REPUBLIC OF BULGARIA
MINISTRY OF ENVIRONMENT AND WATER

Ref.: ***Communication to the Aarhus Convention Compliance Committee concerning compliance by Bulgaria in connection with public participation and access to justice in relation to an amendment of the General Spatial Development Plan of Plovdiv (ACCC/C/2016/144)***

99-00-177

Sofia, 10 July 2020

Dear Ms Marshall,

With regard a letter of the Executive Secretary of the United Nations Economic Commission for Europe, dated 16 June 2020, we present to your attention replies to the questions enclosed to the same letter and concerning Communication ACCC/C/2016/144 to the Aarhus Convention Compliance Committee, as follows:

1. Please provide the text of the following laws as in force in the period from December 2013 to March 2015, together with an English translation thereof:
   (a) Ordinance on the conditions and order for implementation of environmental assessment of plans and programs.
   (b) Articles 62, 125, 127, 215 of the Spatial Development Act.
   (c) Articles 82, 87, 158 and 160 of the Environmental Protection Act.
   (d) Article 31 of the Act on Biological Diversity.
   (e) Article 45 of the Local Government and Local Administration Act

Response:

p. (a): the information is available in Annex 1 and 2.

p. (b) - (e): the information is available in Annex 3.

2. If any of the above provisions have since been amended, please also provide the text of the amended provisions as currently in force, together with an English translation thereof.

Response:

The information is available in Annex 4.

3. What provisions of primary and secondary law regulated the public participation procedure carried out in December 2013 on the draft amendment to the General Spatial Development Plan (GSDP) of Plovdiv? Please provide the text of those provisions as in force in December 2013, together with an English translation thereof. If any of those provisions have since been amended, please also provide the text of the amended provisions as currently in force, together with an English translation thereof.

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Response:

Spatial Development Act

Art. 124b (new – SG 82/12, in force from 26.11.2012) (2) The decisions of the local council and the municipality mayor's orders under Art. 124 [decision for drawing up of a design of a general spatial development plan upon municipality mayor's proposal with an attached Terms of Reference] and 124a [permission for drawing up of a design of a detailed spatial development plan] shall be announced by a notice to be displayed in the designated places in the building of the municipality, region or mayor administration, and in other relevant places in the respective territory – subject to the plan and shall be published on the Internet site of the municipality and in one local newspaper.

Art. 127 (1) (amend. – SG 82/12, in force from 26.11.2012; suppl. - SG 27/13) The designs of general spatial development plans shall be published on the website of the respective municipality and shall be subject to public discussions prior to their submission to the land development expert councils. The employer of the project shall organize and conduct the public discussions, by announcing the venue, date and time of the event by a notice which shall be displayed in the designated places in the building of the municipality, region or mayor administration, and in other places announced in advance and accessible by the public in the respective territory – subject to the plan and shall be published on the Internet site of the employer and of the municipality, in one national daily newspaper and one local newspaper. Written minutes shall be recorded at the public discussion, which shall be attached to the documentation for the expert council and for the local council. In the towns with regional subdivision public discussions must be arranged in all regions. The public discussion shall be combined and shall be a part of the procedure for consultations on the environmental assessment and/or compatibility assessment, organized and conducted by the employer according to the provisions of the Environmental Protection Act and/or the Law for the Biological Diversity.

Local Government And Local Administration Act

Art. 22 (2) (new – SG 69/2006) The acts of the municipal council shall be announced to the population of the municipality within the terms under par. 1 [within seven days after their adoption] through mass media, on the internet site of the municipality or in another appropriate way, set out in the regulations under Art. 21, par. 3 [the municipal council shall adopt regulation for the organisation and the activity of the municipal council, its commissions and its interaction with the municipal administration]. Contesting, cease, revoking or confirmation of contested acts of the municipal council shall be announced following the same procedure. The acts of the municipal council shall be promulgated in the State Gazette in cases provided by the laws.

In addition, we note that the conciliation regime upon approval of the general spatial development plan allows a wide range of control bodies and competent institutions to carry out administrative control at various stages, which provides members of the public, including environmental organizations, the opportunity, by submitting objections and signals to the relevant authorities, to help preventing omissions and irregularities within the procedure. The participation in the mandatory public consultation for the general spatial development plan and the environmental assessment (EA), the transparency and the public awareness in the course of the EA procedure, as well as the EA statement/decision for the general spatial development plan, are opportunities to prevent omissions and violations of administrative bodies in spatial planning procedures.

