

Findings and recommendations with regard to communication ACCC/C/2016/144 concerning compliance by Bulgaria

Adopted by the Compliance Committee on 26 July 2021¹

I. Introduction

1. On 14 November 2016, non-profit association Civil Control – Animal Protection (the communicant), submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging the failure of Bulgaria to comply with its obligations under the Convention.²
2. More specifically, the communicant alleges that the Party concerned failed to comply with article 7 in conjunction with article 6(3) and (8), and article 9(2)-(4) of the Convention by failing to provide adequate public participation in the decision-making on a proposed amendment to the General Spatial Plan (GSP) of Plovdiv and by failing to provide access to justice to challenge either the amendment of the GSP or an authority's omission to overrule the amendment.
3. At its fifty-sixth meeting (28 February-3 March 2017), the Committee determined on a preliminary basis that the communication was admissible.
4. Pursuant to paragraph 22 of the annex to decision I/7 of the Meeting of the Parties to the Convention, the communication was forwarded to the Party concerned on 20 March 2017.
5. On 18 August 2017, the Party concerned provided its response to the communication.
6. The Committee held a hearing to discuss the substance of the communication at its sixty-fifth meeting (Geneva, 5-8 November 2019), with the participation of representatives of the communicant. Despite repeated reminders, the Party concerned did not participate in the hearing.
7. On 16 June 2020, the UNECE Executive Secretary, at the request of the Committee, conveyed the Committee's serious concern that the Party concerned did not participate in the hearing at the Committee's sixty-fifth meeting. Her letter also forwarded questions from the Committee to the Party concerned for its written reply.
8. On 13 July 2020, the Party concerned submitted its answers to the list of questions sent by the Executive Secretary, and on 17 September 2020, the communicant provided written comments thereon.
9. The Committee completed its draft findings through its electronic decision-making procedure on 16 June 2021. In accordance with paragraph 34 of the annex to decision I/7, the draft findings were then forwarded on that date to the Party concerned and the communicant for their comments. Both were invited to provide comments by 23 July 2021.

¹ This text will be produced as an official United Nations document in due course. Meanwhile editorial or minor substantive changes (that is changes that have no impact on the findings and conclusions) may take place.

²The communication and related documentation from the communicant, the Party concerned and the secretariat, is available from <https://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/envppcccom/acccc2016144-bulgaria.html>

10. On 23 July 2021, the Party concerned provided comments on the Committee’s draft findings. No comments on the draft findings were received from the communicant.
11. The Committee proceeded to finalize its findings in closed session, taking account of the comments received and adopted its findings through its electronic decision-making procedure on 26 July 2021. The Committee agreed that the findings should be published as a formal pre-session document to its seventy-second meeting.

II. Summary of facts, evidence and issues³

A. Legal framework

Spatial planning and environmental assessment

General legal aspects

12. Articles 103(2) and 104(1) of the Spatial Development Act (SDA) provide that General Spatial Plans (GSPs) set the general framework and guidelines for the construction and development of the relevant territories. They determine the prevailing use and means of development of those parts of the territories within the scope of the plan and are a base for their development.⁴
13. The Ordinance on the Conditions and Order for Implementation of Environmental Assessment of Plans and Programmes (SEA Ordinance) determines the rules for strategic environmental assessment (SEA) of plans and programmes. Article 2(2)(1) of the SEA Ordinance required that plans and their amendments which are not subject to a mandatory SEA require an assessment regarding the necessity of an SEA.⁵
14. A decision that an SEA is not needed for a draft plan is considered to be a separate administrative act to the plan itself.⁶
15. Article 125(7) SDA provides that an SEA is “part of the development plan.” Article 82(4) of the Environmental Protection Act (EPA) provides that an SEA decision is a mandatory condition before a plan or programme can be approved. The authorities responsible for the adoption and implementation of the plan or programme must take the SEA decision into consideration.⁷

Public participation in decision-making on GSPs

16. Article 127(1) SDA sets out the general framework for the public participation procedure relating to GSPs and GSP amendments.⁸ This provision states that:

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 –

³ This section summarizes only the main facts, evidence and issues considered to be relevant to the question of compliance, as presented to and considered by the Committee.

⁴ Party’s response to the communication, p. 1.

⁵ Party’s reply to Committee’s questions, 13 July 2020, annex 1, p. 1.

⁶ Ibid., p. 2.

⁷ Ibid., p. 3.

⁸ Party’s response to the communication, p. 4.

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.⁹

Access to justice regarding GSPs

17. Pursuant to article 215(6) of the SDA, GSPs and amendments thereto are not subject to appeal.¹⁰ However, article 127(6) of the SDA provides that the County Governor may challenge a GSP in court in accordance with its power to review the legality of all acts of the municipal council under article 45(5) of the Local Government and Local Administration Act (LGLAA). Such a legal challenge must be filed within 14 days according to article 127(6) of the SDA.¹¹

18. Members of the public may make a “referral” to the County Governor to take the actions described in the paragraph above. However, there is neither a legally regulated procedure for such a referral, nor a legal obligation for the Governor to consider and rule on requests of this nature or a procedure to challenge a Governor’s failure to consider and rule on a request of this nature.¹²

19. Following its 14 August 2015 amendment, article 88(3) EPA provides that an SEA decision can be challenged in court.¹³

Preliminary enforcement

20. In accordance with articles 90(1) and 166(1) of the Administrative Procedure Code (APC), any appeal or protest lodged in an administrative or judicial procedure has immediate and automatic suspensive effect.¹⁴

21. However, public authorities may discharge the suspensive effect of an appeal by issuing an order granting immediate enforceability to an administrative act. This order is known as an order for preliminary enforcement.¹⁵ The conditions for preliminary enforcement to be granted are established in article 60(1) APC.¹⁶

22. Article 60(4) APC provides that an order for preliminary enforcement of an administrative act may be challenged within three days after its publication regardless of whether the administrative act itself has been contested.¹⁷ The court examines the legality of the order according to article 60(1) APC and if it finds that the conditions set out in that provision are not met, it may repeal the order, resulting in the suspension of the underlying administrative act. Once the three-day period ends, the right of appeal against the order for preliminary enforcement lapses, but not the right of appeal against the administrative act.

⁹ Party’s reply to Committee’s questions of 13 July 2020, p. 2.

¹⁰ Party’s response to communication, p. 1.

¹¹ Communication, p. 3; Party’s reply to Committee’s questions, 13 July 2020, annex 3, p. 4.

¹² Communication, p. 3.

¹³ Party’s response to the communication, p. 2, and communication, annex 8, pp. 9-10.

¹⁴ Statement of the Party concerned, 28 February 2017, annex, pp. 23 and 39; Party’s response to communication, pp. 8-12.

¹⁵ Communication, p. 1, and Party’s response to the communication ACCC/C/2012/76 (ECE/MP.PP/C.1/2016/3), p. 1.

