

Compliance Committee to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters (Aarhus Convention)

**First progress review of the implementation of decision VI/8e  
on compliance by Czechia with its  
obligations under the Convention**

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## **I. Introduction**

1. At its sixth session (Budva, Montenegro, 11-13 September 2017), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision VI/8e on compliance by Czechia with its obligations under the Convention (see ECE/MP.PP/2017/2/Add.1).

## **II. Summary of follow-up**

2. At its sixtieth meeting (Geneva, 12-15 March 2018), the Committee reviewed the implementation of decision VI/8e in open session with the participation by audio conference of representatives of Czechia, and the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70. Observer ECO Forum also took part in the open session. The communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 also provided a written statement on 15 March 2018.

3. On 26 March 2018, the communicant of communication ACCC/C/2012/71 submitted an email concerning the implementation of decision VI/8e.

4. On 1 October 2018, Czechia submitted its first progress report on decision VI/8e on time.

5. On 5 October 2018, the secretariat forwarded the first progress report to the communicants of communications ACCC/C/2010/50, ACCC/C/2012/70, and ACCC/C/2012/71, and observers OEKOBUEO and Mr. Jan Haverkamp, inviting their comments by 1 November 2018. No comments were received.

6. After taking into account the information received from Bulgaria and the communicants, the Committee prepared its first progress review and adopted it through its electronic decision-making procedure on 21 February 2019. The Committee thereafter requested the secretariat to forward the first progress review to Czechia and the communicants of communications ACCC/C/2010/50, ACCC/C/2012/70, and ACCC/C/2012/71 and registered observers.

## **III. Considerations and evaluation by the Committee**

7. In order to fulfil the requirements of paragraph 3 of decision VI/8e, Czechia would need to provide the Committee with evidence that it had taken the necessary legislative, regulatory and administrative measures to ensure that:

(a) Members of the public are granted access to administrative or judicial procedures to challenge acts and omissions by an operator or competent authority when an operator contravenes provisions of national law relating to noise;

(b) Czechia, in future, submits plans and programmes similar in nature to the National Investment Plan to public participation as required by article 7, in conjunction with the relevant paragraphs of article 6 of the Convention.

8. In order to fulfil the requirements of paragraph 6 of decision VI/8e, Czechia would need to provide the Committee with evidence that it provides:

(a) A legal framework to ensure that when selecting means of notifying the public under article 6(2), public authorities are required to select such means as will ensure effective notification of the public concerned, bearing in mind the nature of the proposed activity and including, in the case of proposed activities with potential transboundary impacts, the public concerned outside the territory of Czechia;

(b) The necessary arrangements to ensure that:

- (i) When conducting transboundary procedures in cooperation with the authorities of affected countries, the competent public authorities make the necessary efforts to ensure that the public concerned in the affected countries is in fact notified in an effective manner;
- (ii) There will be proper possibilities for the public concerned, including the public outside the territory of Czechia, to participate at the subsequent stages of the multistage decision-making procedure regarding the Temelín nuclear power plant.

**Paragraph 3(a) of decision VI/8e**

9. With regard to paragraph 3(a) of decision VI/8e, in its first progress report Czechia reports that it has established a working group on the elaboration of the National Actions Portfolio on Environment and Health. Czechia states that it has agreed to proceed with meetings to discuss the issue of time-limited exceptions (TLEs) under the Law 258/2000 Coll. on the protection of public health. According to the Party concerned, the discussions will review the practice of granting TLEs as it has been established that these do not lead eventually to implementing noise-decreasing measures. Czechia reports that this should lead to a reconsideration of granting TLEs, decreasing their number, and thus also the need to challenge these acts. Czechia reports that in further steps, the obstacles to effective access to justice in this matter will also be discussed. Czechia states that concrete steps are expected in early 2019.<sup>1</sup>

10. Regarding paragraph 3(a) of decision VI/8e the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 reports that there has been no legislative development since the last report submitted by Czechia and the sixth session of the Meeting of the Parties.<sup>2</sup> The communicant states that in cases where the noise exceeds the maximum limits, and the operator is not able to take measures to comply with them in a short time, the operator is still the only party to the proceedings in which a permit (exception) is issued. The communicant states that participation in the administrative procedure is usually a precondition for filing an application to review a decision, and that it is not aware of any case in which standing was granted to either an affected individual or an NGO with respect to a noise permit.<sup>3</sup>

11. The Committee welcomes the working group's discussions regarding TLEs as a positive first step. The Committee urges Czechia to use the working group as an opportunity to work towards legislative or other measures to ensure that members of the public are granted access to administrative or judicial procedures to challenge acts and omissions by an operator or competent authority when an operator contravenes provisions of national law relating to noise, including in relation to TLEs. The Committee notes with concern that such legislative or other measures are still lacking.

