

**Position concerning the preliminary admissibility of the communication
PRE/ACCC/C/2016/144 concerning Bulgaria**

The Party Concerned kindly asks the Committee to take into account within the consideration of the preliminary admissibility of communication PRE/2016/144 the following:

We reject the allegation of the communicant, that in the submitted communication he provides new facts, in relation with Decision V/9d of the Meetings of the Parties on communication ACCC/C/2011/58, concerning the access to review procedures in spatial planning in Bulgaria. The non-contestability of the general spatial plans, also by the members of the public is a circumstance, presented repeatedly to the Committee, and it is directly addressed in paragraph 1 (a) and paragraph 2 (a) of Decision V/9d.

With regard to the imposition of coercive administrative measures in cases of unlawful issuance of acts for approval of general spatial plans, in our first progress report for the implementation of Decision V/9d and in our additional information to the second progress report, is clearly indicated, that such measures could be imposed on the initiative, i.e. at the suggestion of the public concerned, but not upon its request, as it is interpreted by the communicant. The Administrative Procedure Code, through the procedure regulated with Chapter Eight, explicitly provides the possibility to be submitted alerts about legally non-conforming or inexpedient actions or omissions of administrative authorities.

We do not find acceptable the opinion of the communicant that the arguments, exposed by him, put into a different light the subject matter of communication ACCC/C/2012/76 concerning award of injunctive relief during the review of environmental permits.

Contrary to the claimed by the communicant, in cases, when preliminary enforcement is allowed for decision on strategic environmental assessment, and it is used as a ground for subsequent adoption of general spatial plan or its amendment, and when the preliminary enforcement is revoked by the Court, there is legal way, by which a member of the public concerned to insist to be restored the status quo ante the enforcement. The procedure is regulated in the Administrative Procedure Code (Chapter Fifteen), where, in accordance with article 9, paragraph 4 of the Aarhus Convention, is laid down as a remedy the opportunity to be contested the non-performance of factual actions, which the administrative authority is obligated to perform by virtue of the law, i.e. in case of unwarranted omission. Thus, with a judgment, the court may order the administrative authority to perform the actions, necessary for the restoration of the status quo ante the allowed preliminary enforcement.

In order to be restored the status quo ante the enforcement, it is of most importance to be considered whether the decision of Regional Inspectorate of Environment and Water not to carry out an environmental assessment of the amendment of the General Spatial Plan of Plovdiv on allowing the preliminary enforcement was entered into force.

On question of the Compliance Committee: What is the importance of the further development of the procedure on appeal of the decision of the Director of Regional Inspectorate on Environment and Water (RIEW) Plovdiv on strategic environmental assessment for the preliminary admissibility of communication PRE/2016/144?

The decision of the Director of RIEW Plovdiv with discretion to not be carried out an environmental assessment has been revoked by the Administrative Court Plovdiv at first instance, but it has not been entered into force since it has been appealed before the Supreme Administrative Court, and the latter has not ruled on the case so far.

It is essential how will finish the main proceedings on challenging the decision on strategic environmental assessment - whether the Supreme Administrative Court will revoke

or not the decision of the Director of RIEW Plovdiv to not be carried out an environmental assessment. In a possible annulment of the decision it should be considered that for the approved amendment to the general spatial plan of Plovdiv is missing constituent element, namely an entered into force decision on strategic environmental assessment. Then, there is a legal basis to be imposed as a coercive administrative measure – suspending implementation of the amendment to the spatial plan, until the completion of the procedure on environmental assessment of the plan, by which, in fact, is restored the status quo ante the allowed preliminary enforcement of the decision on environmental assessment. The measure may be imposed, as mentioned above, on the initiative of the public through submission of an alert under Chapter Eight of the Administrative Procedure Code. If the court does not revoke the decision on strategic environmental assessment, the amendment to the general spatial plan remains in force, and in this case there is no need to be restored the status quo ante the allowed preliminary enforcement of the decision on environmental assessment.

In conclusion, and in support of the above, we submit to the Committee the Administrative Procedure Code translated in English, given the importance of this legal act regarding the mentioned issues. We believe that it would facilitate the Committee in consideration of the preliminary admissibility of communication PRE/2016/144.