
HRVATSKA BANKA ZA OBNOVU I RAZVITAK (HBOR)



Croatia's export credit agency (ECA) HBOR (Hrvatska banka za obnovu i razvitak/Croatian Bank for Reconstruction and Development) was founded in 1992 on the model of the German Kreditanstalt für Wiederaufbau (KfW). At the time, HBOR's main role was to finance reconstruction in war-torn Croatia. Since 1998 the bank has also carried out export credit insurance on behalf of the Republic of Croatia, as well as other banking activities. HBOR's role in supporting Croatia's economy is threefold. HBOR is primarily a development bank supporting sectors like construction and infrastructure. It also acts as an export finance bank providing four types of credit: pre-export finance, buyer credit, supplier credit and the Loan Programme for the Financing of Exporters out of IBRD Loan Proceeds. Its role as a classic ECA in the sense of an export insurer on behalf of the Croatian state includes providing guarantees (insurance and reinsurance) for exports against non-marketable risks. Additionally, HBOR can apply an "escape clause" in order to provide insurance for a portion of risks not covered in the private markets. HBOR is entirely owned by the Republic of Croatia. The equity capital of the bank consists of only one share (in the hands of the Republic) which may not be divided, transferred, or pledged.

Decision-making structures¹

Management Board (MB): 3 persons, one of which is the President of the board; members are appointed by the Supervisory Board. The MB is in charge of HBOR's everyday business and can adopt loan programmes, make individual loan and other financial transactions, as well as take employment decisions; reports to the Supervisory Board.

Supervisory Board (SB): 10 members: 6 ministers of the Croatian Government, 3 members of the Parliament and the Chairman of the Croatian Chamber of Economy. The Minister of Finances is the President and the Minister of the Economy is the Deputy President of the SB. The SB monitors and controls the legality of operations of the MB and appoints and revokes the President and Members of the MB. The SB determines the principles of business policy and strategy, supervises the bank's business operations, establishes the credit policies, prepares the annual financial statements and considers the

reports of internal audit, external independent auditors, and reports of the State Auditing Office.

The Audit Committee is an independent body, the members of which are appointed by the SB. The Audit Committee is comprised of 3 members, at least one of whom is appointed among the members of the SB, and the other 2 members are appointed by the SB.

Environmental and human rights screening

HBOR has formally committed to adhere to the OECD Common Approaches since 2013. However in practice it is unclear how this is implemented as there are no category A or B projects listed on its website. This may be due to the small size and nature of their export guarantee projects, but it is not clear from the bank's annual reports² and corporate social responsibility reports³ (in further text SRSR). In addition, HBOR has developed Environmental Review Procedures as part of the World Bank-financed Croatian Export Financing Guarantee Project (CEFGP). This document serves as a tool for screening sub-projects. HBOR has a team of employees to screen projects in its internal Department of Technical Analysis and Environmental Protection. According to one HBOR employee, if HBOR had an environmentally-sensitive project and was not able to do the necessary analysis itself, it would ask an external entity for support, such as the German ECA Euler-Hermes.

In an interview with NGO representatives, HBOR staff said that HBOR's main financial supporters are institutions such as the European Investment Bank, the Council of Europe Development Bank and the World Bank, so HBOR has to adopt the policies and procedures of these institutions concerning the protection of human rights and the environment. They also stated that HBOR follows the OECD Recommendation on Bribery and Officially Supported Export Credits, the Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, as well as the Principles and Guidelines to Promote Sustainable Lending Practices in the Provision of Official Export Credits to Lower Income Countries.

1. <https://www.hbor.hr/en/>
 2. https://www.hbor.hr/wp-content/uploads/2019/07/HBOR_Financial-statements-2018_ENG-web.pdf
 3. <https://www.hbor.hr/wp-content/uploads/2019/08/SRS-report-2018-.pdf>
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Questioned regarding the implementation of the UN Guiding Principles on Business and Human Rights, a HBOR representative answered: “We are aware of the guidelines. Further application to our processes by using the appropriate methods is an ongoing challenge for us.”

In 2011 HBOR supported some projects with potential impacts such as the manufacturing of machinery for mines in South Africa. In the same year the bank also issued a letter of intent for insurance, thus enabling Croatian exporters to participate in international tendering procedures for the construction of a 108 MW hydropower plant in Georgia. From the timing and capacity, it seems this might have been the controversial Dariali hydropower plant. In 2012 HBOR backed the delivery and operation of boilers for waste incineration in Switzerland and the United Kingdom. These projects would almost certainly have qualified as category A and B projects if HBOR had adopted the Common Approaches at that time. HBOR has supported projects with credits and guarantees in some very high-risk countries (Turkmenistan, Russia, Azerbaijan, Nigeria, Liberia, Iraq). While ECAs exist to take risks, they also need to ensure that they properly assess projects’ corruption risks as well as the political risks of supporting authoritarian governments. Given that HBOR does not publish information about projects before they are approved, it is not very clear how the bank minimises the risk of supporting projects which are problematic in this regard. Publishing project information in advance would help to provide opportunities for anyone with relevant information to come forward and inform the bank about it.

