

Commission of the  
European Communities  
(Attn: Secretary-General)  
Rue de la Loi 200  
B-1049 Brussels  
BELGIUM

## COMPLAINT

**TO THE COMMISSION OF THE EUROPEAN COMMUNITIES  
CONCERNING FAILURE TO COMPLY WITH COMMUNITY LAW,  
particularly with the requirements of Directive 2008/1/EC of the European  
Parliament and of the Council of 15 January 2008 concerning integrated  
pollution prevention and control (Codified version)**

1. Surname and forename of complainant:

**Ekologický právní servis / Environmental Law Service (ELS)**

as a legal representative of

**Center for Environmental Information and Education (CEIE)**

2. Where appropriate, represented by:

Mgr. Jan Šrytr,  
lawyer of the Environmental Law Service

3. Nationality:

ELS Czech / CEIE Bulgarian

4. Address or Registered Office:

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6. Field and place(s) of activity:

**Environmental Law Service (“ELS”)** is a Czech non-governmental, non-profit organisation engaged in environmental protection and defence of other public interests. Its aim is to eliminate cases of unlawful and improper decision-making by state offices in matters of the environment and human rights, to help people gain access to the courts, to build the knowledge and skills of non-profit organization staffs, to expand the ranks of public-interest lawyers, and to help bring about a high-quality legal code.

The activities are pursued mainly in the Czech Republic, but also in the area of the European Union.

**The Center for Environmental Information and Education (“CEIE”)** is a Bulgarian non-governmental organisation. Its goals are to increase the public awareness on the environmental subjects and problems, promote and facilitate public participation in the decision-making process for environment-related issues, assist NGOs, local stakeholders and citizens in

access to information and justice for environment and development issues; stop or alter projects that destroy or damage environment, and promote and propose sustainable development alternatives that save the nature.  
The activities are pursued mainly in Bulgaria.

7. Member State or public body alleged by the complainant not to have complied with Community law:

**Bulgaria:** The Ministry of Environment and Water  
Environmental Executive Agency (subdivision of the Ministry of Environment and Water, responsible for conducting the IPPC procedure)

8. Fullest possible account of facts giving rise to complaint:

As the Center for Environmental Information and Education (hereinafter “CEIE”) have already informed the European Commission in the letter of alert from 19 May 2009, there is the controversial Chelopech Mining project being prepared and approved in Bulgaria in breach of the European law. At the time CEIE alerted the Commission about the issue, the Integrated Pollution Prevention and Control (IPPC) procedure was not finished yet. Nevertheless, in September 2009 the IPPC permit was issued and the project was approved.

Besides the violations that have occurred during the IPPC procedure for the Chelopech Mining project, we would like to draw your attention to another very serious issue, which is a gap in transposition of Article 15, paragraph 4 of the IPPC directive <sup>(1)</sup> concerning the publication of the IPPC permit into the Bulgarian law (vide point V of part B) below for more details).

#### **A) Summary of Facts and developments**

First of all, we would like to recapitulate the main facts and the project’s development.

#### **I) Basic facts about the project**

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 <sup>(2)</sup>. This method of cyanide leaching is not currently in use in Bulgaria. The concentration of arsenic in the Chelopech ore is considerably high and there is actually no operating industrial installation for analogous production in the whole world which was admitted even by the investor himself. Consequently, the project proposes a technology that cannot be considered as the best available technique (BAT).

According to independent specialists, hydrogeological conditions in Bulgaria and high

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1 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

2 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>

population density downstream from the mine render the application of the proposed method of cyanide leaching unsuitable and unsafe. Moreover, abundant rainfall which repeatedly caused severe flooding in Bulgaria in recent years considerably intensifies the risks. We consider the project to be posing a substantial risk and to represent a severe danger both for the environment and the inhabitants.

The project is situated near the Chelopech village in the Chelopech Municipality but 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. In case of an accident in Chelopech mine, the whole area could be severely affected <sup>(3)</sup>.

## II) Project's development

The approving Environmental Impact Assessment (EIA) decision for the Chelopech Mining project was issued 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. Due to the fact that the EIA procedure started before the accession of Bulgaria to the European Union, the CEIE could not file a complaint to the Commission regarding the very issue, even if the standards of the European directives concerning access to information and public participation in EIA were severely violated <sup>(4)</sup>.

