



28 May 2010

Position Paper on Spatial Planning and Construction Process

1. Executive Summary

The Foreign Investors Council in Latvia (FICIL) position is that the Government should improve regulatory enactments related to spatial planning and construction in order to establish effective, uniform and predictable spatial planning and construction processes.

FICIL has considered and supports conceptually the Draft of Spatial Planning Development Law prepared by the Ministry of Regional Development and Local Municipalities, as well as appreciates and positively evaluates the development of the Construction Law prepared by the Ministry of Economics which has recently been passed at the Cabinet of Ministers.

2. Recommendation/Suggestions

FICIL has communicated its recommendations regarding the Draft Construction Law to the Ministry of Economics in March 2010, this position paper will mainly refer to the Draft Spatial Planning Development Law (hereinafter referred to as “the Draft”) therefore.

In order to make the spatial planning and construction processes more transparent, homogenous and effective both from point of view of long-term development and economical predictability, FICIL initiates the following recommendations for your consideration:

- to process the Draft in full conformity with the proposed amendments to the regulatory enactments related to construction, harmonizing the solutions enclosed in the Draft with the solutions implemented in the process of construction (especially the construction planning and designing);
- to process the amendments to other regulatory enactments necessary to implement the Draft simultaneously with clarification of the legal procedure of the environmental impact assessment of the intended activity, considering a possibility to allow the local governments to approve the intended construction before the procedure of the environmental impact assessment, which then would be a condition;
- when harmonizing the existing legal regulation with the Draft, to consider the necessity of clarification of the principles of public consultations and its procedure in the local governments, especially regarding the assessment of the public consultations results;
- taking into consideration that the Draft determines that the Cabinet of Ministers denotes the types and classification of territory usage, to ensure that each type is generally, prospectively and uniformly related with certain allowed industrial objects or constructions;
- to ensure efficiently that within one local government all documentation of the spatial planning is interrelated and harmonised, for example, that the spatial plan, approved by the binding regulations of the local government, would comply with the strategic development plan of the local government, approved by the decision of the city/town council;
- to clarify the procedure of implementation of the detailed spatial plans, determining that

the local government would be authorised to cancel an approved detailed spatial plan in cases already determined by the Administrative Procedure Law. We see no necessity in expanding the cancelling possibilities. Likewise it is important to express precisely what shall be deemed as commencement of implementation of the detailed spatial plans;

- to explain the aim and the relevant issues of introduction of new kind of spatial planning acts, i.e., the local spatial plans (*lokālplānojums*), and to determine clearly the mutual relationship between the spatial plan and the local spatial plan both in terms of objects of planning, their legal form and the ensuring of reciprocal conformity;
- to consider a possibility that the register maintained by the State Land Service (State Real Estate Cadastre Information System) and the register of the Land Register are both supervised by one single state institution, thus significantly facilitating the procedure of the registration of the land and real estate property rights.

3. Rationale

As it has already been stated FICIL finds the prepared Draft Spatial Planning Development Law reasonable and supports its further processing. FICIL approves the suggestion to generalise and simplify the spatial plans of the local governments and to allow to include there the “territories of future development”, taking into consideration that it is not always possible to give long-term forecast for the possible economic and social activities in a specific territory. The crucial additional aim preparing a new system of spatial development planning and the respective legal regulation should be to achieve the stability and continuity of the spatial plans, that would enable the investors not only to clearly identify the investment opportunities but also to anticipate that these opportunities will be present for a longer period of time.

Additionally FICIL's work group has prepared several suggestions as already mentioned above, which, if implemented in drafting and revision of the Draft, would facilitate the efficiency of the spatial development planning process and would provide preconditions for the sustainable territory and business development. FICIL would like to present the aspects and issues that have formed the basis for the proposals made by FICIL.

