

# **COUNTRY STUDIES CONCERNING STATE AID - BULGARIA**



**Country Study**  
**Justice and Environment 2023**

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## Background

In March 2021, the Aarhus Convention Compliance Committee (ACCC) found in favor of J&E member organization ÖKOBÜRO and its member, GLOBAL 2000, in the communication they had brought, namely [ACCC/C/2015/128 \(EU\)](#). Specifically, the Committee [found that](#):

- (a) *By failing to provide access to administrative or judicial procedures for members of the public to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, the Party concerned fails to comply with article 9 (3) of the Convention;*
- (b) *By failing to provide any procedure under article 9 (3) of the Convention through which members of the public are able to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, the Party concerned also fails to provide an adequate and effective remedy regarding such decisions as required by article 9 (4) of the Convention.*

Accordingly, the Committee made the following recommendation:

*The Committee, pursuant to paragraph 35 of the annex to decision I/7, recommends that the Meeting of the Parties, pursuant to paragraph 37 (b) of that annex, recommends that the Party concerned take the necessary legislative, regulatory and other measures to ensure that the Aarhus Regulation is amended, or new European Union legislation is adopted, to clearly provide members of the public with access to administrative or judicial procedures to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, in accordance with article 9 (3) and (4) of the Convention.*

## Questions

### What courts have competence to make a judgment when allegedly unlawful state aid government measures are challenged in court? Administrative? Civil? Constitutional?

The law regulating the regime of state aid in Bulgaria is the [State Aid Act](#) (SAA) (2017, as amended). When the act of granting state aid is issued by a public body or by a public undertaking (public law organization, public body or public enterprise), the dispute is before the competent administrative court. The complaints and claims are considered according to the Administrative Procedure Code (APC). (Art.53 (2-3). According to Art.54 of the SAA, any interested person may challenge, in accordance with the APC, an act of granting state aid or minimal aid when interests related to the activity carried out by this person are affected. Paragraph 1, point 9 of the Additional Provisions of the SAA define an "interested person" within the meaning of Article 1, letter "h" of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union. The 28 regional administrative courts act as first instance in all administrative cases, with the exception of those cases which fall within the jurisdiction of the Supreme Administrative Court (SAC). The SAC hears cases such as appeals against acts of the Council of Ministers, the prime minister, the deputy prime ministers and the ministers, cassation appeals and protests against first-instance decisions of court, and motions for reversal of effective judicial acts on administrative cases.

As to each of the courts identified in reply to answer 1, what requirements must be met in order to show standing? Specifically, could an NGO meet these requirements and initiate/file a case challenging potentially illegal state aid? Could other members of the

## public meet these requirements (presuming they are neither aid beneficiaries nor (potential) competitors Could this NGO join an ongoing case on any side of the legal dispute as an amicus curiae?

The definition of “interested person” in SAA excludes NGOs as potential claimants since there are neither persons, nor undertakings, nor association of undertakings whose interests might be affected by the granting of aid, in particular as beneficiaries of the aid, competing undertakings and trade associations. Pursuant to Art.153 of APC, parties to the case are the disputant, the authority that issued the administrative act, as well as all interested persons the last category which could be closest to the concept of amicus curiae.

## Has any national court granted legal standing in practice to a party whose competitive position was not affected by a state aid? If yes, how would you categorize this party? An NGO? Another type of member of the public (individuals, citizens initiatives, and other non-incorporated groups)? In what position was this party accepted by the court: plaintiff or amicus curiae (on either side)?

We couldn't identify national court cases granting legal standing to a party whose competitive position was not affected by a state aid (e.g. eNGO). We need to mention that the court practice of challenging state aid decisions is very limited to a few cases.

## Presuming a national court would grant standing to an NGO to challenge a state aid decision, what criteria would

## this NGO need to meet in order to be recognized? Are there different criteria for becoming a party vs. an amicus curiae?