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The EA is developed in a level of detail corresponding to the level of detail of the provisions of the general spatial development plan. The procedure for its development shall be carried out in the sequence established by Art. 3, p. 1, items 2 - 6 of the Ordinance on EA (Ordinance on the conditions and order for implementation of environmental assessment of plans and programs): 1. notifying the competent authority for determining the applicable EA procedure; 2. assessment of the need for EA; 3. determination of the scope and content of the EA; 4. preparation of an EA report; 5. conducting consultations with the public, interested bodies and third parties, which are likely to be affected by the plan or the programme; 6. reflecting the results of the consultations on the EA report; 7. issuing an EA decision; 8. monitoring and control on the implementation of the plan or programme. The actions, which are applicable according to the specific case, shall be integrated with the stages, through which the procedure for preparation and approval of the plan/programme passes, in compliance with the following conditions: 1. a decision deciding not to implement the EA shall be issued before the plan or programme is approved; 2. the documentation, which is required for carrying out the EA by the order of the ordinance, may be supplemented in accordance with the respective special law for the plan/programme. According to Art. 22 of the Ordinance on EA, when as a result of the consultations it is necessary to consider and evaluate other alternatives, opinions or proposals to the plan or programme, the developer assigns a supplement to the EA report or assesses the need for further consultations, including organizing new public discussion by the order of Art. 21, p. 2 of the Ordinance. As could be seen from the provisions of the Ordinance on EA (Art. 22), the legislator has allowed the possibility to consider and evaluate other alternatives, opinions or proposals to the plan or programme, which would amend or supplement the EA report. For its part, the EA decision should contain all the requisites regulated in Art. 26, p. 2 of the Ordinance on EA. As it is clear from the content of Art. 26, p. 2 of the Ordinance on EA, the EA decision should also encompasses: a justification for the conclusion of the preferred alternative from the environmental point of view, including in the light of the results of the consultations with the stakeholders and the public; measures to prevent, reduce or eliminate as far as possible the alleged adverse effects of the implementation of the plan or programme on the environment; measures for monitoring and control on the implementation of the plan or programme, including periodicity of preparation of a control and monitoring report.

The public discussion for the draft general spatial development plan, provided for in Art. 127, p. 1 of the Spatial Development Act is compatible and is part of the procedure for conducting EA consultations and/or the assessment of compatibility with Natura 2000 sites, which the developer organizes and carries out under the EPA and/or the Biodiversity Act. National environmental legislation fully provides the opportunity for members of the public to appeal/challenge before a court EA statements/decisions, the existence of which is an absolute prerequisite for the approval of spatial development plans which allow the implementation of investment proposals that have an impact on the environment. The EA is subject to appeal under the APC, as § 1, item 25 of the Additional Provisions of the EPA defines the interested parties ("the affected public") who have the right to appeal and have taken part in the course of the procedure under EA, which is in accordance with the provisions of Art. 9 (2) and (3) of the Aarhus Convention.

4. Does the submission of a proposal or alert under Chapter 8 of the Administrative Procedure Code mean that the competent authority is required to undertake a review of the substance of the proposal or alert? Alternatively, does it rest within the competent authority's discretion as to whether or not to undertake a substantive review following the submission of a proposal or alert under Chapter 8? Please refer to the relevant legislative provisions in your reply.

Response:

According to the Administrative Procedure Code:
Art. 108

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(1) The administrative bodies, as well as to other bodies, which carry out public and legal functions, shall be obliged to consider and decide the proposals and the signals in the established terms objectively and lawfully.

Art. 114

(1) the decision on a proposal or a signal shall be taken, after being clarified the case and being considered the explanations and the objection of the interested persons;
(2) the bodies, to whom are filed proposals and signals, shall explain to the senders their rights and obligations;
(3) for the establishment of the facts and the circumstances may be used all the means, which are not prohibited by the law;
(4) the means for clarification of the case shall be determined by the body, competent to pronounce the decision, unless another normative act prescribes the proof to be made in a definite way or by definite means;
(5) the organisation shall be obliged to give the requested documents, data and explanations in the term, determined by the administrative body, competent to pronounce the decision;
(6) the citizens shall be obliged to submit the requested documents and to give data, unless that may harm their rights or legitimate interests or offend their dignity;
(7) when the requests are unlawful or ungrounded, or may not been satisfied upon objective reasons, the grounds for that shall be shown.

More information about the procedure for handling proposals and signals is presented in p. 1 of the response of the Party concerned on communication ACCC/C/2016/144.