FICIL considers that the construction in fact is the implementation of the solutions determined by the spatial plans, thus the process of the construction cannot be viewed irrespectively of the process of spatial development planning. Thus all the nuances of the prospective construction processes must be observed while creating a system of spatial development planning. For example, fact that the detailed spatial plan is necessary (or exception when the preparation of detailed spatial plan in the cities/towns is not necessary) may considerably influence the issues related to the procedure of construction. Take, for instance, provision that all the necessary documentation for the initiation of construction procedure may be included in the detailed spatial plan: the approval of the detail spatial plan would automatically result in a permit to initiate the procedure of construction. Taking into account the aforementioned FICIL suggests that the reciprocal conformity and interaction of the spatial planning procedure and the procedure of construction should be ensured, first working out and processing conceptual solutions in the regulatory enactments regulating the spatial planning, and correspondingly aligning and harmonising the solutions in the sphere of construction.

As we have already pointed out, special attention should be paid to the issue of the detailed spatial plans as a precondition for the initiation of the construction procedure. Up to the present moment in the regulatory enactments the cases when the detailed spatial plan is mandatory have not been described clearly enough, which in practice led to different and quite often contradictory interpretations on behalf of the competent local government institutions. Taking into account that the development of the detailed spatial plan considerably increases the costs related to the

construction and is remarkably time consuming, the unambiguous and clear determination must be provided in the regulatory enactments for the cases when there is necessity to develop detailed spatial plan before construction in the concrete territory.

Taking into consideration that the processes of the spatial development planning and construction are closely related to the strategic environmental impact assessment and the environmental impact assessment (hereinafter referred to as "the EIA"), FICIL has summarised its conclusions and suggestions related to the mutual harmonisation and succession of EIA and the procedure of construction. In our opinion it would be useful to consider whether it is possible to determine that the decision on the construction intention is approved by the local government before the procedure of EIA, and to position the EIA procedure as a precondition where positive result would serve as a permit to execute the construction intention. Thus in cases when EIA is necessary the decision of the local government on the approval of the construction intention would contain a condition that a positive report about EIA should have been received.

The members of FICIL have quite often experienced problems related to the assessment of the public consultations results in the local governments in situations, when only a small part of the community, or persons or the representatives of the community with their own subjective interest in the issue have been involved in the consultations, and their signatures have been collected without proper understanding of the issue they have signed for. Therefore the result of the public consultations is an opinion which not only falls against the planning project, but also fails to convey the opinion of the representative part of the community. In the opinion of FICIL when harmonising the present legal regulation with the Draft, the basic principles and procedure of public consultations in the local governments should be clarified, especially in relation to the assessment of the public consultations results, stating the principles for the assessment of the results obtained during the public consultations and, for example, the proportion of the community that must be represented to consider their decision essential in the process of the decision making. In our opinion it is not acceptable and not corresponding to the aim of the public consultations to decline the approval of the detailed spatial plan because of the results of the public consultations, where 9 out of 10 opinions have been negative (counted as 90%) even though 10 inhabitants comprise only 0.02% of all the inhabitants of the municipality.

FICIL supports and approves defining of uniform types of territory usage. , We consider that such types, their designation and, what is most important, the permitted activities and objects for each of types should be determined and equally used for all kinds of spatial plans and this classification should be observed by all local governments. Therefore it is necessary to ensure that the usage type of the territory is beforehand clearly and uniformly related to the definite objects of construction or manufacture industry, so that the opportunities for future development are visible, clear and reliable. At the present moment the types of land usage are set by each local government separately and they tend to vary. Even more, for similar titled types the permitted activities, objects and other criteria differ considerably.

The Draft determines that the spatial development planning in the local level is ensured by preparing the following documents of the spatial development planning which are mutually harmonised and hierarchically aligned: the strategy of the local government development, the development program, the spatial plan, the local spatial plan (*lokālplānojums*) and the detailed spatial plan. It is determined also that the mentioned documents of the local government development planning are mutually aligned. However, FICIL considers it being necessary to assess and within possible limits to set a mechanism of control of the implementation of this mutual alignment, to ensure efficiently that within the local government all the documentation of the spatial development planning are really mutually harmonised and, for example, the spatial plan, approved according to the regulations of the local government in fact complies with the development strategy of the local government, approved by the decision of the council of the city.

