



“Balkanka” Association, Sofia, Bulgaria  
*“Nature has all the time in the world, we do not”.*

**COMPLAINT**  
**TO**  
**THE COMMISSION OF THE EUROPEAN COMMUNITIES**  
**CONCERNING FAILURE TO COMPLY WITH COMMUNITY LAW**

**APPENDIX 7**



**Representative for this complaint:** dipl.eng. Dimiter Koumanov,  
Member of the board

Sofia, Bulgaria  
30.03.2018

## **INTRODUCTION**

Regarding the Complaint to the Commission of the European Communities, lodged by Balkanka Association, Sofia, Bulgaria on **30.06.2015**, followed by **6 /six/** consecutive appendixes - No1 to No6 transferred to **EU Pilot application under reference EUP(2017)9183**, the following document contains new information concerning recently discovered infringements of EU law committed by the Bulgarian authorities responsible for the environmental protection in our country, as well as some new information concerning BG environmental legislation which is supposed to transpose EU law, but it doesn't.

Furthermore, on June 15th 2017 we were kindly informed that DG Environment has started the Pilot application based on our original complaint and subsequent supplements, which usually should be expected to take ten weeks for the Member state to respond and that the Commission in turn has ten weeks to analyse the reply proposed - that's what we were told.

Twice as long a period of time has passed already and we have not a sign of any feedback whatsoever. Somewhere in the early autumn of 2017 we asked MOEW for information about the questions asked by DG Environment and were denied access. We also offered MOEW a little help for the answers to be more precise which was rejected once again. Later on we learned through our unofficial sources that in late autumn of 2017 the answers of MOEW were finally sent back to DG Environment with a significant delay. Back then we asked MOEW under the Public Information Access Act to provide us with the answers and were denied access again. This unexpected secrecy means only that there is something wrong with the information forwarded by MOEW to DG Environment and they have obviously something /or many things/ to hide. We find it's not a normal way of communication between state officials and stakeholders/interested NGO's, therefore we'll ask DG Environment some questions in the end.

Anyone who reads this document, please note that you need to have read the original Complaint and the following Appendixes because these documents contain information that will not be repeated herein. It will be repeated briefly only in case of unavoidable necessity or of description integrity. The numbering of new facts starts at **No95**, simply because in the last three Appendixes the cases are individual and are not numbered, but the last fact in the **Appendix 3** to the original Complaint was **No94**.

## **Acknowledgements**

*We dedicate the following document to the poor people of Bulgaria misled to believe that 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. And we were all misled to believe that if the EU legislation is not followed by a member state, the EC relies on citizens and NGOs to alert the Commission and the necessary measures will be undertaken. But it turns out that only a small part of EU law is implemented in our country, only when it is in favor of individual politically connected businessmen - for example with the hydropower feed in tariffs, or when it comes to splitting EU programmes' funding between the same connected men.*

*And we hear rumors now that via some kind of "fitness check" the objectives laid down in EU Water Framework Directive and the deadlines are about to be revised which means that they will never be accomplished. We will show below some of the reasons why it shouldn't happen and the deadline shouldn't be extended anymore.*

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**ACRONYMS:**

<b>MOEW</b>	- Ministry Of Environment and Waters of Bulgaria
<b>RIEW</b>	- Regional Inspectorate/s of Environment and Waters
<b>RBD</b>	- River Basin Directorate/s
<b>BDDR</b>	- Basin Directorate Danube Region
<b>EARBD</b>	- East Aegean River Basin Directorate
<b>WARBD</b>	- West Aegean River Basin Directorate
<b>BDBSR</b>	- Basin Directorate Black Sea Region
<b>WA</b>	- Water Act
<b>EIA</b>	- Environmental Impact Assessment
<b>AA</b>	- Appropriate Assessment
<b>RBMP</b>	- River Basin Management Plan
<b>HPP</b>	- Hydropower Plant
<b>WWTS</b>	- Wastewater Treatment Station
<b>DWTS</b>	- Drinking water Treatment Station

## **I. IDENTITY AND CONTACT DETAILS**

### **1. Name:**

“Balkanka” Association, Sofia, Bulgaria

### **2. Sector / field of activity and location(s) where active:**

“Balkanka” Association is a non-profit, non-governmental organization, registered in Bulgaria for action in public benefit, on 07 August 2013, company file 203/2013 of the Sofia City Court, UIC 176566443. The main objectives of “Balkanka” are protection and conservation of river biodiversity, with a focus on conservation and restoration of indigenous Balkan brown trout /*Salmo trutta*/ populations in Bulgarian rivers.