Climate mitigation measures

In its SRSR 2018, HBOR states: “Financial sector plays an important role in the achievement of sustainable development ... In this context, the goals of establishing a comprehensive internal sustainability and social responsibility system have been set, with the identification of environmental and social risks and issues of material importance for HBOR's work. ...” It is also stated that “In 2018, HBOR financed investment projects in infrastructure, energy efficiency, environmental protection and renewable energy resources in an amount exceeding HRK 1.34 billion. Through the Loan Programme for the Financing of Projects of Environmental Protection, Energy Efficiency and Renewable Energy Resources, HBOR supports responsible behaviour towards protecting and improving the quality of the environment. Through this Programme, loans are approved for investment

projects intended for improving of waste dumping sites, managing waste, encouraging clean production, preventing and preserving of biological and landscape diversity, implementing national energy programmes, encouraging the sustainable construction and transport and promoting other projects of environmental protection, energy efficiency and renewable energy resources. Further, such approach is embedded in the loan application management procedure: when loans are implemented by HBOR directly, an environmental impact assessment is required. When submitting loan application, a potential borrower is obliged to enclose the filled in Environmental Protection Questionnaire that includes the following information:

- Profile of the applicant and its environmental management policies, quality management policy or health protection and safety at work policy,
- Profile of the location, history of location and existing activities on the location, all from the aspect of environmental protection,
- Condition of the environment – air and dangerous waste emissions, water consumption, waste water release and waste generation and management.

The filled in Questionnaire is analysed and assessed by an expert team that gives its assessment of the project and investment impact on the environment. ... In the cases of export finance, the OECD recommendations are taken into account. The mentioned recommendations of the OECD include:

- The Recommendation of the Council on Bribery and Officially Supported Export Credits;
- Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence;
- Principles and Guidelines to Promote Sustainable Lending Practices in the Provision of Official Export Credits to Low Income Countries.”

Despite everything stated above in its SRSR 2018, HBOR does not appear to have developed any significant climate mitigation measures. Apart from agreements within the OECD Export Credits Group, HBOR appears to have no specific policies for reducing CO2 emissions in project export credit and guarantees, regarding fossil fuels and coal or other climate-related areas. It is not clear whether HBOR has started documenting the amount of greenhouse gas emissions from fossil-fuelled power plants

within the scope of the Common Approaches, and it is not clear whether it has supported any such projects. The majority of the information from the SRSR is unverifiable, because HBOR does not publish it and does not provide it upon request (see below in the section on Transparency). In addition, HBOR has no explicit policy on refusing to finance fossil projects.

Furthermore, the Croatian NGO BIOM⁴ has received information from HBOR that it financially supported the controversial project of the Krs-Padjena wind farm near Knin, with 80 million EUR (590 million HRK). The project is environmentally damaging and its legality and compliance with EU regulations are currently being examined by the European Commission. BIOM had also warned the public earlier that this project was approved on the basis of non-updated, more than ten-year-old environmental data in the Knin area, on a site protected by the Natura 2000 ecological network, which is in breach of national and European nature protection regulations.

The practice of large European banks is not to finance projects that do not comply with national and EU law. This, at BIOM's request, was confirmed by the European Investment Bank. Finally, the project for the construction of the wind farm was reported to the EC by Croatian environmental protection organizations, and the EC is now investigating the project's compliance with European legislation in the field of nature protection. BIOM also warned that, when a Member State fails to comply with its commitments regarding the environmental acquis, a lawsuit on the Court of Justice by the Commission against that country is likely. Given that the Ministry of Environment and Energy was informed of the investigation, BIOM believes that HBOR's approval of the credit to this project is an additional blow to the efforts to implement European environmental legal acquis in Croatia, as well as to the compliance with currently applicable Croatian laws.

