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Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Sixth session

Budva, Montenegro, 11–13 September 2017

Item 7 (b) of the provisional agenda

Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism

Draft decision VI/8d concerning compliance by Bulgaria with its obligations under the Convention

Prepared by the Bureau

The Meeting of the Parties,

Acting under paragraph 37 of the annex to its decision I/7 on the review of compliance (ECE/MP.PP/2/Add.8),

Mindful of the conclusions and recommendations set out in its decision V/9d (see ECE/MP.PP/2014/Add.1) with regard to compliance by Bulgaria,

Taking note of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters on the implementation of decision V/9d concerning compliance by Bulgaria on (ECE/MP.PP/2017/36) and the findings of the Committee on communication ACCC/C/2012/76 (ECE/MP.PP/C.1/2016/3) concerning injunctive relief in connection with challenges to environmental permits,

Encouraged by the willingness of Bulgaria to discuss in a constructive manner with the Committee the compliance issues in question,

* Reissued for technical reasons on 18 August 2017.



1. *Endorses* the finding of the Committee that the Party concerned has not yet fulfilled the requirements of decision V/9d;
2. *Reaffirms* its decision V/9d and, in particular, reiterates paragraphs 2 and 5 of that decision in their entirety;
3. *Requests* that the Party concerned, as a matter of urgency, take the necessary legislative, regulatory and administrative measures to ensure that:
 - (a) Members of the public, including environmental organizations, have access to justice with respect to General Spatial Plans and Detailed Spatial Plans;
 - (b) Members of the public concerned, including environmental organizations, have access to review procedures to challenge construction and exploitation permits for the activities listed in annex I to the Convention;
4. *Calls upon* all relevant ministries of the Party concerned, including the Ministry of Justice, to work together to ensure the successful fulfilment of the above recommendations;
5. *Decides*, in the light of the position of the Party concerned that implementing paragraphs 2 (a) and 2 (b) of decision V/9d is not required for its full compliance with article 9, paragraphs 2 and 3, of the Convention:
 - (a) To issue a caution to the Party concerned;
 - (b) That the caution will be lifted on 1 October 2019 if the Party concerned has fully met the requirements in paragraph 3 of this decision and has notified the secretariat of this fact, providing evidence, by the same date;
 - (c) To request the Committee to establish the successful fulfilment of subparagraph (b) above;
6. *Endorses* the finding of the Compliance Committee with regard to communication ACCC/C/2012/76 that, with respect to appeals under article 60, paragraph 4, of the Administrative Procedure Code of orders for preliminary enforcement challenged on the ground of potential environmental damage, a practice in which the courts rely on the conclusions of a contested environmental impact assessment decision, strategic environmental assessment decision or decision on Assessment of Compatibility with the Special Protected Zones of Natura 2000 (contested EIA/SEA decision) rather than making their own assessment of the risk of environmental damage in the light of all the facts and arguments significant to the case, taking into account the particularly important public interest in the protection of the environment and the need for precaution with respect to preventing environmental harm, does not ensure that such procedures provide adequate and effective remedies to prevent environmental damage. Therefore, the Party concerned fails to comply with article 9, paragraph 4, of the Convention;
7. *Welcomes* the recommendation made by the Committee during the intersessional period with respect to its findings on communication ACCC/C/2012/76 in accordance with paragraph 36 (b) of the annex to decision I/7;
8. *Also welcomes* the willingness of the Party concerned to accept the Committee's recommendation, namely, that the Party concerned review the approach of its courts to appeals under article 60, paragraph 4, of the Administrative Procedure Code of orders for preliminary enforcement challenged on the ground of potential environmental damage, and undertake practical and/or legislative measures to ensure that:
 - (a) Instead of relying on the conclusions of the contested EIA/SEA decision, the courts in such appeals make their own assessment of the risk of environmental damage in the light of all the facts and arguments significant to the case, taking into account the

particularly important public interest in the protection of the environment and the need for precaution with respect to preventing environmental harm;

(b) The courts in their decisions on such appeals set out their reasoning to clearly show how they have balanced the interests, including the assessment they have undertaken of the risk of environmental damage in the light of all the facts and arguments significant to the case, taking into account the particularly important public interest in the protection of the environment and the need for precaution with respect to preventing environmental harm;

(c) Training and guidance is provided for judges and public officials in relation to how to carry out the above-mentioned balancing of interests in environmental cases, including on how to properly reflect that balancing in their reasoning;

9. *Requests* that the Party concerned:

(a) Submit to the Committee detailed progress reports on 1 October 2018, 1 October 2019 and 1 October 2020 on the measures taken and the results achieved in the implementation of the above recommendations;

(b) Provide such further information as the Committee may request in order to assist it to review the progress of the Party concerned in implementing the above recommendations;

(c) Participate (either in person or by audio conference) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered;

10. *Undertakes* to review the situation at its seventh session.