## **3. ADDRESS OR REGISTERED OFFICE**

### **3.1. Surname and forename of complainant:**

Ivan Pandukov, Chairman of the board

### **3.2. Where appropriate, represented by:**

Dipl.eng. Dimiter Koumanov, member of the board

### **3.3. Nationality:**

Bulgarian

### **3.4. Address:**

Petko Todorov blvd, bl.8, en.D, app.87

### **3.5. Town:** Sofia

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### **3.7. Country:** Bulgaria

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## **4. Correspondence from the Commission can be sent to the complainant**

## **5. Member State or public bodies alleged by the complainant not to have complied with Community law:**

The Bulgarian Ministry of Environment and Waters (MOEW) and the River Basin Directorates with MOEW.

## **II. DESCRIPTION OF THE SUSPECTED INFRINGEMENT OF UNION LAW**

### **A. New shortcomings of the legal framework**

#### **Fact No95**

During our ongoing fight for the introduction of an Ordinance on Fish Passes in our country we stumbled into a new fact we were not aware of, which is huge. The problem with the fish passes in BG was described in the original Complaint - see Section B, facts No7 and 8. After a severe pressure we have put on MOEW, a working group for the preparation of the Ordinance was formed and started working in the middle of 2015. We were part of the group and till August 2016 the job was 90% done with just a few small details to be included for the document to get complete.

Then someone didn't like the outcome and the work was terminated. Somewhere in the end of 2017 a new group has started working on, composed mainly of ministry officials who have hardly seen a single fish pass in their lives. Hence there is no reason to believe that the Ordinance on fish passes will ever become ready to be implemented. We started wondering what is the reason for the delayed action on the matter in a country where thousands of river barrages have no fish pass at all and 95% of those that have something like a fish pass are not fit to provide migration of the fish at all.

And the answer turned out to be very simple - there are too many interests of powerful people and companies involved. They are interested in keeping the current situation as it is and the dog is buried in the legal framework which serves their interests perfectly as always. Here is the explanation:

- Under the Bulgarian Fishery and Aquaculture Act, owners of water abstraction facilities /no matter existing or designed at present, for HPP purpose or other/ must provide options for fish and other aquatic organisms migration, by planning and building up fish passes fit for the purpose.
- For the numerous existing river barrages there is no deadline to fulfill the said requirement of law.
- There is such kind of measure listed in the new RBMP 2016-2021 of every RBD, but yet again there is no deadline for fulfillment.
- The necessary Ordinance on fish passes is not prepared either, which gives the operators every reason to skip following the law.

But in Europe we have a basic principle to follow when someone is causing damage to environment /by fully blocking fish migration for example/ - The Polluter Should Pay. And our proud owners of hydropower facilities are actually paying, but can you figure out how much? **10 BGN /5 Euro/ for every meter of the barrage height PER YEAR!** This means that a two meter high river barrage fully blocking fish migration is punished with a 10 Euro penalty per year for the damage caused to the river ecosystem.

**Proof:**

**Document No1**

[https://www.bsbd.org/NU/Ttaksi\\_vodovz\\_polzv\\_zamyrs.pdf](https://www.bsbd.org/NU/Ttaksi_vodovz_polzv_zamyrs.pdf)

The link holds the BG Tariff for the Water Abstraction Taxes and for the Use of Water Bodies - see article 4(2) and 4(3) together with article 14(1)

And what difference does it make if the barrage is only 2/two/ or 200/two hundred/ meters high? They both are equally blocking fish migration, aren't they?

Obviously under these conditions we will never have the fish migration problems solved here in BG. So much for the implementation of the basic EU principles and of EU Water Framework Directive article 23.

