



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

*Ref.: Decision V/9d on compliance by Bulgaria with its obligations under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)*

*МЗХ. № 99-00-1/05.01.2015.*

*Sofia, December 2014*

*Dear Mrs. Marshall,*

In response to your letter from 28 November 2014 and pursuant to paragraph 6 of Decision V/9d of the Meeting of the Parties concerning compliance by Bulgaria with its obligations under the Aarhus Convention, adopted by the Meeting of the Parties at its fifth session (29 June – 2 July 2014, Maastricht, The Netherlands), **I present to your attention information on further progress to date in implementation of the recommendations of the Aarhus Convention Compliance Committee to the Party set out in Decision V/9d with regard to 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), as follows:**

On 19 September 2013, Bulgaria has provided the Committee with information about the actions taken by the Party which contribute to the implementation of the recommendations of Aarhus Convention Compliance Committee concerning Communication to the Committee № ACCC/C/2011/58. Described legislative measures (amendments to the Spatial Planning Act) are aimed at improving the administrative control on spatial planning and construction, in order to be ensured the legality of administrative acts in this area, as well as at guaranteeing transparency, access to information and public participation in broader aspects of decision-making in the field of spatial planning.

In the information submitted, it was exposed, with the relevant arguments, that **the national legislation in the field of environment completely provides the possibility the members of the public (under the Convention) to appeal/challenge the statements/decisions on Strategic Environmental Assessment (SEA)/Environmental Impact Assessment (EIA), issued under the Environmental Protection Act (EPA), whose presence is absolutely imperative condition for the subsequent approval of spatial plans and issuance of construction permits.** The authorities under the Spatial Planning Act (which in Bulgaria are different from the competent authorities under the EPA) responsible for the approval and the implementation of the spatial plan/investment project shall comply with the statement/decision and with the conditions, measures and restrictions stated in these acts. The statement/decision is an application, an integral part of the subsequent act for the approval/authorization under the Spatial Planning Act (SPA).

At the same time, **orders for approval of spatial plans and construction permits are issued under the SPA only if the said entered into force SEA/EIA statements and decisions (subject to appeal in accordance with the above) are available, and thereby the provisions of the SPA are applied linked and in most close interaction with those of the EPA.** This refers to every stage of the investment process – planning, investment project design and construction.

Therefore, under the SPA, for the acts of approval of spatial plans and construction permits is not provided other opportunity for their challenge by the non-governmental organizations (NGOs) or other members of the public on the grounds of protection of the environment.

**According to art. 215, para. 6 of the SPA, general spatial plans (GSP) and their amendments are not subject to appeal. The Constitutional Court of the Republic of Bulgaria, with its Decision №5 from 9 May 2006 on Constitutional Case № 1/2006, has ruled that there is no unconstitutionality of the provision of art. 127, para. 9 of the SPA (in the version at that time, similar to the current provision of art. 215, para. 6 of the SPA). It should be noted that the Constitutional Court decision was taken after the Aarhus Convention has been ratified by the Party with a Law (promulgated in State Gazette № 91 from 14 October 2003).**

**The SPA establishes the right to challenge the administrative acts for approving the detailed spatial plans and the construction permits only to those who have a direct and immediate legal interest in it. Administrative proceedings under the SPA are developing in a special order with explicit statutorily fixed parties. Therefore, the participation of third parties, other than the legally provided, in the proceedings, both for issuing, and for challenging administrative acts under the SPA, is inadmissible.**

Taking into account the principle of non-contestability of the acts for endorsement of GSP and their amendments in accordance with art. 215, para. 6 of the SPA, and in order to be ensured their legality, with § 53 pt. 2 of the Act for amending and supplementing of the SPA (promulgated in State Gazette № 82 from 26 October 2012), as mentioned in the information to the Compliance Committee sent on 19 September 2013, was amended art. 127, para. 6, sentence second of the SPA, by which was allowed the regional governor to challenge for legality the acts of the Municipal Council for approval of GSP – in case of violations, not performed or not respected procedures for consideration and approval of the draft GSP, incl. not performed or failure to comply with procedures under the EPA.

It should be noted that the spatial plans and the construction permits concern not only the environment, but also many other aspects and directions of spatial planning directly related to the socio-economic development at national, regional and local level. In practical terms this means that the issue of providing access for members of the public including environmental organizations to judicial procedures for challenging plans and construction permits should not be considered one-sided, only from the perspective of environmental protection, but in a broader socio-economic context taking into account a number of significant factors requiring integrated consideration and achieving a balance of public and private interests, including: ensuring the sustainability of regional development; reducing the administrative burden on investors; preventing unnecessary delay in implementation of investment intentions; ensuring stability and predictability of the investment environment; avoiding the negative effects associated with unrealized revenue for state and municipal budgets from taxes, duties and concession payments due to delaying the implementation of projects; timely utilization of financial resources allocated to Bulgaria from the Structural and Investment Funds of the European Union and others.

