

To:

Mr. Julio Garcia Burgues
Head of Infringement Unit
DG Environment

Copy to:

Mr. Dzhevdet Chakarov
Minister of
Environment and Waters

Copy to:

Mr. Dimitar Vergiev
Executive Director of
Executive Environmental Agency

Regarding: The Chelopech Mining EAD project for expansion of metals production through cyanide leaching in the Chelopech gold mine in Bulgaria

19 May, 2009

Dear Gentlemen,

We are writing to alert the European Commission about the issue of the Bulgarian Chelopech Mining project which we consider to be a project with potential severe environmental and social impacts in breach of EU law.

Below, we outline the main violations of EU law that have occurred in the process of the project's development and Integrated Pollution Prevention and Control procedure; we believe these violations will create an urgent need to start an infringement procedure unless the Bulgarian

Government soon takes steps for remedy.

First, we would like to briefly present the main facts. The Chelopech Mining project proposes the introduction of cyanide technology for the expansion of metals extraction in the biggest gold and copper mine in Bulgaria ([1]). The proposed method of cyanide leaching for gold extraction is not currently in use in Bulgaria and represents a significant risk both for the environment and the inhabitants. The project is situated near the Chelopech village in the Chelopech Municipality. However, all the potential impacts from the mine will go downstream the Topolnitsa River which is the tributary to the biggest inland river in Bulgaria: the Maritsa River. Maritsa runs through the most valuable land of the Bulgarian Thracian Valley where a lot of the country's horticultural production comes from.

The Environmental Impact Assessment of the project was approved by the Minister of Environment and Water in July 2008 in spite of the lack of proper information and consultations with communities living downstream from the mine along the Topolnitsa and Maritsa Rivers. After the approval, we consulted with the European Commission on the fact that the project had been approved without meeting the requirements of the relevant European environmental directives (letter, ref. no A/18996/2007). However, as the procedure started before the accession of Bulgaria to the EU, the Commission responded that it was not necessary to follow the European directives concerning access to information and public participation in EIA.

After the Chelopech Mining's project obtained the Environmental Impact Assessment approval, the company applied for an Integrated Pollution Prevention and Control (IPPC) permit in March 2009. Unfortunately, the IPPC procedure did not comply with European law either. New breaches of public participation rights occurred.

According to Article 15 of the IPPC directive ([2]) which transposes the provisions of the Aarhus convention ([3]) into the IPPC procedure on the European level, Member States shall ensure that the public concerned is given **early and effective** opportunities to participate in the procedure for issuing an IPPC permit for new installations. According to Point 3 of the Annex 5 of the IPPC directive, the public concerned shall be entitled to express comments and opinions to the competent authority before a decision is taken. Naturally, this is conditioned by the fact that the public concerned has enough information about the procedure. Otherwise, the possibility to express comments regarding any ongoing IPPC procedure would be only formal and inefficient.

The provisions of the IPPC directive on public participation were amended in 2003 by the directive 2003/35/EC ([4]). According to the preamble of the latter Directive, the purpose of the amendment was to adopt the provisions of the Aarhus convention. The Convention was signed by Community on 25 June and the Council approved it on 17 February 2005 ([5]). Since then, it is necessary to interpret the relevant provisions of Community law in compliance with the Aarhus convention. Therefore, we will refer further below to relevant findings of the Compliance Committee which provides a binding interpretation of the Convention.

The IPPC directive postulates that the public shall be informed (by public notices or other appropriate means such as electronic media where available) of the herein defined matters (Annex 5, Point 1). Therefore, the public should be informed of the application for an IPPC permit, including the description of the elements listed in Article 6(1). Among others, it should comprise a

description of the installation and its activities, the sources of emissions from the installation, the conditions of the site of the installation, the proposed technology and other techniques for preventing or, where this not possible, reducing emissions from the installation, and where necessary, measures for the prevention and recovery of waste generated by the installation.

Further, the IPPC directive states in Point 5 of the Annex 5 that the detailed arrangements for informing the public and consulting the public concerned shall be determined by the Member States. However, as an example of *informing the public*, the directive speaks of bill posting within a certain radius or publication in local newspapers. As an example of *consulting the public concerned*, the directive mentions written submissions or a public inquiry. It is also stressed that the public concerned should be given sufficient time to prepare and participate effectively in the procedure.

Notwithstanding the mentioned provisions, the public concerned was informed insufficiently during the IPPC procedure on the Chelopech Mining project so that it could not exercise its right to participate in environmental decision-making guaranteed by the European Directives and the Aarhus convention. There is an imminent danger that the IPPC permit will be granted in a breach of the Community law and the project will be put into operation soon.

The main breach of the public participation rights consists in the fact that the competent authorities did not notify any non-governmental organization significantly concerned with the protection of the environment that an IPPC procedure was started. This happened in spite of the fact that a number of NGOs, including ours, participated in the previous stages of the Chelopech cyanide gold project, namely in the EIA procedure. Our Coalition of NGOs was in contact with the Bulgarian Ministry of Environment as well as with the company itself and we drew up two petitions to the European parliament. Nevertheless, neither the authorities nor the Chelopech Mining company sent us a letter, e-mail nor gave us a phone call. There was no doubt that we were the “public concerned” in terms of the IPPC directive and the Aarhus convention ([6]). The Bulgarian citizens living downstream the Topolnitsa and Maritsa River, who are most threatened by the project, were not properly notified either.