**10 Euro per year is anything but effective, proportionate and dissuasive, to say the least it's nothing but encouraging the breach of law.**

## **B. Considering cumulative effects - bad new practice**

### **Fact No96**

This problem was addressed so many times in our previous complaints hence we were hoping that the Pilot application DG Environment has started will lead to some improvements in the end. Much to our deepest disappointment nothing of the kind has happened. Here is a brand new case - the Gradevska River which is running between the Rila and the Pirin Mountains to flow into the Struma River in our West Aegean River Basin.

According to the WARBD Register of Water Permits, there is the Gradevo HPP in operation, another one under construction - Baba Tsveta HPP, and two more future HPPs that hold actual water permits - Marevo sHPP and Elenkov Chark sHPP.

And a brand new HPP Investment Plan appeared to be currently assessed under EIA procedure of the competent RIEW Blagoevgrad. Under this procedure an eligibility statement of WARBD is required. And here is what the eligibility statement of WARBD concludes in the end:

***The implementation and the operation of the investment plan would have a negligible negative impact on the status of the surface water body***

**Proof:**

**Document No2**

[https://dams.reki.bg/uploads/Docs/Files/Gradevska\\_WARBD\\_Statement.pdf](https://dams.reki.bg/uploads/Docs/Files/Gradevska_WARBD_Statement.pdf)

According to section 10. of the above document there are two water catchments for drinking water supply on a tributary of the Gradevska River and only one HPP belonging to Beeston Energy JSC as an owner - that is the operational Gradevo HPP.

And acc. to section 6. of the above document the water body is in good status with the ecological objective to maintain this status and prevent deterioration.

Now - EARBD is deliberately lying, because besides the existing operational HPP and besides the new one, there are another three future HPP to come along in the nearest future, one of them under construction, together with another two water catchments for drinking water on a tributary.

Moreover, five HPPs will be built one happy day in a section of a small river long about no more than 13 kilometers. And the river is in good status today which should be maintained and here we have the EU WFD objectives to prevent deterioration, do we not.

As for the cumulative effects of the new investment plan together with the existing and all the future ones, obviously the future ones cannot be taken into consideration by the competent authority RIEW Blagoevgrad because the "competent" EARBD has lied, not knowing, possibly or not, that the future investment plans should be taken into consideration too, not only the existing ones.

Yet again we find that there is an entirely new approach towards cumulative effects undertaken by WARBD in this case. We are used to cases when the information about all the existing and the future plans is correct, with the subsequent conclusion that there will be no negative effects - cumulative or other - that is the common practice here in EIA/AA decisions and reports. But here we have another case - the information is incorrect in the first place. A possible reason for that is that the entire river is divided into several small pieces each one of which is proudly called a "water body". But each small section of the river will host two or three diversion HPPs, very close to one another - five pieces in 13 /thirteen/ kilometers of the river. And if rivers are divided in much smaller water bodies - each of them will host only a single HPP with no cumulative effects to be considered together with any other IP for the small water body whatsoever. We, therefore, find this action of dividing even small rivers in all our new RBMP 2016-2021 into numerous short water bodies very wrong and deeply unacceptable.

### **C. EU funding wasted in BG.**

Here we'll get back to two of the cases described in our previous complaints - the Dushantsi WWTS and the Barzia DWTS.

#### **Fact No96**

The Barzia DWTS case was described in our first Appendix 1 to the original Complaint - see **fact No42** on page 21 of Appendix 1. The new drinking water treatment station and the new pipeline system of the village are worth 5.7 million BGN /**2.85 million EUR**/ European taxpayer's money. They were built in 2015 to purify the water for the village. We are in **2018** now and the problem still remains unsolved - the water is still running muddy from the batteries and the treatment station doesn't purify a drop. Thus a lot of European money was wasted for nothing.

#### **Fact No97**

The Dushantsi WWTS case was described in our Appendix 2 to the original Complaint - see **fact No59** on page 7 of Appendix 2. There were two videos attached to prove that the new Dushantsy village sewerage system was collecting all the waste waters of the village, discharging them directly into the river, passing by, not through the new waste water treatment station. In Appendix 2 there is a description of our subsequent actions as well as of the lack of effective actions by the state authorities.