Reporting

HBOR reports publicly on its activities as part of its semi-annual and annual report and in its quarterly financial statements. Within the reports basic information is provided about the amounts guaranteed and disbursed together with some examples of projects. HBOR publishes an annual report on social responsibility and sustainability (from 2018 by this name, previously it was called the Report on social responsibility). The Croatian ECA also reports quarterly to the Ministry of Finance and the Committee for Export Credit Insurance. The Committee for Export Credit Insurance is comprised of 6

members - representatives from the Ministry of Finance, the Ministry of Economy, the Ministry of Agriculture, the Ministry of Foreign and European Affairs, the Croatian National Bank and the Croatian Chamber of Commerce.

HBOR is obliged to quarterly and annually inform the mentioned Committee on HBOR's business activities as a public ECA. HBOR provides technical and administrative support to this Committee, which is, according to a 2008 Government decision, supposed to send an annual report on its work to the government. The latest Committee report, which was found on the government webpage,⁵ is for the year 2017 and it was adopted by the government in July 2018. For CSOs performing independent oversight over HBOR, the fact that these reports are not published annually and that there are significant delays suggests that reporting isn't done as regularly as prescribed, although HBOR claims that the Committee reports annually. This raises questions about the institutional framework for oversight over HBOR's export-related decisions and operations, which should ensure that public funds are managed and spent in the best interest of Croatia and its people.

Once a year, the Supervisory Board submits its financial statements and annual report to the Croatian Parliament, and HBOR reports to the EC on its short, medium & long-term insurance projects. After the President of the Parliament receives HBOR's financial report, s/he sends it to the government which then issues an opinion⁶ and chooses several representatives to be present at the discussions related to the opinion within the Parliament and its Committees. Then discussions about this report take place within at least two parliamentary Committees. On the Croatian Parliament's website, there are decisions⁷ approving HBOR's financial reports by the Finance and Central Budget Committee and the second Committee (usually the Committee on the Economy). The Committees get HBOR's reports as well as the Government's opinion. After discussion, the Committees decide on approving the report and propose the approval of the financial report/statements for the parliament. The fact that the last HBOR report approved by the committees and the parliament regards 2017, and that the 2018 report⁸ entered the parliament procedure in June 2019 and the committees' decision still hasn't been made, can also give an idea about the "timeliness" of the procedure, which seems to be rather formal.

Transparency

Regarding the openness of its work to the public, HBOR stated in the SRSR 2018:

"HBOR continuously performs measures aimed at increasing access to information

4. <https://www.biom.hr/vijesti/hbor-dao-zeleno-svjetlo-projektu-kojega-istrazuje-europska-komisija/>
5. <https://vlada.gov.hr/UserDocsImages//2016/Sjednice/2018/07%20srpanj/108%20sjednica%20VRH//108%20-%202017.pdf>
6. https://www.sabor.hr/sites/default/files/uploads/sabor/2019-07-18/154902/m_%20IZVJ_HBOR_2018.pdf
7. <https://www.sabor.hr/radna-tijela/odbori-i-povjerenstva/izvjesce-odbora-za-financije-i-drzavni-proracun-s-objedinjene-5>
8. <https://www.sabor.hr/godisnji-financijski-izvjestaji-hrvatske-banke-za-obnovu-i-razvitak-hbor-za-2018-godinu?t=110440&tid=207960>

for all stakeholders and informing the public in a proactive manner. HBOR puts a special focus on providing information to the public about its goals and about the measures for their attainment as well as about the results of its activities by simultaneously obeying the principle of bank secrecy. Therefore, all information on HBOR's operations can be found on HBOR's websites except for those subject to bank secrecy regulations pursuant to the Credit Institutions Act. ..."

It is also stated that "information in possession of HBOR is available to the beneficiaries of the right of access to information and of re-use of information under the terms and conditions prescribed by the Right of Access to Information Act,⁹ except for the information subject to bank secrecy pursuant to the Credit Institutions Act ... In 2018, 39 requests for access to information were received pursuant to the Right of Access to Information Act." Finally, in their case: "The stakeholders vis-à-vis HBOR are the persons who affect HBOR or who are affected by HBOR's decisions and activities. HBOR's stakeholders are: government and public administration bodies, beneficiaries, foreign and local financial institutions, regulatory bodies, rating agencies, employees, local community, NGOs, suppliers/investors and media. HBOR monitors the standpoints of the stakeholders, assesses their foundation and takes necessary measures to gradually improve relationships and develop transparency. HBOR communicates with the stakeholders actively and openly with a special focus on the improvement in quality of communication with beneficiaries."

However, only the number of cases received is reported in the report - real-life practice tells a different story. Namely, when answering requests from CSOs and citizens in accordance with the RAIA, HBOR stated it would not give out data about its projects like their purpose, the names of clients or the amount of funds granted to a specific beneficiary. Its basis for this denial of information is the aforementioned Credit Institutions Act¹⁰ (specifically section XII which explains the obligation of banking secrecy).

