REPUBLIC OF BULGARIA
MINISTRY OF ENVIRONMENT AND WATER

Ref.: Decision V/9d on compliance by Bulgaria with its obligations under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)

99-00-87

Sofia, 25 April 2016

Dear Mrs. Marshall,

In response to your letter from 16 April 2015 concerning Decision V/9d of the Meeting of the Parties, concerning the compliance Bulgaria with its obligations under the Aarhus Convention, adopted by the Meeting of the Parties on its fifth session (29 June – 2 July 2014, Maastricht, The Netherlands), with regard to Communication to the Aarhus Convention Compliance Committee related to restricted access to review procedures in spatial planning in Bulgaria (Ref. ACCC/C/2011/58), I would like to bring to your attention **the following information:**

Comments made by Bulgaria during the open session on decision V/9d of the Meeting of the Parties concerning Bulgaria held on 11 March the Compliance Committee's 52nd meeting (Geneva, 8-11 March 2016):

As we already mentioned in the Second progress report on the implementation of Bulgarian of the recommendations of the Compliance Committee to the Party, set out in Decision V/9d, the improvement of the investment policy in Bulgaria through better regulation of the investment process is a priority of importance for the Government. The large number of procedures on issuing of construction permits and the significant time, necessary for their execution were identified as one of the problematic areas. In that respect, proposals for legislative, administrative and coordination measures aiming at reducing the regulatory and administrative burden on businesses and citizens in the investment process are in process of elaboration. In this context, providing access to the public (including environmental organizations), to appeal procedures concerning spatial plans and construction permits is a challenge, that would lead to delays and would impede the investment process in the country, due to the inclusion of morestakeholders in addition to those having a direct and immediate legal interest in administrative and judicial proceedings under article 131 of the Spatial Planning Act (SPA). The latter could lead to duplication of procedures for examination of environmental issues, which have already been addressed in separate independent administrative and judicial procedures for issuing of decisions on strategic environmental assessment and environmental impact assessment of investment proposals. We would like to recall that the presence of these acts is *conditio sine qua non* for approval of the spatial plans and construction permits. Currently, legislative measures (amendments to the SPA) are considered in a very early stage, they are focused on the further improvement of the administrative control on spatial planning and construction, in order to be ensured the legitimacy of administrative acts in this area, as well as guaranteeing transparency, access to information and public participation in the decision-making in the field of spatial planning.

1000 Sofia, 22 Maria Louiza blvd. *Phone: +359 2 988 25 77, +359 2 940 6300, +359 2 940 6222;*
Fax: +359 2 986 25 33

Does the public have the right to appeal to the courts to challenge (i) the general or spatial plan itself; and/or (ii) the decision adopting the general or spatial plan; or (iii) only the EIA or SEA decision regarding the general or spatial plan?

