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Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Seventh session

Geneva, 18–20 October 2021

Item 7 (b) of the provisional agenda

Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism

Draft decision VII/8d concerning compliance by Bulgaria with its obligations under the Convention

Prepared by the Bureau

The Meeting of the Parties,

Acting under paragraph 37 of the annex to its decision I/7 on the review of compliance,¹

Mindful of the conclusions and recommendations set out in its decision VI/8d with regard to compliance by Bulgaria,²

Taking note of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters on the implementation of decision VI/8d concerning compliance by Bulgaria,³ and the findings of the Committee on communication ACCC/C/2016/144 concerning public participation in decision-making and access to justice regarding the amendment of a General Spatial Plan,⁴

Encouraged by the willingness of Bulgaria to discuss in a constructive manner with the Committee the compliance issues in question,

1. *Endorses* the findings of the Committee that:

(a) The Party concerned has not yet met the requirements of paragraph 3 (a) or (b) of decision VI/8d, nor made any progress in that direction;

(b) While welcoming the steps made in that direction, the Party concerned has not yet met the requirements of paragraph 8 (a), (b) or (c) of decision VI/8d;

¹ ECE/MP.PP/2/Add.8.

² ECE/MP.PP/2017/2/Add.1.

³ ECE/MP.PP/2021/49, forthcoming.

⁴ ECE/MP.PP/C.1/2021/29, forthcoming.



2. *Reaffirms decision VI/8d*, and requests the Party concerned, as a matter of urgency, to:

(a) Take the necessary legislative, regulatory and administrative measures to ensure that:

(i) Members of the public, including environmental organizations, have access to justice with respect to General Spatial Plans and Detailed Spatial Plans;

(ii) Members of the public concerned, including environmental organizations, have access to review procedures to challenge construction and exploitation permits for the activities listed in annex I to the Convention;

(b) Review the approach of its courts to appeals, under article 60 (4) of the Administrative Procedure Code, of orders for preliminary enforcement challenged on the ground of potential environmental damage, and to undertake practical and/or legislative measures to ensure that:

(i) Instead of relying on the conclusions of the contested environmental impact assessment/strategic environmental assessment decision, the courts in such appeals make 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;

(ii) The courts in their decisions on such appeals set out their reasoning to clearly show how they have balanced the interests, including the assessment they have undertaken 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;

(iii) Training and guidance is provided for judges and public officials in relation to how to carry out the above-mentioned balancing of interests in environmental cases, including on how to properly reflect that balancing in their reasoning;

3. *Calls upon* all relevant ministries of the Party concerned, including the Ministry of Economy and the Ministry of Justice, to work together to ensure the successful fulfilment of the above recommendations;

4. *Decides*, in the light of the ongoing position of the Party concerned that implementing paragraph 3 (a) and (b) of decision VI/8d is not required for its full compliance with article 9 (2) and (3) of the Convention:

(a) To maintain the caution issued to the Party concerned at its sixth session (Budva, Montenegro, 11–13 September 2017);⁵

(b) That the caution will be lifted on 1 October 2023 if the Party concerned has fully met the requirements in paragraph 2 (a) (i) and (ii) of the present decision and has notified the secretariat of this fact, providing evidence, by the same date;

(c) To request the Committee to establish the successful fulfilment of subparagraph (b) above;

5. *Endorses* the findings of the Committee with respect to communication ACCC/C/2016/144 that:

(a) By not providing the public with adequate and effective remedies with respect to General Spatial Plans, and amendments thereto, adopted on the basis of unlawful strategic environmental assessment decisions, the Party 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 General Spatial Plan amendment contained accurate information on “the proposed activity” and “the nature of the

⁵ Decision VI/8d, para. 5 (a).

possible decision” or 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 General Spatial Plan and the proposed General Spatial Plan 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 time frame between the public notice of the hearing on the proposed amendment to the Plovdiv General Spatial Plan 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 General Spatial Plans and General Spatial Plan amendments;

(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 General Spatial Plan,

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

6. *Recommends* that the Party concerned take the necessary legislative, regulatory, administrative and practical measures to ensure that:

(a) Adequate and effective remedies are provided for the public to challenge General Spatial Plans and General Spatial Plan amendments adopted on the basis of unlawful strategic environmental assessment decisions;

(b) Public notice to initiate public participation in decision-making on General Spatial Plans 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 General Spatial Plan, and, in the case of a General Spatial Plan amendment, the text of both the existing General Spatial Plan and the proposed amendment thereto, is provided to the public in due time before the hearing;

(d) In decision-making on proposed General Spatial Plans and General Spatial Plan amendments, a reasonable time frame between the publication of the public notice and the hearing is provided to the public;

(e) In decision-making on proposed General Spatial Plans and General Spatial Plan 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;

7. *Requests* the Party concerned to:

(a) Submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the recommendations in paragraphs 2 and 6 above;

(b) Provide detailed progress reports to the Committee by 1 October 2023 and 1 October 2024 on the measures taken and the results achieved in the implementation of the plan of action and the recommendations in paragraphs 2 and 6 above;

(c) Provide such further information as the Committee may request in order to assist it to review the progress by the Party concerned in implementing the recommendations in paragraphs 2 and 6 above;

(d) Participate (either in person or by virtual means) in the meetings of the Committee at which the progress of the Party concerned in implementing the recommendations in paragraphs 2 and 6 above is to be considered;

8. *Undertakes* to review the situation at its eighth session.