However, repeated rulings by the Information Commissioner, as well as the Croatian High Administrative Court,¹¹ found that this argument about banking secrecy is incorrect. In short, the rulings state that, since HBOR uses public funds for its operations, every person has the right to know how public funds are spent. After the High Administrative Court rulings, HBOR also tried a somewhat unconventional legal solution - it asked the State Attorney's Office (SAO) to make a request to the Supreme Court to overthrow the verdict (the first one regarding the journalist Simicevic's request - see below - and the following requests).

The SAO decided to support HBOR,¹² which is interesting because it didn't have a legal obligation to do so, and could have easily denied their request, being that this kind of procedure wasn't the usual practice for the SAO. However, this was also futile, as the Supreme Court in the end of 2018 denied the request of the SAO¹³. This means that all related requests towards the Supreme Court will also be denied. HBOR was ordered to provide the requested information.

Nevertheless, HBOR didn't give up after that. It made a final desperate move - a lawsuit at the Constitutional Court of the Republic of Croatia. Its claim was that its human rights and fundamental freedoms guaranteed by the Constitution were violated by the ruling(s) of the High Administrative Court to provide information to citizens/organizations. On June 11th 2019, the Constitutional Court concluded that HBOR's constitutional complaint was inadmissible¹⁴ because a bank, as a public-law body founded by the State, could not invoke the violation of human rights and fundamental freedoms guaranteed by the Constitution. Neither the State nor the bodies it established, the Constitutional Court explained, are authorized to file constitutional complaints claiming that their human rights and fundamental freedoms guaranteed by the Constitution have been violated by another State body. Namely, the High Administrative Court (against which HBOR filed the constitutional complaint) is also a State body.

It all started with the journalist Hrvoje Simicevic, who in accordance with RAIA requested HBOR's management to provide the information about the companies that HBOR granted credits to from 2010 to the end of 2013 and the amounts of those credits. He had reasonable doubt that a credit was given to a company owned by the family of an assistant of the Minister of Finance (which proved correct, see the Segon case described below) during the time he was employed in this function, therefore causing a severe conflict of interest. However, the process that said journalist had to go through to obtain the required information lasted almost two years. Anyone who until June 2019 has asked HBOR for information on credits granted and management decisions has had to go through the same lengthy journey as Simicevic, despite the numerous rulings that credits granted by HBOR cannot be kept secret because HBOR is not a commercial bank but a state credit institution, whose share capital is taxpayers' money.

Environmental organization Green Istria can relate to the Simicevic case. The first example is when Green Istria asked about projects in October 2016 (after the Simicevic High Administrative Court ruling), HBOR first released only aggregated data, citing banking secrecy

9. <https://www.pristupinfo.hr/pravni-okvir/?lang=en>

10. <https://www.zakon.hr/z/195/Zakon-o-kreditnim-institucijama>

11. <https://www.jutarnji.hr/vijesti/hrvatska/grcevita-pravna-bitka-drzavne-banke-hbor-digao-23-tuzbe-da-sprijeci-objavu-podataka-0-svojim-kreditima-vec-16-puta-izgubio-spor/7950154/>

12. <https://www.tportal.hr/vijesti/clanak/zasto-dorhna-vrhovnom-sudu-trazistopiranje-uvida-u-kredite-hbor-a-foto-20181026>

13. <https://www.jutarnji.hr/vijesti/hrvatska/vrhovni-sud-donio-odluku-hbor-vise-ne-smije-tajiti-koje-tvrtke-i-kojim-iznosima-kreditira/8243942/>

14. <https://www.jutarnji.hr/vijesti/hrvatska/ustavni-sud-hbor-mora-dati-podatke-0-korisnicima-kredita/9095732/>

laws. After the Information Commissioner's decision, issued on the basis of a Green Istria complaint against HBOR's decision, again confirmed that every person has the right to know how public funds are spent, and ordered HBOR to provide the information, HBOR again started an administrative dispute against the decision, and, again, lost the case.

About 4 months after the High Administrative Court's ruling, in November 2017, HBOR finally fulfilled its legal obligation, and delivered the information. In the letter accompanying the documents, HBOR stated that it does not require its beneficiaries to deliver the name of the projects, and therefore does not have any records about the projects by their names. HBOR also explained that within the pre-export finance programme it approves "revolving loans for working capital for export preparation and export of goods", so HBOR possesses information about the value (which can be up to almost EUR 4 million) of the approved loans but not information about project names, companies, export countries, or economic sectors to which the projects belong.

