

COUNTRY STUDIES CONCERNING STATE AID



Bulgaria
Justice and Environment 2024

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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

IS ADMINISTRATIVE STATE AID CASE LAW AVAILABLE IN YOUR COUNTRY?

The Minister of Finance is the national authority which, according to Art. 7, para. 1 of the State Aid Act, is 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 cases under Art. 8 of the Law on State Aids falling under the special competence of the Minister of Agriculture. The ministry maintains a register of state aid at: minimis.minfin.bg which leads to the EC [State aid transparency database](#).

The Supreme Administrative Court has a searchable website with all administrative law cases: https://info-adc.justice.bg/courts/portal/edis.nsf/e_cases.xsp?inst=administrative, incl. the state aid case law. It is searchable by different criteria: type of the case, N^o/year of the case, appealed administrative act, appealed first-instance court decision, key words in the case document.

IS JUDICIAL STATE AID CASE LAW AVAILABLE IN YOUR COUNTRY?

The Supreme Administrative Court has a searchable website with all administrative law cases: https://info-adc.justice.bg/courts/portal/edis.nsf/e_cases.xsp?inst=administrative, incl. the state aid case law. It is searchable by different criteria: type of the case, N^o/year of the case, appealed administrative act, appealed first-instance court decision, keywords in the case document.

IN JUDICIAL CASES, WHO HAD LEGAL STANDING ACCORDING TO THE STATE AID CASE LAW?

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)). The legal standing is accorded to any interested person who 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 (Art.54(1) of the SAA). Paragraph 1, point 9 of the Additional Provisions of the SAA defines "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 Union¹. The definition of “interested person” in SAA excludes NGOs as potential claimants **unless** they could be considered persons or undertakings whose interests might be affected by the granting of aid, in particular as beneficiaries of the aid, or competing undertakings. 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.

IS THERE ANY EXAMPLE WHERE AN NGO WANTED TO HAVE LEGAL STANDING IN STATE AID RELATED COURT PROCEDURE?

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 limited to a few cases.

ARE THERE ENVIRONMENTAL ISSUES ADDRESSED IN STATE AID CASES IN YOUR COUNTRY?

No such issues are addressed in state aid cases to our knowledge. See above the answer to Q4.

IF YES, WHAT ARE THEY?

See above.

HAS THERE BEEN A PRELIMINARY RULING CASE INITIATED BY YOUR COUNTRY'S JUDICIARY IN STATE AID CASES?

No. According to Art. 58 of the SAA “Regardless of whether a request is made under Art. 57, the court may make a preliminary inquiry to the Court of Justice of the European Union regarding the interpretation of a provision of European Union law or an interpretation regarding the validity of an act of the European Union bodies that is relevant to the subject of the case.”

We have not found any preliminary ruling case according to Art.58.

¹ ‘Interested party’ means any Member State and any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, in particular the beneficiary of the aid, competing undertakings and trade associations.

IF YES, WHAT WAS THE JUDGMENT OF THE EU COURT?

HAS THERE BEEN AN INFRINGEMENT CASE AGAINST YOUR COUNTRY AT THE COMMISSION?

DID IT GO TO THE EU COURT?

IF YES, WHAT WAS THE JUDGMENT OF THE EU COURT?

HAS IS CHANGED ANYTHING IN YOUR RESPECTIVE CASE LAW?

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