CEIE and other NGOs from the "Cyanide Free Bulgaria" Coalition raised a claim against the approving decision and the Supreme Administrative Court abolished the decision in November 2009. However, the ruling is not final as the Ministry has a right to appeal within the same court to the tribunal of five judges. We would like to stress that there is unambiguously stated in the decision of the Supreme Administrative Court that the proposed technology cannot be considered as the best available technique (BAT).

However, after the Chelopech Mining's project obtained the approving EIA decision, the company applied for an IPPC permit in March 2009. The IPPC procedure did not comply with European law either as new breaches of public participation rights occurred. At the same time, even the Bulgarian legislation was violated. Despite many urgencies and notices about the violations of law addressed to the competent authorities by CEIE and other concerned NGOs, the IPPC permit was issued in September 2009.

According to the Bulgarian legislation <sup>(5)</sup>, public concerned has right to appeal against the permit to the Supreme Administrative Court. Thus, CEIE filed a lawsuit to the court claiming that the permit was issued illegally and should be abolished. However, the IPPC permit is legally binding and valid in the meantime because the lawsuit does not have a suspensive effect. Thus, the applicant can proceed with the realization of the project <sup>(6)</sup>.

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3 As an example of the seriousness of an accident in the cyanide gold mine and subsequent severe impacts on the environment, we can refer to the Baia Mare (Romania) gold mine accident from 30 January 2000. The accident caused pollution of 2000 square kilometers of the Danube catchment basin and it affected the water supply of 24 municipalities with population of over 2.4 million people.

4 The Commission was informed by CEIE about the public rights violations which occurred within the EIA procedure and the possibility of submitting a complaint was communicated with the Commission in 2007 (the answer of the Commission is attached).

5 Article 127 paragraph 3 of the Environmental Protection Act

6 The company needs to obtain three more permits in order to put the project into full operation – a SEVESO permit on the grounds of SEVESO II Directive 96/82/EC, an IPPC permit for the tailings dam and a permit from the State Building Control Office. However, the investor can proceed and start

## **B) Specific violations of Community law**

Below, we outline the main violations of Community law that have occurred in the process of the IPPC procedure. **We came to the conclusion that these violations create an urgent need to start the infringement procedure.**

We would like to emphasize that IPPC procedure is one of the pivotal environmental decision-making processes where public participation rights should be guaranteed in accordance with the Aarhus Convention.

In order to adopt the provisions of the Aarhus Convention, the provisions of the preceding IPPC directive <sup>(7)</sup> on public participation were first amended in 2003 by the directive 2003/35/EC <sup>(8)</sup>. Afterwards, the Aarhus Convention was signed by Community on 25 June and the Council ratified it on 17 February 2005 <sup>(9)</sup>. In this way, the Convention **has become, as a so-called “mixed agreement”, a part of Community law** <sup>(10)</sup>. Since then, it is also necessary to interpret the relevant provisions of Community law in compliance with the Aarhus Convention. Therefore, we will refer further below to relevant provisions of the Aarhus Convention and findings of the Aarhus Convention Compliance Committee <sup>(11)</sup> which provides a binding interpretation of the Convention.

## **I) Lack of Best Available Technique**

According to Article 3, paragraph 1, letter a) of the IPPC directive, which sets out general principles governing the basic obligations of the operator, Member States **must ensure** *“that installations are operated in such a way that all the appropriate preventive measures are taken against pollution, in particular through application of the best available techniques”* <sup>(12)</sup>. Further, Article 9 of the IPPC directive, determining conditions of the permit, sets out in paragraph 1 in connection with paragraph 4 that Member States must ensure that the emission limit values and the equivalent parameters

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to build the facilities and apply for the remaining permits either during the construction or after finishing it.

7 Council Directive 96/61/EC of 24 September 1996, concerning integrated pollution prevention and control OJ L 257, 10.10.1996, p. 26.

8 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

9 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

10 Mixed agreements fall within both Community and Member State competence. Thus, conclusion of such an agreement requires joint exercise of Community and Member State competences and close cooperation between Member States and the Community institutions in fulfilling undertaken commitments. If a provision of a mixed agreement does fall within the scope of Community law (which is definitely the case of Article 6 of the Aarhus Convention), then such provision forms an integral part of Community law. Hence, all Member States must interpret the provision in the same way as it is required by Community law.