¹⁶ Statement of the Party concerned, 28 February 2017, annex, p. 16.

¹⁷ Ibid..

23. Pursuant to article 166(2) APC, a court may, at the request of the appellant, stop a preliminary enforcement order issued by a public authority if it may cause the appellant significant or irreparable damage. The enforcement order may only be stopped however on the ground of new circumstances.¹⁸

24. In accordance with article 167(1) APC, during any stage of the proceedings a court may also issue an order for preliminary enforcement of the administrative act under the same terms as an administrative authority.¹⁹

25. Article 167(3) APC provides that a court's decision to order the preliminary enforcement of an administrative act shall likewise be appealable within three days after the communication thereof. If the preliminary enforcement order is reversed, the status quo ante the enforcement shall be restored.²⁰

Alerts and coercive administrative measures

Alerts

26. Article 109 APC provides that any individual or organization and the ombudsman may submit an "alert" to public authorities. Article 107(4) APC provides that "alerts" may be filed inter alia in relation to unlawful or inexpedient acts of administrative bodies and officials which affect state or public interests, or the rights or legitimate interests of other persons. The filing of an alert does not itself stop the execution of the disputed act or a particular activity, unless the body competent to issue the decision on the alert directs the execution to stop until it issues its decision.²¹

27. Article 108 APC states that "administrative bodies, as well as ... other bodies, which carry out public and legal functions, shall be obliged to consider and decide the [alerts] in the established terms objectively and lawfully".²²

28. Article 113 APC provides that alerts may not be dealt with by the authorities or officials against whose actions the alerts were submitted, unless the authorities or officials hold the alerts to be justified and grant them.²³

29. Article 114 APC specifies that a response to an alert shall be taken after the case has been clarified and the explanations and objections of any interested persons have been considered. If the requests are considered unlawful or ungrounded, or may not be satisfied upon objective reasons, the grounds for that shall be shown.²⁴

30. Article 115 APC provides that an authority that has taken a decision on an alert shall take measures for its enforcement, determining the manner and time limit for enforcement.²⁵ Such measures are known as "coercive administrative measures" (see paras. 33 and 34 below).

¹⁸ Statement of the Party concerned, 28 February 2017, annex, p. 39, and Party's response to the communication, p. 10.

¹⁹ Statement of the Party concerned, 28 February 2017, annex, p. 39, and Party's response to the communication, p. 11.

²⁰ Statement of the Party concerned, 28 February 2017, annex, p. 39.

²¹ Party's response to the communication, p. 2; Statement of the Party concerned, 28 February 2017, annex, pp. 26-27.

²² Party's reply to Committee's questions of 13 July 2020, p. 3-4.

²³ Statement of the Party concerned, 28 February 2017, annex, p. 26, and Party's response to the communication, p. 2.

²⁴ Party's reply to Committee's questions of 13 July 2020, p. 4.

²⁵ Party's response to the communication, p. 2; Statement of the Party concerned, 28 February 2017, annex, p. 26.

31. Pursuant to article 121 APC, a decision on an alert shall be made not later than two months after its receipt.²⁶
32. Pursuant to article 124(1) and (2) APC, any re-submitted alerts on a matter on which a decision has been made shall not be considered unless they are in connection with the enforcement of the decision or based on new facts and circumstances, and the decision rendered on a specific alert is unappealable.²⁷

Coercive administrative measures relating to the environment

33. If the competent body, the Ministry of Environment and Water (MOEW) or the Regional Inspectorate of Environment and Water (RIEW) decides an alert is well-grounded, it may impose a coercive administrative measure (CAM) to suspend the implementation of the contested administrative act under article 160(1) EPA, in conjunction with article 158(3) or (4) EPA.²⁸
34. Article 158(3) EPA relates to the occurrence of an immediate danger of environmental pollution or damage or of damage to human health or property. Article 158(4) EPA concerns the prevention of termination of administrative violations relating to environmental protection, as well as the prevention or elimination of the harmful consequences of such violations.²⁹
35. Third parties cannot submit an alert requesting a coercive administrative measure to MOEW or RIEW.³⁰

Restrictions on construction

36. In accordance with Ordinance no. 7 of 22 December 2003 of the Ministry of Regional Development, there are the following restrictions on construction in particular zones:
- (a) No more than 1% construction is permitted in territories designated as zones for public green space
 - (b) Up to 80% construction is permitted in territories designated as zones for sport and entertainment (ZSE).³¹

Constitutional provisions and ruling

37. Article 120(2) of the Constitution of the Party concerned allows certain administrative decisions to be excluded from judicial review.³²
38. By decision no. 5 of 9 May 2006 on case no. 1/2006, the Constitutional Court ruled that article 127(9), second sentence SDA, which the judgment stated provides that GSPs are

²⁶ Party's response to the communication, p. 2; Statement of the Party concerned, 28 February 2017, annex, p. 26.

²⁷ Party's response to the communication, p. 2; Statement of the Party concerned, 28 February 2017, annex, p. 29.

²⁸ Party's response to the communication, p. 3, Party's reply to Committee's questions of 13 July 2020, p. 4.

²⁹ Party's response to the communication, p. 3.

³⁰ Communication, p. 3.

³¹ Communication, p. 4.

³² Communication, annex 7, pp. 2-3

unchallengeable, does not contradict the Constitution, reasoning that GSPs provide only general frameworks and guidelines for the construction and development of the territory.³³

B. Facts

Decision V/9d and VI/8d

39. In its findings on communication ACCC/C/2011/58 (Bulgaria), the Committee found that, by barring all members of the public, including environmental organizations, from access to justice with respect to GSPs, the Party concerned failed to comply with article 9(3) of the Convention.³⁴

40. Through decision V/9d concerning the compliance of Bulgaria,³⁵ the Meeting of the Parties, at its fifth session, endorsed the Committee's findings on communication ACCC/C/2011/58, the implementation of which the Committee was reviewing at the time that the present communication was submitted. During the Committee's review of the implementation of decision V/9d, the Party concerned stated that "if at any stage of the investment process is allowed unlawful issuance of an act under the SDA – in violation of the provisions of the EPA, may be applied compulsory/coercive measures for suspending the implementation of spatial plans and investment projects" and that "it is important to note that compulsory administrative measures may be implemented on the initiative of the public concerned.³⁶ In its third progress report, the Party concerned further reported on what it considered improved approval regimes, which inter alia provided "the public, including environmental organizations, with the opportunity, by submitting objections and signals, to cooperate for prevention of omissions and violations."³⁷

41. In its findings on communication ACCC/C/2012/76 (Bulgaria), the Committee found that, with respect to appeals under article 60(4) APC of orders for preliminary enforcement challenged on the ground of potential environmental damage, a practice in which the courts rely on the conclusions of the contested EIA/SEA decision rather than making their own assessment of the risk of environmental damage in the light of all the facts and arguments significant to the case, taking into account the particularly important public interest in the protection of the environment and the need for precaution with respect to preventing environmental harm, does not ensure that such procedures provide adequate and effective remedies to prevent environmental damage. Therefore, the Committee found that the Party concerned failed to comply with article 9(4) of the Convention.³⁸

42. Through decision VI/8d concerning the compliance of Bulgaria, the Meeting of the Parties, at its sixth session, endorsed the Committee's findings on communication ACCC/C/2012/76 as well as the Committee's finding that the Party concerned had not yet fulfilled the requirements of decision V/9d. It further decided, in light of the Party's position that implementing paragraphs 2(a) and (b) of decision V/9d was not required for its full compliance with article 9(2) and (3), to issue the Party concerned a caution.³⁹

³³ Communication, annex 7, pp. 3-4.