12. What is more, Czechia merely reports that the working group is to assess the practice of granting TLEs and that, following a series of further steps, there will be a decreased need to challenge these acts. The Committee points out that decreasing the need for access to justice is not the same thing as granting access to justice. Furthermore, the Committee stresses that discussing the obstacles to effective access to justice is not the same as actually removing such obstacles, nor is it clear that this amounts to clear steps in that direction. Finally, the Committee points out that, even if members of the public were granted access to justice with respect to TLE proceedings, this does not address the full scope of paragraph 3(a) of decision VI/8e, which requires access to administrative or judicial procedures more broadly to challenge acts and omissions by an operator or competent authority when an operator contravenes provisions of national law relating to noise.

13. In light of the above, the Committee finds that Czechia has not fulfilled the requirement of paragraph 3(a) of decision VI/8e.

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<sup>1</sup> Party's first progress report, 1 October 2018, p. 1.

<sup>2</sup> Statement from the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70, 15 March 2018, p. 1.

<sup>3</sup> Ibid.

### **Paragraph 3(b) of decision VI/8e**

14. Concerning paragraph 3(b) of decision VI/8e, in its first progress report Czechia reports that its position from previous progress reports has not changed. Czechia, while reiterating its commitment to enable public participation in the preparation of plans similar in nature to the National Investment Plan (NIP), submits that at this moment it is not aware of an instrument similar to the NIP being prepared in the near future. While granting that the notification of some plans can be envisaged, e.g. due to their periodicity, Czechia states it does not have an exhaustive list of plans to be approved. Therefore, Czechia reports that at the present moment it cannot provide the Committee with a list of plans similar in nature to the NIP because such a list is not available, not because of unwillingness to do so.<sup>4</sup> Czechia adds that public participation is ensured for plans that are subject to SEA proceedings.<sup>5</sup>

15. With respect to paragraph 3(b), the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 states that nothing has changed since the last report submitted by Czechia in the previous intersessional period and the sixth session of the Meeting of the Parties. According to the communicant, there are no indications of any formal or informal measures (e.g. methodological instructions) taken to meet the requirements of paragraph 3(b).<sup>6</sup>

16. The Committee takes note of the Czechia's submission. However, even a non-exhaustive list of plans, including those which can be envisaged due to their periodicity, would be welcomed as a positive first step towards implementing paragraph 3(b) of decision VI/8e. The Committee regrets that Czechia has not taken up the suggestion put forward by the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 in the last intersessional period as a proactive means to implement this provision or its predecessor in paragraph 6 of decision V/9f.<sup>7</sup> Moreover, the Committee recalls that the NIP was not subject to SEA, and the Committee has not been provided with any evidence to indicate that if a plan similar in nature to the NIP was prepared at the present time it would now be subject to SEA or would otherwise be subject to public participation.

17. Given that to date Czechia has provided no evidence of any steps taken to ensure that, in the future, plans and programmes similar in nature to the NIP are submitted to public participation as required by article 7, the Committee considers that Czechia has not yet fulfilled the requirements of paragraph 3(b) of decision VI/8e.

### **Paragraph 6(a) of decision VI/8e**

18. In respect of paragraph 6(a) of decision VI/8e, in its first progress report Czechia reports that in the course of cooperating on transboundary issues, its neighbouring states have assured it that the current extensive practice of providing information to the affected Party is more than sufficient. Czechia also provides the Committee with a list of tools for notification of the public in the EIA procedure on the national level, including on notice boards of the concerned territorial self-governing units (physical and the internet), and on the EIA information system website.<sup>8</sup>

19. The communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 states that, despite the fact that the EIA Act and related laws were subject to extensive amendments at the end of 2017, no legislative measures have been adopted to meet the recommendation in paragraph 6(a).<sup>9</sup> It confirms that, with respect to the proposed activities with potential transboundary impacts, there is only a requirement to inform the affected Party but no specific duty to actively and directly notify the public concerned outside the territory of

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<sup>4</sup> Party's first progress report, 1 October 2018, pp. 1-2.

<sup>5</sup> Ibid., p. 2.

<sup>6</sup> Statement from the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70, 15 March 2018, pp. 1-2.

<sup>7</sup> ECE/MP.PP/2017/38, para. 57.