11 Vide <http://www.unece.org/env/pp/compliance.htm#Documents>

12 According to Article 2 point 12 of the IPPC directive: *“‘best available techniques’ means the most effective and advanced stage in the development of activities and their methods of operation which indicate the practical suitability of particular techniques for providing in principle the basis for emission limit values designed to prevent and, where that is not practicable, generally to reduce emissions and the impact on the environment as a whole...”*

and technical measures prescribed to the operator within the permit are based on the best available techniques in order to achieve a high level of protection for the environment as a whole by means of protection of the air, water and land.

Nevertheless, this principle was violated in the case of the Chelopech mining project because the project **does not introduce the best available technique (BAT)**.

The proposed technology is currently in operation only as an experimental installation with the capacity of 16 000 TPA in Arisona, USA, while the installation of Chelopech Mining is planned for a capacity of 220 000 TPA. There is no ongoing industrial installation in the world which would treat ore with levels of arsenic similarly high to those of the Chelopech ore. This fact is undisputable because it was admitted even by the applicant himself within the IPPC application.

More precisely, the project introduces the method of high-temperature oxidation under pressure for processing of copper concentrate *“whereas this method is not used for the industrial processing of copper concentrate. Hence, the method of high-temperature oxidation under pressure for processing of copper concentrate is not based on the best available techniques ...”* <sup>(13)</sup>. This argument was confirmed by the judgment of the Supreme Administrative Court abolishing the EIA decision. Although the best available technique was not proposed by the applicant, the IPPC permit was issued.

A lack of best available technique alarmingly increases the risks posed by the Chelopech Mining project and the seriousness of impacts on the environment and inhabitants in case of accident.

## **II) Lack of proper notification about the start of IPPC procedure**

According to Article 15, paragraph 1 of the IPPC directive <sup>(14)</sup> which transposes the provisions of the Aarhus Convention 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 paragraph 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 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, paragraph 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 paragraph 5 of the Annex 5 that the detailed arrangements for informing the public and consulting the public concerned shall be

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13 Decision of The Supreme Administrative Court of Republic of Bulgaria from 4 November 2009, No. 13092, p. 6, para. 2

14 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

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.

**In breach of Article 15 and Annex V of the IPPC directive and Article 6, paragraph 2 of the Aarhus Convention, the competent authorities did not notify any non-governmental organizations from the “Cyanide-free Bulgaria” Coalition, which were 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 the CEIE, participated in the previous stages of public consultations on the Chelopech Mining project, namely in the EIA procedure. The “Cyanide Free Bulgaria” Coalition of NGOs was in contact with the Bulgarian Ministry of Environment as well as with the company itself and they drew up two petitions to the European Parliament. Nevertheless, neither the authorities nor the Chelopech Mining Company sent them a letter, e-mail nor gave them a phone call. There was no doubt that they were the “public concerned” in terms of the IPPC directive and the Aarhus Convention <sup>(15)</sup>. 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 <sup>(16)</sup>) that the IPPC documentation for the Chelopech Mining project was made available to the public from 20 March to 18 April 2009, with the specification of when and where it can be examined. No other information relating to the project was disclosed. Neither the text of the application was made available on the internet. It was necessary to pursue and inspect the documentation to find out other information about the project, including the application itself.

Such a notification cannot meet the requirements set out for consulting the public concerned by the IPPC directive (Annex 5, paragraph 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 <sup>(17)</sup> *“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 <sup>(18)</sup>, the Compliance Committee stressed that *“considering the nature of the project and the interest it has*

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15 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.”*

16 Hereinafter, we use only the term „Ministry of Environment“ or “Ministry“ for the simplicity because the Environmental Executive Agency is the subdivision of the Ministry.

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

18 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

*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 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.

Supposedly to remedy the violations of public participation rights, the Ministry extended the period for submitting statements and comments from 29 April to 29 May 2009. However, the NGOs concerned were left out again since the Ministry did not notify them about this additional opportunity. CEIE learned about the second period for public comments on the documentation only when it had already been over. Thus, the failures were repeated by the Ministry. Consequently, the extension of the period for public comments could not remedy the violations which occurred during the whole procedure.

