

**FORM FOR THE SUBMISSION OF COMPLAINTS CONCERNING ALLEGED
UNLAWFUL STATE AID OR MISUSE OF AID**

The mandatory fields are marked with a star (*).

1. Information regarding the complainant

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2. I am submitting the complaint on behalf of somebody (a person or a firm)

Yes

If yes, please also provide the following information

Name of the person/firm you represent: **Balkanka Association, Sofia, Bulgaria**

Registration nr. of the entity: **176566443**

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Fax:

Please attach proof that the representative is authorized to act on behalf of this person/firm.* -
Attached in the Annex

3. Please select one of the following options, describing your identity*

c) **Non-governmental organisation**

f) Other, please specify

Our Association has set the goal of protecting rivers and more broadly the nature along with promotion of sustainable development to guarantee that our efforts would have long term effects on the ground. Being aware of the adverse effects of climate change and how it affects the sensitive freshwater ecosystems we are putting all efforts to support climate policies and most notably the promotion of Renewable Energy Sources (RES) as conventional energy production is a major producer of greenhouse gas emissions. Furthermore, pursuant to art. 8 of our Statue we have set among our goals the support of our members in all their activities and actions, directly related to the goals of our organization. Thus we as an association of citizens support individual initiatives and endeavours of our members directed to nature and river protection, promotion of sustainable development and their enterprises in line with our values. Therefore, in procedures and public consultations we are authorized by our members to represent their individual interests and act as their agents in relation to their individual activities and even their business enterprises.

As association initially established by anglers and kayakers we are most interested in protecting and restoring river habitats and fish populations in order to preserve our way of living. Increasing the possibilities for development of many kinds of ecosystem services mountain rivers can provide for (like riverside tourism, kayaking, rafting, angling etc) is the only sustainable way to achieve our goals. Therefore our activities include cleaning of the riverbeds, fish stocking, fight against fish pouching and river pollution, green classes for kids and many other. But riverside tourism is still our main objective, as it may lead to local development by engaging local communities in river protection they can only benefit from. Since 2013 we also encouraged the state to designate more than 30 mountain rivers as special angling "Catch & Release" zones for the Balkan trout (*Salmo trutta*), which is the most interesting fish to catch around here, especially in the mountain areas which are pitifully among the poorest regions in Bulgaria.

We even tried to convince the state and West Aegean River Basin Directorate together with our friends from the Bulgarian Kayak Society to designate the famous Struma River in the Kresna Gorge as a Water Sports Zone in the River Basin Management Plan 2016-2021 and were denied the plea, never mind that the Water Act enforces Basin Directorates to announce such zones...

It is also our intention to develop fishing tourism together with local associations along several of those rivers announced as "Catch & Release" zones, since such an activity has proven to be quite effective for developers and local communities in our neighbouring countries like Bosnia, Slovenia and Serbia, as well as all over the world. And most importantly this kind of tourism also leads to beneficial consequences for the environment, which stays protected and preserved by definition.

Still, our experience so far shows a bigger threat to our efforts than fish pouching and river pollution

- the constant growth of river bio corridors' disruption by numerous new water catchments.

Having in mind that Socialism has done its best effort to utilize the waters running in our rivers, we are critically interested in the removal of every river barrier which is useless today, as all of them have significant adverse impact on fish populations by disrupting the habitats' continuity and all of them are too dangerous to all kind of water sports. We are also most interested in not allowing the creation of new migration barriers because we have enough of these in our country. It is renowned fact that dam removal is the most efficient river restoration measure which currently is applied worldwide to a great success. We have studied the possibility of dam removal in Bulgaria in a vain attempt to implement such a project. Although the Bulgarian law explicitly stipulates that obsolete dams or weirs¹ should be removed the State has not undertaken a single dam removal effort insofar. Unfortunately our study revealed that it is impossible for an association like ours (or any other environmental NGO) to initiate a procedure for dam removal even if it can provide the funding on its own and even if those dams are foreseen for removal in the relevant River Basin Management Plans. The mere reason is that any work² carried out on public state property (e.g. the river beds) can be requested and initiated only by the owner of the property or any other person who has special rights to do so. Thus NGOs do not have the capacity of a contracting authority in order to start such a procedure and request the relevant authorizations and permits to be granted³. While it is impossible to remove a weir because of the lack of a special right, new hydropower companies have constructed freely in river beds without the same rights. Obviously we are competing parties in the process of removal and construction of dams on the rivers. As it is revealed below unlike the NGOs the investors in hydropower are not required to prove that they have the said special rights to initiate a construction in public state property. Not only companies receive preferential treatment and are not required to follow the law, there is adverse ecological effect and breach of the Water Framework Directive by the mere fact that ecological conditions of the water bodies are being constantly deteriorated in our country. Thus currently in Bulgaria it is easier to construct a new migration barrier on the river despite the Water Framework Directive than to remove an old obsolete and even dangerous weir which can potentially cause floods while such activity is permitted by the same Directive and prescribed by the Flood Directive of the EU.

As mentioned above, among the goals of our Association is the promotion of angling related tourism, e.g. local or foreign anglers who would come on fishing tours and create a demand for specific beneficial conditions on the rivers and which contribute to the local economy of remote and isolated communities all over the country. All our activities are related to the improvement of the conditions for angling related tourism and promotion of its different forms. Being an association of a wide variety of professionals working in different sectors we also have members who earn their living like kayaking and fishing guides⁴. Therefore our Association has a direct interest in protection of rivers for the reason that this will create and sustain a specific conditions and

¹ Most of the obsolete dams and weirs in Bulgaria were erected in socialist time and are currently abandoned, some of them are partially destroyed and some pose great risk of floods.