5. With respect to variant 1.1. of the table in its response to the communication, the Party concerned states that "there are legal bases to impose a CAM suspension of the implementation of GSDP/GSDP amendment until completion of the EA procedure". Please clarify the following, referring to the relevant legislative provisions in your replies:
   (a) If a CAM is issued, could it only **suspend** the implementation of an illegal GSDP/GSDP amendment, or could a CAM be issued to **quash or annul** that GSDP/GSDP amendment?
   (b) Is there any legal mechanism through which an illegal GSDP/GSDP amendment can be quashed or annulled? If so, who can request that the illegal GSDP/GSDP amendment be quashed or annulled? Can this request be made by members of the public?

Response:

In p. 1 of the response of the Party concerned on communication ACCC/C/2016/144 is stated that the coercive administrative measure (CAM) consists of suspension of the implementation of GSDP/GSDP amendment, which is not in force any more until completion of the EA procedure, with which practically the condition before the allowed preliminary enforcement of the EA statement/decision is kept, in the meaning that no further actions can be undertaken on the implementation of GSDP/GSDP amendment, and the current ones are "frozen".

We also pay attention that the provision of Art. 160, p. 1, in connection with p. 5 of the EPA, provides the appeal on the order by which the CAM is imposed to does not suspend its effect, i.e. a preliminary execution is allowed by law. In this sense, the special significance and importance of public relations for society and the state, related to the prevention and cessation of administrative violations related to environmental protection and public relations related to the emergence of an immediate danger of pollution and damage to the environment, is found expression in the legislative permissions of the EPA with the admission with Art. 160, p. 5 of the EPA of preliminary execution of CAM. Therefore, the allowed by the provision of Art. 160, p. 5 of the EPA preliminary execution of the CAM encompasses the legislator's assessment of the existence of a particularly important state and public interest, which should be guaranteed. By

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Interpretative Decision № 5 of 08.09.2009 (TR № 5/2009) the General Assembly of the Colleges of the Supreme Administrative Court (SAC) accepted that *"the preliminary execution of a general or individual administrative act allowed by virtue of separate laws is subject to appeal before the court and in the cases when the law does not provide an explicit possibility for the court to rule differently from the preliminary execution. The law providing for preliminary execution aims to protect relevant important state or public interests, or to prevent other consequences in the sense and scope of the criteria listed in the general norm of Article 60, but if this preliminary execution results in serious damages within the meaning of 120 of the Constitution of the Republic of Bulgaria, the court may exercise control and consider the appeal against the preliminary execution. "*. In this regard, taking into account the reasons of TR № 5/2009 of the General Assembly of the Colleges of the SAC, the following conclusions can be made: the validity of the request to suspend the order for CAM is assessed by comparing the evidence under Art. 60, p. 1 of the APC (specifically a particularly important interest for any of the sides), with the interest in whose protection the law has allowed the preliminary execution of the appealed order.

In view of the above, apart from the fact that with the provisions of the EPA the legislator has ensured the right of the affected public to appeal against decisions on EIA and EA, the EPA provides for the possibility of imposing CAM, the appeal of which does not suspend its implementation.

GSDP/GSDP amendment could be annulled pursuant to:

- Local Government And Local Administration Act

  Art. 45. (amend. - SG 69/06)

  (1) The acts of the mayor of municipality can be appealed under administrative procedure before the regional governor, unless otherwise provided in a law.

  (2) The municipal council can revoke administrative acts, issued by the mayor of municipality, which disagree with acts, adopted by the council, within 14 days after their acceptance. Within the same term the council can dispute the unlawful administrative acts, issued by the mayor of municipality, before the respective administrative court.

  (3) The acts of the municipal council can be appealed before the respective administrative court.

  (4) Regional governor shall exercise control for the lawfulness of the acts of municipal councils, unless otherwise provided in a law. He/she can bring the unlawful acts back for new consideration by the municipal council or to dispute them before the respective administrative court. The appeal shall suspend the application of individual and general administrative acts and the application of sub-legislative legal acts, unless otherwise resolved by the court.

  (5) The mayor of municipality can bring back for re-consideration unlawful or inappropriate acts of the municipal council or to dispute the unlawful acts before the respective administrative court and to claim suspension of implementation of general administrative acts and the application of sub-legislative legal acts. The mayor of municipality cannot bring back for re-consideration by expediency internal acts, related to the organization and the activity of the municipal council and its commissions.

  (6) The brought back for re-consideration act along with the reasons for its bringing back shall be sent to the chairperson of the municipal council within 7 days after its receipt.