³⁴ ECE/MP.PP/C.1/2013/4, para. 83(a).

³⁵ ECE/MP.PP/C.1/2014/2/Add. 1.

³⁶ First progress report of the Party concerned regarding decision V/8d, 6 January 2015, p. 3.

³⁷ Third progress report of the Party concerned regarding decision V/8d, 28 October 2016, p. 3.

³⁸ ECE/MP.PP/C.1/2016/3, para. 82.

³⁹ ECE/MP.PP/C.1/2017/2/Add.1.

The amendment of the Plovdiv GSP

43. On 10 December 2013, the Municipality of Plovdiv started a procedure for the amendment of its GSP. The amendment covered a heavily forested area of approximately 800 decare (80 hectares), the majority of which is within two protected Natura 2000 sites.⁴⁰ The proposed amendment to the GSP changed the permanent use of this territory from a zone for public green space which allowed no more than 1% construction to a zone for sport and entertainment, which allows a maximum building of 80% (see para. 36 above).⁴¹

44. On 10 December 2013, the Municipality of Plovdiv published a notice of upcoming public discussions on the proposed GSP amendment in the local editions of two national newspapers.⁴² The notice stated that:

“In implementation of Order 13OA050/25.11.2913 of the Mayor of Plovdiv Municipality, Spatially Planning Directorate officially developed a Project for amendment of the General Spatial Plan of Plovdiv with scope – ZSE [zone for sports and entertainment] area within the territory of the Sports Complex “Recreation and Culture”.

We would like to inform you that in relation to the above mentioned and pursuant to art. 127, par 1 from the Spatial Planning Act in the administrative districts of the Municipality of Plovdiv the following public discussions will be conducted:

Central district -	12.12.13	-	9.00-10:30AM
Northern district -	12.12.13	-	01:00-02:30PM
Southern district -	12.12.13	-	9.00-10:30AM
Western district -	12.12.13	-	01:00-02:30PM
Trakia district -	12.12.13	-	9.00-10:30AM
Eastern district -	12.12.13	-	01:00-02:30PM.” ⁴³

45. On 12, 13 and 14 December 2013, public discussions were held.⁴⁴

46. On 6 January 2014, the Municipality of Plovdiv submitted the proposed GSP amendment to the Plovdiv division of the Regional Inspectorate of Environment and Water (RIEW-Plovdiv).⁴⁵

47. A report (“protocol”) of the public discussions was attached to the documentation submitted to an expert council and the Plovdiv Municipal Council, the authority responsible for the adoption of the GSP. The report was not part of the documentation submitted to the Director of RIEW-Plovdiv, the authority responsible for issuing the SEA screening decision.⁴⁶

48. On 8 May 2014, the Director of RIEW-Plovdiv ruled that no SEA was required for the proposed GSP amendment (the SEA screening decision).⁴⁷

⁴⁰ Communication, p. 4, and factsheet, p. 1.

⁴¹ Communication, p. 4.

⁴² Communication, factsheet, p. 1.

⁴³ Communication, annex 1, p. 1.

⁴⁴ Communication, annex 1, p. 2.

⁴⁵ Communication, factsheet, p. 1.

⁴⁶ Communication, pp.8-9.

⁴⁷ Communication, factsheet, p. 1.

49. On the basis of a preliminary enforcement order (see para. 53 below), the proposed GSP amendment was approved on 19 March 2015 (decision approving the GSP amendment).⁴⁸

County Governor review

50. The County Governor reviewed the decision approving the GSP amendment pursuant to article 45(4) of the LGLAA but found no irregularities and did not reverse or challenge the decision (see paras. 17-18 above).⁴⁹

The communicant's legal challenge of the SEA screening decision

51. On 22 May 2014, the communicant challenged the SEA screening decision before the Administrative Court of Plovdiv (the main SEA proceedings).⁵⁰ On 1 October 2015, the Court revoked the SEA screening decision on the basis that it failed to adequately state reasons.⁵¹

52. The Municipality appealed the Administrative Court's decision to the Supreme Court. On 15 May 2017, the Supreme Court upheld the lower court's ruling.⁵²

The preliminary enforcement order and associated legal challenge

53. During the main SEA proceedings and at the request of the Municipality of Plovdiv, the Administrative Court of Plovdiv issued an order for preliminary execution for the SEA screening decision by order 513 of 5 March 2015.⁵³

54. The communicant appealed the order for preliminary execution to the Supreme Administrative Court and, on 28 May 2015, the Supreme Administrative Court revoked the order.⁵⁴

The communicant's legal challenge to decision approving the Plovdiv GSP amendment

55. The communicant challenged the decision approving the Plovdiv GSP amendment before the Plovdiv Administrative Court. On 30 April 2015, the Court found the communicant's complaint inadmissible and dismissed the case.⁵⁵

56. Specifically, the Court found that amendments to a GSP were unchallengeable in accordance with article 215(6) SDA (see para. 17 above). Moreover, the Court held that the communicant's claim was inadmissible because it had no standing to challenge the decision approving the GSP amendment, but only the SEA screening decision.⁵⁶

57. On appeal, the Supreme Court upheld the lower court's dismissal, stating that the determining factor for whether or not an act should be challengeable is "whether it is essential in the field of ecology."⁵⁷ The Supreme Court rejected the communicant's argument that it should be allowed to challenge the decision approving the GSP amendment on the basis of article 9(2) of the Convention regardless of whether article 127(6) is

⁴⁸ Communication, factsheet, p. 2.

⁴⁹ Communication, p. 3, and factsheet, p. 2.

⁵⁰ Communication, factsheet, p. 1, and annex 8, p. 10.

⁵¹ Communication, factsheet, p. 2, and annex 8, pp. 32-33.

⁵² Party's response to the communication, p. 3.

⁵³ Communication, factsheet, pp. 1-2.

⁵⁴ Communication, factsheet, p. 2, and annex 6, p. 2.

⁵⁵ Communication, factsheet, pp. 1-2, and annex 5, p. 2.

⁵⁶ Communication, para. 11 and annex 5.

