

## Plan of action for decision VII/8d (Bulgaria)

Through paragraph 7 (a) of decision VII/8d concerning the compliance of Bulgaria, the Meeting of the Parties to the Aarhus Convention has requested the Party concerned to submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the recommendations contained in that decision.

The text of decision VII/8d is available at: <https://unece.org/env/pp/cc/decision-vii8d-concerning-bulgaria>

In preparing its plan of action, the Party concerned was invited by the Compliance Committee to take into account the Committee's information note for Parties on preparing their plan of action. The Committee's information note, which contains step-by-step guidance for Parties on how to complete their plan of action, is available at: <https://unece.org/env/pp/cc/implementation-decisions-meeting-parties-compliance-individual-parties>

### **A. Description of the process by which the plan of action has been prepared**

This plan of action has been prepared by the Ministry of Environment and Water as it is the national focal point for the Aarhus Convention for Bulgaria and has the necessary expertise to proceed with decision VII/8d. The plan is based on the outcomes of the long-standing consultations with the concerned authorities commenced after the adoption of decision V/9d of the Meeting of the Parties on compliance by Bulgaria with its obligations under the Convention in 2014 – the first decision of the Meeting of the Parties which concerns compliance issues of Bulgaria (in particular - the findings and recommendations of the Committee on communication ACCC/C/2011/58). Of course, the suggestions and the information provided by the communicants also have been duly taken into account. The draft of the plan has been consulted with the relevant authorities. The final version of the plan of action has been placed on the Ministry's website – on the special section for the Aarhus Convention.

### **B. General character of the measures that will be needed to implement the recommendations in the MOP decision**

All of the recommendations in decision VII/8d require legislative amendments. In order to be fulfilled the recommendations of paragraph 2 (b) (i) and (ii) of decision VII/8d fundamental change to the legislative framework would be needed – namely, the Administrative Procedure Code should be amended. The change could be considered as a fundamental because the Code shall regulate the order, rules and procedures for issuance, contestation and enforcement, incl. preliminary enforcement, of all types administrative acts, concerning many areas of the state governance, not only the environment.

The recommendations in paragraph 2 (a) (i) and (ii) as well as the recommendation in paragraph 6 (a) of decision VII/8d could be addressed by a common legislative measure. By an amendment of the Spatial Planning Act could be provided to the members of the public, incl. environmental organizations, access to review procedures to challenge general spatial plans, detailed spatial plans and construction and exploitation permits for the activities listed in annex I to the Convention, and by this way would be also fulfilled the requirement of article 9(4) of the Convention to ensure adequate and effective remedies regarding general spatial plans and their amendments adopted on the basis of unlawful strategic environmental assessment decisions.

<b>C. Detailed plan of action</b>	
<b>Recommendations: Para. 2 (a) (i) and (ii) of decision VII/8d</b>	<p>In paragraph 2 (a) (i) and (ii) of decision VII/8d, the Meeting of the Parties requests the Party concerned, as a matter of urgency, to:</p> <p>(a) Take the necessary legislative, regulatory and administrative measures to ensure that:</p> <ul style="list-style-type: none"> <li>(i) Members of the public, including environmental organizations, have access to justice with respect to General Spatial Plans and Detailed Spatial Plans;</li> <li>(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;</li> </ul>
<b>Proposed measures to fulfil recommendation</b>	<p>Amendment of the Spatial Planning Act would be needed and in particular those provisions (Art. 127, Art. 131, Art. 149, Art. 177, Art. 215 – 219) which regulate the challenging of general spatial plans, detailed spatial plans and construction and exploitation permits, as well as the interested persons entitled to appeal. Standing should be granted to the public according to the definition in §1, p. 24 of the Additional Provisions of the Environmental Protection Act (EPA) where is stated that "public" is defined as one or more natural or legal persons, and associations, organisations or groups thereof established in accordance with national legislation. §1, p. 25 of the EPA further defines "the public concerned" as the public referred to in §1, p. 24 who are affected or likely to be affected by, or which has an interest in, the procedures for approval of plans, programmes and development proposals, and in the decision-making process on the granting or updating of permits according to the respective environmental procedure or in the conditions set in the permits, including non-governmental organisations promoting environmental protection which are established in accordance with national legislation. Additional criteria for standing to be met by the members of the public should also be considered – for instance, related to objectives and activities pursuing environmental protection implemented by the entities, previous experience in this respect, number of members of the public supporting the contestation, etc. The grounds for appeal should be restricted to violation of the requirements of the environmental legislation – lack of issued statements/decisions on Strategic Environmental Assessment (SEA)/Environmental Impact Assessment (EIA) or non-fulfilment of conditions, measures and restrictions set in them.</p>
<b>Outline of the steps necessary to implement the proposed measures</b>	<p>It would be appropriate the draft amendment of the Spatial Planning Act to be approved by the Council of Ministers until the end of April 2023. Prior to submission for approval an ex-ante regulatory impact assessment of the amendment (subject to liaising with the Administration of the Council of Ministers) should be prepared, and the bill, accompanied by this assessment, should be placed for public consultations for at least 30 days. According to the established practice, it is realistic to expect the National Assembly to adopt the bill in three months – by the end of July 2023, and before the summer break – in August 2023.</p> <p>The lead responsibility for preparation and proceeding the amendment of the Spatial Planning Act lies with the Ministry of Regional Development and Public Works.</p>

