholders' rights are being compromised in Albania, the Bankwatch report calls for "TAP AG to inform all people who have already been identified by TAP (or its contractors) as directly affected by Land Easement and Acquisition about their rights, and particularly about the possibility of using grievance mechanisms (both that of TAP as well as those in place at the respective IFIs)."⁴²

The existence of these TAP grievance mechanisms does not entail full EP compliance at this stage. The Albanian grievance mechanism has notified NGOs that

it will issue a report on its activities to date some time in 2017; similar reports ought, too, to be issued by the Greek and Italian grievance mechanisms. Potential EPFI investors should insist on the publication of these reports in order to properly assess the functioning and credibility of TAP's grievance mechanisms. Given the scale of the project, the apparent invisibility of the Albanian mechanism raises doubts about the company's stated commitments to uphold stakeholder rights fully.

42. <http://bankwatch.org/sites/default/files/no-other-option-TAP-FFM-Albania.pdf>

Conclusion

The Equator Principles are understood to be the minimum standard for responsible investment and management of environmental and social risk in the project finance sector. Banks that aspire to be seen as leaders on responsible investment and environmental and social policy need to go beyond these minimum standards.

As detailed in this report, the TAP project, to varying degrees across

the transit countries Albania, Greece and Italy, is failing to comply with the minimum environmental and social norms demanded by EPs 2, 3, 5 and 6. As it is not compliant with these principles, the project is not appropriate for investment by EPFI, nor should it be considered for financing by any banks that aspire to socially and environmentally responsible investment.