Two years later there is no sign of positive improvement and the waste water is still discharged directly into the river.

#### **Proof:**

Watch the next videos taken in February 2018, please:

<https://www.youtube.com/watch?v=K6dew-kpZac> - the exhaust pipes that come from the village, passing by the new station and discharging the wastewater into the river.

<https://www.youtube.com/watch?v=zQJDyGeesO4> - the exhaust pipe that comes from the new WWTS is dry.

According to our unofficial information the waste water treatment station and the new sewerage system of the village are worth 10 million BGN /**5.0 million EUR**/ European taxpayer's money.

#### **Now what is the news in these old cases anyone may wonder? Here it is:**

1. For two years now the state authorities are doing nothing to make the EU funding worth a thing, as well as to achieve its goal.
2. In November 2017, considering the Euro Presidency of Bulgaria, the Belgian VRT broadcasting group has made with us a contact asking for information about bad practices, to be presented together with the Union wide advertisements of our country. We warned MOEW on time that we will take foreign reporters to shoot the ugly truth, thus we gave the state officials every chance for these problems to be solved, rather than to be shamefully exposed.

Three months later we were pretty much unhappy to find out that the state has done nothing actually, but the Belgian reporters were even more surprised that these cases were brought to the attention of DG Environment two years ago and there is no reaction whatsoever. Especially in the Dushantsi case which didn't lead to beneficial consequences to the environment, but on the contrary - the river is dead today and this has happened with the financial help of the EU.

#### **D. Amendments of the Water Act - bad practice**

Just a short note here about amendments of the basic Act that is supposed to guide the water use in our country and lead us to sustainable development. The most important article of the Water Act set to safeguard the areas for water protection from further hydropower development is article 118j.

In the last year or so, two amendments of article 118j sneaked through between first and second reading of another law in the Parliament, without the necessary public consultations, thus the objectives of the law concerning water bodies' protection were seriously weakened. It was done so secretly that no one had a clue and there was no reaction by the interested parties like our organization. But we are positive that such basic law must not be altered in such secret way, so easily, and such alterations of the law should not be hidden from the public only because the authors are ashamed of what they're doing.

#### **E. The EU Pilot application under reference **EUP(2017)9183****

On June 15th 2017 we were kindly informed that DG Environment has started the Pilot application based on our original complaint and subsequent supplements, which usually should be expected to take ten weeks for the Member state to respond and that the Commission in turn has ten weeks to analyse the reply proposed - that's what we were told in letter No *EN V.E.1 /ARK/sv/CH AP(2015)02363* of DG Environment Unit ENV.E.1.

Twice as long a period of time has passed already and we have not a sign of any feedback whatsoever. Somewhere in the early autumn of 2017 we asked MOEW for information about the questions asked by DG Environment and were denied access. We also offered MOEW a little help for the answers to be more precise which was rejected either. Later on we learned through unofficial sources that in late autumn of 2017 the answers of MOEW were finally sent back to DG Environment with a significant delay. Back then we asked MOEW under the Public Information Access Act to provide us with the answers and were denied access again.

Now, for several years we are doing weekly check up actions carried out on different rivers and subsequently we submit reports to MOEW holding full description of the outcome of our visits. Today MOEW officials know much more of what is happening than if they were simply sitting in their cozy cabinets - most of them have never seen a single river running in the wild for their entire lives. We therefore find MOEW's denial to provide us with the information deeply disappointing. So much for the capacity building of environmental NGOs working in the field of river and environmental protection every EU Member state is supposed to support.

Anyway, this unexpected secrecy can only mean one thing - that there is something wrong with the information forwarded by MOEW to DG Environment and obviously there is something /or many things/ to hide. We find it's not a normal way of communication between state officials and stakeholders/interested NGO's.