Actors involved	The Ministry of Regional Development and Public Works may consider amendment of the Spatial Planning Act and, if appropriate, to undertake this legislative initiative. The Ministry may consult within the process with some other relevant authorities – Ministry of Environment and Water, Ministry of Justice, Ministry of Economy and Industry and National Association of the Municipalities in Bulgaria, as well as with NGOs (environmental and those from the construction sector – Bulgarian Construction Chamber, for instance).
Final date by when implementation of recommendation will be completed	July 2023
<b>Recommendations: Para. 2 (b) (i) and (ii) of decision VII/8d</b>	<p>In paragraph 2 (b) (i) and (ii) of decision VII/8d, the Meeting of the Parties requests the Party concerned, as a matter of urgency, to:</p> <p>(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:</p> <p>(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;</p> <p>(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;</p>
Proposed measures to fulfil recommendation	<p>Amendment of the Administrative Procedure Code would be needed and in particular those provisions (Art. 60 and Art. 167) which regulate the contestation of the ruling whereby preliminary enforcement is admitted or refused. The main problem is that the recommendations of the Committee are difficult to be implemented by legislative measures, as such measures would come into contradiction to the principle of the independence of the judiciary, regulated in Art. 117, para. 2 of the Constitution, which ensures the free and independent formation of the internal conviction of the court in revealing the truth in the course of a case. It could not be imposed on the court as an obligation (much less by law) to ignore the conclusions of the contested decision or to appoint its own assessment of the risk of environmental damage, as this would mean to be ignored and violated the basic fundamentals of the justice and the functioning of the judiciary in Bulgaria. In view of these principles, it is clear that at the court in challenging SEA/EIA statements/decisions is obliged to assess all the evidence in the case and the arguments of the parties, given the fact that the SEA/EIA procedure is complex, public and involves broad public participation, and there is no obstacle the court to appoint, on its discretion and internal conviction, an independent expertize through the experts appointed by the court, to clarify the objective truth.</p> <p>Nevertheless, the most efficient solution to fulfil the recommendations seems to be the consideration of some amendments of the Administrative Procedure Code. In view that the relevant provisions of the Code concerns general principles of the enforcement of the administrative law and the administrative judicial proceedings, possible amendments could introduce some more common conditions like: assessment by the courts of all risks of damages (including but not explicit refer to the risk of environmental damage), to be taken into account by the courts all public interests (incl.</p>