² The demolition of a structure is a type of construction under the Bulgarian Spatial Development Act

³ There is a long range of documents and procedures which have to be carried out like Appropriate of Environmental Impact Assessment, Statement of admissibility under the River Basin Management Plan, Water body use permit, contrition permit, etc

⁴ https://en.wikipedia.org/wiki/Guide#Fishing_guide

prerequisites for further development of the niche market of river related forms of tourism in our country. However any hydropower development is inconsistent with this goal by the fact that any new river barrier disrupts bio corridors and water flow regime. In recent years we have proven that BG hydropower development creates such conditions which are incompatible with the sheer existence of the fish and we have documented all those violations on our hydropower monitoring platform dams.reki.bg⁵. There is no option for any kind of water sports in a river section dried up to the bottom, while this is the common situation of hydropower *modus operandi* as our platform displays in about 90% of the cases. Hence, by illegally promoting hydropower development and operation, Bulgarian state has significantly and adversely affected the possibility of river related tourism and has thus affected our members and Association.

As environmental protection association we are also quite interested in the balanced development of the RES industry. Recently it became clear there is a practical halt in solar and wind energy investments. In the same time investors shift to hydropower which is the only RES industry to survive in Bulgaria. Therefore, we commissioned to external legal consultant to carry out an analysis of the different support schemes which distort the RES market and shift focus towards hydropower. The result of this analysis clearly shows that there is a significant and unreported State Aid in relation to planning, construction and operation of hydropower. It became clear that through these schemes Bulgarian hydro engineers have gained substantial competitive advantage over other actors in the RES consultancy market.

These schemes have distorted the RES market and the conditions for the development of RES projects as a whole in Bulgaria. In 2013 massive protests took place here in which people demonstrated their huge discontent with the prices of electricity and which led to change in government. Most notably the discontent was shifted towards the RES which are promoted through feed-in tariffs that are much higher than those from fossil/nuclear sources. Producers of electricity from renewable sources were also contractually entitled against the grid operator to the purchase and payment of electricity at a guaranteed price. Back then renewable energy was still given priority access for connection to the grid. The great public outcry led to a situation where both the feed in tariffs for RES were significantly reduced and the priority access to the grid was removed. Currently not only prices are not guaranteed but also access to the grid is hindered. In this current new situation which took place after 2014 investments in solar and wind energy were practically abandoned. The only RES sector which continues to further develop is hydro energy. This is a clear indication that hydropower receives competitive advantage over other RES.

A recent media investigation revealed⁶ that many politicians have hydropower plants thus it is not surprising that this sector was less affected by the price reduction. Therefore we have grounds to believe that RES feed in tariffs were not uniformly reduced and that those for hydro still remain attractive which has happened in expense of others. While we do not have neither the resources, nor the information to prepare a comprehensive market analysis it is clear that only the hydropower sector continues to grow. We can speculate that if the prices were fairly reduced thus leaving equal conditions for development that would have created a healthier market environment. Most likely, a more even reduction of feed in tariffs could have had the same effect on end user energy prices while still supporting all RES branches. Currently all are blocked except for one.

⁵ <https://dams.reki.bg/Dams/About?setlang=en>

⁶ <https://nova.bg/news/view/2017/11/12/198360>

All these facts have distorted the RES sector in the promotion of which we are really interested in order to reduce the greenhouse emissions and help ease down the effects on the fragile freshwater ecosystems.

Please explain why and to what extent the alleged State aid affects your competitive position / the competitive position of the person/firm you represent. Provide as much concrete evidence as possible.

Please be aware that, by virtue of Article 20(2) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, only interested parties within the meaning of Article 1(h) of that Regulation may submit formal complaints. Therefore, in the absence of a demonstration that you are an interested party, the present form will not be registered as a complaint, and the information provided therein will be kept as general market information.

By creating more favourable conditions for the development of hydropower projects the government has made:

1. consultants, having no or limited capacity/experience with hydropower less competitive on the consultancy market to those (mainly hydro engineers) who have specific knowledge in hydro as currently mainly hydro power projects are being developed.
2. solar and wind RES less attractive for investors to the point that here are no (or very little) new such projects (please see below). Hence people with expertise and experience in these sectors are driven out of business without being able to offer their services.
3. investors in solar projects to go insolvent because feed-in tariffs were not evenly reduced so as to guarantee the survival of all players under equal conditions.

In our Association there are people who suffered from all of the above described adverse effects.

As evidence we present data from the State Agency for Sustainable Energy Development:

In 2014 there were 31 solar plants put into operation to the combined capacity of 2.56 MW, 11 hydro with 9, 48 MW capacity and 6 wind power plants with capacity of 9,07 MW in total.

In 2015 the same number of solar and hydro were put into operation – 9, but the installed capacity of hydro was 7,92 MW and that of solar 0,515 MW. No wind.

In 2016 only 2 new solar plants were put into operation with combined capacity of 0,035 MW compared to 4 small hydropower plants (HPP) with the combined capacity of 8,895 MW. Again no wind.

In 2017 3 solar installations were put into operation with combined capacity of 0,045 MW. Currently no HPPs are put into operation but 5 are being actively constructed.

We should of course say that a project is being planned and implemented in different periods, but these figures are quite indicative of the current situation in the RES sector. In the period of last 3 years no wind power was put into operation and despite the significant reduction of the price of solar panels and the fact that these are the easiest and fastest (requiring less permissions and procedures) to implement projects we saw less than 1 MW of installed capacity for the whole period. Meanwhile wind was completely stopped. Still 16 MW of hydro were added to the network and

new permits are being issued.

As for the personal loss of Balkanka Association, besides the unbalanced RES development, we are also deprived of any possibility whatsoever to compete with hydropower companies for the use of freshwater eco system services which BG rivers can provide for in a much more sustainable and friendly to the environment way as described in the previous section.

