

Additional information regarding communication ACCC/C/2014/144 concerning compliance by Bulgaria with provisions of the Convention concerning Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

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1. Further to Mrs. Fiona Marshall’s email of 18 September 2020, please find below our comments on Bulgaria reply of 13 July 2020 to Committee’s question 11.
2. In response to question 11 on the actions that Bulgaria has taken to rectify the illegality of the amended General Spatial Development Plan of Plovdiv (“GSDP Plovdiv”), the Government of Bulgaria points to a new amendment of the GSDP of Plovdiv, which is currently ongoing. The Government claims that *“The scope and the content of the ongoing procedure under mandatory EA for the new amendment of the GSDP Plovdiv is for the entire territory of the Municipality of Plovdiv and includes the provisions set out in the partial amendments of the GSDP Plovdiv under Decision No. 65, Protocol No. 6/19.03.2015.”*
3. Two court instances confirmed that the decision not to carry out a SEA for the GSDP of Plovdiv of 2015 violates the law.¹ A new amendment to the plan cannot rectify this illegality for the reasons stated below.
4. As regards the facts of the specific case, despite the violation of the SEA laws, GSDP of Plovdiv of 2015 entered into legal effect and caused consequences. Based on the GSDP of Plovdiv of 2015, detailed spatial plans were adopted and construction works were carried out. As far as we are aware, the zoo garden planned under the GSDP of Plovdiv of 2015 is now constructed. Adoption of a new GSDP, even if a lawful procedure is followed, will not rectify this illegality.
5. As regards the shortcomings in the national legal system, the Government does not report any improvements. It is already confirmed that the barred access to courts for GSDP violates the Aarhus Convention.² The case at hand provides evidence for violations of the Convention that are not subject to procedure ACCC/C/2011/58 (Bulgaria).
6. The facts submitted to the Committee clearly evidence that the barred access to court for GSDP is a precondition for illegal SEA decisions to cause legal effect. It has been proven that even if a national court repeals an illegal SEA decision for a GSDP, there is no mechanism to repeal the GSDP and to ensure that SEA law are properly complied with. As the GSDP cannot be not subjected to review for legality by court or other tribunal by members of public, there is no legal mechanism to rectify violations in the SEA procedure. The communicant submitted evidence that procedures for alerts under Chapter 8 of the APC and coercive administrative measures are no mechanism to rectify these failures in the Bulgarian legal system.

¹ Decision No. 1756/01.10.2015 on adm. Case No. 1443/2014 of the Administrative Court of Plovdiv and Decision No. 5969/15.05.2017 on adm.case No. 14187/2015 of the Supreme Administrative Court ruled that Decision No. ПІВ – 3-ЕО/2014 of 08.05.2014 of the Director of the Regional Inspectorate of Environment and Water violates the law and a SEA shall be carried out.

² ECE/MP.PP/C.1/2013/4

7. For the reasons stated herein and in our comments of 17 September 2020, we consider that Bulgaria has not taken any measures to rectify the illegality of the GSPD Plovdiv 2015 and the failures in the national legal system that bar access to justice with regards to GSPD and provide no mechanism to ensure that SEA laws are compiled with when GSPD are adopted.