



16 September 2013

Aphrodite Smagadi
Secretary to the Aarhus Convention Compliance Committee
Economic Commission for Europe
Environment, Housing and Land
Management Division
Bureau 348
Palais des Nations
CH-1211 Geneva 10
Switzerland

Dear Ms. Smagadi,

RE: Following up with decision IV/9f of the Meeting of the Parties to the Aarhus Convention (Access to information)

Thank you for your e-mail of 30 August 2013, inviting Spain to provide information about progress with recommendations of Decision IV/9f relating the fees by public authorities for provision of information relating to urban planning and building to ensure that such fees are the same as for information relating to the environment.

FEES FOR PROVISION OF INFORMATION RELATING TO URBAN PLANNING AND BUILDING

1.- INTRODUCTION: DISTRIBUTION OF COMPETENCES ON MATTERS RELATING TO URBAN PLANNING AND BUILDING

In Spain, legislation on urban planning activities is the responsibility, ever since an important ruling of the Constitutional Court in 1997, of the Spanish Regional Governments called "Autonomous Communities" (AC). Each AC is responsible of the development and approval of the laws concerning land use. For example, in the AC of Madrid, the Land Use law (2001) brought important changes to the previous situation: with the only exception of specifically protected land, all land can be used for urban purposes. Within each AC, urban planning is developed at local level by the Town Councils, although it must be approved by the Government of the AC in order to come into effect.



At national level, the State only sets basic conditions to ensure equality of constitutional rights and obligations within all the territory, establishing its economic and environmental basis.

Town Councils are responsible for the development of urban planning. The General Urban Distribution Plan is the main tool for urban planning in Spain. Once developed and approved by the Town Council, the proposal must receive the final approval by the Government of the AC, in order to come into effect.

In short, Town Councils are responsible for the management, monitoring, execution and discipline in matters relating to urban planning and building, as established in article 25 of Law 7/1985, of April 2, regulating the Bases of Local Government.

2.- FEE REGIME FOR PROVISION OF INFORMATION RELATING TO URBAN PLANNING AND BUILDING

According to Articles 133.2 and Article 106 of the Law 7/1985, of April 2, regulating the Bases of Local Government, and the procedure provisions of Articles 15-17 of the Royal Decree 2/2004, of 5 March, approving the revised text of the Law Regulating Local Finance, Town Councils (more than 8.000 in Spain) are responsible to set the fees for provision of services related to licensing, authorizations, control and/or inspection prior notices and responsible statements and other actions as urban development.

As regards the cases in which a fee has to be paid, article 24.2 of the Law Regulating Local Finance states that the amount of the fees for the provision of a service or for the performance of an activity may not exceed, when taken as a whole, the actual or foreseeable cost of the service or activity in question or, otherwise, the value of the service provision received. Moreover, the provisions of local authorities in this area may be contested under economic-administrative law in a contentious jurisdictional process when they do not comply with the provisions regarding coverage of the cost of the service by the amount of the local fees established.

Additionally, Law 27/2006, of 18 July, regulating the right of access to information, public participation and access to justice in environmental matters, recognizes the autonomy of local entities to create their own fees according to the above mentioned criteria, but with important limits to assure the reasonability of the price: the taxable event is restricted to the reproduction and/or delivery of environmental information; the examination of any documentation *sur place* or the access to any list or public file will be free of charge, as well as the copies of less than 20 pages in DIN A4 format and the telematic delivery of information.



3.- ACTION TAKEN TO ENSURE THAT URBAN PLANNING AND BUILDING FEES ARE THE SAME AS FOR INFORMATION RELATING TO THE ENVIRONMENT

Article 137 of Spain's Constitution enshrines the autonomy of municipalities, provinces and ACs to manage their own interests. Besides, according to the jurisdictional order established by the Constitution, it is not ordinarily the competence of the National Government to review the action of other public authorities or to supervise the manner in which they exercise their powers, including those actions related to Aarhus issues.

For these reasons, the action taken by the Ministry of Agriculture, Food and Environment (MAGRAMA) in this particular case should be necessarily limited to exchange information, cooperate with and raise awareness among all administrations with responsibilities in Aarhus issues.

In this regard, Law 27/2006, of 18 July, regulating the right of access to information, public participation and access to justice in environmental matters, states that "*public administrations will provide the most appropriate means for effective exercise of the rights enshrined in this Law. For this purpose, they will adjust their action to the principles of mutual information, cooperation and collaboration*". Similarly, the Eighth Additional Disposition of Law 27/2006 provides that "*to ensure the compliance of the State with its international obligations, all Public Administrations will collaborate and exchange relevant information.*"

In this cooperation context, the MAGRAMA organized a meeting with Regional Focal Points (representing the Autonomous Communities) and representatives of the Spanish Federation of Municipalities and Provinces (FEMP), in order to give notice of the findings and recommendations of the Compliance Committee, raise awareness and call to the highest commitment in the implementation of the Aarhus dispositions, including those related to the fees charged for the provision of urban planning information.

More recently, a letter has been sent to the Secretary General of the FEMP stressing the importance of a reasonable fee scheme in matters relating to urban planning and building, along with a petition to circulate this information among the municipalities.

Additionally, the MAGRAMA is currently collaborating with the General Secretariat of Local and Regional Coordination of the Ministry of Finances and Public Administration in order to bring this matter to the agenda of future meetings.

Regarding capacity building activities, a specific line of training for officials is currently on-going under the MAGRAMA training program for civil servants in the MAGRAMA and its autonomous bodies. This line of training includes a number of courses focusing specifically on the Convention Aarhus, relevant EU directives and the Law 27/2006, with the aim of improving their knowledge and implementation. This training program is expected to be continued over the following years.



Lastly, we are pleased to inform that a new Royal Decree regulating fees for environmental information at a national level is about to be passed. It will harmonize and rationalize the various fees charged by ministries and other national public bodies, in compliance with the Aarhus principles of gratuity and reasonability.

Please do not hesitate to contact us if you need any clarification on our response.

With best regards,

MARÍA JOSÉ GÓMEZ GARCÍA-OCHOA

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