4. Please select one of the following two options*

Yes, you may reveal my identity

No, you may not reveal my identity

If not, please specify the reasons:

Confidentiality: If you do not wish your identity or certain documents or information to be disclosed, please indicate this clearly, identify the confidential parts of any documents and give your reasons. In the absence of any indication about confidentiality of your identity or certain documents or information, those elements will be treated as non-confidential and may be shared with the Member State allegedly granting the State aid. The information contained in points **5 and 6** cannot be designated as confidential.

5. Information regarding the Member State granting the aid*

Please be aware: the information provided under this point is regarded as non-confidential.

a) Country: Bulgaria

b) If known, specify which institution or body granted the alleged unlawful State aid:

Central government: Council of Ministers, Ministry of Environment and Waters, Ministry of Regional Development, Directorate for National Construction Control

Region (please specify): Basin Directorates, Regional Directorates for National Construction Control, Municipalities and their chief architects who issues construction permits

Other (please specify):

6. Information regarding the alleged aid measure*

Please be aware: the information provided under this point is regarded as non-confidential.

a) Please provide a description of the alleged aid, and indicate in what form it was granted (loans, grants, guarantees, tax incentives or exemptions etc.).

Hydropower in Bulgaria receives state aid in at least 4 different forms all of which are in the form of exemption from the general legal procedures and horizontal law which are applicable to all enterprises and especially to all other RES producers. All of these forms are not declared as state aid. From the 4 different forms only two have a legal basis to some extent as they are enacted in laws. The others are not based on any law or regulation; on contrary – they are received despite the provisions of the laws and could be described with the Bulgarian legal term “*custom in practice*” where they take place without being based on any legal text but on the contrary - they are in breach of the law with the knowledge and active participation of the state institutions which proceed them despite the law.

The different forms of state aid according to our non-exhaustive survey are:

1. Construction in public state property - the river beds, without any legal right or consent by the Government – at least 140 small hydropower water catchments were constructed in riverbeds in such way. This is not based on any legal document whatsoever. Please refer to the above mentioned journalist investigation⁷ for more detailed information. In the video you could see current deputy ministers, high ranking administration, former ministers, law professors, consultants, chief architects, etc. explaining that this construction was carried out against the law but still no actions are taken. Please also refer to the second document in the Annex, representing a letter, sent from the Ministry of Environment and Waters to the Ministry of Regional Development and Public Works describing that run-off HPPs are constructed without permission and concession contracts in public state property. This was sent in 2010 but no actions followed till these days (just the law amendments, see the item below). While the letter correctly described the applicable legislation it clearly fails to list all other hydro projects (diversion type of facilities) where weirs/dams/water catchments are also being constructed in river beds, e.g. Public State Property within the meaning of the Water Act. These dams ranging from 100 cm to 30 meters of height all represent construction. Yet not only the construction requires permission but also the dam lake represents a type of usage that requires special right of space to be established in favor of the investors. Furthermore, we refer to two court decisions⁸ (text in Bulgarian) related to the definition of Public State Property over riverbeds which eradicate any doubt that the construction took place in exactly such land.
2. Receiving an everlasting right to construct in public state property without concession – 3 small hydro power plants received such right to be constructed. This possibility was given by amendment to the Energy Act in 2010. Although it provided a form of solution (and a form of legalized state aid) in response to the letter of Ministry of Environment and Water only 3 HPP received such - for proof see the Annex please. However, the fact that some have it while the rest do not clearly indicates that this is the compulsory procedure to be followed.
3. Construction of penstock in forest without changing the designation of land from forest to

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<https://nova.bg/news/view/2017/11/12/198360/%D1%80%D0%B0%D0%B7%D1%81%D0%BB%D0%B5%D0%B4%D0%B2%D0%B0%D0%BD%D0%B5-%D0%B2-%D1%82%D0%B5%D0%BC%D0%B0%D1%82%D0%B0-%D0%BD%D0%B0-nova-%D0%B2-%D0%BC%D1%8A%D1%82%D0%BD%D0%B8-%D0%B2%D0%BE%D0%B4%D0%B8/>

⁸ http://www.reki.bg/2017/11/blog-post_47.html http://www.reki.bg/2017/11/blog-post_2.html

urbanized – we are not aware how many.

4. 3. Utilizing more water from the rivers than what is allowed by law⁹. Due to the extent of this systematic breach we reckon these are not isolated cases of law violation but a direct result of government's policy towards hydropower.

b) For what purpose was the alleged aid given (if known)?

As described above only two of the four forms of state aid are officially granted in legal texts. No formal reasons were provided by the government. The motives for those law amendments are not clear but the intention was to relieve hydropower development from the obligation to pay royalty and undergo additional procedure. While we fully support the relief of businesses from administrative burdens all other enterprises in Bulgaria are not exempt, not even hospitals, but only hydro industry. Thus they spare money and time and become eternal “owner” of the river beds despite that they are public state property. However, we can stipulate that the alleged state aid is given, because hydropower operators are usually politically connected persons.

c) What is the amount of the alleged aid (if known)? If you do not have the exact figure, please provide an estimate and as much justifying evidence as possible.