⁵⁷ Communication, annex 7, p. 2.

constitutional. The Court reasoned that the explicit exclusion of judicial review for a certain category of administrative acts meant that article 9(2)(b) of the Convention was not a reason for derogating from national law under article 5(4) of the Constitution.⁵⁸

58. In light of the above, the Court rejected the communicant's special request to suspend the proceedings pending a judgment in the main SEA proceedings. The Court considered that the outcome of that case did not have a "preliminary nature concerning the admissibility of the appeal covered by this dispute", and thus the request should be dismissed.⁵⁹

The communicant's attempts to obtain a compulsory administrative measure

59. On 25 March 2016, the communicant submitted an "alert" to the Ministry of Environment and Water (MOEW) requesting it to impose a compulsory administrative measure (CAM) suspending the decision approving the GSP amendment.⁶⁰ In the alert, the communicant referred to the statement by the Party concerned in its first progress report on the implementation of decision V/9d that a CAM could be applied for to address unlawful acts under the SDA (see para. 40 above).⁶¹ The communicant claimed that the decision approving the GSP amendment was illegal and that, in the absence of any access to justice to challenge the decision approving the GSP amendment, there was no alternative but for the Minister to impose a CAM suspending the GSP.⁶²

60. By letter 48-00.295 of 26 April 2016, the Minister forwarded the communicant's request to the Director of RIEW-Plovdiv.⁶³

61. By letter M-148 of 25 May 2016, the Director of RIEW-Plovdiv refused to impose the requested CAM, explaining that third parties cannot submit requests for CAMs to the MOEW or RIEW.⁶⁴

C. Substantive issues

Article 7 – transparent and fair framework

62. The communicant submits that for the public to participate effectively a transparent and fair framework is needed, citing *The Aarhus Convention: An Implementation Guide* (Implementation Guide) at page 179. The communicant alleges that no such framework is required by the law of the Party concerned nor provided by its administration. It claims that the discussions on the proposed GSP amendment were held without any regulation or rules and practically no guarantee of effective participation.⁶⁵

63. The Party concerned states that article 127(1) SDA sets out the generally applicable mandatory framework for public participation on GSPs and their amendment.⁶⁶

64. The Party concerned points out that the EPA and SEA Ordinance for public participation within the SEA procedure apply to the preparation of an SEA decision. It accepts that these rules do not apply to the preparation of an SEA screening decision.⁶⁷

⁵⁸ Communication, annex 7, p. 3.

⁵⁹ Ibid.

⁶⁰ Communication, p. 3, and annex 2.

⁶¹ First progress report of the Party concerned regarding decision V/8d, 6 January 2015, p. 3.

⁶² Communication, annex 2, p. 6.

⁶³ Communication, p. 3.

⁶⁴ Ibid.

⁶⁵ Communication, p. 8.

⁶⁶ Party's response to the communication, p. 4.

⁶⁷ Ibid., p. 6.

Article 6(3) in conjunction with article 7

65. The communicant submits that the information and time-frames provided for the public discussions on the proposed GSP amendment breached article 6(3) in conjunction with article 7 in three respects.

66. Firstly, the communicant claims that the newspaper notices failed to provide information about the place where the text of the proposed GSP amendment was available and that this resulted in the participants at the public discussions only being introduced to the proposed amendment at the time of the discussions.⁶⁸

67. The Party concerned submits that, along with its announcements for the hearing published on 10 December 2013 in two newspapers, it also indicated the address of the Plovdiv municipality, where the textual and graphical components of the proposed GSP amendment were available.⁶⁹

68. Secondly, the communicant points out that the notices stated that the subject to be discussed was “Draft amendment to the GSP of Plovdiv with scope – Zone ZSE [Zone for Sports and Entertainment] within the territory of the Sports complex Recreation and culture”. The communicant submits that this statement did not make clear that the concerned territory was currently part of the green space of the city, lying almost entirely in two protected areas, and that the amendment would provide for almost complete development of that territory.⁷⁰ The communicant claims further that the phrase “Scope – Zone ZSE” is not only completely incomprehensible, but misleading, as the amendment related to an area that was at the time a zone for public green space, which would only become a zone for sports and entertainment (ZSE) if the amendment was made.⁷¹ The communicant also claims that although the notice named article 127(1) SDA, it did not make clear that the discussions were part of a procedure for consultation on the need for an SEA.⁷²

69. Thirdly, the communicant submits that discussions were held two to four days after the date the notices were published. It submits that two to four days can in no way be considered a reasonable timeframe for informing the public and for the public to prepare and participate effectively.⁷³

70. The Party concerned submits that notices for the hearings were published in one local and one national daily newspaper, and additionally, on dates not specified, on the Plovdiv Municipality website, in the designated areas of the Plovdiv Municipality administrative buildings and in several public squares.⁷⁴

Article 6(8) in conjunction with article 7

71. The communicant claims that public participation on the proposed GSP amendment was completely ignored.⁷⁵ The communicant submits that the minutes of public discussions were not attached to any documentation forwarded to the expert council, the Municipal Council of Plovdiv, or the Director of RIEW-Plovdiv.⁷⁶

⁶⁸ Communication, p. 8.

⁶⁹ Party’s reply to Committee’s questions of 13 July 2020, p. 7.

⁷⁰ Communication, p. 8.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Party’s reply to Committee’s questions of 13 July 2020, p. 6.

⁷⁵ Communication, pp. 8-9.

⁷⁶ Communication, pp. 8-9.

72. The communicant submits that the expert council and Municipal Council only received a piece of paper entitled “Summary of protocols of public discussions”, which was no more than half a page long and summarised the objections and opinions raised by citizens, experts and organizations in a frivolous and tendentious way.⁷⁷ The communicant claims that not even this summary version of the opinions was taken into account, as evidenced by Protocol 24 of 30 May 2014 of the Expert Council of Spatial Planning and the reasons given for the decision approving the GSP amendment.⁷⁸

73. The communicant submits that not even this summary was included in the documentation for the Director of the RIEW-Plovdiv and that the SEA screening decision neither mentions nor comments on the public discussions.⁷⁹

74. The Party concerned states that a summary of the minutes of the hearing was attached to the decision approving the GSP amendment. It adds that the summary included the opinions expressed at the hearing, both those in support of the proposed GSP amendment and those opposed to it.⁸⁰

Article 9(2) and (3)

Decision V/9d and coercive administrative measures

75. The communicant claims that the communication adds new facts concerning access to justice with respect to GSPs which are additional to those underlying the recommendations in decision V/9d as well as demonstrating the inconsistency of the Party’s claims regarding CAMs in its first and second progress reports on that decision.⁸¹

76. The Party concerned disputes that the communication presents new facts, claiming that the inability to challenge GSPs was directly addressed in paragraphs 1(a) and 2(a) of decision V/9d.⁸² It states that the “principle of unappealability” of GSPs is based on the nature of the plan itself, which has no direct application to construction permitting and therefore does not raise rights or obligations for the legal persons.⁸³ It claims that judicial control is instead provided over the act that is crucial for the environment, namely the SEA decision.⁸⁴

77. The communicant submits that the decision approving the Plovdiv GSP amendment was a material breach of administrative and procedural rules, yet its challenge was found inadmissible (see paras. 55-58 above). It submits that national law provides no other line of defence against the “full ignoring” of public participation, in violation of article 9(2) of the Convention.⁸⁵

78. The communicant submits that it chose not to make a referral to the County Governor to reverse the decision approving the GSP amendment or challenge it in court because there is no legally regulated procedure for such a referral (see para. 18 above).⁸⁶ The communicant claims that whilst the decision approving the GSP amendment was reviewed by the Governor, the Governor neither reversed the decision nor challenged it in the 14-day time period.⁸⁷

⁷⁷ Communication, p. 9.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Party’s reply to Committee’s questions of 13 July 2020, pp. 7-8.

