HANDOUT

Compliance Committee (35th meeting)

Århus Convention

Question.1. Please describe in more detail the relation between (i) SEA decisions and EIA statements under the Environmental Protection Act (EPA) and (ii) plans and decisions (permits) under the Spatial Planning Act (SPA).

In some cases of plans and decisions (permits) there is relation, in other cases there is not. There are three types of cases:

- Compulsory SEA or EIA: in those cases the environmental assessments are always compulsory pre-condition for adoption of plans or decisions (permits), as provided by in the law, i.e. *ex lege*;
- Subject to a screening procedure decision: in those cases an administrative body (MOEW or RIEW) finds whether the particular plan or decision (permit) will need an environmental assessment as a pre-requisite for their lawful adoption; the administrative body does not exercise full discretion in deciding screening a plan or decision (permit) out of SEA or EIA, as there are certain rules prescribed by the law; once the case is screened for SEA or EIA, the respective environmental assessment becomes a required pre-requisite for adoption of the particular plan or permit in question.
- No SEA or EIA shall be necessary.

Those three types of cases are outlined in the EPA. Usually, only cases with some environmental impact are are subject to SEA or EIA. In that respect, the criteria used in the law are in compliance with the Århus Convention. We do not claim the EPA criteria when environmental assessment is necessary or not contradicts the Convention.

What is more, if those criteria were always respected. i.e. if SEA or EIA were always conducted when prescribed by the law, there would be no violation of the Convention whatsoever.

1.1. SEA statement:

The relation between the SEA statement and the plans under the Spatial Planning Act can be found in articles 82 (4) and 85 (1) of the Environmental Protection Act (EPA) (transposition of Art. 3 of the SEA Directive) and Art. 125 (6) of the Spatial Planning Act (SPA):

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Art. 82 (4) of the EPA: *The Environmental assessment (SEA) of a plan and a program ends with a statement of the MoEW. The authorities, responsible for the adoption and application of the plan or program, should take the SEA statement into account.*

Art. 85 (1) of the EPA: *The Environmental assessment (SEA) is mandatory for plans and programs in the sphere of agriculture, forestry, fisheries, transport, energy, waste management, water management, industry, mining, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II of the Environmental protection Act (more or less identical with the projects listed in Annexes I and II of the EIA Directive).*

Art. 125 (6) of the SPA: *The assignment of the plan should be subject to SEA screening procedure. The environmental assessment (SEA) is part of the spatial plan.*

1.2. EIA decisions:

The relation between the EIA decision and the construction permits under the Spatial Planning Act can be found in articles 82 (5) of the Environmental Protection Act (EPA) (transposition of Art. 4 of the EIA Directive) and Art. 144 (1.4) of the Spatial Planning Act (SPA):

Art. 82 (5) of the EPA*: The EIA of a development project ends with a decision, issued by the MoEW, which is binding for the developer. The decision is a compulsory condition for the further authorization of a development project under a specific law* (e.g. the Spatial Planning Plan).

Art. 144 (1.4) of the SPA: *The development projects, requiring building permit, should be authorized after the developer submits the administrative acts, issued under the Environmental protection Act or special Act as a condition for the authorization of the construction activities.*

Question. 2. Following from question 1, please specify whether the environmental aspects of individual plans and projects are definitively decided upon in the SEA statements/EIA decisions, or, if not, which aspects, and to what extent, may be further discussed and decided upon when approving the plan or issuing the permit under the SPA.

According to Art. 81 (3) and 85 (5) of the EPA all environmental aspects of a plan or a development project should be discussed and decided upon in the SEA statement/EIA decision, and if any new environmental aspects may arise when approving the plan or issuing the permit under the SPA, the SEA/EIA procedure should be reinitiated:

Art. 81 (3) of the EPA: *the Environmental assessment (SEA) of plans and programs is being carried out simultaneously with their preparation, taking into account the goals, the territorial domain and the level of detail of the plans and the programs, so that the possible environmental impacts resulting from the application of the development projects included in the plans or programs are identified, described and assessed.*

Art. 85 (5) of the EPA: *The EIA defines, describes and assesses the direct and indirect environmental impacts of development projects on the human beings, the biodiversity and its elements, as well as the flora and fauna, the soil, the water, the air, etc. Acc. to §1, p.30 of the Additional provisions of the EPA, the Decision on the EIA is an individual administrative act, by which is approved the admissibility for design of a development project proposal by assessment of the situation of the objects and the expected environmental impact on basis of the EIA report and the statements of the public and the interested parties.*

Again, if the SEA or EIA is properly proceeded any time when the law provides it is compulsory, there would be no infringement upon the rights of the public concerned under the Århus Convention. Unfortunately, in numerous cases no environmental assessment is conducted (or not properly conducted), and the public concerned have no effective remedy of amending such omissions during the next stages in the proceedings for adoption of plans or permits.