The general rule is that the Bulgarian legislation grants standing in environmental protection cases to interested persons without imposing very limiting requirements to the eNGOs and physical persons. According to §1, p. 24 of the Additional Provisions of the [Environmental Protection Act](#) (EPA), "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. The only difference could concern the classification of the NGOs in Bulgaria in two categories: that have identified themselves as NGOs carrying out activities for public or private benefit. The national courts in Bulgaria interpret differently "the public concerned" pursuant to Art. 2, item 5 of the Aarhus Convention, transposed by §§ 24 and 25 of the Additional Provisions of the Environmental Protection Act. At the moment, the prevailing case-law on the matter seems to favour only the eNGOs registered for public benefit having a right of appeal in environmental cases.

Regarding the relevance of having a status of a party or of an amicus curia in the proceedings, the general rule in the Administrative Procedure Code is that the parties to the administrative process may be the administrative body, the prosecutor and any citizen or organization whose rights, freedoms or legal interests are or would be affected by the administrative act or the court decision or for whom they would give rise to rights or obligations (Art.15(1) APC).

## Has an eNGO ever filed a lawsuit against a state aid measure in your Member State? Has an eNGO ever been admitted into a case as amicus curiae? If yes, what was

## **the outcome of the case? What was the contribution of the eNGO to the outcome of the case? Please address both admissibility (standing/scope) and merits.**

As mentioned in point 3 above, in Bulgaria the court practice of challenging state aid decisions in general is very limited, to a few cases<sup>1</sup>. We have not identified an instance of a lawsuit against a state aid measure.

## **Can an applicant claim a state aid measure or scheme violated EU or national law relating to the environment? If yes, please provide details, specific examples where this was done, etc. You can quote here cases that were not initiated by eNGOs or members of the public, too.**

SAA provides an act for the provision of state aid or de minimis aid and actions could be challenged for alleged violations of Bulgarian legislation and the law of the European Union in the provision of state aid or of de minimis, as well as that claims related to the provision of state aid or de minimis aid could be submitted (Art.53) and that any interested person may challenge an act of granting state aid or de minimis aid when interests related to the activity carried out by him are affected (Art.54). There is no legal ground in the special law nor any caselaw that considers environmental arguments in state aid litigation.

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<sup>1</sup> According to similar research of ClientEarth, the existing case-law on legal standing in challenges to illegal State aid under the Bulgarian State aid legislation is extremely limited and essentially entails only two cases. Ruling No. 755 of 28.01.2022 of Sofia City Administrative Court in administrative case No. 8264/2018, and Judgement No. 264 of 21.2.2022 of Sliven Administrative Court in administrative case No. 230/2022. (<https://www.clientearth.org/latest/documents/access-to-justice-in-state-aid-matters-in-eu-member-states-where-do-ngos-stand/>)



## What sort of remedies is available in a judicial procedure started against a state aid measure?

The general rule in the law concerning the remedies is available in a judicial procedure started against a state aid measure is found in Art. 60 of the SAA. It states that the court may order:

- annulment of the act for granting state aid or de minimis aid;
- suspension of the payment of unlawful state aid or de minimis aid;
- payment of compensation for breach of the obligation to defer;
- recovery of unlawfully granted state aid and unlawfully received de minimis aid from the recipient and payment of interest for unlawfulness;
- payment of compensation for damages caused to competitors of the recipient and/or to third parties;
- recovery of state aid that has not been reimbursed;
- prohibition of taking actions to pay illegal state aid or de minimis aid.

## Assuming eNGOs and other members of the public have standing to challenge state aid measures, what potential costs would they face? Would these costs be different if these eNGOs and members of the public are only acting as amicus curiae?

The APC promotes the principle of access to justice, including that there should be no financial barriers. It stipulates that no stamp duties are collected and no costs are paid for any proceedings, except in the special cases provided for in the APC or in another law, as well as in the cases of judicial appeal against administrative acts and the bringing of a legal action under the APC (Art. 12(3)).

In the Tariff for State Taxes, the tax for filing a cassation appeal against an administrative act by NGOs or individuals is 10 BGN (about 5 EUR). With the 2019 amendments to the APC the tax for the cassation appeal has been raised from 5 BGN to 70 BGN (appr. 35 EUR) for

individuals, sole traders, state and municipal authorities and other persons with public functions or offering public services, and 370 BGN (appr. 185 EUR) for organisations. The tax is not paid for the filing of a protest by the prosecutor or by individuals for whom it is acknowledged by the court or another authority (e.g. the chairman of the Supreme Administrative Court) that they do not possess the means to pay.