### **III) Impediments to public access to the IPPC documentation**

As cited above, according to Article 15, paragraph 1 and Annex V, paragraph 3 of the IPPC directive the public concerned must be given early and effective opportunities to participate in the IPPC procedure and must be entitled to express comments and opinions to the competent authority before a decision is taken. These public participation rights include the right to proper access to the documentation of the project with real and effective possibility to prepare qualified comments.

In accordance with Article 6 paragraph 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 “to ensure that public participation is informed and therefore more effective”**<sup>(19)</sup>.

In the Chelopech case, the relevant information was not effectively disclosed by the Bulgarian competent authority. The public access was very limited due to many technical obstructions.

**First, 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 (9 am to 5 pm). 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.

**Second, 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. In this regard, we draw your attention to the fact that the Chelopech project documentation consisted of more than 300 pages (or more precisely more than 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 the public 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

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



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) <sup>(20)</sup>: “*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.*”

**Finally, it was not even possible to get the relevant information through internet, e.g. to have an electronic copy of the documentation sent to an email address.** Such request from CEIE was refused by the Ministry of Environment with reference to the Bulgarian IPPC legislation which merely required that the documentation was “available”. Finally, the access to the electronic copy was granted by the Ministry in the letter from 8 April 2009. However, this letter was posted on 10 April 2009 (that means on Friday) and CEIE received it on 14 April 2009. That is 4 days (!) before the end of the period in which the documentation was open to public comments. Moreover, CEIE did not directly obtain the electronic copy of the documentation but was asked to come to the Ministry and pay a fee first. Since the documentation was very extensive (hundreds of pages) it was not possible to prepare qualified and expert comments, e.g. to find some external specialists to examine the documentation, in such a short period.

#### **IV) Lack of information on the draft IPPC permit**

According to Article 15, paragraph 1 in connection with Annex V, paragraph 1, letter d) of the IPPC directive, the public must be informed early in the procedure of the draft decision where there is one. The Bulgarian legislation does provide that a draft of the IPPC permit must be published and open to comments.

According to the Article 126 of the Bulgarian *Environmental Protection Act*, the competent authority, jointly with the municipalities, shall announce and grant the persons concerned equal access, in the course of one month, to the applications for issuance of an integrated permit and to the draft of the integrated permit.

In consequence, the implementing Bulgarian *Regulation on the terms and the procedure for the issue of an integrated permit* states in Article 11, paragraph 2 that the public should have an access to an IPPC documentation for the period of one month. Further, in Article 15, paragraph 3 it states that the competent authority should publish an announcement on its web pages of the fact that a draft of an IPPC permit was elaborated and should specify the way in which the public access to the draft will be granted and the conditions for submitting comments, remarks and objections.

**Despite the requirements of the IPPC directive and the Bulgarian legislation, the procedure postulated by Annex V, paragraph 1, letter d) of the IPPC directive, Article 126 of the Environmental Protection Act and Article 15 of the Regulation did not take place at all.** Only the documentation was open to comments, remarks and objections of the public, not the draft of the permit. This subsequent violation of public participation rights demonstrates the obvious tendencies to cut out the public from the procedure.

Moreover, the text of the Regulation itself is contradictory to the Aarhus Convention and

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20 Ibid., para. 30

the principles it sets out as it creates undue obstructions to the public participation in IPPC procedure. More precisely, it is in breach of Article 6, paragraph 2, letter b) of the Aarhus Convention requiring that the public concerned should be informed in an adequate, timely and effective manner of the nature of possible decisions or the draft decision. There is no reason why the draft of the permit itself could not be directly published at the web sites. Such an approach would be effective and adequate. Instead, the Bulgarian legislation forms artificial impediments to efforts of the public concerned to comment on the draft of the IPPC permit.

#### V) Denial of the right to access to the text of IPPC permit – gap in transposition

According to Article 15, paragraph 4 of the IPPC directive, after a permit is issued, the competent authority must inform the public in accordance with the appropriate procedures and “*make available to the public the following information:*”

*(a) the content of the decision, including a copy of the permit and of any conditions and any subsequent updates; and*

*(b) having examined the concerns and opinions expressed by the public concerned, the reasons and considerations on which the decision is based, including information on the public participation process.”*

Similarly, Article 6, paragraph 9 of the Aarhus Convention stipulates that “*the text of the decision along with the reasons and considerations on which the decision is based*” must be made accessible to the public. According to paragraph 8 of Article 6 of the Convention, due account must be taken of the outcome of the public participation in the decision.