Therefore we have every reason to believe that the hydropower hydro morphological pressure maps MOEW had to prepare and submit to DG Environment under the Pilot application are incorrect. This can very easily be checked - if for the Belmeken-Sestrimo cascade there are only two points of water abstraction displayed on the maps only for the Maritsa River, and possibly but not likely for the Mesta and Struma River Basins, and if the points show the Belmeken dam and the Stankovi Baraki dam - then MOEW is not sharing the whole truth, or anything near the truth, because the waters in these dams are collected by five derivation channels at two altitudes /1900&1300 meters/ in the entire Rila Mountain, which is announced National park as well as a Natura 2000 Habitats & Birds Directives site. The overall number of water catchments in the Rila Mountain for the cascade is more than **100/one hundred/** none of them releasing a single drop of water in the rivers below. And below these derivation channels there are numerous new small HPPs authorized by the "competent" MOEW on every river and stream again.



The same goes for the Petrohan Cascade in the Ogosta and Iskar River Basins /67 water catchments/, for the Batak Hydropower Drive in the Maritsa River Basin /more than 60 water catchments/ and to all the rest cascades from socialist times.

Anyway, we are aware that our horizontal case is complex and it sure needs more time than normal cases do to be properly assessed by DG Environment. By any means we do not want to be considered pushy, insisting on the deadlines DG Environment communicated in the above letter too.

**That is why we have a kind request** - if Unit ENV.E.1 will be so kind to share with us the answers of MOEW, we'll do our best to check the information in accordance with our best knowledge and submit to DG Environment a thorough feedback. In this way, the procedure can only benefit from an additional verification and the deadline can possibly be shortened. After all, the Pilot application has started as a result of our efforts, there cannot be anything secret in such kind of information and we are the most interested party for our case to be properly studied and be dealt with in accordance with the corresponding EU law.

#### **F. Union laws (e.g. Treaties, regulations, directives, decisions) or principles underpinning Union law that we believe to have been breached by the authorities of the country**

- **Treaty on the Functioning of the European Union**

- **Article 191**

- (ex Article 174 TEC)

- 2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

- **Directive 2001/42/EC** of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment:
- **Directive 2000/60/EC** of the European Parliament and of the Council establishing a framework for Community action in the field of water policy
- **Council Directive 92/43/EEC of 21 May 1992** on the conservation of natural habitats and of wild fauna and flora
- **DIRECTIVE 2011/92/EU** OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the assessment of the effects of certain public and private projects on the environment
- **DIRECTIVE 2014/52/EU** OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

**G. Does the EU country concerned receive EU funding relating to the issue that prompted your complaint, or may it receive such funding in future?**

Yes, a lot of it. For the second time we are submitting information for some cases when EU funding is not only wasted, but the misuse of it is leading to negative impacts to the environment. And we wonder now - why is this question asked in a standard complaint form, when there is no reaction whatsoever by the competent EC authorities? Are they worried about the waste of EU funding or are they not? If not - why are they asking such a question?

**III. LIST OF DOCUMENTS / EVIDENCE**

**1. Document No1** - The BG Tariff for the Water Abstraction Taxes and for the Use of Water Bodies - see article 4(2) and 4(3) together with article 14(1)

[https://www.bsbd.org/NU/Ttaksi\\_vodovz\\_polzv\\_zamyrs.pdf](https://www.bsbd.org/NU/Ttaksi_vodovz_polzv_zamyrs.pdf)

**2. Document No2** - WARBD statement of eligibility for the fifth in a row new HPP on the small Gradevska river:

[https://dams.reki.bg/uploads/Docs/Files/Gradevska\\_WARBD\\_Statement.pdf](https://dams.reki.bg/uploads/Docs/Files/Gradevska_WARBD_Statement.pdf)

**IV. APPEALS/LEGAL ACTIONS/ OTHER ACTIONS**

All the actions we have taken insofar are described in the previous complaints.

**We have tried to contact EU Institutions to request help on the same issues seven times already - one original complaint and six consecutive appendixes so far.**

We were kindly informed that all these documents are transferred to **EU Pilot application under reference EUP(2017)9183** and hope that this new appendix No7 will be transferred to the application under the same reference too.