⁸¹ Communication, p. 1.

⁸² Party’s response to the communication, p. 1.

⁸³ Party’s response to the communication, pp. 1-2.

⁸⁴ Ibid., p. 2.

⁸⁵ Communication, p. 9.

⁸⁶ Communication, p. 3.

⁸⁷ Ibid.

79. The communicant claims that, having exhausted all other legal remedies, it approached the MOEW with a request to impose a CAM.⁸⁸ The communicant alleges that the Minister chose to forward the request to the Director of RIEW-Plovdiv, who did not have the power to order the CAM and was a party to the communicant's pending lawsuit challenging the SEA screening decision.⁸⁹

80. The communicant submits that the Director of RIEW-Plovdiv was correct to say that the Minister is not required to consider requests from third parties to impose a CAM of the type requested.⁹⁰

81. The communicant claims that no judicial remedy was available against a refusal to consider an alert or to impose a CAM. The communicant submits that this disproves the claim of the Party concerned that a CAM can be a way for the public concerned to challenge the unlawful issuance of an act under the SDA (see para. 40 above).⁹¹

82. The Party concerned claims that CAMs may be applied by public authorities following a proposal by the public. It states that the APC explicitly envisages the possibility for members of the public to report unlawful or inexpedient actions by public authorities via alerts.⁹²

Communication ACCC/C/2012/76, preliminary enforcement orders and the ability to challenge the final act

83. The communicant submits that the only way to challenge the failure to comply with article 7 would have been by challenging the final act, i.e. the decision approving the GSP amendment.⁹³

84. The communicant further points out that an SEA decision is a prerequisite for the approval of a GSP (see para. 15 above)⁹⁴ and that the Party concerned has consistently cited that such decisions are an "absolutely imperative condition for approval of spatial plans" in its progress reports on decision V/9d.⁹⁵

85. The communicant claims that the findings on communication ACCC/C/2012/76 (Bulgaria) concern only orders for preliminary enforcement issued by administrative authorities, whereas its communication concerns orders for preliminary enforcement issued by courts.⁹⁶

86. The communicant further submits that orders for preliminary enforcement of an SEA decision should not be allowed to be as a basis for the approval of GSPs.⁹⁷ The communicants claim that an "allowed preliminary execution of an SEA decision" is not the same as an "effective SEA decision" and that the former cannot be considered to fulfil the legal requirement to have an effective decision on SEA.⁹⁸ The communicant submits that preliminary enforcement orders can be reversed and are extraordinary temporary measures which means they cannot form a final and incontestable basis for the decision approving the GSP.⁹⁹

⁸⁸ Communication, p. 9.

⁸⁹ Ibid.

⁹⁰ Communication, pp. 9-10.

⁹¹ Communication, pp. 3-4, and 10.

⁹² Party's response to the communication, p. 2.

⁹³ Communication, p. 3.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Communication, pp. 1-2.

⁹⁷ Ibid., p. 6.

⁹⁸ Ibid., p. 6.

⁹⁹ Ibid., p. 7.

87. The communicant submits that under article 167(3) APC, if the preliminary execution is cancelled, the situation that existed before the execution is restored, which is to preserve/restore the GSP as it was before the amendment. The communicant claims that national law provides no legal remedy for the public concerned since annulment of the effects of the GSP amendment may be requested only in proceedings challenging the decision approving the GSP amendment.¹⁰⁰

88. The communicant states that from the case law attached to communications ACCC/C/2011/58 and ACCC/C/2012/76, it is evident that the public concerned cannot contest acts which adopt/approve a GSP or any amendments thereto in court, regardless of the grounds for contestation.¹⁰¹

89. The communicant claims further that for preliminary enforcement orders issued by a public authority, article 60(6) APC clearly states that the administrative body is the body which restores the situation, but that article 167(3) APC does not specify who is responsible for restoring the situation before the execution with respect to a preliminary enforcement order issued by a court under article 167.¹⁰²

90. The communicant stresses that with respect to preliminary enforcement orders issued by both authorities and the courts, members of the public cannot challenge a refusal or omission of the body responsible to restore the situation before the execution. The communicant claims that due to the inability to challenge GSPs, it is practically impossible, even for the authority who issued the order for admitting preliminary execution, to restore the situation, as it would mean cancellation of the already adopted/approved GSP.¹⁰³

91. The communicant further claims that the 14-day time period for a County Governor to challenge a GSP under article 127(6) SDA is insufficient to receive a final court ruling on the legality of the admitted preliminary execution, which in the case at issue in the present communication took almost three months.¹⁰⁴

92. The communicant submits that the above creates the possibility for abuse and circumvention of virtually all environmental legislation. It alleges that violations of the EPA and other acts remain without consequences once a GSP is accepted/approved. That is, a preliminary enforcement order for SEA decisions can be used as a tool to guarantee the adoption of unlawful GSPs. The communicant submits that this is a violation of article 9(3) of the Convention.¹⁰⁵

93. The Party concerned disagrees with the communicant's claim that the communication presents the issue of injunctive relief considered in communication ACCC/C/2012/76 in a different light.¹⁰⁶

94. The Party concerned submits that the Supreme Administrative Court's decision of 15 May 2017 confirmed the lower court's decision to revoke the SEA screening decision and this means that an obligatory element of the decision approving the GSP amendment (i.e. an effective SEA decision) is lacking.¹⁰⁷ The Party concerned submits that this would mean that there is a legal basis for a CAM suspending the implementation of the GSP amendment until the completion of the SEA procedure, temporarily restoring the condition before the preliminary enforcement of the SEA decision.¹⁰⁸ It claims that "the measure can be

¹⁰⁰ Ibid., p. 5.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Communication, pp. 5-6.

¹⁰⁴ Ibid., p.6.

¹⁰⁵ Ibid.

¹⁰⁶ Party's response to the communication, p. 3.

¹⁰⁷ Party's response to the communication, p. 3 and annex, p. 1.

