



Министерство на околната среда и водите
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**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)

Sofia, 28 October 2016

Dear Ms Marshall,

In accordance with paragraph 6 of Decision V/9d of the Meeting of the Parties, concerning the compliance of 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, Netherlands), with regard to Communication to the Aarhus Convention Compliance Committee related to the access to review procedures in spatial planning in Bulgaria (Ref. ACCC/C/2011/58), I would like to bring to your attention **third report for the progress to date in implementation of the recommendations of the Compliance Committee to the Party set out in Decision V/9d:**

As a result of the initiative of the government to provide a favorable investment environment, mentioned in the second progress report, namely the Action plan with measures addressing key areas of concern hindering the increase of the investments, approved by Decision № 617/12.08.2015 of the Council of Ministers, in 2016 was developed and published for public consultations a draft act for amendment and supplement of the Spatial Planning Act (SPA). The main objective of the draft law is to be achieved alleviation of the administrative procedures and to be reduced the administrative burden, while also to be enhanced the responsibility of the municipal administrations and the administrative control over their activities, as well as the responsibility of NGOs presented by the professional organizations of architects and engineers and registered companies-consultants in the process of investment design and construction.

In order to be ensured publicity and transparency, is foreseen introduction as a requirement to be maintained public registers by the respective administrations and to be posted on their websites the approved drafts of spatial plans.

**Fiona Marshall
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It is proposed the introduction of deadlines for implementation of procedures where these are not provided for in current regulations, incl.: deadlines for the execution of the procedure for the announcement of the draft spatial plans to the stakeholders and to the public by the municipal administrations, and for their consideration by the municipal expert council before announcement, at the discretion of the chief architect; duration of the issued permits for the elaboration of spatial plans and their amendments; deadline for approval of amendments to the adopted investment project in cases of substantial deviations.

With the draft amendment of SPA are specified the responsibilities of the competent authority for consideration of the investment projects, which are limited to verifying compliance with the provisions of the detailed spatial plan and the rules and normatives for construction. The assessment of the conformity of the investment projects with other requirements of the SPA shall be done by a registered company-consultant or the municipal expert council. A requirement is introduced for submission of a contract for author supervision by the project designer at the opening of the construction site, which aims to provide mandatory exercising control by designers during construction.

The bill proposes to be suspended the enforcement of hitherto acting (existing) detailed spatial plans (DSP) in cases of entry into force of a new general spatial plan (GSP) and to be obliged the competent authorities to issue a prescription for *ex officio* amendment of the existing DSP within 6 months from the entry into force of the new GSP, when this is necessary to defend public interests – protection of the environment and human health, incl. agricultural, forest and protected areas and protected zones (under Natura 2000).

It is envisaged also to be created objective criteria for the assessment of the conditions for the revalidation of a building permit, which has lost its legal force, or for decree of refusal, incl. assessment of the compliance with the provisions of the DSP and the requirements of the effective administrative acts under the Environmental Protection Act (EPA), the Biodiversity Act (BA), the Cultural Heritage Act or other special law, that, depending on the type and size of the construction, are a necessary condition for authorizing the construction.

Separately, in order to be achieved better synchronization between the implementation of the legislation on spatial planning, tied with the environmental protection regulations, in a draft Ordinance amending and supplementing Ordinance № 8 of 2001 on the scope and content of the spatial plans is envisaged in the objectives of the spatial plans and their scope and content to be tighten the requirements for "guaranteed protection of the immovable cultural heritage, the environmental protected areas and the biodiversity."

Furthermore, in the content of the spatial plans is complemented the requirements for determining the territories for active application of landscape measures and aesthetic arrangement, including territories for preventive planning protection and conservation of landscape features under the BA which provide linkages between protected zones and are essential for the migration, dispersal and genetic exchange in plant and animal populations and species.

Supplements on environmental assessment, as a part of the spatial plans, are made – it should be evaluated also the impact of the hitherto acting DSP whose main development is not implemented and for which were not carried out the procedures of Chapter Six (strategic environmental assessment of plans and programmes) and Chapter Seven, Section I of the EPA (control on major accidents involving dangerous substances in industry) and/or BA (assessment the compatibility of plans, programmes and investment proposals with the object and purpose of the conservation of the protected zones under Natura 2000) and/or when decisions or opinions issued under the EPA and/or the BA are with lost legal effect.