It is very difficult to assess the exact amount of the state aid. We are not aware of its full amount but it is substantial. However we reckon that:

1. All small hydro, built in rivers between year 2000 and 2010 should have been constructed after receiving a concession in a tender procedure and payment of one time premium. Furthermore, all these projects are supposed to pay annual tax to the amount of a certain percentage of their turnover (around 2% plus additional fee to the Ministry of Environment and Waters¹⁰) and they can exploit the power plant for a term (usually 30 year with the possibility of additional 10) after which the ownership is transferred to the state. Between year 2000 and 2010 104 small HPPs were put into operation according to the public register of State Agency for Sustainable Energy Development. At least 90% of those were constructed within public state property and the rest on some existing facilities like irrigation channels. None of them holds a concession contract with the state, which leads to a huge loss for society.
2. All small hydro, constructed between 2010 till present should have received a building right in order to construct on public state property, but they didn't. In that period 70 HPPs were constructed (again 90% of those affect public state property and the rest are on existing state owned facilities). Only 3 of those received a building right to construct by virtue of decision of Council of Ministers. Furthermore, all those 3 received the right of space for eternal times

⁹ Please note that although the Water Act requires a special Ordinance designating the amount of water to be released in the rivers as ecological water flow for diversion type of HPPs, such an Ordinance has not been prepared for 8 years now. Thus currently there is a flat approach where only 10% of the average multi annual flow per the specific river has to be released. Furthermore, those 10% should not be less than the minimum average monthly flow within 95% reliability. This second requirement however is disregarded and still we have seen cases where HPPs are permitted to release much less.

¹⁰ Due to the frequent law amendments regulating concessions in the past decade we cannot comment in which period what was the exact regulation thus we just provide a general overview.

which is also against the law.

3. It is impossible to assess the price to acquire the right of space for using public state property of river for eternal times. First of all under the Bulgarian legislation that Public State Property is excluded from commercial turnover thus it has no price to be compared to (the river bed does not cost the same as the pasture along the river, it actually is priceless). Secondly, this price should be equal to 100% of the possible price of the land since this right is granted for eternal times, which means that the state only retains *nuda proprieta* but all rights are transferred. Therefore we reckon that concession is the only possible way to construct in public state property and this exemption not only represents state aid but also significantly undermines the general legal order.
4. From all small hydro we have visited in the recent years, we have found that 90% of those release much less than the required or even no ecological flow at all. Although there is technical possibility to control the E-flow, the state has not put any effort to measure and control the amount of water released in the river. Thus all diversion type of HPPs received state aid.
5. We are not aware how many small HPPs used the right to construct penstock in forests without changing the designation of the land. There are about 30 small HPPs put into operation after this legal amendment so it is possible that 40% of them potentially benefitted from this state aid.
6. In the light of the destruction caused to river ecosystems by the wild development of hydropower, favoured by the State and uncontrollable as it is, no figures can actually estimate the loss and potential future costs for river restoration.

Still, as a very rough estimate we can point out the one time premium paid by one of those three HPP operators for the right of space for construction in the riverbed - 14 000BGN /7000 €/ . It is really nothing, having in mind that the right was given forever, but the overall state aid for hydropower can be calculated accordingly for 140 HPP that paid nothing. Then, on this issue only, the figures come to 980 000 €.

We will prove below that the state is not forcing HPP operators to install special measuring equipment for the Ecological flow they are obliged to discharge in the river below the water catchments, hence expenses are also spared, and the state also fails to force them to cease operation during times of drought as they should, thus they are producing much more energy to their profit than they would in case the law was followed. When only this legal requirement for the E-flow is not followed and the dry period with low water in BG rivers is taken as four months per year at the average /it usually continues much longer/ - the state aid could reach some hundred million € per year, paid for the hydropower energy produced in breach of the Water Act.

Moreover, each EU member state benefits most from the application of the EU legal framework, which is not followed in our country at all as far as water bodies' protection is concerned. Since the hydropower devastating impacts are constantly growing in our country, Bulgaria will never be able to achieve the objectives laid down in EU Water Framework Directive - not until the deadline 2027, neither until 2227. Then the whole society will pay the price for not achieving these objectives, again in favor of the hydropower operators, only we don't know today what the price might possibly be.

d) Who is the beneficiary? Please give as much information as possible, including a description of the main activities of the beneficiary/firm(s) concerned.

1. All hydro power plants with water catchments constructed (or refurbished) entirely or partially in river beds after 2000. A list of all HPPs is attached hereunder as found at the public register of the State Agency for Sustainable Energy Development.

2. All hydropower plants operating in Bulgaria after 2000 which have not followed the requirements on the minimal ecological water flow discharge.

e) To your knowledge, when was the alleged aid granted?

As described:

State aid for construction without permit in public state property was never granted. The Water Act, as enacted in January year 2000 introduced the new rules and stipulated public state ownership for riverbeds. Therefore we reckon all HPPs built (or refurbished) ever since should fall within its scope.

The same applies for the lack of application of the requirements set on the E-flow discharge and using more water than the quantity allowed by the Water Act.

The state aid in the form of right to construct in Public State Property as exemption from the requirements to have a concession was granted by the virtue of amendments to the Energy Act, art. 62, enacted on 16 July 2010.

The state aid in the form of right to construct in forest without changing the designation was granted by the virtue of amendments to the Forestry Act, art. 54, enacted on 7th august 2012

Based on the above the alleged state aid was granted by not following the legal requirements since the Water Act was published in 2000 up to this day.

f) Please select one of the following options:

According to my knowledge, the State aid was not notified to the Commission.

According to my knowledge, the State aid was notified, but it was granted before the decision of the Commission. If known, please indicate the notification reference number or indicate when the aid was notified.

According to my knowledge, the State aid was notified and approved by the Commission, but its implementation did not respect the applicable conditions. If known, please indicate the notification reference number or indicate when the aid was notified and approved.

According to my knowledge, the State aid was granted under a block exemption regulation, but its implementation did not respect the applicable conditions.

7. Grounds of complaint*

Please note that, for a measure to qualify as State aid under Article 107(1) TFEU, the alleged aid has to be granted by a Member State or through State resources, it has to distort or threaten to distort competition by favouring certain undertakings or the production of certain goods, and affect trade between Member States.

a) Please explain to what extent public resources are involved (if known) and, if the measure was not adopted by a public authority (but for instance by a public undertaking), please explain why, in your view, it is imputable to public authorities of a Member State.

