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16 August 2012

Ms. Kristína Šabová
Dvořákova 13
602 00 Brno
Czech Republic

Dear Ms. Šabová,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the Czech Republic with provisions of the Convention in connection with public participation and the implementation of the 2013 EU Emissions Trading System (Ref. ACCC/C/2012/70)

On 9 May 2012, the secretariat of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) received from you the above communication addressed to the Compliance Committee of the Convention. The communication concerns compliance by the Czech Republic with the provisions of the Convention on public participation in relation to the implementation of the 2013 rules on EU Emissions Trading System. The communication was submitted in accordance with the provisions of chapter VI of the annex to decision I/7 of the Meeting of the Parties.

The communication has been registered under the symbol ACCC/C/2012/70, which you are invited to cite in future correspondence on the matter. The main documentation relating to the communication will be shortly available on the Committee's web site at: <http://www.unece.org/env/pp/pubcom.htm>.

The Compliance Committee, having considered the admissibility of the communication at its thirty-seventh meeting (26-29 June 2012), has on a preliminary basis determined it to be admissible in accordance with paragraph 20 of the annex to decision I/7. A copy of the preliminary determination on admissibility is attached. Please note, however, that the Committee has not reached any conclusions with respect to the compliance issues referred to in the communication.

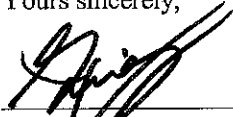
In order to facilitate further consideration of the communication, the Committee invites you to address a number of questions that are annexed to this letter. Please provide any supplementary documentation which is necessary to substantiate your response to the questions. At the same time, you are encouraged to avoid submitting to the Committee excessive documentation which is not strictly relevant to the allegations of non-compliance.

In a letter to the Party concerned, a copy of which you will receive for your information, the Committee has invited the Party to address other questions. You are welcome to respond to those question, if you so wish.

You are invited to submit your response to the Committee as soon as possible, but no later than **16 January 2013**.

Please do not hesitate to contact the secretariat if you have any questions.

Yours sincerely,



Aphrodite Smagadi
Secretary to the Aarhus Convention Compliance Committee

cc: Ms. Marie Petrová, Ministry of the Environment, Czech Republic
Permanent Mission of the Czech Republic to the United Nations Office and international organizations in
Geneva

Enc. Preliminary determination on admissibility
Datasheet on the communication

ANNEX

Questions to the communicant

- 1) Please provide a copy of Annex II to the Czech Application, the "Methodical Report", which includes the argumentation of the Party why an environmental assessment of the national plan was not required.
- 2) Although Czech authorities did not find that the National Investment Plan qualifies as a "plan or conception" and that no environmental assessment under national legislation is applicable (p. 6 of your communication), public consultations were carried out (p. 4 of your communication), as required in Annex VII to the Guidance Document of the European Commission.

Could you please explain whether the public participation process would have been different, had a strategic environmental assessment or an EIA been carried out?

- 3) You claim that the Application and plan are final under Czech law (p. 3 of your communication).

At the same time, it is understood that the Czech authorities have submitted their Application, accompanied by the national investment plan, to the European Commission in order to qualify for an exception under the revised rules of the EU Emission Trading System. This means that there is a possibility that the European Commission rejects the Application or returns the Application to the Czech authorities for revision, on the ground that the public participation process (as described in Section 6 at p. 17 of the Application) applied by the Czech authorities was not in conformity with the public participation standards under EU law.

Could you please elaborate how the Application and the Plan are final, if there is still a possibility that the European Commission requests the Czech authorities to revise the process and the Application, especially with respect to the consultation process?

- 4) On pp. 9-10 of your communication, you allege that the Czech authorities claimed that "it was not possible to submit an appeal" against the Government's approval of the Application or the National Investment Plan. Would this also imply non-compliance with article 9 of the Convention?
- 5) You state that you informed the European Commission about your concerns on 5 December 2011. Has the European Commission acknowledged that it received your information? Has the European Commission approved the Czech application and the National Investment Plan yet or is it still considering the documents?