	<p>the public interest in the protection of the environment) and the courts to set out their reasoning to clearly show how they have balanced the interests (incl. the public interest in the protection of the environment).</p> <p>In addition, amendment to the Environmental Protection Act should be considered to regulate the conditions and procedure for allowing preliminary enforcement of SEA/EIA decisions, which should be in line with the recommendations of the Committee, namely: assessment of the risk of environmental damage, 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, motivation based on a balance of interests and, last but not least, the guarantee that the administrative authority requires to protect the interests of the parties. The basis for taking such a measure is the provision of Art. 167, para. 1 of the Administrative Procedure Code, according to which, in any situation of the case, at the request of a party, the court may allow preliminary enforcement of the administrative act under the conditions under which it can be allowed by the administrative body, i.e. identical conditions are defined in terms of administrative and judicial practice.</p>
Outline of the steps necessary to implement the proposed measures	<p>It would be appropriate the draft amendment of the Administrative Procedure Code (by a law)/ Environmental Protection Act to be approved by the Council of Ministers until the end of April 2023. Prior to submission for approval an ex-ante regulatory impact assessment of the amendment (subject to liaising with the Administration of the Council of Ministers) should be prepared, and the bill, accompanied by this assessment, should be placed for public consultations for at least 30 days. According to the established practice, it is realistic to expect the National Assembly to adopt the bill in three months – by the end of July 2023, and before the summer break – in August 2023.</p> <p>The lead responsibility for preparation and proceeding the amendment of the Administrative Procedure Code lies with the Ministry of Justice in view that the legislative changes are related with common principles and rules of the administrative justice and the functioning of the judiciary. Regarding the Environmental Protection Act, the responsible institution is the Ministry of Environment and Water.</p>
Actors involved	<p>The Ministry of Justice may consider amendment of the Administrative Procedure Code and, if appropriate, to undertake this legislative initiative. The Ministry may consult within the process with some other relevant authorities – Ministry of Environment and Water, Supreme Judicial Council and National Institute of Justice. The Ministry of Environment and Water may consider amending the Environmental Protection Act and consult with the Ministry of Justice, the Supreme Judicial Council and the National Institute of Justice.</p>
Final date by when implementation of recommendation will be completed	July 2023
<b>Recommendation: Para. 2 (b) (iii) of decision VII/8d</b>	<p>In paragraph 2 (b) (iii) of decision VII/8d, the Meeting of the Parties requests the Party concerned, as a matter of urgency, to:</p> <p>(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:</p> <p>(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</p>

	their reasoning;
Proposed measures to fulfil recommendation	When the amendment of the Administrative Procedure Code/Environmental Protection Act is adopted according to the recommendations in paragraph 2 (b) (i) and (ii) of decision VII/8d, the National Institute of Justice may consider to provide training and guidance for judges from the administrative courts how to carry out the balancing of interests in judicial review of orders for preliminary enforcement, including on how to properly reflect that balancing in their reasoning, according to the newly introduced legal norms. The trainings could be organized as e-learning courses with lectures and discussions on practical case studies. The training resources (incl. main lecture guidance materials and additional information related to the implementation of the Convention) for the judges from the administrative courts have to explain how to be implemented the new provisions in the Administrative Procedure Code/Environmental Protection Act in the context of the recommendations in paragraph 2 (b) (i) and (ii) of decision VII/8d, with provided good practices from the case law (national and such of the Court of Justice of the EU). Suitable examples of court rulings with appropriate balancing of interests and reasoning are available and could be used for this purpose. At the same time, the Court of Justice of the EU has issued significant rulings clarifying how to be imposed interim measures – referred to as ‘injunctive relief’ in Article 9(4) of the Aarhus Convention, for instance on case C-76/08, which also should be taken into account. Other sources are the Notice on access to justice in environmental matters of the European Commission and the Implementation Guide for the Aarhus Convention (second edition).
Outline of the steps necessary to implement the proposed measures	The National Institute of Justice may consider to provide trainings. All training resources should be prepared by the end of 2023. The trainings could be 3 or more (with groups of no more than 20 persons) in order to be covered at least 60 judges (the administrative judiciary in Bulgaria consists of 28 administrative courts and the Supreme Administrative Court). Period of trainings: January – June 2024.
Actors involved	The main responsibility lies with the National Institute of Justice, which may consult with the Ministry of Environment and Water in the process of the elaboration of the training resources.
Final date by when implementation of recommendation will be completed	June 2024
<b>Recommendation: Para. 6 (a) of decision VII/8d</b>	In paragraph 6 (a) of decision VII/8d, the Meeting of the Parties recommends that the Party concerned take the necessary legislative, regulatory, administrative and practical measures to ensure that: <ul style="list-style-type: none"> <li>(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;</li> </ul>

Proposed measures to fulfil recommendation	As it is explained above, the recommendation in paragraph 6 (a) of decision VII/8d would be fulfilled by the measure foreseen for the implementation of the recommendations in paragraph 2 (a) (i) and (ii) of decision VII/8d, namely – with the amendment of the Spatial Planning Act in order to be provided to the members of the public, incl. environmental organizations, access to review procedures to challenge the general spatial plans, detailed spatial plans and construction and exploitation permits for the activities listed in annex I to the Convention.
Outline of the steps necessary to implement the proposed measures	N/A
Actors involved	N/A
Final date by when implementation of recommendation will be completed	N/A
<b>Recommendations: Para. 6 (b) of decision VII/8d</b>	<p>In paragraph 6 (b) of decision VII/8d, the Meeting of the Parties recommends that the Party concerned take the necessary legislative, regulatory, administrative and practical measures to ensure that:</p> <p>(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</p>

