



**REPUBLIC OF BULGARIA
MINISTRY OF ENVIRONMENT AND WATER**

Ref.: Follow-up on Communication to the Aarhus Convention Compliance Committee concerning compliance by Bulgaria with provisions of the Convention in connection with restricted access to review procedures in spatial planning (Ref. ACCC/C/2011/58)

99-00-231
Sofia, 9 September 2013

Dear Mrs. Smagadi,

Following your letter from 15 July 2013 relevant to the Communication to the Aarhus Convention Compliance Committee concerning compliance by Bulgaria with provisions of the Convention in connection with restricted access to review procedures in spatial planning (Ref. ACCC/C/2011/58) and having regard to paragraph 36 (b) of the Annex to Decision I/7 of the Meeting of the Parties, we send you enclosed (Annex I) information on progress by Bulgaria in implementing the Recommendations of the Committee on Communication Ref. ACCC/C/2011/58.

We hope for a fruitful collaboration with the Compliance Committee concerning the Communication Ref. ACCC/C/2011/58 and we express our willingness to do all efforts for that. Please do not hesitate to contact us if any questions arise or if further information is needed.

Yours sincerely,

Iskra Mihaylova

**Minister of
Environment and
Water**

**Aphrodite Smagadi
Secretary to the Aarhus
Convention Compliance Committee
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ANNEX I

Actions taken by Bulgaria to 16.09.2013 which contributes to the implementation of the Recommendations of Aarhus Convention Compliance Committee on the Communication to the Committee concerning compliance by Bulgaria with provisions of the Convention in connection with restricted access to review procedures in spatial planning (Ref. ACCC/C/2011/58):

With adopted in October 2012 amendments to the Spatial Planning Act (promulgated State Gazette (SG) № 82 of 26.10.2012, in force from 26.11.2012) has been **improved the administrative control for spatial planning and construction, in order to be ensured the legality of administrative acts in this area** – powers of municipal authorities and the Directorate for National Construction Supervision have been clearly distinguished. Moreover, with the changes in the text of the normative act have been increased the powers of local government and local administration in the exercise of control and, also in this regard, have been clarified and expanded the rights, obligations and responsibilities of the administrative authorities and participants in construction process.

In particular, it was regulated in detail **the obligation of the developer to agree the draft of the General Spatial Plan (GSP) with relevant central and local administrations**, and if necessary – with the specialized control bodies and utility companies. Any such agreement/clearance shall take the form of:

1. **Issuance of the requisite acts** under the terms, according to the procedure and within the time limits established in a special law.
2. **Issuance of written opinions and/or participation of representatives of central-government departments concerned in the meeting of the Expert Advisory Board** (national, regional or local, depending on the scope of the spatial plan; the composition of the Advisory Board may include representatives of specialized control and coordination bodies when their opinion, decision or approval is required by law), where the issuance of an act under Item 1 is not required for the agreement/clearance. In such case, if no written opinion has been presented within one month after the receipt of the request for agreement/clearance and a representative of the central-government department concerned is not present at the meeting of the Expert Board, or if the minutes of proceedings at the meeting of the board are not signed within fourteen days after the meeting, agreement/clearance of the draft without remarks shall be presumed. Any refusals of agreement/clearance must be reasoned.

In order to be ensured the legality of GSP and taking into account the direct non-contestability of the approved GSP, as well as their changes, has been amended Art. 127, para. 6 of the Spatial Planning Act (SPA) which now provides that GSP shall be approved by the Municipal Council on a report by the municipality mayor and within seven days after the passage thereof; **the Municipal Council resolution shall be transmitted to the Regional Governor who, within fourteen days after the receipt, may return the legally non-conforming resolution for further consideration or may contest the said resolution before the competent administrative court** under the terms and according to the procedure established by Art. 45 of the Local Self-Government and Local Administration Act. By this way is allowed the **Regional Governor to challenge the administrative and judicial acts of the Municipal Council for approval of GSP on legality** – in case of violations, not carried out or not respected procedures for coordination, clearance and approval of the draft GSP, including procedures under environmental legislation.

National legislation provides another opportunity to exercise administrative control over the adoption of GSP, in the cases relevant to 127, para. 10 of the SPA, when the GSP for local settlements of national importance shall be approved by the Minister of Regional Development – according to Art. 107 of the Constitution of the Republic of Bulgaria (prom. SG № 56 from 13.07.1991, last amend. 6.02.2007) and Art. 20, para. 6 of the Administration Act (prom. SG № 130 of 05.11.1998, last amend. 15.02.2013) **The Council of Ministers shall revoke any unlawful or improper acts of the Ministers. On the same basis may be revoked Detailed Spatial Plans** approved, pursuant to Art. 129, para. 3, items 2 and 3 of the SPA, by the Minister of Regional Development (for objects/sites with a range of more than one region, which are of national importance and/or national objects specified by law) or the Minister of the Investment Planning (for objects ranged up to one region that is: determined by the Council of Ministers for projects of national importance and/or national projects; constructions of first and second category with an indicative value of over 10 million leva, publicly funded).