<sup>8</sup> Party's first progress report, 1 October 2018, p. 2.

<sup>9</sup> Statement from the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70, 15 March 2018, p. 2.

Czechia. It is not aware of any legislative measures (methodological, etc.) concerning this issue. The communicant also confirms that domestic notifications require the notice of an office carrying out either the EIA procedure or the subsequent decision-making to publish “physical” notice and on a notice on the website of the office. The communicant adds that the duty to publish the information about the EIA procedures also by other means, such as via newspapers and other media, was cancelled in 2015.<sup>10</sup>

20. The Committee points out to Czechia that its submission concerning its implementation of the requirement in paragraph 6(a) of the decision refers to its cooperation with Czechia’s neighbours – i.e. the States whose members of the public would be affected by an activity with a potential transboundary impact. The Committee considers that this is not in line with the wording or intent of paragraph 6(a) of the decision, which requires a legal framework which ensures that, when selecting means of notifying the public under article 6(2), public authorities are required to select such means as will ensure effective notification of the *public concerned*, including, in the case of proposed activities with potential transboundary impacts, the public concerned outside the territory of Czechia. Implicit in this formulation is furthermore the requirement that the notice also be effective with respect to the domestic public concerned. In this regard, the Committee considers the 2015 amendment whereby public authorities are no longer required to publish in newspapers or other media may fail to ensure that these authorities select such means as will ensure effective notification.

21. The Committee accordingly considers that Czechia has not yet fulfilled the requirements of paragraph 6(a) of decision VI/8e.

#### **Paragraph 6(b)(i) of decision VI/8e**

22. With regard to paragraph 6(b)(i) of decision VI/8e, in its first progress report Czechia reports that, in its view, the obligation which stems from paragraph 6(b)(i) is fulfilled by notifying the authorities of the affected country in an effective manner. Czechia points to several legislative arrangements in that respect and claims that its arrangements and efforts to notify the competent authorities in the affected Party satisfy the requirement of paragraph 6(b)(i) of decision VI/8e. Czechia claims that Czech authorities cannot exercise their power on the territory of another Party.<sup>11</sup>

23. The communicant of communication ACCC/C/2012/71 disagrees with Czechia’s statement. According to the communicant “nothing forbids the member states of the Aarhus Convention...to ensure reliable transboundary public information, participation and access to justice system for EIA (and SEA) procedures under the Aarhus Convention”.<sup>12</sup>

24. The Committee points out to Czechia that, as with paragraph 6(a) of the decision, the requirement in paragraph 6(b)(i) is not only to notify the competent authorities of the affected Parties in an effective manner. Rather, in order to fulfil paragraph 6(b)(i) Czechia should provide evidence that it has put in place the necessary arrangements to ensure that, when conducting transboundary procedures, in cooperation with the authorities of affected countries or otherwise, the competent authorities make the necessary efforts to ensure that the public concerned in the affected countries is in fact notified in an effective manner. In Czechia’s first progress report there is neither any evidence that such arrangements have been made, nor any information provided that Czechia plans to make such arrangements.

25. Based on the above, the Committee considers that Czechia has not fulfilled the requirement of paragraph 6(b)(i) of decision VI/8e.

#### **Paragraph 6(b)(ii) of decision VI/8e**

26. With regard to paragraph 6(b)(ii) of decision VI/8e, in its first progress report Czechia asserts that the conditions needed for NGOs to participate in the subsequent decision-making

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<sup>10</sup> Ibid.

<sup>11</sup> Party’s first progress report, 1 October 2018, p. 3.

<sup>12</sup> Comments on the Party’s first progress report by the communicant of communication ACCC/C/2012/71 (Czechia).

procedures on the Temelín NPP are the same for both domestic and foreign NGOs, namely that the organization must be “a legal person of private law whose principal activity is not business (or other profit making activity) and whose activity set in its founding act is protection of the environment or public health.” It must also have either been in existence for 3 years or be supported by at least 200 persons by their signatures.<sup>13</sup>

27. The communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 states that, according to the EIA and Building Acts, the public concerned will have the right to participate in the zoning and building permit procedures. The general public, including individuals and NGOs outside the territory of Czechia, will have the right to submit comments in these procedures. While stating that it had not yet been confirmed by jurisprudence, the communicant submits that NGOs from other countries should have the right to become parties to the decision-making procedures under the same conditions as Czech-based NGOs. However, the communicant states that the public does not have the right to participate in some important stages of the multistage decision-making – namely in procedures under the Nuclear Act through which the technology for the nuclear power plant is permitted. These procedures, the communicant claims, are not on the exhaustive list of the “subsequent procedures” according to the EIA Act, where public participation is granted to the public concerned.<sup>14</sup>