	<p>(2) of the Convention;</p> <p>(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;</p> <p>(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;</p> <p>(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;</p>
<p>Proposed measures to fulfil recommendation</p>	<p>Amendment of the Spatial Planning Act would be needed and in particular those provisions which regulate the procedure for public hearing of general spatial plans (Art. 127, para. 1). According to the regulatory framework for the procedure of SEA, applicable to the general spatial plans (GSP)/GSP amendments, for the GSP, in the highest degree "relating to the environment" (within the meaning of Art. 7 of the Aarhus Convention) and their amendments, it is obligatory to conduct SEA with the respective strict criteria for public participation, according to Environment Protection Act (EPA) and the Ordinance on the conditions and order for implementation of environmental assessment of plans and programmes. These requirements for public participation within the SEA procedure at each stage (consultations on the elaborated SEA report together with the plan/programme; announcement for conducting of consultations; public discussion (hearing); approval of the plan/programme), are in full compliance with Art. 7, in connection with Art. 6, Para. 3, 4 and 8 of the Aarhus Convention.</p> <p>Furthermore, for GSP/ some GSP amendments the SEA is obligatory and all other GSP amendments are subject to an SEA screening procedure (assessment regarding the necessity of SEA). This means that all GSP and all GSP amendments, which could have significant environmental impacts, should be put through SEA and accordingly – public participation under the SEA. Regarding those GSP amendments for which it is considered that no SEA should be performed, it is very doubtful whether it can be assumed that they are related to the environment and therefore – that they fall within the scope of Art. 7 of the Aarhus Convention.</p> <p>Nevertheless, in view of the findings of the Committee based on the opinion that all GSP/GSP amendments (regardless whether a GSP/GSP amendment is subject to SEA or not) are related to the environment within the meaning of article 7 of the Convention, and thus subject to the requirements of that provision, the procedure for public hearing of GSP should be revised in the light of the recommendations in paragraph 6 (b) of decision VII/8d.</p> <p>In addition, consideration should be given to preparing and disseminating instructions (guidelines) to the bodies issuing SEA decisions and the bodies adopting GSP/GSP amendments regarding the joint application of the provisions of the environmental legislation (the Environmental Protection Act and the Ordinance on the conditions and the procedure for carrying out an environmental assessment of plans and programmes) regarding the consultations with the public within the framework of the SEA procedure and the provisions of the Spatial Planning Act regarding the public discussion (hearing) of the GSP/GSP amendments, with a view to complying with the requirements of Art. 7, in connection with Art. 6, Para. 3, 4 and 8 of the Aarhus Convention.</p>

<p>Outline of the steps necessary to implement the proposed measures</p>	<p>It would be appropriate the draft amendment of the Spatial Planning Act to be approved by the Council of Ministers until the end of April 2024. Prior to submission for approval an ex-ante regulatory impact assessment of the amendment (subject to liaising with the Administration of the Council of Ministers) should be prepared, and the bill, accompanied by this assessment, should be placed for public consultations for at least 30 days. According to the established practice, it is realistic to expect the National Assembly to adopt the bill in three months (by the end of July 2024) and before the summer break (August 2024).</p> <p>The lead responsibility for preparation and proceeding the amendment of the Spatial Planning Act lies with Ministry of Regional Development and Public Works.</p> <p>The instructions (guidelines) on the joint implementation of the SEA public consultation procedures and the public discussion (hearing) of the GSP/GSP amendments should be available by mid-2023.</p>
<p>Actors involved</p>	<p>The Ministry of Regional Development and Public Works may consider amendment of the Spatial Planning Act and, if appropriate, to undertake this legislative initiative. The Ministry may consult within the process with some other relevant authorities – Ministry of Environment and Water, National Association of the Municipalities in Bulgaria, as well as with NGOs (environmental and those from the construction sector – Bulgarian Construction Chamber, for instance). The responsible institution for preparing the instructions (guidelines) is the Ministry of Environment and Water.</p>
<p>Final date by when implementation of recommendation will be completed</p>	<p>July 2024</p>