As we reported in our progress reports (First and Second progress reports) for the implementation of the recommendations of the Aarhus Convention Compliance Committee to the Party set out in Decision V/9d, the national legislation in the field of environment provides the full right to the public concerned (including non-governmental organizations-NGOs) to appeal decisions on Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA) which are obligatory conditions for approval of spatial plans and issuance of construction permits, which allow the realization of investment projects affecting the environment. According to article 99, para. 6 of the Environmental Protection Act (EPA), public concerned may appeal against the EIA according to the procedure established by the Administrative Procedures Code (APC) within fourteen days after its announcement under article 4.
With the last amendment of the EPA (SG, 62 from 2015) in article 88 para 3 is stipulated the right of the public concerned to appeal the SEA or the decision not to carry out SEA, according to the procedure under the APC within fourteen days after its announcement.
In accordance with article 82, para 5 of EPA a final decision on the necessity of EIA or EIA issued is *conditio sine qua non* for approval/authorization of the considered investment proposal in accordance with a special law. The authorities responsible for approval and application of the plan or programme take into account the conditions, measures and limitations and the decision is enclosed and is inseparable part of the administrative act of approval/permission, necessary for the implementation of the investment proposal.
In article 82, para 4 of EPA is stipulated that an opinion or a decision that has entered into force for SEA is *conditio sine qua non* for subsequent plan or programme. The authorities responsible for approval and application of the plan or programme take into account the conditions, measures and limitations defined in the opinion or the decision.
Given the above the acts for approval of spatial plans and construction permits are issued under the SPA only when there are statements and decisions that have entered into force (subject to appeal in accordance with the above), and thereby the provisions of the SPA are applied linked and in most close interaction with the provisions of the EPA. This refers to every stage of the investment process – planning, investment project design and construction. The SPA establishes the right to appeal the administrative acts for approval the detailed spatial plans (DSP) and the construction permits only to those persons who have a direct and immediate legal interest, in administrative and legal procedures according to article 131 of the SPA, and for the construction permits- according to article 149, para 2 SPA. The administrative proceedings under the SPA are developing in a special order with explicit statutorily fixed parties. Therefore, the participation of third parties (e.g. public, incl. environmental NGOs), other than the legally provided, in the proceedings, both for issuing, and for appealing of the administrative acts under the SPA, is unacceptable.
According to article 124b, para 5 of SPA the refusal for issuing the permit for elaboration of the spatial plan referred to in article 124a, para 5 SPA is issued with motivated decision or order from the competent authorities within one month after application of the request. The refusals are notified in accordance with Administrative Procedure Code (APC) procedure and can be appeal in accordance with rule of article 215.
According to article 215, para 1 of SPA the individual administrative acts related to SPA, the refusals to be issued and the administrative acts for abolishment or leaving in force, with the exception of those under article 216, para 1, can be appealed to the regional administrative court, where the property is located.
According to article 215, para 6 SPA the general spatial plans (GSP) and their amendments cannot be appealed , yet as it has been described above, they are subject to the SEA, the environmental acts issued according to environmental legislation can be appealed, and the legal basis is set out in EPA.

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Fax: +359 2 986 25 33

Can members of the public appeal a refusal to impose administrative measures under article 158 of the Environment Protection Act ?

In its essence the imposition of Coercive administrative measures (CAM) is a form of state coercion and is implemented within the specific administrative proceedings developing between the implementing authorities and its controlled entities. Administrative enforcement is a type of state coercion that is used in statutory cases as a last resort for the implementation of relations arising in the field of executive activity. The reasons for its implementation, the authorities implement it, and the legal entities to which it applies to are legally defined.
It should be noted that the CAM application is the final stage of control and it is optional and not obligatory instrument.
In a legal theory and jurisprudence is accepted that third parties do not have the right to request CAM application, including appeal of a refusal to CAM to be imposed. Requests of third parties to impose CAM should be addressed as a signal and the competent authority has the rights to start the procedure on its own initiative or refuse to start administrative proceedings.
The legal base for CAM is Chapter two, Section three of the Administrative Violations and Penalties Act (AVPA), "Coercive administrative measures". According to article 22 of AVPA CAM is a tool that serves, accompanies or assists the administrative-penalty proceedings. On the other hand article 23 of AVPA requires the special laws to define explicitly the cases where measures for suspension of administrative violations or for the prevention and removal of harmful consequences will be imposed. Thus the evaluation of the certain hypotheses on the arguments of the article 23 AVPA is a prerequisite to the discretion of the administrative authority with respect to its lawful application of CAM.

Legislative or administrative proposals for the improvement of the investment climate that are considered currently and that may impact on the range of stakeholders in proceedings regarding the issue of administrative decisions and enforcement of the regulatory regime in the areas of spatial planning and construction.

In addition to the information provided in the Second progress report, we would like to inform you that the interagency working groups created- with the task to formulate concrete proposals for legislative, administrative and coordinative measures aimed at the improvement the investment climate up to January 31 2016 - have concluded their task.
As a result of the activity of working group “Construction permits – number of procedures and time for implementation a number of proposals on future legislative amendments in different laws has been proposed as follows: concerning spatial planning and construction aiming to achieve an optimization of administrative regulatory regimes for adoption of GSP/DSP and issuing construction permits with shorter deadlines, simplifying and combining procedures, providing more transparency and public access to information, concerning spatial plans, improving the control. The proposed new legal rules do not affect the range of stakeholders in proceedings on the access to administrative and judicial appealing procedures of the public.

Yours sincerely,

Ivelina Vassileva

Minister of Environment
and Water

1000 Sofia, 22 Maria Louiza blvd. Phone: +359 2 988 25 77, +359 2 940 6300, +359 2 940 6222;
Fax: +359 2 986 25 33