All rivers and waters in Bulgaria are public state property. By allowing their exploitation without concession or any other legal grounds, state authorities have failed to implement any measures to prevent this continuous breach of legislation.

b) Please explain why, in your opinion, the alleged State aid is selective (i.e. favours certain commercial undertakings or the production of certain goods).

1. The state aid clearly is selective aimed to promote exclusively the hydropower in favour of hydro engineers, consultants, construction companies and owners of such facilities. No other RES (or another economic activity) has enjoyed such privileges, or exemptions from general rules and laws. Small hydro power plants are by far the only facilities built in public property, namely river beds, in recent years. We are aware that other facilities (e.g. water catchments for drinking water or for fishery purposes) could have been constructed, but these are isolated cases which do not have significant effects comparable to the 140+ small HPPs constructed in that period from year 2000 onwards. The energy produced by those has competitive advantages over other RES. For instance by virtue of building small dams thus flooding public state property without permission they were able to be flexible and produce energy at peak demand and thus sell their electricity on unregulated market while solar and wind cannot benefit from such.

2. Moreover, no human activity other than hydropower can compete with the same when the use of running river flows is concerned. Thus the development of all kinds of riverside tourism (kayaking, rafting, angling etc) is currently inconceivable. Famous for kayaking and angling river stretches for example were so easily drained for the sake of hydropower in the last decade, despite that any kind of undertaking connected to river tourism is beneficial for the river ecosystems, while hydropower has definitely proven to be devastating. The promotion of any kind of river related ecosystem services is condemned around here.

3. And still another issue - some hydropower plants received financing through the Rural Development Programme (RDP) of the EU. This was authorized by the state through the local management of the RDP governed by the Ministry of Agriculture and Foods, despite that there can be no rural development alongside a river dried up to the bottom.

c) Please explain how, in your opinion, the alleged State aid provides an economic advantage for the beneficiary or beneficiaries.

1. By allowing the construction of small hydro in public state property without concession, the government has supported small hydro in the following ways:

a) Hydropower operators have spared money which would actually have been paid for earning the

concession tender (one time premium) and annual fees.

b) Hydropower operators have received right to use the public land without limitation in time i.e. forever and for free.

c) Hydropower operators have been able to implement their project faster (e.g. without public tender and other related procedures).

d) Hydropower operators retain the ownership over the facility and are not obliged to transfer it back, as it is required under concession. This is hidden privatization of public state property.

2. By not introducing a reasonable controlling system over the usage of water and control over the production of energy at times of draught both Ministry of Environment and Waters and Ministry of Energy are providing the opportunity for the beneficiaries of the state aid to produce more energy and sell it to their profit. Such control is both technically possible and feasible. It can be carried out automatically by real time measurements. Almost all HPPs are currently equipped with automatic meters which control the inflow to the turbines. These figures, if transferred via internet to a data base, could automatically be compared to the data for the energy produced. For double checking data for the water flow provided by the automatic stations of the Bulgarian Academy of Science could also be used. Moreover, the expenses for the measuring equipment (e.g. current meters integrated in stabilized river profiles) are also spared to the HPP operators, because there are no requirements on this issue in the legal framework. Despite the numerous violations Environmental NGOs and our Association register and our constant demand for such an approach, similar measuring system was never even contemplated. Furthermore, the state authorities do not have means to measure the released water flow when carrying out their own inspections. We attach in the Annex a confirmation of this fact by one of the four Basin Directorates received under the Public Information Access Act - read the last page top lines, please. We would like to emphasise the fact that taking all the water from the river is sometimes crucial for the operation of small hydro power plants which are constructed on very small rivers which do not have enough water throughout the year, except for during Spring times.

3. By creating a special exception for construction of penstock in forests without changing the designation of the land, Bulgarian state has created a special advantage for these facilities over all the other forms of enterprises which all have to change the designation of the land from forest to urban before construction takes place. We underline that the exception for construction of facilities in forests without changing the designation of the land is very narrow and it only applies to linear facilities of overriding public interest which do not cause great harm to nature. While we have seen penstocks constructed above ground thus creating a fragmentation barrier before wild life access to water we have also documented cases where open channels are also built in the same way thus causing not only fragmentation effects but also the drowning of animals and possibly children.

4. By creating a special exception for construction of small HPPs in public state property with a unlimited in time right of space the government has supported illegally small hydro to acquire for eternal time the right of space; to own those power plants constructed on public property; and to use the water which is also a public state property forever. The government has also transferred rights over public state property which cannot be evaluated, to private entities. This public property by its origin and nature serves overriding public interest only and cannot be privatized under such scheme.

In comparison, if people would like to install solar panels on their rooftops, until 2013 they had to undergo the whole process similar to that of a big production facility. Despite the fact that ever since the procedures have been somewhat relieved there are still huge administrative burdens if owners

would like to sell energy from rooftop panels to the grid. In comparison HPPs are being constructed on public property with no obstacles.

d) Please explain why, in your view, the alleged State aid distorts or threatens to distort competition.

1. By granting (through legal norms but also to an obvious omission to implement the law towards a specific sector) the government has granted exclusive and broad advantage for the investors in hydro power. Thus funds were directed towards this particular type of RES instead of other, which both harm the nature less and need wider support. As mentioned before some HPPs here were financed through the Rural Development Programme of the EU, while to our view hydropower adversely affects rural development based on agriculture and tourism - that is a proven fact. Furthermore, investors are now able to achieve higher prices through the possibility to sell electricity when the demand is high.