¹⁰⁸ Party's response to the communication, annex, p. 1.

imposed...by public initiative by reporting a signal [“alert”] under the order of chapter eight of APC.”¹⁰⁹

95. The Party concerned claims that it is important to consider that the adoption of a GSP amendment does not lead to immediate implementation of the initiatives within the scope of the territory subject to the GSP, such as construction activities which could cause negative impacts on the environment.¹¹⁰

96. Finally, the Party concerned submits there is no relation between the proceedings on the legality of a SEA decision and the separate proceedings on the permission of a preliminary enforcement.¹¹¹ The Party concerned claims that the independent nature of the two proceedings means that where a preliminary enforcement of a SEA decision is allowed, the SEA decision should be considered temporarily entered into force. It submits that the opposite approach would make no sense in terms of the legal institution of preliminary enforcement.¹¹²

97. As regards developments since the Supreme Court’s judgment of 15 May 2017 upholding the lower court’s ruling that the SEA screening decision was unlawful, the Party concerned claims that on 6 October 2016 it initiated a procedure for a new amendment to the GSP, which includes an SEA procedure. It claims that, as at July 2020, the SEA procedure is ongoing.¹¹³

Article 9(4)

98. The communicant claims that its allegations at paragraphs 85-92 also establish a violation of the requirement for adequate and effective remedies under article 9(4) of the Convention.¹¹⁴

99. The Party concerned does not comment on the communicant’s article 9(4) allegations.

III. Consideration and evaluation by the Committee

100. Bulgaria ratified the Convention on 29 December 2004. The Convention entered into force for Bulgaria on 29 March 2005, being ninety days after the deposit of its instrument of ratification.

Opening remarks

101. At the outset, the Committee expresses its serious concern that, despite the repeated reminders and even an offer to hold the hearing on an alternative date in order to facilitate its attendance, the Party concerned chose not to participate in the hearing to discuss the substance of the communication at the Committee’s sixty-fifth meeting, which was the sole opportunity for the Committee to have heard from the Party concerned and the communicant in each other’s presence.

¹⁰⁹ Party’s response to the communication, annex, p. 1.

¹¹⁰ Ibid., p. 4.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Party’s reply to Committee’s questions of 13 July 2020, p. 8.

¹¹⁴ Communication, p. 6.

102. The Committee makes clear that it is not able to take into account arguments expressly made for the first time in the comments on the draft findings. Hence, the Committee's findings and recommendations are based on what has been submitted by the parties prior to the completion of the draft findings.

103. The failure by the Party concerned to participate in the hearing at the Committee's sixty-fifth meeting means that, despite the Committee's efforts to the contrary, the Party concerned forfeited its right to clarify issues in person with the Committee. This is regrettable given that the Party concerned raised significant arguments in its comments on the Committee's draft findings that it had not clearly made before. The failure by the Party concerned to participate in the hearing is all the more grave given that it is already under a caution pursuant to paragraph 5(a) of decision VI/8d of the Meeting of the Parties for its ongoing failure to take measures to provide for access to justice regarding spatial plans.

Admissibility

104. The communicant extensively used domestic remedies, challenging both the SEA screening decision, the order for preliminary enforcement and the decision approving the Plovdiv GSP amendment through the courts. The Committee accordingly determines the communication to be admissible.

Relationship with decision VI/8d

105. The Party concerned submits that the communication does not provide any new facts that have not already been considered under decision V/9d of the Meeting of the Parties under communication ACCC/C/2011/58 (Bulgaria) or communication ACCC/C/2012/76 (Bulgaria).¹¹⁵

106. The Committee points out that neither its findings on communication ACCC/C/2011/58 (Bulgaria) or communication ACCC/C/2012/76 (Bulgaria) examine the compliance of the Party concerned with article 7 of the Convention with respect to decision-making on GSPs and GSP amendments. Likewise, the allegations in the present communication concerning adequate and effective remedies under article 9(4) of the Convention relate to different matters than those examined by the Committee in its two previous findings. The Committee accordingly examines the communication in the present findings.

Article 9(4) in conjunction with article 9(3) – failure to provide adequate and effective remedies

107. In its findings on communication ACCC/2011/58 (Bulgaria), the Committee held that:

the characteristics of the General Spatial Plans indicate that that these plans are binding administrative acts, which determine future development of the area. They are mandatory for the preparation of the Detailed Spatial Plans, and thus also binding, although indirectly, for the specific investment activities, which must comply with them. Moreover, they are subject to obligatory SEA and are related to the environment since they can influence the environment of the regulated area. Consequently, the General Spatial Plans have the legal nature of acts of administrative authorities which may contravene provisions of national law related

¹¹⁵ Party concerned's statement on admissibility, 28 February 2017, p. 1.

to the environment and the Committee reviews access to justice in respect to these plans in the light of article 9, paragraph 3, of the Convention.¹¹⁶

108. In line with the above findings, the Party concerned was required by article 9(3) to provide the public with access to justice with respect to the amendment to the Plovdiv GSP at issue in this case. Pursuant to article 9(4) of the Convention, the Party concerned was also required to ensure adequate and effective remedies.

109. Under paragraph 3 of decision VI/8d, the Meeting of the Parties recommends the Party concerned to take the necessary legislative, regulatory and administrative measures to ensure that members of the public, including environmental organizations, have access to justice with respect to GSPs and Detailed Spatial Plans. In its second progress review on the implementation of decision VI/8d, the Committee considered that the Party concerned has not demonstrated that the requirements of paragraph 3 of decision VI/8d had yet been met.

110. On 22 May 2014 the communicant challenged the screening decision by the Director of RIEW-Plovdiv that no SEA was required for the proposed GSP amendment before the Plovdiv Administrative Court. On 1 October 2015, the Administrative Court ruled that the SEA screening decision was unlawful. That ruling was upheld by the Supreme Court on 15 May 2017.

111. However, already during the Administrative Court's proceedings, the Municipality of Plovdiv had requested an order for preliminary enforcement of the SEA screening decision, which the Court granted on 5 March 2015, with the result that the SEA screening decision had immediate effect. As a consequence, on 19 March 2015, the Municipality of Plovdiv took the decision approving the Plovdiv GSP amendment, relying on the contested screening decision. This meant that, although the Supreme Administrative Court revoked the order for preliminary enforcement on 28 May 2015, by then the decision approving the GSP amendment had entered into effect and was unchallengeable.

112. As the chronology of decisions and judgments set out in paragraphs 49 and 51 - 58 above shows, despite the subsequent annulment of the SEA screening decision, the mechanism of preliminary enforcement enabled the Municipality of Plovdiv to take the decision approving the GSP amendment, which was unappealable, before the SEA screening decision was annulled by the courts. It is therefore clear to the Committee that, despite the Party concerned's strong contention to the contrary, the possibility for members of the public to challenge SEA Decisions, and SEA screening decisions, does not provide an adequate and effective remedy to prevent the execution of unlawful GSPs and GSP amendments.

