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2 February 2012

Dear Mr. Stoev,

Re: 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)

On behalf of the Aarhus Convention Compliance Committee, I refer to the discussion of the above referenced communication at the thirty-fifth meeting of the Compliance Committee (Geneva, 13-16 December 2011). The Committee expressed its strong concern that the Party concerned had chosen not to participate in the discussion of the communication, which was the sole opportunity for the Committee to have heard from the communicant and the Party concerned in the presence of the other.

The advance unedited copy of the report of the meeting, including information concerning the discussion on the communication at issue, will be shortly accessible at the following link <http://www.unece.org/env/pp/ccMeetings.htm>.

Following the discussion of the communication, the Committee requested you to submit some additional information, as detailed in the questions annexed to the present letter. You are invited to reply to the questions as soon as you can, but no later than **1 March 2012**.

The Compliance Committee hopes to be able to complete the preparation of its draft findings with regard to the communication at its thirty-sixth meeting (Geneva, 27-30 March 2012), after which the draft findings will be circulated for comment to the parties concerned.

Mr. Hristo STOEV
Chief Expert
Environmental Policies Directorate
Strategies and Programmes Department
Ministry of Environment and Waters
Gladstone Str, 67
BG-1000 Sofia
Bulgaria

Please do not hesitate to contact the secretariat if you require any further information.

Yours sincerely,



Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee

Cc: Permanent Mission of Bulgaria to the United Nations Office at Geneva and other international organizations in Geneva
Mr. Alexander Dountchev, Expert, Balkani Wildlife Society

ANNEX - Questions to the parties

Questions to the Party concerned

1. Please clarify if the SEA procedure for spatial plans is an independent legal procedure, or if it is integrated into the procedure for the adoption of spatial plans. Also, please explain if the conditions/recommendations of the final act of the SEA procedure (SEA statement/decision) are binding for the authority adopting the spatial plan, or if it only has to “take them into account” (i.e. has to consider them, but is not bound by them).
2. Please explain if and why General Spatial Plans (GSP) shall be considered to be binding administrative acts, or if not, why not. In that regard, please also explain what you meant in your response to the communication that GSP have “no direct investment application”.
3. Is it possible, according to the Bulgarian legislation and/or practice, for an authority to decide that an activity regulated by a Detailed Spatial Plan, for which an SEA statement was issued, does not subsequently require an EIA procedure before a construction permit will be issued? If yes, does this possibility apply to activities listed in annex I of the Aarhus Convention, and if so, please give examples?
4. With respect to the activities listed in annex I of the Aarhus Convention, which decision shall be considered as the one literally “permitting” the activity - the EIA decision, the construction permit or both?
5. What are the precise legal effects of the EIA decision? Is, according to the Bulgarian legislation, the EIA decision (or its conditions) independently enforceable with respect to the developer? If yes, by which authorities and by what means is the project’s compliance with the EIA decision to be ensured?
6. Does article 149 of the Spatial Development Act, which limits the scope of persons entitled to appeal building permits in the court, apply also to building permits concerning activities listed in annex I of the Aarhus Convention?

Questions to the communicant

1. Please explain if and why General Spatial Plans shall be considered to be binding administrative acts, or if not, why not.
2. Please explain why the spatial plans shall be, in your opinion, considered as acts which can contravene provisions of national law related to the environment. Please give reasons with respect to both General and Detailed Spatial Plans.
3. What are the precise legal effects of the EIA decision? Is, according to the Bulgarian legislation, the EIA decision (or its conditions) independently enforceable with respect to the developer? If you are aware of cases in which construction permits/exploitation permits were issued even though the EIA decision’s conditions were not respected and not promoted by the authorities, please provide the Committee with such examples.
4. Does article 149 of the Spatial Development Act, which limits the scope of persons entitled to appeal building permits in the court, apply also to building permits concerning activities listed in annex I of the Aarhus Convention?