2. By granting these special advantages (or omitting to enforce law) the Government has made this sector more attractive for investors, who might otherwise invest in other RES. Thus, through unlawful state aid the hydropower industry became more attractive which in turn drives more business to a very narrow branch of experts, e.g. hydro engineers, who consult and design such facilities.

e) Please explain why, in your view, the alleged aid affects trade between Member States.

Energy trade extends far beyond the borders of Bulgaria. Hence RES from hydro potentially could be sold on EU market. The so called “green” certificates of origin of the RES energy are also easily transferable and various schemes exist. We have already seen Bulgarian hydropower companies selling¹¹ “green” energy certificates to companies in Hungary. The fact that such hydro energy could be cheaper, hence more attractive to such deals, is a direct result of the received state aid and free use of public resources. In another deal the same company sold¹² green certificate to German retailer in Bulgaria. Although such types of deals are in their dawn they clearly affect the whole EU market. Furthermore, as most turbines for Bulgarian hydropower plants are produced in Czech Republic and Austria we see that the interest in such projects drives export and trade between Member States instead of wind turbines, which are produced in the Netherlands. These are all effects on the common market.

8. Compatibility of the aid

Please indicate the reasons why in your view the alleged aid is not compatible with the internal market.

The specific nature of this state aid, demonstrated above, clearly shows that it is granted both by law exception and in the same time by clear violation of legal order. While the first type, although inexplicable, might merit some formal reason, the second is completely not compatible with internal market. We reckon there is no need to demonstrate why a clear violation of law, done with the

¹¹ <https://www.energo-pro.bg/en/News/58/ENERGO-PRO-Trading-sold-the-first-issued-in-Bulgaria-guarantees-of-origin-for-green-energy-to-a-Hungarian-company>

¹²

https://www.capital.bg/politika_i_ikonomika/bulgaria/2016/04/08/2739233_kak_bulgariia_ne_iska_da_spech_eli_ot_zeleniia_tok/

knowledge and participation of the Bulgarian Government, needs to be analyzed if it affects internal market or not, since it is illegal to start with in the first place. It is also clear that, by allowing illegal construction to take place and by sparing concession rights and fees, the final product of these enterprises, e.g. renewable energy, is significantly cheaper than that of other sectors. While as we have already stressed, we completely support the balanced development of RES, such advantages for cheaper energy are still incompatible with internal market where other hydropower plants acquire their licenses through tender procedures, pay significantly more for the water they use and invest huge amounts of money for construction of fish passes and monitoring while these are completely not applicable here. No other RES producer can compete with such favourable conditions which are enjoyed by HPP in Bulgaria. Another angle to this state aid is the fact that companies, acquiring certificates of origin of the energy and their consumers are unaware that this energy was produced in violation of the legal order in the country of origin. Thus they are misled which in turn deceives their customers who chose those companies because they are responsible to the environment while in fact this is not true. Thus active consumers, who prefer to vote with their money and support businesses using renewable energy produced in EU and supposedly under uniform EU laws, end up with energy from illegal source which also happens to harm the environment. This consequential distortion of internal market is of not lesser importance.

Here we can distinguish the following forms of distortion of internal market:

1. The RES consultancy market – experts in the field of hydro engineering have competitive advantage over other consultants;
2. Producers of water turbines have advantage and prevent the development of solar/wind equipment manufacturers including the possible price reduction of such equipment in the future;
3. Consumers – on one hand they are misled that the energy produced by hydropower is green and conforming with the legal requirements and on the other hand they are misled to believe that solar and wind energy are expensive and should be limited without knowing that hydropower is illegally subsidized and causes adverse environmental impact;
4. Water use: already in Bulgaria there is competition between different water users. HPPs take the water which otherwise could have been used for livestock breeding, irrigation, river related tourism etc. In the most dramatic cases local communities are deprived of the access to water for household consumption because of the operation of the hydropower stations - for example at the Petrohan cascade and the village of Barzia. While this extreme case is related to existing dams we know of other such cases where local communities have engaged legal procedures to protect their access to freshwater.
5. Other ecosystem services: by allowing the illegal promotion of hydropower the Bulgarian State has created a drive for adverse effect on rivers which in turn has significantly reduced their capacity to provide their specific ecosystem services (e.g. water purification, underground water table maintenance, flood protection, riparian forests destruction, lack of access to water for game and even their direct destruction by drowning¹³, etc)

¹³ <http://btvnovinite.bg/article/bulgaria/incidenti/napoitelen-kanal-kraj-montana-se-prevarna-v-smartonosen-kapan-za-divi-zhivotni.html>

6. River related forms of tourism: in numerous cases anglers and kayakers have objected and demonstrated the adverse effects of hydropower development over the maintenance of existing sustainable forms of river related tourism like kayak, fishing, rafting, bathing, etc. Unfortunately hydropower development in Bulgaria is incompatible with those forms of tourism and has on numerous cases destroyed the conditions for them which are currently impossible to restore.

9. Information on alleged infringement of other rules of European Union law and on other procedures

a) If known, please indicate what other rules of European Union law you think have been infringed by the granting of the alleged aid. Please be aware that this does not imply necessarily that those potential infringements will be dealt with within the State aid investigation.

As demonstrated in our complaints officially lodged with DG Environment in which DG Competition was CC for the last Appendix, our Association has a prolonged correspondence with EU institutions in which we demonstrate that hydropower developments in Bulgaria are incompatible with EU legislation related to Natura 2000, to water protection, to Strategic Environmental Assessments and to the relevant EU Directives. Because of our previous complaints and that of WWF Bulgaria DG Environment has commenced an EU Pilot procedure under reference **EUP(2017)9183** concerning the systematic violation of the Habitats Directive, the SEA Directive and the Water Framework Directive and of national strategic documents, adopted in line with these Directives, referring to the planning, approval, construction and operation of small hydropower plants (HPP) and river management in Bulgaria in general. The alleged systematic violation by the national authorities implies simultaneously breach of:

Habitats Directive (art. 6 (2) and (3))

SEA Directive (art. 3)

WFD (art. 4, 11, 13, 15)

b) Have you already approached the Commission's services or any other European institution concerning the same issue? *

Yes

If yes, please attach copies of correspondence.