Question 3. Please outline which persons are entitled to challenge an EIA decision issued under the EPA through the national courts and the conditions they must fulfill to do so.

We do not claim there is violation of the Convention in relation to the circle of persons entitled to challenge an EIA decision or to the conditions they must fulfill to do so. The EPA is in full compliance with the convention in that respect.

According to Art. 99 (6), the EIA decision under the EPA could be challenged only by interested parties. Under §1, p 24 and 25 of the EPA the interested parties is the public concerned, incl. the environmental NGOs. The environmental NGOs should be established in compliance with the national legislation.

Certainly, to exercise those rights under the EPA, one will need an EIA decision to challenge, i.e. a proper EIA procedure and a proper EIA decision issued by the respective authority. If there is no procedure conducted, if there is no decision, one cannot exercise her/his rights under the EPA and the Århus Convention. Later, no participation of the public concerned is possible in decision-making process in adoption of plans or decisions (permits).

Question 4. If a specific EIA decision is challenged in the court, please explain the legal consequences, if any, on the issuing of subsequent construction/exploitation permits for the project.

In general, according to Art. 90 and Art. 166 of the Administrative Procedure Code, if an administrative act (incl. EIA decision) is challenged it shall not enter into force and cannot be implemented before the review procedure is finished. In the case if challenged EIA decision, it prevents the respective construction permit to be issued. Preliminary execution (implementation) of an administrative act is possible prior to the review procedure end solely in case when an *Order for preliminary execution* of the act is issued under Art. 60, resp. Art. 167 of the APC.

In that respect, there is no contradiction between the Bulgarian national legislation and the Århus Convention. We do not claim such violation; it is out of the scope of our complaint.

Our complaint covers cases when no EIA is proceeded and the respective permit is issued without the otherwise compulsory environmental assessment.

Question 5.

Please explain what legal options are available to challenge a Spatial Plan after its adoption on the ground that either (i) the SEA statement was not issued before the adoption of the General or Detail Spatial Plan, or (ii) the SEA procedure was not carried out properly. Which persons are entitled to bring such a challenge? Similarly, please explain what legal options are available to challenge a permit for a given project after its adoption on the basis that an EIA decision was not issued before the permit's adoption. Which persons are entitled to bring such a challenge?

5.1. Spatial plans:

5.1.1. General Spatial Plans:

No options.

Persons entitled to bring such challenge:

No one.

Acc. to Art. 215 (6) of the SPA, neither the spatial schemes and the general spatial plans, nor their amendments are subject to a review procedure.

Note: Before 2010, those provisions were regulated by art. 126 (6) and (10)

5.1.1. Detailed Spatial Plans:

No options.

Persons entitled to bring such challenge:

Acc. to Art. 215 of the SPA, the detailed spatial plans can be subject to a review procedure, however Art. 131 of the SPA limits the number of persons (*Numerus clausus*) who have the right to express an opinion and have access to judicial review on *Detailed Spatial Plans* as follows:

- The owners of the plot under spatial planning
- The owners of the neighboring plots
- The owners of plots in the hygiene protection zones if such are planned.

5.2. Construction permit:

No options.

Persons entitled to bring such challenge:

Acc. to Art. 215, the building permits can be subject to a review procedure, however Art. 149 of the SPA limits the number of persons (*Numerus clausus*) who have the right to express an opinion and have access to judicial review on *building permits* of development projects to the investors and in case of reconstruction activities - the neighbors.

Question 6

Acc. to Art. 103 (2-3) of the SPA the General Spatial Plans define the predominant designation and development type in the different structural elements of the territories in the domain of the plan, while the Detailed Spatial Plans define the concrete designation and development type in the different land plots in the domain of the plan.

In more detail, Art. 106 of the SPA is stipulating that the General Spatial Plan of a Municipality or part of it defines:

1. The general structure of the territory, the subject of the plan, and predominant designation of the structural elements – situation and boundaries of the settlements; the agricultural territories; the forest territories; the nature protection territories, etc.
2. The general regime of planning of each of the territories under p.1.
3. The particular situation of the technical infrastructure (roads, rail roads, water-canals, ski lifts and ski runs, etc.) on the territory of the municipality and its connection with the territories of the adjacent municipalities and the technical infrastructures of national importance.

4-6. Other regimes.

Acc. to Art. 108 (1) of the SPA, the Detailed Spatial plans provide details the development and urbanization of the territories of the settlements. Acc. to Art. 103 (4) of the SPA, every spatial plan should be in compliance with the provisions of the plan or scheme of higher level. Further, Art. 108 (1) of the SPA stipulates that the provisions of the Detailed Spatial Plan are obligatory for the development projects.