

Recommendations to the MOEW

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Introduction

The present recommendations were written on the basis of the analyses and assessments, prepared in the framework of the project “Enhancing Access to Information and Public Participation in Environmental Decision-making” and the results of the two national meetings, organized during the carrying out of the abovementioned project.

The recommendations reflect the real facts that became obvious during the project, but also is an expression of the author’s opinion on how the legal framework for access to environmental information should be implemented.

The recommendations are divided into three groups:

- a) with respect to changes of the legal framework;
- b) with respect to the implementation of the existing legislation;
- c) with respect to the possibility of discussing some of the questions during the workshops that will be organized within the project;

I. Recommendations with respect to changes of the legal framework

I.1. Some officials, who participated at the National meetings, say that they know little about the criteria for specifying which information is trade and industrial secret. This issue was subject to a special study about the possibilities for regulation of the social relations with respect to the question: “What data is trade and industrial secret?”.

Recommendation 1: In order to create legal security and for protection of the public interest when access to data which might be trade and industrial secret is granted, we recommend the adoption of detailed criteria for specifying this type of protected data. For more information – see the analysis on this subject that was presented at the National meeting held on 30 March 2006.

I.2. There is no regulation of the practical measures for protection of confidential information submitted by the business to the executive power agencies. This is why we find appropriate the creation of such a regulation. It might be similar to the existing regulation for protection of classified information. During the study trip to the USA, the participants were acquainted with the tools for physical protection of confidential information. The study tour participants were demonstrated concrete examples for protection of confidential information.

Recommendation 2: Initiation by the MOEW of creation of regulation in order to create practical guarantees/measures for physical protection of confidential information submitted by the business to the executive power agencies.

II. Recommendations with respect to the implementation of the existing legislation

II.1. It seems that there is no problem related to the active provision of environmental information in the water protection sector. Generally the opinions of the public and the administration overlap. In spite of this if we try to compare the pictures of the effective active access to environmental

information as described by the institutions and the good practices on the one hand and the expectations and the difficulties as described by the NGOs on the other hand, some problem issues appear. These are:

- the active access to information of public interest as for example the municipal contracts for utility services (household waste collection. Water provision services, waste water treatment service), the drinking water quality, the state of public resources (municipal and state owned forests are given as examples, but the same arguments might be applied to the mineral resources and the water resources as well);
- the active operative provision of information on issues of public interest (e.g. the drinking water quality, or the state of water bodies in spring time when snow in the mountains is melting or when there is flooding danger).

It would be good and appropriate if the institutions answer the intensive public interest in the abovementioned issues by creating an disseminating of good practices of active access to environmental information on the mapped issues and questions, with the use of accessible public registers included. There is an already existing good practice in this direction – the Internet site of the West Aegien River Basin Directorate-Blagoevgrad. On this website one can find a register of the issues water use permits. The register contains some interesting and useful information about the permits. It would be better if the register also contains information about the concrete place where the waste water discharge is permitted and the individual emission limitations imposed on the owner of the permit – this information can not be confidential because it relates to the emissions in the environment.

Recommendation 3: MOEW and the agencies subordinated to the MOEW to publish more information with respect to the abovementioned issues on their websites.

II.2. The analyses and discussions show that legal departments at different environmental agencies lack an uniform opinion on how the existing legislation on passive access to environmental information should be applied. The National meetings were attended by few lawyers and no discussion about the relation between the three legal documents for access to environmental information took place. These three legal documents are: a) the Aarhus Convention (AC); b) the Environmental Protection Law (EPL) and c) the Access to Public Information Act (APIA).

The lack of a uniform opinion on how to implement the abovementioned legal documents makes pointless any training seminars or workshops because officials from special departments who attended the National meetings said that when administrative decisions for permitting passive access to environmental information are drafted, the lawyers at the agencies have the final say.

The legal problems with respect to the implementation of the AC, EPL and APIA are few. The most important issues are:

- the relation between art.37, paragraph 2 of the APIA on the one hand and art.20, paragraph 4 EPL/art.4, paragraph 4 of the AC on the other hand;
- the problem with the implementation of the public interest test when confidential information falling under any of the exceptions to access provided in art.4, paragraph 4 of the AC can be disclosed to the public;
- the problem resulting from some contradictions between the AC (which is an international treaty and the domestic laws (EPL and APIA). Under BG Constitution international treaties are prior to internal laws in cases of contradiction between the rule of an international treaty and the corresponding internal law (EPL and the APIA).

As a part of the present recommendations we attach an analysis/description of the steps that are to be followed by the administration in order to assure a correct, non-conflicting implementation of the existing legal documents for access to environmental information¹.

We are aware that the conclusions of the attached analysis might not be shared by the lawyers at the MOEW, but we recommend the MOEW's lawyers to express their opinion on the questions brought up in the analysis. Thus the lawyers at the Regional Environmental Inspectorates and the River Basin Directorates will dispose not only of the personal doctrinal opinion, expressed in the analysis, but also of the opinion of the legal department at the MOEW. If the legal department at the MOEW expresses opinion on the questions related to the implementation of the existing legislation, brought up in the present analysis. The officials who would attend the workshops can be trained what concrete steps should be made when an application for access to environmental information is on their desk.

Recommendation 4: The legal department at the MOEW to give instructions about what steps should be made for correct implementation of the access to environmental information legislation. Officials at the local executive power agencies in environmental protection area will be trained on the basis of these instructions.

II.3. Answers, provided by all stakeholders – administration, NGOs, business make clear that in general the business does not mark the confidential information, despite the fact that art.20, paragraph 3 of the EPL requires so.

Recommendation 5: The MOEW officials to discuss possible appropriate tools to motivate the business to implement the requirement of art.20, paragraph 3 of the EPL. For example by including in the permits of an express clause/requirement that the business should mark the confidential information.

III. Recommendations with respect to the possibility of discussing some of the questions during the workshops that will be organized within the project;

III.1. The experience obtained in the framework of the demo project, realized by Ecomission 21, and the discussions, held during the National meetings show that the administration rarely implements art.20, paragraph 5 of the EPL, providing that: In the cases of restricted access, the available information relating to the environment shall be provided in the part therein as can possibly be separated out from the information covered under Paragraph (1) – (confidential information). This is why the practical tools and approaches for separation of confidential from non confidential information would be an interesting and important subject of a training workshop.

Recommendation 6: We recommend one of the subjects of the training workshops to be: Practical training for separation of confidential from non-confidential (accessible) environmental information

III.2. Some answers to demands for access to environmental information filed at the administration within the demo project implemented by Ecomission 21 show that sometimes at the administration a misunderstanding about what the meaning of “personal data” is exists. Sometimes the names of

¹ In this description we suggest that before releasing data, that might occur confidential the administration should ask the consent of the body that submitted the information to the administration. The document exists in Bulgarian, it will be translated to English.

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juridical persons are defined as “personal data” by the administration. This is not correct from legal point of view.

Recommendation 7: We recommend the officials to be acquainted with the criteria for specifying of data, access to which is limited and namely with the “personal data” as a category of confidential data under the Law for Protection of Personal Data.

III.3. Any of the recommendations, laid down in part II (Recommendations 3-5) can also be a subject of the training workshop because the recommendations concern the implementation of the existing legislation.

These recommendations were prepared by Alexander Kodjabashev