  (7) The brought back for re-consideration act shall not enter into force and shall be considered by the municipal council within 14 days after its receipt.

  (8) The brought back for re-consideration act can be disputed before the respective administrative court by the mayor of municipality, respectively by the regional governor, within 7 days after the expiration of the term under par. 7, provided that the municipal council fails to issue a pronouncement with this regard.

  (9) The municipal council can revoke, amend or re-adopt the act brought back for re-consideration.

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(10) The act, brought back for re-consideration, shall be adopted again with the majority, provided in a law, but not less than more than the half of the total number of the municipal councillors.
(11) The amended or re-adopted act of the municipal council can be disputed before the respected administrative court pursuant to the provisions of the Administrative Procedure Code.

- Spatial Development Act
  Art. 127
  (6) (amend. – SG 87/10; amend. and suppl. – SG 82/12, in force from 26.11.2012; suppl. - SG 27/13) The general spatial development plan shall be approved by the municipal council upon a report of the mayor of the municipality. The decision of the local council shall be sent within 7 days after its adoption to the Regional Governor, who may within 14 days after its receipt send back the illegitimate decision for a new discussion or may appeal it before the respective administrative court subject to the terms and conditions and the procedure of Art. 45 of the Local Government and Local Administration Act. The decision of the local council shall be sent for promulgation in State Gazette if it has not been sent back for new discussion or has not been appealed before the respective administrative court, and if it has been appealed – after the finalization of the court proceedings. The approved general spatial development plan shall be published on the website of the respective municipality.

The above provisions enable the members of the public, in case of violations, non-conducted or non-complied procedures for coordination and approval of the draft GSDP/GSDP amendment, including procedures under environmental legislation, to seize the Regional Governor by submitting a signal. The Regional Governor may appeal by administrative and judicial order the acts of the municipal council for approval of the GSDP/GSDP amendments in accordance with the law, which would lead to a possible repeal. Members of the public may also refer to the Mayor of the Municipality, who also has the powers to challenge the illegal acts of the municipal council before the relevant administrative court, as well as to request the suspension of the implementation of acts of the municipal council.

6. On what date(s) was the notice of the public hearings published? In what places and media were the notices published?

Response:

In December 2013, a public hearing has been held on the draft amendment of the GSDP of Plovdiv (full name: draft amendment of the GSDP of Plovdiv in the scope "Zone for sports and attractions" within the territory of the sports complex "Recreation and Culture"), in compliance with the conditions of Art. 127, p. 1 of the Spatial Development Act, according to which: *"The developer organizes and conducts the public discussion, announcing the place, date and time of the announcement with a notice, which is placed at the designated places in the municipal building, district administration and other pre-announced publicly accessible places in the territory - subject of the plan, and is published on the website of the developer and the municipality, in a national daily newspaper and in a local newspaper."* The announcement has been made in a national daily newspaper "24 hours" on 10.12.2013, local newspaper "Your day" on 10.12.2013, on the website of the Municipality of Plovdiv, on the information boards in the buildings of the Municipality of Plovdiv, at Central Square 1, Plovdiv and Stefan Stambolov Square 1, Plovdiv, and on the information boards in the buildings of the regional administrations of Plovdiv Municipality.
The published announcements, including in a national daily newspaper and a local newspaper, as well as resume of the minutes of the public discussions, are part of the annexes to Decision № 65, taken with Protocol № 6 of 19.03.2015 of the Plovdiv Municipal Council, by which has been approved the amendment of the GSDP of Plovdiv.

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7. Other than the information contained in the public notice itself, what information was made available to the public prior to the hearings on 12, 13 and 14 December 2013? Was the text of the draft amended plan made available to the public prior to the hearing? Where was this information available to the public? How was the public informed where it could access this information?

Response:

With Decision № 372, taken with protocol № 17 of 17.10.2013 of the Municipal Council Plovdiv, a planning assignment for the amendment of the GSDP of Plovdiv (within the meaning of Art. 125 of the Spatial Development Act) has been adopted and with the same has been allowed also the elaboration of the amendment itself. This decision has been announced to the population of the municipality, according to the provisions of Art. 22, p. 2 of the Local Government and Local Administration Act (LGLAA) and within the timeframe under p. 1 of the same article of LGLAA on 24.10.2013 in newspaper "Maritsa", the website of the Municipality of Plovdiv and on the information board of the municipality on Stefan Stambolov square 1. The decision has been announced by the order of art. 124b, p. 2 of the Spatial Planning Act in issue 285 of 05.12.2013 of the newspaper "Maritsa", the website of the Municipality of Plovdiv and the information boards in the buildings of all regional administrations in Plovdiv.