113. The legislation of the Party concerned includes a possibility for an administrative authority – including the MOEW and the RIEW – to impose a CAM to suspend the implementation of a GSP amendment. However, although it is possible for a member of the public to submit a request to the administrative authority to exercise its power to prevent the execution of an administrative act (via an “alert”, see paras. 26-35 above), the administrative authority is under no obligation to exercise this power, as is demonstrated by the facts of the case. On this point, the Committee recalls its findings on communications ACCC/C/2013/85 and ACCC/C/2013/86 (United Kingdom), in which it held “the right to ask a public authority to take action does not amount to a ‘challenge’ in the sense of article 9, paragraph, 3, and especially not if the commencement of action is at the discretion of the authority”.¹¹⁷

114. The Committee considers that the above finding is equally applicable to the possibility under article 127(6) SDA for the County Governor to challenge the decision to amend a GSP within 14 days of its approval. The Committee finds that a referral by a member of the public to the County Governor can neither amount to a challenge under article

¹¹⁶ ECE/MP.PP/C.1/2013/4, para. 64.

¹¹⁷ ECE/MP.PP/C.1/2016/10, para. 84.

9(3) nor be considered as an adequate and effective remedy under article 9(4) of the Convention, given that the County Governor is not obliged to act on such a request.

115. In light of the above, the Committee considers that the Party concerned fails to provide adequate and effective remedies to ensure that a GSP, or a GSP amendment, adopted on the basis of an unlawful SEA decision, cannot enter into force.

116. This lack of adequate and effective remedies against GSPs adopted on the basis of an unlawful SEA decision is a direct consequence of the continuing non-compliance by the Party concerned to ensure access to justice under article 9(3) with respect to the GSPs themselves, as recommended by the Meeting of the Parties through decisions V/9d and VI/8d. The Committee considers that, in order to fulfil the requirement of article 9(4) to ensure adequate and effective remedies regarding GSPs, and GSP amendments, adopted on the basis of an unlawful SEA decision, the present case makes clear that the Party concerned must grant the public the right under article 9(3) of the Convention to challenge GSPs, and amendments thereto, themselves.

117. Accordingly, the Committee finds that, by not providing the public with adequate and effective remedies with respect to GSPs, and amendments thereto, adopted on the basis of unlawful SEA decisions, the Party concerned fails to comply with its obligations under article 9(4) in conjunction with article 9(3) of the Convention.

Article 7

118. In its submissions to the Committee prior to the completion of the draft findings, the Party concerned has not disputed that the Plovdiv GSP is a plan relating to the environment within the meaning of article 7 of the Convention, and thus subject to the requirements of that provision. Nor has it disputed that the amendment to the Plovdiv GSP was required by article 7 to be subject to public participation.

119. The Committee examines below whether the public participation procedure met the requirements of article 7.

Necessary information

120. Under article 7 of the Convention, Parties are required to provide the “necessary information to the public”. As the Committee held in its findings on communication ACCC/C/2014/100 (United Kingdom):

The obligation in article 7 to provide ‘the necessary information to the public’ includes requirements both:

- (a) To actively disseminate the information indicated in article 6(2), including information about the opportunities to participate and availability of the relevant information; and
- (b) To make available to the public all information that is in the possession of the competent authorities and is relevant to the decision-making and is to be used for that purpose. The relevant information under category (b) would normally include the following information:
 - (i) The main reports and advice issued to the competent authority;
 - (ii) Any information regarding possible environmental consequences and cost-benefit and other economic analyses and assumptions to be used in the decision-making;
 - (iii) An outline of the main alternatives studied by the competent authority.

(a) Information indicated in article 6(2)

121. As noted by the Committee in its findings on communication ACCC/C/2014/100 (United Kingdom), the requirements of article 6(2) “are incorporated by virtue of the express reference in article 7 to article 6 (3), which in turn stipulates that notice is to be carried out in accordance with article 6 (2)”.¹¹⁸

122. In the present case, the notice of the public hearings provided a limited level of information on the proposed GSP amendment and associated public participation procedure, indicating only the location, date and time of the hearings and that the “scope” of the amendment was related to a “ZSE area within the territory of the Sports Complex ‘Recreation and Culture’”.

123. Significantly, the notice did not clarify that the proposed amendment envisaged changing the use of the relevant territory from a forested and partly protected area allowing no more than 1% construction, into a zone which allows 80% of the territory to be used for construction. The notice provided no indication of how the public could access any further information on the draft GSP amendment or the public participation procedure itself or any of the other information required by article 6(2)(a)-(e) of the Convention.

124. Based on the evidence before it, the Committee considers that the information made available to the public in the notice of the public hearings was in fact misleading in that the “scope” of the amendment as described in the public notice was not an adequate description of the actual proposed GSP amendment and was not further explained by any additional text. As the Committee made clear in its findings on communication ACCC/C/2006/16 (Lithuania), “inaccurate notification cannot be considered as ‘adequate’ and properly describing ‘the nature of possible decisions’ as required by the Convention”.¹¹⁹ The Committee therefore considers that the notice by the public authority in the present case fails to comply with the obligations to adequately inform the public about “the proposed activity” and “the nature of the possible decisions” as required by article 6(2)(a) and (b).

125. Furthermore, the notice provided no indication of the public authority from which relevant information could be obtained, as required by article 6(2)(d)(iv).

126. The Committee notes that article 127(1) SDA, which sets out the legal framework for public participation on spatial plans and amendments thereto, only requires that the public notice indicate the “location, date and time” of the public hearing. It does not explicitly require the public authority to ensure that the notice provides adequate information on “the proposed activity”, “the nature of possible decisions or the draft decisions” nor that it includes any of the other required information listed in article 6(2).

127. Based on the foregoing, the Committee finds that, by not ensuring that the public notice for the proposed GSP amendment contained accurate information on “the proposed activity” and “the nature of the possible decision” nor any of the other information required by article 6(2)(a)-(e) except for the location, date and time of the hearing, the Party concerned failed to comply with article 7 in conjunction with article 6(2) of the Convention.

(b) All information relevant to the decision-making

128. The communicant claims that the text of the proposed GSP amendment itself was not made available to the public in advance of the hearing. While the Party concerned has disputed this, it has not provided the Committee with any evidence demonstrating how the public was informed of where it could access the text of the proposed GSP amendment, nor the text of the existing GSP, prior to the hearing.

¹¹⁸ ECE/MP.PP/C.1/2019/6, para. 94.

¹¹⁹ ECE/MP.PP/2008/5/Add.6, para. 66.

129. Without engaging in an examination of what other information relevant to the decision-making should also have been made available to the public, the Committee finds that, by not making the texts of the existing GSP and the proposed GSP amendment effectively available to the public, the Party concerned failed to comply with the requirement in article 7 to provide the necessary information to the public.

Article 7 in conjunction with article 6(3)

130. Article 6(3) of the Convention is applicable to GSPs and GSP amendments by virtue of its incorporation into article 7 of the Convention. The Party concerned must accordingly ensure that public participation procedures for GSPs and their amendment include reasonable time-frames for the different phases. This includes allowing sufficient time for informing the public in accordance with article 6(2) and for the public to prepare and participate effectively.