The Bulgarian competent authority definitely acted in breach of these provisions.

Information on issuing the IPPC permit was published in the daily newspapers called “24 Hours” on 25 September 2009. However, the text of the permit was not published anywhere. Only some very brief information was made publicly available through the public register containing data on the issuance, review and modification of integrated permits which is kept by the Minister of Environment and Water <sup>(21)</sup>. Namely, there was quoted the date of announcement, the way of announcement and the progress concerning the permit (that is the fact that a claim was raised against it).

The CEIE asked for the copy of the permit on the base of the Bulgarian Act on the Access to Information. Despite the fact, that the information should have been provided within 14 days according to this statute, the Ministry of Environment reacted to the request only after a time-limit twice as long. **Moreover, the Ministry sent only the front page of the permit stating that the “permit is granted”. No conditions and no reasoning were included, neither the information on how the comments of the public were dealt with.**

Conditions of the permit, reasoning and information on how the public comments were handled should be regular part of every IPPC permit issued. Moreover, CEIE explicitly asked for this information in the request submitted to the Ministry. Thus, we regard the course of action of the Ministry as obvious obstruction to the public participation in the IPPC process, in particular to the right of public concerned to appeal against the IPPC permit to the independent court. Without knowing the denied information it is impossible for concerned NGOs to raise a thorough and qualified claim against the permit. Thus, the claim had to be raised as a blanket one.

We conclude that such acting constitutes other severe violation of the right of the public

21 <http://www.moew.government.bg/manage/index.html>

concerned to participate in the IPPC procedure, with regard to the abovementioned provision of Article 15 paragraph 4 of the IPPC directive and Article 6, paragraphs 8 and 9 of the Aarhus Convention. At the same time, Article 16, paragraph 1 and 3 of the IPPC directive and Article 9 of the Aarhus Convention was violated as well because the claim against the IPPC permit had to be raised as a blanket one, without contents, as NGOs still do not know the conditions and the reasoning of the permit.

### **Gap in transposition:**

Moreover, it is necessary to emphasize that **the Bulgarian legislation does not even set forth the obligation to make available to the public the content of the decision, including a copy of the permit and of any conditions.** The Bulgarian *Environmental Protection Act* in Article 127, paragraph 2 merely sets out the obligation to announce issuing of an IPPC permit through the media of mass communication within fourteen days after the date of issue. Neither the implementing *Regulation on the terms and the procedure for the issue of an integrated permit* states the obligation to make available the content of an IPPC permit as required by Article 15, paragraph 4 of the IPPC directive.

Hence, with this respect, the transposition of Article 15, paragraph 4 of the IPPC directive into the Bulgarian law must be considered as insufficient and incorrect. **We conclude that there is a major gap in transposition of the IPPC directive.**

### **VI) Conclusion**

**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” and the IPPC permit was issued in breach of the IPPC directive, the Aarhus Convention and even the Bulgarian legislation itself.**

**At the same time, the case proved that there is a serious gap in transposition of the IPPC directive concerning the publication of the IPPC permit.**

**As the issue is very serious, we entreat the Commission to start the infringement procedure as soon as possible, in the interest of the Bulgarian citizens, very precious parts of Bulgarian nature and the environment as a whole.**

9. As far as possible, specify the provisions of Community law (treaties, regulations, directives, decisions, etc.) which the complainant considers to have been infringed by the Member State concerned:

- **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 <sup>(22)</sup>,

in particular following Articles of the IPPC Directive:

*Article 3 paragraph 1, letter a) /vide point 8 B I/*

*Article 9 paragraphs 1, 4 /vide point 8 B I/*

*Article 15 paragraph 1 /vide point 8 B II, III, IV/*

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22 Analogous obligations were set forth by the preceding IPPC directive which had to be transposed into the Bulgarian law at latest on the day of its accession to the EU (Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control OJ L 257, 10.10.1996, p. 26)

*paragraph 4 /vide point 8 B V/*

*Article 16 paragraphs 1 and 3/vide point 8 B V/*

*Annex V paragraphs 1, 3, 4, 5 /vide point 8 B II, III, IV/*

- **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
- **Aarhus 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 *in connection with 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,

in particular following Articles of the Convention:

*Article 6 paragraph 2 /vide point 8 B II, IV/*

*paragraph 6 /vide point 8 B III/*

*paragraphs 8 and 9 /vide point 8 B V/*

*Article 9 paragraphs 2 and 4 /vide point 8 B V/*

10. Where appropriate, mention the involvement of a Community funding scheme (with references if possible) from which the Member State concerned benefits or stands to benefit, in relation to the facts giving rise to the complaint:

It is necessary to outline that the investor of the Chelopech Mining project has benefited the financial support from the European Bank for Reconstruction and Development (EBRD) in the amount of USD 25 million.  
<http://ebrd.com/projects/psd/psd2004/4468.htm>

11. Details of any approaches already made to the Commission's services (if possible, attach copies of correspondence):

- Answer of the Commission from 26/11/2007 concerning the EIA issue (attached) /att. no. 1/
- Letter of alert about the IPPC procedure from 19/5/2009 (attached) /att. no. 2/
- Answer of the Commission from 17/6/2009 to the letter of alert about the IPPC procedure (attached) /att. no. 3/

12. Details of any approaches already made to other Community bodies or authorities (e.g. European Parliament Committee on Petitions, European Ombudsman). If possible, give the reference assigned to the complainant's approach by the body concerned:

Two petitions concerning the Chelopech case were submitted to the European Parliament in the end of 2007. The first one aimed to complain about the limited public access to information and limited consultations on the Chelopech Mining project with communities living downstream the Topolnitsa and Maritsa River during the EIA procedure. The second one was drawn up to support the cyanide ban in Bulgaria (with 14,432 signatures). The Members of the European Parliament Committee on Petitions visited the Chelopech mine tailings facility in October 2008 during their mission to Bulgaria. The final report from this mission, containing a part on Chelopech, was approved by European Parliament on 10 February 2009.

[http://www.europarl.europa.eu/meetdocs/2004\\_2009/documents/dt/764/764827/764827en.pdf](http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dt/764/764827/764827en.pdf)

**13.** Approaches already made to national authorities, whether central, regional or local (if possible, attach copies of correspondence):

**13.1** Administrative approaches (e.g. complaint to the relevant national administrative authorities, whether central, regional or local, and/or to a national or regional ombudsman):

Communication with the Ministry of Environment only (vide point 14)

**13.2** Recourse to national courts or other procedures (e.g. arbitration or conciliation). (State whether there has already been a decision or award and attach a copy if appropriate):

Lawsuit filed against EIA decision (text of the document translated into English attached) /att. no. 4/

Judgment of the Supreme Administrative Court abolishing the EIA decision, the judgment is not final (text of the document translated into English attached) /att. no. 5/

Lawsuit filed against IPPC permit (attached) /att. no. 6/

**14.** Specify any documents or evidence which may be submitted in support of the complaint, including the national measures concerned (attach copies):

- text of the Bulgarian Environmental Protection Act:  
<http://www.p-united.org/en/legislation/law.php?lawtype=1>
- text of the Regulation on the terms and the procedure for the issue of an integrated permit
- copy of the front page of the IPPC permit /att. no. 7/
- request for access to information: IPPC documentation from 16/3/2009, addressed to the Ministry of Environment and The Environmental Executive Agency separately /att. no. 8a and 8b/
- answer of the deputy minister of environment from 2/4/2009 to the request from 16/3/2009 /att. no. 9/

- letter from 8/4/2009 /att. no. 10/
- official statement of the CEIE from 17/4/2009 /att. no. 11/
- letter to the Ministry from 20/5/2009 /att. no. 12/
- answer of the Ministry from 5/6/2009 to letter from 20/5/2009 /att. no. 13/
- request for the copy of the IPPC permit and other information from 26/9/2009 /att. no. 14/
- answer of the Ministry from 19/10/2009 to the request from 26/9/2009 /att. no. 15/

**15. Confidentiality (tick one box):**

- "I authorise the Commission to disclose my identity in its contacts with the authorities of the Member State against which the complaint is made."
- "I request the Commission not to disclose my identity in its contacts with the authorities of the Member State against which the complaint is made."

**16. Place, date and signature of complainant/representative:**

Brno, Czech Republic, 20 November 2009

Mgr. Jan Šrytr,  
lawyer of the Environmental Law Service

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