DG Competition was copied in our last correspondence with DG Environment which was duly received on 15/11/2017 (Registration: **2017/107322**)

c) Have you already approached national authorities or national courts concerning the same issue? *

Yes

If yes, please indicate which authorities or courts; also, if there has already been a decision or judgement, please attach a copy (if available); if, on the contrary, the case is still pending, please indicate its reference (if available).

Bulgarian authorities are aware of the situation with the illegal hydropower construction in public state property since correspondence was exchanged between Ministry of Environment and Waters and Ministry for Regional Development. It was also recently demonstrated in prime time on a national TV network. We have also notified formally the General Prosecutor's office. We have raised the question about the E-flow control during working meetings with experts from the Ministry of Environment and Waters. However we reckon it is apparent that we can hardly expect any solid actions to be taken since this violation has systematically continued unchecked for such a prolonged duration. Currently there is a check up carried out as announced by the ministry of regional development, but the case is still pending and we have no reason to believe that a decision will be reached at all.

d) Please provide any other information that may be relevant for the assessment of this case.

Case law from Supreme Court of Cassation of Bulgaria regarding what the Public State Property over riverbeds

<http://domino.vks.bg/bcap/scc/webdata.nsf/vCourtActsByCase/FFA3B6F96158C6E8C2257D3F004052D7>

<http://domino.vks.bg/bcap/scc/webdata.nsf/vCourtActsByCase/1CEF23CC693D1044C2257D02002BA8A3>

CONSTITUTIONS OF THE REPUBLIC OF BULGARIA

Article 18. (1) The subsurface resources, the coastal beaches, the national roads, as well as the water bodies, forests and parks of national importance, the nature reserves and archaeological reserves designated by a law, shall constitute exclusive state property.

....

(5) The terms and procedure whereunder the State shall award concessions to the items of property and shall grant authorizations for the activities covered under the foregoing paragraphs shall be established by a law.

ENERGY ACT

effective 18.07.2017

Article 62. (Amended, SG No. 74/2006) (1) (Amended, SG No. 54/2010, effective 16.07.2010, supplemented, SG No. 54/2012, effective 17.07.2012) Where site and/or linear energy works, ground or underground hydro-technical electricity generation facilities or parts thereof, as well as production related equipment and sites for disposal of production waste are constructed or expanded on a corporeal immovable constituting state property, the competent state authorities shall create an onerous building right to the land tract without an auction or tender in favour of the person to build and operate the energy works under the procedure established by the State Property Act.

SPATIAL DEVELOPMENT ACT

Article 144. (Amended, SG No. 65/2003) (1) Any development-project designs, which serve as grounds for the issuance of a building permit, shall be approved acting on a written application by the

contracting entity and after submission of:

- 1. documentary proofs of title and, applicable to buildings of housing development cooperatives, an effective resolution of the general meeting on adoption of the design;*
- 2. (supplemented, SG No. 61/2007, amended, SG No. 101/2015) a design permit, in the cases referred to in Article 140 (3) herein;*
- 3. (amended and supplemented, SG No. 13/2017) two copies of the development-project design of a scope and contents specified by the ordinance referred to in Article 139 (5) herein in hard copy and soft copy, with the format of the record of the digital copies of the development-project designs and of the documents and data thereto being specified by the ordinance referred to in Article 139 (5) herein;*
- 4. (amended, SG No. 77/2005, SG No. 82/2012, effective 26.11.2012) effective administrative acts which, depending on the type and size of the construction work, are required as a condition for authorization of construction under the Environmental Protection Act, the Biological Diversity Act, the Cultural Heritage Act or another special law, and conformity of the development-project design with the conditions in the said administrative acts;*

STATE PROPERTY ACT

Article 16 (Amended, SG No. 124/1998)

(1) (Amended, SG No. 32/2005, SG No. 36/2006, effective 1.07.2006, supplemented, SG No. 64/2006, amended, SG No. 87/2010, SG No. 45/2012, effective 1.01.2013) Properties - in public state ownership, shall be used only according to purpose and may not be provided to third parties, except in the cases under paragraphs (2), (5) and (6) and Article 16a.

(2) (Amended, SG No. 32/2005, SG No. 36/2006, effective 1.07.2006, SG No. 33/2009) Separate properties or parts of properties - in public state ownership, may be granted on lease terms under the procedure of Article 19(1) for a term of up to 10 years, on condition they are used according to their purpose and the performance of activities, for which they have been provided for management, shall not be impeded".

(3) (Amended, SG No. 32/2005, repealed, SG No. 36/2006, effective 1.07.2006).

(4) (New, SG No. 12/2000, amended, SG No. 24/2004, amended and supplemented, SG No. 32/2005, repealed, SG No. 36/2006, effective 1.07.2006).

(5) (New, SG No. 64/2006, amended, SG No. 33/2009, SG No. 45/2012, effective 1.01.2013) State-owned single-person commercial companies and state enterprises authorized by virtue of law to use, manage or operate projects in public state ownership, as well as persons to which rights over projects in public state ownership have been granted with a concession agreement pursuant the Concessions Act or a public-private partnership contract pursuant to the Public-Private Partnership Act, shall be entitled to make available on lease terms for up to 10 years parts of the projects in public state ownership provided to them, in accordance with the granting deed and on condition that they be used in accordance with their intended purpose.