Pursuant to Art. 127, p. 1 of the Spatial Development Act, with announcements published on 10.12.2013 (Tuesday) in the local newspaper "Tvoyat Den" and in the national daily newspaper "24 Chasa" has been announced for forthcoming public discussions of the draft amendment of the GSDP of Plovdiv in the six administrative districts of Plovdiv municipality. The date and time of the public hearings are indicated as well as the address of the municipality of Plovdiv, where the textual and graphic part of the draft amendment of the GSDP of Plovdiv and the interested public could get acquainted with it.

8. Please provide Decision Is PV-3-EC I 08.05.2014 of the Director of RIEW Plovdiv, together with an English translation thereof.

Response:

The information is available in Annex 5 and 6.

9. Please provide documentary evidence to show how the outcomes of the hearings on 12, 13 and 14 December 2013 were taken into account, in a transparent and traceable way, in the decision-making on the amendment to the GSDP.

Response:

In the reasons to Decision № 65, taken with Protocol № 6 of 19.03.2015 of the Municipal Council of Plovdiv, by which has been approved GSDP amendment Plovdiv, is stated that in November 2013 has been held a public discussion on the draft amendment of the GSDP of Plovdiv, in compliance with the conditions of Art. 127, p. 1 of the Spatial Development Act.

Minutes № 24/30.05.2014 from a meeting of the Expert Council for Spatial Planning (ECMT) of Plovdiv Municipality states: *"ECMT of Plovdiv Municipality considered amendment of the GSDP of Plovdiv, together with all materials from the public hearing and the speeches and opinions, including those from the liaising with the interested central and territorial administrations and specialized control bodies and operating companies under Art. 127 p. 2 of the Spatial Development Act "*.

To Decision № 65 is attached a document that summarizes the content of the minutes of the public discussions, where have been presented the opinions of the participating members of the public, incl. civic organizations and political parties and formations. Contradictory opinions have

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been expressed – positive, in support of the draft, and negative.

Summary content of the minutes from the public discussions and Minutes № 24/30.05.2014 of the ECMT of Plovdiv Municipality are presented in Annex 7.

10. Please provide the text of the judgment of the Supreme Administrative Court Decision No. 5969 of 15 May 2017 on administrative case No. 14187/2015, together with an English translation thereof.

Response:

The information is available in Annex 8 and 9.

11. In its response to the communication, the Party concerned states that, in the light of the 2017 decision of the Supreme Administrative Court regarding the Plovdiv GSDP, "the case falls into the hypothesis of Variant 1.1.". According to the table provided by the Party concerned, the legal effect of Variant 1.1 is that: "it should be considered that there is no obligatory element of the factual aspects for it, namely entered into force EA decision/opinion (pursuant to Art. 125, para. 7 of the SDA and Art. 82, para. 4 of the EPA)".
What, if any, action has been taken by the Party concerned since the 2017 decision of the Supreme Administrative Court to rectify the illegality of the amended Plovdiv GSD?

Response:

With notification № OVOS-1463/06.10.2016, the Municipality of Plovdiv submits to the RIEW Plovdiv an assignment for a new amendment of the GSDP of Plovdiv – for conducting an EA procedure.

The assignment reflects the significant changes in the systems of regional and spatial planning, as an essential need to amend the GSDP of Plovdiv, approved by Decision № 375, Protocol № 16/05.09.2007, and also determines the territorial scope of the change to be the territory of the municipality, within the agglomeration scope of the city of Plovdiv. According to the provisions of Art. 18, p. 8 of Ordinance № 8 on the volume and content of the spatial development plans: "The environmental assessment is part of the spatial development plan, as the scope and content are determined by the Environmental Protection Act /EPA/ and the Biodiversity Act /BDA/".
As stated above, the scope of the amendment to the GSDP, with the repealed EA, is within the boundaries of the "Zone sport and attraction" on the territory of the sports complex "Recreation and Culture" and has been approved by Decision № 65, taken with Protocol 6/19.03. 2015 of the Municipal Council of Plovdiv.

The scope and content of the ongoing procedure under mandatory EA for the new amendment of the GSDP Plovdiv is for the entire territory of the Municipality of Plovdiv and includes the provisions set out in the partial amendment of the GSDP Plovdiv under Decision № 65, Protocol № 6 /19.03.2015.

Yours sincerely,

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