There was only a very brief notification published on the websites of the Environmental Executive Agency (which is a subdivision of the Ministry of Environment, responsible for conducting the IPPC procedure) that the IPPC documentation for the Chelopech Mining project was made available to the public. Such a notification cannot meet the requirements set out for consulting the public concerned by the IPPC directive (Annex 5, Point 5, vide supra). According to Article 6 of the Aarhus convention, “*the public concerned shall be informed [...] in an **adequate, timely and effective manner.***” As the Aarhus Convention Compliance Committee stated in case relating to Lithuania ([7]) “*the requirement for the public to be informed in an “effective manner” means that public authorities should seek to provide a means of informing the public which ensures that all those who potentially could be concerned have a reasonable chance to learn about proposed activities and their possibilities to participate.*” Further, in case relating to Ukraine ([8]), the Compliance Committee stressed that “*considering the nature of the project and the interest it has generated, notification in the nation-wide media as well as individual notification of organizations that explicitly expressed their interest in the matter would have been called for.*” The manner the Bulgarian public concerned (or potentially concerned) was notified about the Chelopech Mining project was not in line with the principles formulated by the Compliance Committee. Given the seriousness of impacts that the project may bring about and the number of people potentially endangered, the information was clearly insufficient and did not meet the requirements of the IPPC

directive and the Aarhus convention.

Further, the project documentation was made available to the public only in two places: at the Ministry of Environment in the capital city of Bulgaria, Sofia, and in the Information center of the company Chelopech Mining in Chelopech in limited office hours. There was only one copy of the documentation in each of the two places and the public was not allowed to get or make copies of the documentation or even of a part of it. It was not even possible to get the relevant information through internet, e.g. to have it sent to an email address. Such request from our part **was refused** by the Ministry of Environment with reference to the Bulgarian IPPC legislation which merely required that the documentation was “available”.

In accordance with Article 6 of the Aarhus convention, the public concerned shall be given the access for examination, free of charge and as soon as it becomes available, to all information relevant to the decision-making. This Article aims to provide the public concerned **with an opportunity to examine all relevant details of the planned project so that the participation is informed and therefore more effective** ([9]).

In the Chelopech case, the relevant information was not effectively disclosed by the Bulgarian competent authority. The public access was very limited. If people from the most affected and potentially endangered areas wanted to comment on the procedure – in case they somehow learned that the IPPC procedure started – they had to take a day off from the work and spend money and time to travel to one of those places where the documentation was made available.

We also draw your attention to the fact that the Chelopech project documentation consisted of more than 300 pages (or more precisely around 1,000 pages including annexes) so that it was not possible to examine it properly during one day. Still the competent authorities did not allow to make copies. Please note that the competent authorities applied this limited access to the whole documentation instead of using its right to limit or exclude access only to certain parts for reasons of the protection of intellectual property or for other reasons. This restrictive practice was found in breach of the Aarhus convention by the Compliance Committee which stated in regard to a Romanian case concerning an EIA documentation (which is in principle very similar to the IPPC documentation) ([10]): *“although that provision allows that request from the public for certain information may be refused in certain circumstances related to intellectual property rights, this may happen only where in an individual case the competent authority considers that disclosure of the information would adversely affect intellectual property rights. Therefore, the Committee doubts very much that this exemption could ever be applicable in practice in connection with EIA documentation. Even if it could be, the grounds for refusal are to be interpreted in a restrictive way, taking into account the public interest served by the disclosure.”*

We conclude that in the Chelopech case, the public concerned was not allowed to exercise its right to examine the “information relevant for to the decision-making”.

We are afraid that the Chelopech cyanide gold project will very soon obtain an IPPC permit in spite of the mentioned breaches of public participation rights and in spite of the severe environmental risks involved.

In case the Bulgarian Government does not take steps to remedy the breaches and the IPPC permit will be issued, we will inform you and ask for an intervention, including the initiation of an infringement procedure.

Yours sincerely,

Daniel Popov
Centre for Environmental Information and Education
National coordinator for
CEE Bankwatch Network

[1] For more information see:

<http://www.bankwatch.org/project.shtml?apc=2005354-1904290c1936661-1&w=2005354&s=1904290> or <http://www.bankwatch.org/project.shtml?apc=2005354-1904290---1&x=2097038&d=n>

[2] Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008, concerning integrated pollution prevention and control (codified version), OJ L 24, 29.01.2008, p. 8

[3] Convention on access to information, public participation in decision-making and access to justice in environmental matters of 25 June 1998, done at Aarhus, Denmark

[4] Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, OJ L 156, 25.6.2003, p. 17

[5] Council decision 2005/370/EC of 17 February 2005, on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters OJ L 124, 17.5.2005, p.1

[6] Interpretation of the term “public concerned” by the Aarhus Convention Compliance Committee in case: Armenia ACCC/C/2004/8; ECE/MP.PP/C.1/2006/2/Add.1, 10 May 2006, para. 18: “*The Committee considers that all the communicants, being registered NGOs and having expressed an interest in the decision making process, fall within the definition of the “public concerned” as set out in article 2, paragraph 5.*”

[7] Case: Lithuania ACCC/2006/16; ECE/MP.PP/2008/5/Add.6, 4 April 2008, para. 67

[8] Case: Ukraine ACCC/C/2004/3 and ACCC/S/2004/1; ECE/MP.PP/C.1/2005/2/Add.3, 14 March 2005, para. 28

[9] Case: Romania ACCC/C/2005/15; ECE/MP.PP/ 2008/5/Add.7, 16 April 2008, para. 30

[10] Ibid., para. 30