(6) (New, SG No. 87/2010) Where that is needed with a view to fulfilling obligations arising from an international treaty, separate properties or parts of properties constituting public state property may be leased out to international organisations for a period of up to 10 years without a tender by the

minister, the head of another institution or the regional governor whereto the management of the property has been entrusted, subject to procedures specified in the Regulation on the Implementation of this Act. The rent shall be determined in accordance with the Regulation on the Implementation of this Act.

(7) (New, SG No. 87/2010) Properties constituting state property which have been leased out may not be used in a way different from their intended use, subleased or be used jointly under a contract with third parties.

(8) (New, SG No. 87/2010) In case the prohibitions under paragraph (7) are violated, the lease agreement shall be terminated.

Comment: in the State Property Act there is no rule that property rights on public state property may be created. This is because the underground riches under Art. 18, para. 1 of the Constitution are exclusive state property and the state gives them with a concession public state property cannot be subject to disposition and to be acquired by statute of limitation according to Art. 7, para. 1 of the State Property Act.

WATER ACT

Article 11. The following waters and water bodies shall constitute public state property:

1. (supplemented, SG No. 61/2010, amended, SG No. 58/2015) the river waters and the riparian land tracts, as well as the waters in water reservoirs, including waters in dams constituting State property;

2. natural lakes, lagoons, firths, swamps and marshlands, where located on land tracts constituting state property;

3. the ground waters, with the exception of mineral waters, regardless of whether located beneath the surface of land constituting state, municipal or private property;

4. the natural waterfalls and the adjoining strips of land, depending on the natural landscape, but not narrower than 10 metres on either side of the waterfall;

5. the waters, including wastewaters, where flowing out of corporeal immovables constituting public or private property, and flowing into waters constituting public state property.

10. Supporting documents

Please list any documents and evidence which are submitted in support of the complaint and add annexes if necessary

- Whenever possible, a copy of the national law or other measure which provides the legal basis for the payment of the alleged aid should be provided.
- Whenever possible, please attach any available evidence that the State aid was granted (e.g. press release, published accounts).
- If the complaint is submitted on behalf of someone else (a natural person or a firm) please attach proof that you as a representative are authorised to act.

- Where applicable, please attach copies of all previous correspondence with the European Commission or any other European or national institution concerning the same issue.
- If the issue has already been dealt with by a national court/authority, please attach a copy of the judgement/decision, if available.

Evidence can be found in the Annex.

Here are links to our entire correspondence in standard complaint forms lodged with DG Environment on the matter:

https://dams.reki.bg/uploads/Docs/Files/EU_COMPLAINT.pdf

https://dams.reki.bg/uploads/Docs/Files/EU_COMPLAINT_ANNEX%201.pdf

https://dams.reki.bg/uploads/Docs/Files/EU_COMPLAINT_ANNEX_2_DRAFT4.pdf

https://dams.reki.bg/uploads/Docs/Files/EU_COMPLAINT_ANNEX_3_DRAFT4.pdf

https://dams.reki.bg/uploads/Docs/Files/EU_COMPLAINT_ANNEX_4_%20DRAFT3.pdf

https://dams.reki.bg/uploads/Docs/Files/EU_COMPLAINT_ANNEX_5_DRAFT2.pdf

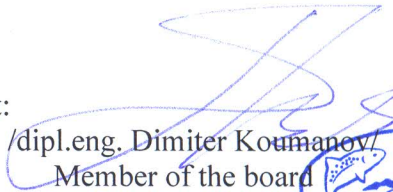
https://dams.reki.bg/uploads/Docs/Files/EU_COMPLAINT_ANNEX_6_DRAFT3.pdf

Please note that Annex 4 is the only one not connected to hydropower development and Annex 6 was already lodged with DG Environment, as well as with DG Competition - we were kindly informed that the document was registered under DG Competition reference No **2017/107322**

I hereby declare that all the information in this form and annexes is provided in good faith.

Place, date and signature of complainant

Representative for this complaint:


/dipl.eng. Dimiter Koumanov/
Member of the board



"Nature has all the time in the world, we do not".

Sofia, Bulgaria
02.01.2018

ANNEX

List of documents/evidence:

1. Letter from Ministry of Environment and Waters to the Ministry of Regional Development and Public Works informing them about the lack of concession contracts to use Public State Property for hydropower, including reference concerning run-off river sHPP commissioned in the period 2000-2010.

https://dams.reki.bg/uploads/Docs/Files/MOEW_LETTER_CONCESSIONS_1.pdf

Please note that the only three permits issued by the Council of ministers granting building right for construction of hydropower facilities in public state property are also included. We received these under the Public Information Access act.

2. Another Declaration by Council of Ministers' office concerning building rights for the construction of SHPPs, issued after 2010 for only two operational and one future sHPP.:

https://dams.reki.bg/uploads/Docs/Files/Doc3_Council_ministers_letter.pdf

3. NOVA TV broadcast on the case of the illegal construction of sHPP and the politically connected persons involved:

https://nova.bg/news/view/2017/11/10/198140/ILLEGAL_HPP_1

https://nova.bg/news/view/2017/11/12/198360/ILLEGAL_HPP_2

4. BTV broadcast on the case of the village of Barzia not having drinking water for the sake of the Petrohan cascade benefit:

<http://btvnovinite.bg/article/bulgaria/regionalni-novini/selo-pie-matna-voda-vapreki-skapa-prechistvatelna-stancija.html>

5. Letter from Basin Directorate "East Aegean Region" to Balkanka Association in which it is stated that they cannot measure E-flow (please see the underlined section)

https://dams.reki.bg/uploads/Docs/Files/EARBD_LETTER_WATER_FLOW.pdf

NOTE:

For proof that Dimiter Koumanov is authorized to act on behalf of **Balkanka Association, Sofia, Bulgaria** – certificate of good standing, issued by the Sofia City Court - see the following two pages please.