131. The public hearings on the proposed GSP amendment took place on 12, 13, and 14 December 2013. The Municipality published public notices announcing the hearings only two days before the first of these hearings, i.e. on 10 December 2013.

132. The purpose of publishing notices of public hearings is inter alia to allow the public to become acquainted with the proposed activity or plan, to plan their availability and prepare for the hearing effectively. For public participation to be effective, it is necessary that sufficient time be allowed for the public between the announcement of a hearing and the holding of the hearing.

133. A two- to four-day period is clearly insufficient both to enable the public to ensure their availability to attend the hearing and also to prepare for the hearing in order to participate effectively.

134. With respect to the organization of public hearings prior to the adoption of GSPs and GSP amendments, article 127(1) SDA contains only a requirement to publish a notice of the hearing, without specifying a minimum time that the notice should be published in advance. As the case of the amendment of Plovdiv GSP shows, this lack of specification in the legislation of the Party concerned does not ensure that the requirement in article 6(3) for reasonable timeframes are met.

135. Therefore, the Committee considers that, by not ensuring a reasonable timeframe between the public notice of the hearing on the proposed amendment to the Plovdiv GSP and the hearing itself, the Party concerned failed to comply with article 7 in conjunction with article 6(3) of the Convention.

Article 7 in conjunction with article 6(8)

136. Article 6(8) is likewise applicable to GSPs and GSP amendments by virtue of its incorporation into article 7 of the Convention. The legal framework of the Party concerned must accordingly ensure that due account is taken of the outcome of public participation in preparation of GSPs and GSP amendments.

137. Article 127(1) SDA requires that a report (“protocol”) is made of the public consultations and discussions, which is to be included with the documentation for the expert council and the municipal council. In the present case, six public hearings were held on the proposed GSP amendment. The report of these six hearings is a one-page summary, of which only a total of eight lines is dedicated to summarizing the comments received in the course of these six separate hearings.

138. These eight lines in the report do not clearly identify the specific issues and concerns raised by the public or any proposals they made. Therefore, even assuming that the decision-

making authorities had the report at their disposal, they could not have relied on it to take due account of the public's input.

139. Based on the report, and in the absence of information indicating that any other documents reporting the outcome of the public participation were available to the decision-making authorities, the public consultation process appears to have been a mere formality that did not enable the public to participate effectively in the decision-making on the proposed GSP amendment.

140. The Committee notes that there appears to be no requirement in the legal framework of the Party concerned which ensures that the report recording the outcomes of the public participation is taken into account by the authorities when the decision is adopted. Accordingly, the Committee considers that the failure of the public authority to take due account of the outcome of the public participation is not an isolated incident but rather appears to be caused by a systemic defect in the legal framework of the Party concerned.

141. Moreover, the Committee recalls that under article 6(8), the Party concerned is not only obliged to take due account of the comments presented by the public, but also to demonstrate how it has fulfilled this obligation. As the Committee held in its findings on communication ACCC/C/2013/96 (European Union), "in the process of preparing a plan this obligation could be fulfilled by following the procedure set out in article 6, paragraph 9, or any other way the Party concerns chooses to demonstrate that it has taken 'due account' of the outcome of the public participation."¹²⁰

142. The Committee considers that the Party concerned has not provided any evidence that when carrying out public participation on proposed GSPs and GSP amendments, its public authorities are required to take due account of the comments, opinions, information and analyses expressed by the public and to demonstrate this in a transparent and traceable way.

143. Therefore, the Committee finds that the Party concerned, by:

(a) Failing to ensure that due account is taken of the outcome of public participation in decision-making on proposed GSPs and GSP amendments; and

(b) Failing to demonstrate, in a transparent and traceable way, how due account was taken of the public participation in the decision-making on the proposed amendment to the Plovdiv GSP,

the Party concerned has failed to comply with article 7 in conjunction with article 6 (8) of the Convention.

IV. Conclusions and recommendations

144. Having considered the above, the Committee adopts the findings and recommendations set out in the following paragraphs:

A. Main findings with regard to non-compliance

145. The Committee finds that:

(a) By not providing the public with adequate and effective remedies with respect to GSPs, and amendments thereto, adopted on the basis of unlawful SEA decisions, the Party

¹²⁰ ECE/MP.PP/C.1/2021/3, paras. 127-28; also ECE/MP.PP/C.1/2014/9, para. 62.

concerned fails to comply with its obligations under article 9(4) in conjunction with article 9(3) of the Convention;

(b) By not ensuring that the public notice for the proposed GSP amendment contained accurate information on “the proposed activity” and “the nature of the possible decision” nor any of the other information required by article 6(2)(a)-(e) except for the location, date and time of the hearing, the Party concerned failed to comply with article 7 in conjunction with article 6(2) of the Convention;

(c) By not making the texts of the existing GSP and the proposed GSP amendment effectively available to the public, the Party concerned failed to comply with the requirement in article 7 to provide the necessary information to the public;

(d) By not ensuring a reasonable timeframe between the public notice of the hearing on the proposed amendment to the Plovdiv GSP and the hearing itself, the Party concerned failed to comply with article 7 in conjunction with article 6(3) of the Convention;

(e) By:

- (i) Failing to ensure that due account is taken of the outcome of public participation in decision-making on proposed GSPs and GSP amendments; and
- (ii) Failing to demonstrate, in a transparent and traceable way, how due account was taken of the public participation in the decision-making on the proposed amendment to the Plovdiv GSP,

the Party concerned has failed to comply with article 7 in conjunction with article 6 (8) of the Convention.

B. Recommendations

146. The Committee pursuant to paragraph 36 (b) of the annex to decision I/7 of the Meeting of the Parties, and noting the agreement of the Party concerned that the Committee take the measures requested in paragraph 37 (b) of the annex to decision I/7, and recalling the need to implement the decision VI/8d, recommends that the Party concerned undertake the necessary legislative, regulatory, administrative and practical measures to ensure that:

(a) Adequate and effective remedies are provided for the public to challenge GSPs, and GSP amendments, adopted on the basis of unlawful SEA decisions;

(b) Public notice to initiate public participation in decision-making on GSPs contains details related to the proposed activity and the nature of the subsequent decision as well as all other relevant information required by article 6(2) of the Convention:

(c) All necessary information, including but not limited to the text of the proposed GSP, and in the case of a GSP amendment, the text of both the existing GSP and the proposed amendment thereto, is provided to the public in due time before the hearing;

(d) In decision-making on proposed GSPs and GSP amendments, a reasonable timeframe between the publication of public notice and hearing is provided to the public;

(e) In decision-making on proposed GSPs and GSP amendments, due account is required to be taken of the outcomes of the public participation in the decision, and that this is documented in a transparent and traceable way.