

**Reply to the questions of the Aarhus Convention Compliance Committee related to the case  
ACCC/C/2015/126**

1. The provisions of the Act of 27 March 2003 on spatial planning and development (Journal of Laws of 2017, item 1073) (hereinafter referred to as the "Spatial Planning Act") do not require submitted comments on the draft spatial development plan to be reasoned. The only requirement regarding the form of comments is that they need to be submitted in writing or in an electronic form equivalent to the written form.

**Art. 18 of the Spatial Planning Act**

1. Comments on the draft local spatial development plan may be submitted by anyone who questions the arrangements adopted in the draft plan, which has been made available for public inspection referred to in Art. 17 (9).

2. Comments on the draft plan should be submitted in writing within the time limit specified in the announcement referred to in Art. 17.11.

3. The comments submitted by means of an electronic inbox within the meaning of the Act of 17 February 2005 on computerisation of activities of entities performing public tasks (Journal of Laws of 2017, item 570) shall be also deemed as filed in writing if they:

- 1) bear a qualified electronic signature, or
- 2) bear an entrusted signature.

Similarly, the provisions of the Act of 3 October 2008 on the provision of information about the environment and its protection, public participation in environmental protection and environmental impact assessments (Journal of Laws of 2017, item 1405, as amended) (further referred to as "the EIA Act") do not require any special form of comments. In accordance with Art. 34 of the EIA Act, comments and suggestions may be submitted during the decision-making procedure requiring public participation: in writing, orally to the record or via electronic means of communication without the need to provide them with a qualified electronic signature. The same applies to the public participation in the preparation of documents which require public participation.

**Art. 34 of the EIA Act**

Comments and suggestions may be submitted:

- 1) in writing;
- 2) orally to the record;
- 3) by means of electronic communication without the need to provide them with a qualified electronic signature.

**Art. 40 of the EIA Act**

Comments and suggestions may be submitted:

- 1) in writing;

2) orally to the record;

3) by means of electronic communication without the need to provide them with a qualified electronic signature.

2. Both the voivode's substitute order and the spatial development plan may be subject to an appeal . The basis for lodging an appeal against the plan and the substitute order is their non-compliance with the law. The order, as an act constituting a binding law of general application, may be subject to appeal to the administrative court. On the basis of Art. 98 and Art. 98a (3) of the Act of 8 March 1990 - the Local Government Law (Journal of Laws of 2018, item 994) - the appeal may be filed both by a municipality and a person whose legal interest or right is affected by the substitute order. However, the right to appeal is limited not only to this provision. Compliance with law should also be considered in relation to separate regulations, including EU legislation. The administrative court reviews the voivode's substitute order with its compliance with law, but does not assess the rationale of the adopted planning solutions, as long as they are compatible with law.

Art. 12 of the Spatial Planning Act provides that "after the deadline passes with no effect, the voivode shall draw up the local spatial development plan or its amendment for the area that concerns the failure of the municipality, to the extent necessary for the performance of the public purpose investment." The notion "necessary extent" should also be understood as necessary arrangements and consultations that would normally take place under the planning procedure. However, one should clearly distinguish the fact of referring or not referring to the comments filed by the public during the planning procedure (the regularity of this process is subject to control as a formal element of the proceedings) from "taking into account the comments". The Spatial Planning Act requires that the comments submitted during public consultations should be considered during the planning procedure, but it does not impose on the authorities an obligation to include the content of all comments filed, because suggestions submitted by the public are often contradictory or contrary to law, so it would not be possible to include them all. The administrative authority concerned analyses the comments and produces reasons for their inclusion or rejection.

7. The documents requested by the Committee are attached hereto.

8. The substitute order of the Podlasie Voivode was subject to public consultations. On 24 October 2013, the Podlasie Voivode issued a notice on the launch of the proceedings for drawing up a local spatial development plan in the area enabling the construction of an overhead 400 kV double circuit line from Elk to the border of the Republic of Poland in the Bakalarzewo Municipality. In this connection, the Mayor of the Bakalarzewo Municipality received a letter asking him to place two notices of the Podlasie Voivode on the notice board of the Office of the Bakalarzewo Municipality. The first notice was to be placed based on Art. 39 of the EIA Act, while the second - based on Art. 17.1 in conjunction with Art. 12.3 of the Spatial Planning Act. These notices were posted on the notice board of the Office of the Municipality from 28 October to 12 November 2013. Please find attached the copies of both notices.

On 14 November 2013, the Podlasie Voivode requested again the Mayor of the Bakalarzewo Municipality to post on the notice board of the Municipality Office the notices of 12 November 2013 on the launch of the proceedings for drawing up a local spatial development plan due to the need to keep the 21-day consultation period, provided for in the EIA Act. The above notices were posted on the notice board of the Office of the Municipality from 14 November to 11 December 2013. Please find attached their copies.

On 24 July 2014, the Podlasie Voivode sent to the Bakalarzewo Municipality the text of the Substitute Order of 16 July 2014 on the adoption of the local spatial development plan for its implementation. Please find attached the Decision on the manner of considering comments on the Substitute Order of the Voivode.

9. The Substitute Order has been published:

a) in the Official Journal of the Podlasie Voivodship and can be found under the link: <http://edziennik.bialystok.uw.gov.pl/#/legalact/2014/2689/>

b) on the website of the Public Information Bulletin of the Podlasie Voivodship Office and can be found under the link: [http://bip-archiwum.bialystok.uw.gov.pl/Show\\_Item.aspx?ID=30525](http://bip-archiwum.bialystok.uw.gov.pl/Show_Item.aspx?ID=30525)

10. The options for conducting the project are part of the environmental impact report and as such are subject to the public participation procedure. And information on the date and form of disclosing the report to the public was given in point 2.2 of the Reply to the Communication. Please find attached appropriate notices of the Regional Director for Environmental Protection in Białystok.

11. Please find attached a letter from the Regional Director for Environmental Protection in Białystok, addressed to the offices of all municipalities where the investment was to be carried out. The letter includes a request for posting the notice of 10 May 2013 on the initiation of the environmental impact assessment of the project "Construction of an overhead 400 kV double circuit line from Elk to the border of the Republic of Poland" in places commonly used for such purpose and on the route of the project. The letter requested the notice to be posted for the period from 15 May 2013 to 6 June 2013. The notice informs about the possibility of getting acquainted with the environmental impact report, as well as the possibility of submitting comments and suggestions. The copies of individual notices include confirmation of the dates when the relevant notice was posted. According to the presented documentation, the notice was posted on the notice board in the Bakalarzewo Municipality from 14 May to 7 June 2013.

best

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PODSEKRETARZ STANU  
Sławomir Mazurek