When a material interest could be defined in the administrative court proceedings, the state tax is proportional and amounts to 0.8% of the material interest of (the value for) the party, but not more than 1,700 BGN, and in the event that the interest in the case is above 10,000,000 BNG the tax is 4,500 BGN (appr. 2250 EUR).

Another component of the potential costs in administrative court proceedings is the attorney's fee, with a minimum fee defined in Ordinance № 1 on the Minimum Amounts of Attorneys' Fees (e.g., for procedural representation, defence and assistance in administrative cases without a specific material interest, except for the special cases in para. 2, no less than 500 BGN, (Art.8(3)).

When the court rejects the challenge or terminates the proceedings, the defendant is entitled to costs, unless his behaviour has given rise to the filing of the case, including a legal consultancy fee determined pursuant Art. 37 of the Law on Legal Aid (Art.143(3) APC)

Where the court rejects the contestation or the appellant withdraws the appeal, the party for which the administrative act is favourable is entitled to be awarded costs. The appellant shall pay all costs incurred in litigation, including the minimum fee for one lawyer, fixed according to the ordinance to the Bar Act on minimum lawyers' fees, if the other party has hired a lawyer, or, if the administrative authority has been represented by its staff legal adviser, remuneration is awarded in the amount determined by the court (Art. 78(8) Civil Procedure Code).

Where the court allows expertise and assigns experts appointed at the request of the parties or ex officio, it determines an initial deposit, as well as the proportions to be paid by each party, and the timing for payment. Upon accepting the expert opinion, the court rules on the final deposit to be paid in and the remaining amounts to be paid by the parties.

The 'loser party pays' principle applies in administrative court proceedings according to Art. 143 of the APC (Liability for Costs). Where the court revokes the appealed administrative act or refusal to issue an administrative act, the stamp duties, court costs and fee for one lawyer, if the appellant has retained a lawyer, are reimbursed from the budget of the authority which issued the revoked act or refusal. The appellant is entitled to the same awarded costs upon dismissal of the case by reason of a withdrawal of the contested administrative act.

If the court rejects the contestation or the appellant withdraws the appeal, the party to which the administrative act is favourable shall be entitled to be awarded costs. The defendant (the administrative authority) is entitled to costs, unless his behaviour has given rise to the filing of the case, including a legal consultancy fee determined pursuant Art. 37 of the Law on Legal Aid (Art.143(3)) APC.

The appellant shall pay also all costs incurred in litigation by third parties supporting the defendant, including the minimum fee for one lawyer, fixed according to the ordinance to the Bar Act on minimum lawyers' fees, if the other party has retained a lawyer. The only grounds for a possible reduction of the lawyer's fee is provided in the CPC, applicable also in administrative litigation. The CPC states that the court can reduce the lawyer's fee to be paid if the amount does not correspond to the legal and factual complexity of the case, but not to less than the minimum amount determined according to Art. 36 of the Bar Act.

**How can eNGOs and other members of the public have access to information about any possible planned state aid or an actually granted state aid? Specifically, are there national registers? Please answer not only as to general information “out there”, but specifically indicate whether, in your view, this register is fit for the purposes of mounting a timely legal challenge of any such aid.**

The Minister of Finance is the national authority responsible for the monitoring, transparency and coordination of state aid and minimum aid at the national, regional and municipal level and the interaction with the European Commission, except in the field of agriculture, the development of rural areas, forestry and hunting and fisheries where the Minister of Agriculture is competent. The Ministry of Finance issues annual reports on the state aid<sup>2</sup>, however, as stated also in other reports<sup>3</sup>, no central public registry of all State aid measures planned, in the process of approval or granted, however, exists in Bulgaria.

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<sup>2</sup> <https://stateaid.minfin.bg/bg/526>

<sup>3</sup> <https://www.clientearth.org/latest/documents/access-to-justice-in-state-aid-matters-in-eu-member-states-where-do-ngos-stand/>

## Contact information

### Association of Justice and Environment

European Network of Environmental Law Organizations

33 Udolní, 602 00 Brno, Czech Republic

e-mail: [info@justiceandenvironment.org](mailto:info@justiceandenvironment.org)

web: [www.justiceandenvironment.org](http://www.justiceandenvironment.org)



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