28. The communicant in communication ACCC/C/2012/71 queries whether, since the information provided by Czechia in its first progress report addresses only the conditions for NGOs to participate in the subsequent decision-making procedures on the Temelín NPP, other members of the public are excluded from participating.<sup>15</sup>

29. The Committee considers that the first progress report of Czechia fails to provide sufficient information to demonstrate that the requirements of paragraph 6(b)(ii) are fully met. Firstly, Czechia reports only on the opportunities for domestic and foreign NGOs to participate at the subsequent stages of the multistage decision-making procedure regarding the Temelín nuclear power plant, and not the opportunities for other members of the public concerned, including other members of the public outside the territory of Czechia. Secondly, Czechia has not provided any evidence to show at which of the subsequent stages in the multistage decision-making procedure for the NPP the public concerned will be entitled to participate. On this point, the Committee takes note of the submissions by the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 that the public will have no right to participate in procedures under the Nuclear Act, including those through which the technology for the NPP is permitted.

30. In the light of the above, the Committee considers that Czechia has not yet fulfilled the requirements of paragraph 6(b)(ii) of decision VI/8e.

## **IV. Conclusions**

31. The Committee finds that Czechia has not yet fulfilled the recommendations set out in paragraph 3 and 6 of decision VI/8e.

32. The Committee invites Czechia, together with its second progress report due on 1 October 2019:

(a) With respect to the recommendation set out in paragraph 3(a) of decision VI/8e, to submit the texts of any legislative, regulatory or administrative measures intended to implement the recommendation with respect to:

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<sup>13</sup> Party’s first progress report, 1 October 2018, p. 3.

<sup>14</sup> Statement from the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70, 15 March 2018, pp. 2-3.

<sup>15</sup> Comments on the Party’s first progress report by the communicant of communication ACCC/C/2012/71 (Czechia).

(i) Access to justice for members of the public to challenge an act or omission by an operator or competent authority with respect to time-limited exceptions from Law 258/2000 Coll. on the protection of public health;

(ii) Access to administrative or judicial procedures for members of the public to challenge other acts and omissions by an operator or competent authority when an operator contravenes provisions of national law relating to noise;

that are available either in draft or final form at the time of submitting its second progress report, together with English translations thereof, as well as an approximate timeline for the adoption of any of the proposed measures still then in draft form.

(b) With respect to the recommendation set out in paragraph 3(b) of decision VI/8e to provide:

(i) A list of the types of plans and programmes that it will in future ensure are subjected to public participation under article 7 of the Convention; or

(ii) A list of criteria which it will apply in future to determine which plans and programmes are “similar in nature to the National Investment Plan” and thus will be subjected to public participation under article 7 of the Convention; or

(iii) A list of the types of plans and programmes that it has already determined will be subjected to public participation under article 7, together with a set of criteria to identify which other as yet unknown types of plans and programmes may in fact be “similar in nature to the National Investment Plan” and thus need to be subjected to public participation under article 7 of the Convention.

(c) With respect to the recommendation in paragraph 6(a), evidence, including the text of the relevant measures, together with English translations thereof, that a legal framework has been or is being put in place to ensure that when selecting means of notifying the public under article 6(2), public authorities are required to select such means as will ensure effective notification of the public concerned, bearing in mind the nature of the proposed activity and including, in the case of proposed activities with potential transboundary impacts, the public concerned outside the territory of Czechia;

(d) With respect to the recommendation in paragraph 6(b)(i), evidence that it has put in place the necessary arrangements to ensure that, when conducting transboundary procedures, in cooperation with the authorities of affected countries or otherwise, the competent authorities make the necessary efforts to ensure that the public concerned in the affected countries is in fact notified in an effective manner;

(e) With respect to the recommendation in paragraph 6(b)(ii) of decision VI/8e, to provide the Committee with:

(i) Evidence that Members of the public concerned other than NGOs, including such members of the public outside the territory of Czechia, are entitled to participate at the subsequent stages of the multistage decision-making procedure regarding the Temelín nuclear power plant;

(ii) A list of the stages of the subsequent decision-making for the Temelín nuclear power plant, and an explanation, with appropriate supporting evidence, of the stages at which the public concerned, including the public outside Czechia’s territory, can participate, including with respect to relevant procedures under the Nuclear Act.