However, bearing in mind that HBOR has formally committed to adhere to the OECD Common Approaches since 2013 and all the above stated quotes from its SRSR, it is unclear how this is possible. In four out of the five delivered documents, HBOR kept insisting that the data provided represents a banking secret. The fifth document is the one containing aggregated data which HBOR had previously already sent to Green Istria.

The issue with the set of data provided was that not a single word of description of the projects was available. Therefore, in late 2017, Green Istria sent a request for amendment and correction of information, and received another set of documents from HBOR. In January 2018, HBOR delivered amended information and enabled Green Istria to get at least some idea about the projects, as this time HBOR indeed provided a short description of the goods exported or projects, and associated them with the companies' names, economic activities and sectors (such as energy or wood industry etc.), countries of export and export values, within its export guarantees and export insurance programmes. But still, in relation to some projects, HBOR provided more information (e.g. the exact names of hydropower plants for which transformers were produced, like Shiroro in Nigeria or Skedvi in Sweden), while in some cases only the exported product (e.g. transformers) was named.

The second example is very recent - in April 2019 Green Istria requested information

regarding the export projects credited from 1.1.2015 - 31.12.2018 and in May got the same "banking secret" response. Furthermore, in its response, HBOR also explained that (putting aside the previous Court verdicts) for every case they "must exhaust all legal options at their disposal in order to obtain confirmation from the highest court instance, in the event of the clients' claim for damages for disclosure of bank secrecy. ... Such action is necessary because in this way HBOR protects itself, but also the Republic of Croatia, which guarantees for the obligations of HBOR, against potential clients' claims against HBOR and the Republic of Croatia for disclosure of proprietary information which are a bank secret." This is unacceptable - that HBOR ignores the verdicts of the High Administrative, Supreme and Constitutional Court and that it abuses public resources by bringing every single request for information to the courts. Green Istria made a complaint against HBOR to the Information Commissioner on May 24th 2019, but by the end of September we had received no feedback regarding our complaint.

Another Croatian NGO, GONG, has a very similar story. It requested information regarding the details of HBOR's projects¹⁵ on more than one occasion¹⁶, before and after the Court rulings. In all cases HBOR refused to provide information based on GONG's RAIA requests, with the usual "banking secret" argumentation, but also adding that "large amounts of data are requested, whose processing and systematization would burden the normal operation and regular functioning of the public authority".

Despite the fact that HBOR refuses to provide information until it receives court rulings ordering it to do so, in July 2019, upon the request from the NGO BIOM mentioned above, it did provide information about the wind farm investment near Knin without hesitation. It is unclear whether this "shift" is caused by the Constitutional Court's verdict in June, or if it was a discrepancy from their usual information providing practice. This remains to be seen what will be the case with future requests for access to information.

Conclusion

For decades, HBOR has been subject to minimal public scrutiny, with media and relevant institutions rarely asking questions about the social and environmental costs of the business it supports.

The 'UN Guiding Principles on Business and Human Rights' are not fully implemented, and the 'OECD Guidelines for Multinational Enterprises' still need to be adopted. The fact that HBOR mainly does small projects is not a reason to not adopt

15. <http://imamopravoznati.org/request/6393/response/7818/attach/2/06%2018%20GONG%20Dostava%20rje%20enja.pdf>

16. http://imamopravoznati.org/request/6691/response/8184/attach/5/Rje%20enja%203%202019.pdf?cookie_passthrough=1

guidelines for climate change mitigation. The same is valid for potential exclusion lists of harmful sectors.

Finally, a lack of public disclosure regarding the projects financed is obvious until June 2019 and the Constitutional Court verdict. After that, one CSO (BIOM) received the requested information without the need to wait for all court verdicts, as all the others before them. However, for now it is unclear whether this will become usual practice from now on, this remains to be seen from future requests for information. The lack of transparency regarding documents related to decision-making is also documented. For example, in Green Istria's case described above, transcripts from Management Board sessions (on which the decisions on projects' financing are made) were requested and not provided.

Also, in the past when some of their clients were charged with illegal activity, HBOR didn't publish information about whether the bank itself took disciplinary measures (termination of their loans etc). The lack of transparency surrounding HBOR's practices should be a matter of concern for the national Parliament (to which they report to directly) and for the European Commission (to which the state reports regarding their ECA).

HBOR should be required not only to undertake due diligence to assess the human rights, environmental and corruption risks associated with transactions and clients, but also to publish the results and make them available for public scrutiny. Its project list and management decisions should be publicly disclosed, or at least available to be obtained through the Right of Access to Information Act instantly, not after a long lasting judicial procedure, every time funded with taxpayers' money.