Control on the issuance of construction/building permits has been also enhanced. With the amendment of Art. 156 of the SPA, it has been **introduced a requirement the authorities of the Directorate for National Construction Supervision to verify the conformity of the construction permits as issued and the investment projects as approved, where such are required, to the projections of the Detailed Spatial Plan (DSP).** Upon ascertainment of **any violations under DSP, as well as of any other violations leading to legal non-conformity of the construction files as issued, the Chief of the Directorate for National Construction Supervision or an official authorized thereby shall revoke, by a reasoned order, the construction permit and the investment projects as approved.**

Also in this regard, in order to be prevented situations in which illegal construction permits are issued before the procedures of environmental impact assessment of the investment proposals to be completed, by an amendment to Art. 144 of the SPA is provided that **any investment projects, which serve as grounds for the issuance of a construction permit, shall be approved acting on a written application by the contracting authority and after submission of effective (entered into force) 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 investment projects with the conditions in the said administrative acts.

Again with the above amendments to the SPA adopted in October 2012 and with the adopted amendments to the Black Sea Coast Structure Act (prom. SG No. 27 of March 15, 2013), **additional measures have been taken for transparency, access to information and public participation in broader aspects of decision making in the field of spatial planning.** With an amendment to Art. 127 of SPA **was précised the obligation of the developer of the draft GSP to organize and hold the public debate/hearing, making public the venue, date and time of holding by a notice which shall be posted in the places appointed to this end in the building of the municipality, district or mayoralty, as well as in other pre-announced publicly accessible places within the respective spatial-development area which is subject to the plan, and shall be published on the Internet site of the developer and of the municipality and shall be inserted in one national daily newspaper and in one local newspaper. The proceedings at the public debate shall be recorded in writing, and the record shall be attached to the documentation for the Expert Advisory Board and for the Municipal Council.** In the cities subdivided into districts, public debates shall mandatorily be organized in all districts. The public debate shall be integrated with and shall be part of the procedure for holding

consultations under the environmental assessment and/or the compatibility assessment which the authority commissioning the draft organizes and holds under the Environmental Protection Act and/or the Biological Diversity Act.

The adopted amendments to Art. 127, 128 and 129 of the SPA, provide that the **approved GSP and DSP shall be published on the websites of the respective municipalities covered, and when the plans are approved by the Minister of Regional Development – also on the website of the Ministry of Regional Development.**

At the moment, **consultations are ongoing between the competent in terms of Communication № ACCC/C/2011/58 authorities – Ministry of Environment and Water, Ministry of Regional Development and Ministry of Investment Planning with the aim to be identified and taken additional appropriate measures to deal with the issues set out in the Conclusions and Recommendations of the Aarhus Convention Compliance Committee on Communication № ACCC/C/2011/58**, taking into account not only the concerns related with compliance by Bulgaria with provisions of the Convention, but also socio-economic and administrative aspects (eg, avoiding the increase of duration and complication of administrative procedures, reducing administrative burdens on business and public administration, preventing loss of economic and social benefits for society, etc.).

We would like to remind you that the **national legislation in the field of environment completely provides the possibility the members of the public to appeal/challenge the enforced statements/decisions on Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA) whose presence is absolutely imperative condition for approval of spatial plans and issuance of construction permits, which allow the realization of investment projects affecting the environment. Statement/decision on SEA and decision on EIA are subject to appeal/contest under the Administrative Procedures Code (APC) – for the EIA it is explicitly mentioned in Art. 99, para. 6 of the Environmental Protection Act (EPA), and interested parties/persons who are entitled to appeal are defined (“the public concerned” within the meaning of § 1., Item 25 of the Supplementary Provisions of the Act). For the statement/decision on SEA, in the EPA and the Ordinance/regulation on the conditions and procedures for the SEA there is no text which provides that it is not subject to appeal**, although the same is a part of the spatial plan, in accordance with Art. 125, para. 7, sentence 2 of the SPA. Given the foregoing, **with regard to the statement/decision on SEA and EIA, the environmental legislation do not restrict the access of “members of the public concerned having a sufficient interest” (within the meaning of Art. 9, para. 2, (a) of the Aarhus Convention) to legal and administrative appeal/challenge**, which means that the procedure for SEA/EIA are in compliance with the provisions of Art. 9, para. 2 and 3 of the Aarhus Convention.

In conclusion, we believe that the actions taken to date in relation to the optimization of spatial planning procedures, contribute to the implementation of the Recommendations of the Aarhus Convention Compliance Committee on Communication № ACCC/C/2011/58 in the following aspects:

- **Improved coordination/clearance/agreeing regime for approving GSP, which allows a wider range of control authorities and relevant institutions to carry out administrative control at various stages, providing members of the public, including environmental organizations, the opportunity, through the submission of objections and signals to the appropriate authorities, to help for prevention of omissions and violations within the procedure. Similarly, thanks to formalizing and expanding the powers of the Directorate for National Construction Supervision, it is possible also, upon a signal from members of the public for legal violations, this authority to**

revoke by a reasoned order the construction permit and the approved investment projects.

- It was established the opportunity of members of the public, when they find any offenses, violations, uncarried or ignored procedures for coordination/clearance/agreeing and approval of the draft GSP, including procedures under environmental legislation, to referral/seize the Regional Governor, who can challenge for legality on judicial or administrative order the Municipal Council's acts for approval of GSP. The précising and formalization (eg. keeping a written record) of the rules of public debate of the draft of the SP, in turn, allows members of the public to referral/seize the Regional Governor if their views and opinions expressed and submitted during the public hearing are not taken into account.
- Greater transparency and public awareness as regards the approved GSP and DSP, which already shall be available on the internet is another opportunity to prevent omissions and violations of administrative authorities in spatial planning procedures.