**Furthermore**, as we have definitely proven in our Appendix 6 to the original complaint that most of the small new HPPs here in BG are built without the necessary building right or without concession, which means they are illegal, we have prepared and lodged with DG Competition of the European Commission an additional Complaint based on this particular issue. This complaint was registered under reference **2017/122743** Directorate-General for Competition. It can be found here:

[https://dams.reki.bg/uploads/Docs/Files/DG\\_Competition\\_Complaint\\_SHORT\\_BALK\\_ANKA.pdf](https://dams.reki.bg/uploads/Docs/Files/DG_Competition_Complaint_SHORT_BALK_ANKA.pdf)

We really hope that DG Environment will also pay attention to this document, because it is very interesting in regards to sustainable development of local communities and the ways they can be engaged in river protection and restoration they can really benefit from, as a favorable alternative to hydropower. The message there has direct relation to the position we will express in Section VI here, concerning eventual weakening of the objectives laid down in EU Water Framework Directive...

**We do not believe that SOLVIT is better placed to deal with this problem.**

## **V. CONFIDENTIALITY – DATA PROTECTION**

We authorize the Commission to disclose the identity of Balkanka Association and/or the identity of our representative in its contacts with the Bulgarian state authorities, against which we are lodging this complaint.

Actually, we have sent copies of all the previous complaints to MOEW, so they are pretty well aware of our actions. Having nothing to hide, we will send a copy of this document too.

## **VI. AIM OF THE COMPLAINT**

**Ladies and gentlemen,**

In the original Complaint and the following appendixes the aim was thoroughly described. We shall not repeat that once again. We will express a very short position on the eventual amendments of the EU WFD which are about to be carried through some kind of "fitness check" and may also lead to possible extension of the deadlines and weakening of WFD objectives.

It has been nearly three years now since our first Complaint was prepared and lodged with DG Environment. And we started fighting against the killing of our rivers two years earlier. So for five years we are witnessing the fact that our state officials are pretty well aware of all the problems and do nothing to resolve them. On the contrary - they're doing everything they can to serve the interests of a small bunch of connected men to gain unlawful profit destroying river after river and then to split the cash with those who have the political power of the day to help them gain that profit.

This is not sustainable development - this is consistent permanent river destruction in the interest of a few, regardless of the public interest and of the public money spent for plans and programmes written by the competent authorities on paper which are not followed.

Furthermore, it is so obvious that no one here and in the EU is worried that we will not achieve the EU WFD objectives until the last deadline - 2027, neither afterwards, because our authorities do not even try to implement those River Basin Management Plans they wrote.

OK, achieving good status of all the surface water bodies may happen not be an easy task, but when you do not even want to try, can you succeed? Of course you can't, clearly you won't and when the time comes you will cry out mission is impossible and the timescale must be altered and the deadline be postponed.

BUT, if achieving good status is impossible /it still is possible/, failing to prevent deterioration is just a sign of bad will - deterioration must have stopped in the end of 2015, once and for all. And we are still losing 5 /five/ rivers at the average per year in Bulgaria, rivers that could have been used in much more sustainable way than for micro hydropower - see the complaint lodged with DG Competition to understand our point.

Furthermore, there are some countries in EU which are putting their best efforts towards river restoration like Spain or France, Denmark has also set a ban on any future hydropower development due to its devastating impacts on nature, all of them in a pursuit to meet the WFD requirements. And there are other countries like ours which are doing nothing of the kind - what is the signal which the EC will send to the first and to the second member states by weakening the WFD objectives? Especially when the WFD itself is full of so many different exemptions justifying almost every failure to achieve its goals that we are wondering if there is anything to weaken any further?

And finally, if EU member states have once agreed to set a goal which the same EU member states cannot achieve, this is a sign of bad planning and a very clear sign that any further change of plans is not reliable again and everyone will only wait for the next extension, then for the next... on and on, until the end of time. There still is time enough, goals still could be achieved, or they shouldn't have been set at all.


**These are but only rumors we have heard about a WFD "fitness check"**, but if you really decide to weaken the EU WFD objectives, you better throw it in the trash instead of torturing yourselves in a vain attempt to convince the public everything will be OK only later on, not now. This will leave so many people like us in Europe with no hope at all and we will fight.

**Thank you all for your kind understanding and cooperation.**

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

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

Representative for this complaint:

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

Sofia, Bulgaria  
30.03.2018