We believe that in order to attain the main objective set out in art. 1 of the Aarhus Convention, namely: contribution “to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being”, the lack of direct access for the members of the public, including environmental organizations to procedures for appealing the spatial plans and the construction permits, is fully compensated by the effective means of control over the investment process introduced in Bulgaria. Some mechanisms are set in the SPA for stopping the construction and for eliminating the effects of illegal construction, which is carried out in violation of environmental legislation, as follows:

- **Stopping the execution and prohibition for the access to the construction or to part of the construction that is carried out without complying with the specific**

**requirements and/or without availability of acts** within the meaning of art. 142, para. 5, pt. 8 of the SPA (entered into force administrative acts, which, depending on the type and size of construction, are a necessary condition for authorization of the construction under the EPA), pursuant to art. 224, para. 1, p. 7 of the SPA (for the constructions from first to third category) and art. 224a, para. 1 of the SPA (for the constructions from fourth to sixth category).

- **Construction, or part of it, is illegal when it is performed in the presence of an effective refusal for issuing an act** under art. 142, para. 5, pt. 8 of the SPA (administrative acts, which depending on the type and size of construction are a necessary condition for authorization of the construction under the EPA) **or in violation of the requirements for construction in the territories with special territorial protection or with preventive territorial protection regime**, according to art. 225, para. 2, pt. 5 and 6 of the SPA, **and the same is subject to removal**, pursuant to art. 225, para. 1 of the SPA (for the constructions from first to third category) and Art. 225a, para. 1 of the SPA (for the constructions from fourth to sixth category).

If at any stage of the investment process **is allowed unlawful issuance of an act under the SPA – in violation of the provisions of the EPA, may be applied compulsory/coercive administrative measures for suspending the implementation of spatial plans and investment projects**, as already practiced in our country. Compulsory administrative measures shall be imposed by an order of the competent authorities under art. 160, para. 1 of the EPA, in conjunction with art. 158, pt. 3 of the EPA. **It is important to note that compulsory administrative measures may be implemented on the initiative of the public concerned.** The order for imposing compulsory administrative measure may be appealed by interested parties under the Administrative Procedure Code, but challenging such order do not suspend its implementation, according to art. 160, para. 5 of the EPA.

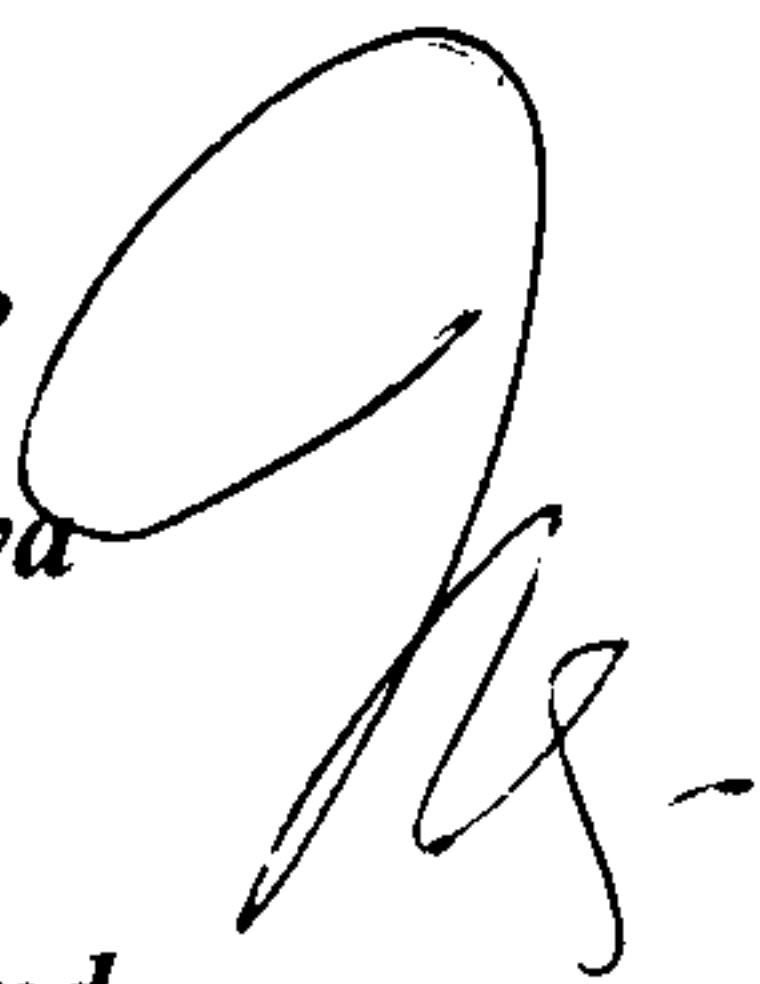
With these remedies is guaranteed that **shall be not allowed the realization of a spatial plan or an investment project, when there is imminent danger of pollution or damage to health or property of the people.**

**In conclusion, we consider that the actions taken to date in relation to the optimizing the administrative procedures in spatial planning, contribute to the implementation of the recommendations of the Committee concerning Communication № ACCC/C/2011/58 and Bulgaria has fully complied with its commitments to transpose into national legislation the European Community law in terms of access to justice in environmental matters.**

*Yours sincerely,*

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*Minister of  
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