In connection with the implementation of the previous proposal, the requirements for output data for preparation of new spatial plans are supplemented – the basis plan should also contain data on hitherto acting DSP (scope, predictions, act of approval, opinion or decision on the EPA and the BA, entry into force) with designation of those parts where the plans are implemented, and those parts where the plans are not implemented.

We believe that the envisaged legislative changes with respect to optimizing the procedures in spatial planning and authorization of construction contribute to the implementation of the recommendations of the Compliance Committee set out in Decision V/9d, in the following aspects:

- Improved approval regimes, which allow a wider range of supervisory authorities, competent institutions and NGO representatives to carry out administrative control at various stages, provide the public, including environmental organizations, with the opportunity, by submitting objections and signals, to cooperate for prevention of omissions and violations.
- Additional opportunities for prevention of corrupt practices and illegal actions of administrative bodies in procedures on spatial planning, incl. on the initiative of citizens and NGOs are provided by:
 - increased transparency and timely public awareness;
 - strict regulation of the terms for public consultations and the other procedural steps in the elaboration of spatial plans;
 - introduction of additional criteria concerning the legal effect of the spatial plans and construction permits, and the content of the spatial plans in accordance with the requirements of the environmental legislation.

Improving the investment policy in Bulgaria through better regulation of the investment process is a priority of importance for the government. The recommendations in Decision V/9d are facing us to a serious challenge – ensuring public access (including environmental organizations) to procedures for appealing the spatial plans and construction permits to lead to delay and deterring (and the possibility to be lost financial resources provided by the European Structural and Investment Funds on which our country relies on very much) the investment activities in the country, as a result of the duplication of review procedures on environmental issues, which have already been the subject of separate independent administrative and judicial procedures for issuing decisions on environmental assessment of plans and programmes – strategic environmental assessment (SEA) and environmental impact assessment of investment proposals (EIA).

In this situation, it is imperative the administrative authorities and courts to interpret in the greatest possible extent the relevant procedural rules in order to bring administrative or judicial proceedings in accordance with article 9, paragraph 2 and 3 of the Convention (in order to provide the members of the public with the opportunity to challenge before a court administrative decision), according to the balance of public interests and relationships.

The main determinant element in this evaluation should be the type of the contested administrative act and is it with crucial importance in the field of environmental protection. In spatial planning and construction permits proceedings, the acts which are crucial for the environment are the SEA/EIA decisions – subject to judicial review within separate judicial-administrative proceedings as administrative decisions relevant to the environmental issues, with applicability of article 9, paragraph 2 and 3 of the Aarhus Convention, concerning the range of appellants.

In view of the latter, we would like to remind once again that, as it is noted in the second progress report, in pursuance of paragraph 2, point (b) of Decision V/9d of the Meeting of the Parties and taking into account the conclusions of the Committee in paragraph 59 of its finding and recommendations, concerning Communication ACCC/C/2011/58, some legislative amendments were taken that secure the right of the public concerned to appeal/challenge the decisions on SEA, respectively the statements to not be carried out SEA, as an independent and separate administrative act falling within the scope of the provision of article 9, paragraph 3 of the Aarhus Convention. In particular, with the adopted Act for Amendment of the EPA (promulgated State Gazette No. 62 of

14.08.2015, effective from 14.08.2015) a new paragraph 3 to article 88 was introduced, which states: "The persons concerned may appeal against the statement or decision on paragraph 1 [statement/decision on SEA] according to the procedure established by the Administrative Procedure Code within fourteen days after its announcement."

In conclusion, we express our confidence that, when prepare its report to the Meeting of Parties, the Compliance Committee will take into account the steps taken by Bulgaria and described in this and the previous reports (submitted respectively on 09.19.2013, 06.01.2015 and 10.28.2015) aimed at:

- Improving the administrative control by expanding and further legal arrangement of the functions and powers of the supervisory authorities and ensuring publicity and transparency in the field of spatial planning, investment design and construction, in order to be guaranteed the legality of the administrative acts.
- Implementation of paragraph 2, point (b) of Decision V/9d – the guaranteed opportunity for the public concerned to appeal the decision on SEA or the statement to not be carried out SEA under the Administrative Procedure Code.

We consider it necessary to be taken into account, also, the functions and scope of the acts issued within the proceedings on spatial planning and authorization of construction – namely, decisions on SEA and EIA are the acts with crucial role regarding the environment, and they are subject to judicial review, and separately challenge, incl. by the environmental NGOs.

Yours sincerely,

Ivelina Vassileva

*Minister of Environment
and Water*

