



## **UNECE Task Force on Access to Justice - session on air quality (15-16 February 2021)**

### **Statement of Environmental Association Za Zemiata and Greenpeace Bulgaria**

10 February 2021

This statement concerns a violation of the right to access to justice and public participation in the decision-making process regarding the operation conditions of coal power plants in Bulgaria.

#### **Background**

In compliance with Directive 2008/50/EC and the Commission Implementing Decision (EU) 2017/1442 of 31 July 2017 establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU (BAT Conclusions), Bulgarian law obligated large combustion plants to submit documentation providing that they will either comply with the new environmental requirements or request derogations. It is a known fact that Bulgarian power plants will be experiencing difficulties complying with the new standards for SO<sub>2</sub> due to the high Sulphur content of the local lignite they incinerate. Later on, it became known that Bulgarian power plants requested derogation from the standard for Hg, as well. According to Directive 2008/50/EC, derogation from the BAT Conclusions may be granted only subject to an assessment that the achievement of emission levels under BAT Conclusions would lead to disproportionately higher costs compared to the environmental benefits (Article 15 (4)).

Environmental Association Za Zemiata and Greenpeace Bulgaria were informed that most of the Bulgarian coal power plants requested derogations from the BAT Conclusions.<sup>1</sup> In the summer of 2018, Environmental Association Za Zemiata and Greenpeace Bulgaria requested access to the applications and the cost-benefit analyses prepared under Art. 15(4) of Directive 2008/50/EC. The national authority in charge of integrated pollution permits denied access on the grounds of that the information requested contains trade and industrial secret of power plants. The court quashed the refusal, but instead of ordering the authority to disclose the information, returned the file back to the authority. A new refusal to disclose the information

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<sup>1</sup> The power plants that requested derogations from the BAT Conclusions are TPP Maritsa East 2 EAD, TPP ContourGlobal Maritsa East 3 AD, AES Maritsa East 1 EOOD, TPP Brikel EAD, Sliven District Heating Power Plant EAD, TPP Maritsa 2 AD and Rouse District Heating Power Plant EAD.

followed. As of today, Environmental Association Za Zemiata and Greenpeace Bulgaria won three court cases on the same request for access to environmental information, but the EEA continues to refuse access.

The reasons for this deadlock lie with the specifics of the national procedural laws and the insufficiencies in the application of the Directive 2003/4/EC and the Aarhus Convention.

- The court returns the file to the authority, because it is considered that the authority has discretion to assess whether the information requested contains trade and industrial secret and whether the information is of prevailing public interest.<sup>2</sup>
- Despite the court judgement, the authority may refuse access on new grounds, not included in its initial decision.
- Lack of effective sanctioning mechanisms to ensure that the authority complies with the *obiter dicta* of the court decision. As long as the authority issues a new administrative decision on the case, the public official issuing the decision is not subjected to sanctions.
- As of 1 January 2019, cases for access to environmental information are subject to one-instance court review only. Such cases are not reviewed by the Supreme Administrative Court, which has the function to ensure that the law is applied equally in different cases. This legislative decision is part of a series of legislative and policy measures in the last years that to reduce the environmental rights of the public.<sup>3</sup>

### Impact

The case is a clear violation of the right to access to court on requests for access to environmental information. Although in theory, the public is entitled to court proceedings, the inefficiency of a favorable decision strips any practical effect of the procedure.

Additionally, in the specific situation the public is deprived from its rights to effective public participation in the integrated permit procedure. In violation of Art. 24 in conjunction with Annex IV, point 2 “a” of Directive 2008/50/EC, Bulgaria subjects only the draft permit to a public consultation. The application and the cost-benefits analysis are not disclosed. The draft permits do not contain information on the amount of the costs for the plant to comply with the BAT Conclusions, nor of the environmental benefits. Thus, the public is practically left outside the decision making process.

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<sup>2</sup> According to national law Information of prevailing public interest shall be disclosed, even if it contains trade and industrial secret (Art. 17, para 2 of the Law on Access to Public Information).

<sup>3</sup> In 2018, Environmental Association Za Zemiata and Greenpeace Bulgaria submitted a communication to the Aarhus Convention Compliance Committee on the systemic violations of the environmental rights in Bulgaria (ACCC/C/2018/161)

**GREENPEACE**



**Za Zemiata**  
Friends of the Earth Bulgaria

### **Steps forward**

We are considering bringing the case to the attending to the European Commission.

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Environmental Association Za Zemiata and Greenpeace Bulgaria monitor closely the policy in air quality and just energy transition in Bulgaria.