Taking into account that at the level of the local government different documents of the spatial planning are approved with hierarchically different legal acts, it must be observed, that the legal force of these acts in relation to third parties does not always conform to the importance of the document in the spatial development planning aspect. Thus a private person, for example, has no legal mechanism to achieve that the spatial plan conforms to the program of development, therefore another and different, possibly, administrative, mechanism should be introduced to help to ensure that all documents of the spatial planning are mutually harmonised.

In relation to the detailed spatial plan as a document of the local government's spatial development planning, FICIL agrees with the opinion that it should be approved with an administrative act, which not only conforms to the essence of the act, but would also improve the issues of its implementation and appeal in terms of the legal formulation. At the same time the solutions introduced in the present version of the Draft and related to the order of the implementation of the detailed spatial plan should be reconsidered. In our opinion it is sufficient and appropriate for reaching the respective aim to determine that the local government has the right to cancel an approved detailed spatial plan in cases generally determined by the Administrative Procedure Law. It is not useful to extend this right to other cases that are vague in terms of practical determination. We also believe, that since it is planned to approve the detailed spatial plan by an administrative act, the order of its implementation, including the possibility of cancellation, if necessary, can easily be included in the detailed spatial plan itself as the condition of the administrative act, and there is no reasonable basis for including special regulation in the Draft.

In addition if the possibility of the cancellation of the detailed spatial plan is related to commencement of its implementation, in the opinion of FICIL, it should be clearly and explicitly stated what activities shall be regarded as the commencement of the implementation of the detailed spatial plan (for example, the commencing of development of engineering and communication systems and road construction, the preparation of the construction site, compartmentalization etc.) in order to prevent the possibility that the moment of the commencing is detected differently and as one finds it necessary, or interpreted on the basis of other external factors from case to case.

As a result of assessing the Draft and meetings with the representatives of the Ministry of Economics, FICIL has established that it is planned to implement a new additional document of the spatial development planning in the level of the local government - the local spatial plan (*lokālpplānojums*).

FICIL points out that the Draft does not provide a clear explanation in relation to issues of the spatial planning and all the subordinated solutions in the sphere of construction with regards to local spatial plans. It is not clear how the implementation of the local spatial plan would facilitate and make the process of development planning more efficient and how it will affect the process of construction. Moreover, the cases when the local spatial plan is necessary are not yet determined. FICIL does not find reasonable implementation of spatial planning tools that would make the existing process of the spatial planning slower and less transparent and that may produce obscure effect on the process of construction. In the opinion of FICIL any legal act produced in the process of the spatial planning must be clear in relation to its binding force to the third parties, and must have predictable effect on the process of construction. It is not less important, that the content of each document of the spatial planning (especially the determined limits) must be so clear and unambiguous that everybody interested in the issue can obtain full and explicit information about the construction type permitted in the specific territory and all the considerable limitations.

As it can be concluded from the Draft, in the local government it is planned to approve both the spatial plan and the local spatial plan with the binding regulations of the local government.

Although the local spatial plan may be regarded as a special regulation in relation to the spatial plan, the mutual relation between these documents cannot be concluded indubitably from the Draft. That in its turn may lead to misunderstandings practically working on the local spatial plan and to ill-advised and voluntary amendments to the separate parts of the spatial plan caused by the local spatial plan, making it fragmentary and altogether not conforming either to the initial development strategy or principles of the spatial planning.

Considering the above mentioned, the aim of introducing the local spatial plan should be cleared and provided in the Draft, and the relationship between the spatial plan and the local spatial plan both in the aspect of planned objects, legal force and the ensuring of the mutual alignment should be determined clearly.