

# Answers to the questions of the Aarhus Convention Compliance Committee in case no ACCC/C/2018/158

## 1. With reference to questions no 1, 3 and 4

In order to clarify the nature of individual plans, first of all it should be noted that the plans identified in the communication in case no ACCC/C/2018/158 are adopted in different forms. The form under which a plan is adopted will determine whether it should be classified as an act within the meaning of Article 9(3) of the Aarhus Convention.

Some of the plans mentioned in question 1 are the plans adopted in the form of acts of generally applicable law. In accordance with Article 87(1) of the Constitution of the Republic of Poland, the sources of generally applicable law of the Republic of Poland include: the Constitution, acts of law, ratified international agreements and regulations. Pursuant to paragraph 2 of the aforementioned article, sources of generally applicable law also comprise acts of local law within the area of operations of the authorities that enacted them. In accordance with Article 94 of the Constitution of the Republic of Poland, local government authorities and local government administration bodies, based on and within the limits of the authorisations contained in the act, establish acts of local law binding on the territory where these authorities operate. The principles and procedure of issuing acts of local law are determined by the act of law.

The individual plans and a description of the forms in which they are adopted are presented below. For the designation of the individual plans by letters, the list defined in question no. 2 of the Aarhus Compliance Committee of 13 May 2022 was adopted.

### **The plans constituting the acts of local law include:**

- The local spatial development plan which, pursuant to Article 20(1) of the Act of 27 March 2003 on spatial planning and development (Journal of Laws of 2023, item 977, as amended) is adopted by the municipality council by way of a resolution. Pursuant to Article 14 (8) of this act, the local plan is the act of local law.
- The water maintenance plan which is adopted pursuant to Article 327(4) of the Act of 20 July 2017, Water Law (Journal of Laws of 2023, item 1478, as amended) by the Governor of the Province [*Polish: Wojewoda*], on the proposal of Polish Waters [*Polish: Wody Polskie*] and with the consent of Polish Waters, by way of an act of local law.
- Plan of protection measures of Natura 2000 areas, which is adopted under Article 28 (5) of the Act of 16 April 2004 on Nature Protection (Journal of Laws of 2023, item 1336, as amended) by way of an act of local law in the form of a regulation of the competent regional director for environmental protection.
- The nature reserves protection plan, which is established by the competent regional director for environmental protection by way of an act of local law in the form of a regulation, pursuant to Article 19 (6) of the Act of 16 April 2004 on Nature Protection.
- The air quality action plan and the short-term air quality action plan, adopted under the resolutions of the local parliaments [*Polish: Sejmik Województwa*], pursuant to Articles 91 and 92, respectively, of the Act of 27 April 2001, Environmental Protection Law (Journal of Laws of 2024, item 54). The air quality action plan is the plan within the meaning of Article

84 (1) of the Act of 27 April 2001, Environmental Protection Law, whereas the short-term air quality action plan is an element of the air quality action plan. The programmes are published in the official journals of the provinces.

- The noise management action plan which, pursuant to Article 119a(9) of the Act of 27 April 2001, Environmental Protection Law is adopted by the local parliament by way of a resolution. It is a plan within the meaning of Article 84 (1) of the Act of 27 April 2001, Environmental Protection Law and therefore also an act of local law.

The plan which partially constitutes the act of local law is the landscape parks protection plan. In the remaining scope, the plan is an act of internal law (see answer to question no 2). Article 20(4a) of the Act of 16 April 2004 on Nature Protection provides that:

The landscape parks protection plan, in the part concerning:

- 1) determination of the boundaries of the zones referred to in paragraph 4(7) (i.e. the boundaries of the landscape protection zones delineated within the priority landscapes),
- 2) the list of objects of significant historical and cultural importance (referred to in paragraph 4(8)),
- 3) introduction of the bans referred to in Article 17(1a) (i.e. bans introduced within the priority landscapes, in particular the prohibition of locating new buildings or afforestation)

- shall be an act of local law.

#### **The plans adopted by way of a regulation include:**

- The Natura 2000 area protection plan, which is adopted under Article 29 (3) of the Nature Protection Act of 16 April 2004 by way of a regulation of the minister competent for the environment.
- The national park protection plan, which is established under Article 19 (5) of the Nature Protection Act of 16 April 2004 by way of a regulation of the minister competent for the environment.
- The river basin management plan which, pursuant to Article 321 of the Act of 20 July 2017, Water Law is adopted by way of a regulation of the minister competent for water management.
- The flood risk management plan which, pursuant to Article 173(16) of the Act of 20 July 2017, Water Law is adopted by way of a regulation of the minister competent for water management.
- The drought management plan which, pursuant to Article 185(6) of the Act of 20 July 2017, Water Law is adopted by way of a regulation of the minister competent for water management.

The plans which, pursuant to the Constitution of the Republic of Poland, are the acts of the generally binding law are the executive regulations and other generally applicable legally binding normative acts referred to in Article 8 of the Aarhus Convention.

Therefore, the plans mentioned in paragraphs (a), (k), (l), (m), (n), (o), (p), (q), (r) are not the acts referred to in Article 9(3) of the Aarhus Convention. Since Article 8 of the Convention refers to executive regulations and other generally applicable legally binding rules, these acts cannot at the same time be the acts indicated in Article 9(3) of the Convention. This is evidenced by a literal interpretation of the provisions of the Convention.

## 2. With reference to question no 2

Plans of internal nature represent another type of plans.

### Plans of internal nature include:

- The waste management plan adopted at national level (National Waste Management Plan), which is enacted pursuant to Article 36(1) of the Act of 14 December 2012 on Waste (Journal of Laws 2023, item 1587, as amended) by the Council of Ministers by way of a resolution. Pursuant to Article 93(1) of the Constitution of the Republic of Poland, resolutions of the Council of Ministers and orders of the Prime Minister and ministers shall be of an internal character and shall bind only those organisational units subordinate to the authority issuing these acts.
- The waste management plan adopted at the Voivod level which is adopted pursuant to Article 36(2) of the Act of 14 December 2012 on waste by the local parliament by way of a resolution, which, however, is not an act of local law. According to the case law of the administrative courts, a waste management plan does not contain generally binding norms. Consequently, the waste management plan is recognised as the so-called internal management act, constituting a framework action plan for a given area in the scope of waste management and is addressed to public administration bodies. The case law emphasises that this act in principle contains general norms of an informative nature (containing data and forecasts).
- The voivodship spatial development plan which, pursuant to Article 42 (1) of the Act of 27 March 2003 on spatial planning and development is adopted by the competent local parliament by way of a resolution. This plan is a planning act which defines the principles of spatial organisation of the province [*Polish: województwo*]. Consequently, the voivodship spatial development plan does not directly translate into the interests of individual private and public entities.  
The voivodship spatial development plan, which is not an act of generally binding law, cannot constitute a direct legal basis for issuing any administrative decisions.
- The landscape parks protection plan - in the part other than indicated in the answer to question no 1.

Acts of an internal nature are not acts within the meaning of Article 9(3) of the Convention. These acts do not exert any external effects, but only effects with regard to public administration bodies. No rights or obligations for private parties can be derived from them. Their provisions can exert external effects only if they are included in generally binding legislation. Consequently, it should also be recognised that these acts do not generate effects for the public concerned within the meaning of Article 2(5) of the Convention (affected or has an interest in the adoption of the respective plan).