

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

**Second 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 the Party concerned, and the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70. Observer European ECO Forum also took part in the open session. In addition, the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 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, the Party concerned 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 OEKOBUERO and Mr. Jan Haverkamp, inviting their comments by 1 November 2018.

6. On 31 October 2018, the communicant of communication ACCC/C/2012/71 submitted comments on the first progress report by the Party concerned. No other comments were received.

7. After taking into account the information received from the Party concerned and the communicants, the Committee prepared its first progress review and adopted it through its electronic decision-making procedure on 21 February 2019.

8. On 25 February 2019, the secretariat forwarded the Committee's first progress review to the Party concerned and the communicants of communications ACCC/C/2010/50, ACCC/C/2012/70, and ACCC/C/2012/71, and observers OEKOBUERO and Mr. Jan Haverkamp.

9. At its sixty-third meeting (Geneva, 11-15 March 2019), the Committee reviewed the implementation of decision VI/8e in open session, with the participation by audio conference of representatives of the Party concerned and the observer OEKOBUERO. Though invited, the communicants of communications ACCC/C/2010/50, ACCC/C/2012/70 and ACCC/C/2012/71 did not take part.

10. On 14 March 2019, the Party concerned and the observer OEKOBUERO provided written versions of the statements they had delivered during the open session on decision VI/8e held during the Committee's sixty-third meeting.

11. On 24 July 2019, the secretariat wrote to the Party concerned to remind it of the deadline of 1 October 2019 set out in paragraph 7(a) of decision VI/8e for the Party concerned to provide its second progress report.

12. On 1 October 2019, the Party concerned submitted its second progress report on decision VI/8e, on time.

13. On 2 October 2019, the secretariat forwarded the second progress report by the Party concerned to the communicants of communications ACCC/C/2010/50, ACCC/C/2012/70 and ACCC/C/2012/71, inviting their comments thereon.

14. On 28 and 30 October 2019, respectively, the communicant of communication ACCC/C/2012/71 and observers OEKOBUEO and GLOBAL 2000 provided their comments on the second progress report of the Party concerned.

15. After taking into account the information received from the Party concerned, the communicants and observers, the Committee prepared its second progress review and adopted it through its electronic decision-making procedure on 3 March 2020. The Committee thereafter requested the secretariat to forward the second progress review to the Party concerned, the communicants of communications ACCC/C/2010/50, ACCC/C/2012/70 and ACCC/C/2012/71 and registered observers.

II. Consideration and evaluation by the Committee

16. In order to fulfil the requirements of paragraph 3 of decision VI/8e, the Party concerned would need to provide the Committee with evidence that it has 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; and

(b) The Party concerned, 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.

17. In order to fulfil the requirements of paragraph 6 of decision VI/8e, the Party concerned 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 the Party concerned;

(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 the Party concerned, to participate at the subsequent stages of the multistage decision-making procedure regarding the Temelín nuclear power plant.

18. In its first progress review, the Committee concluded that the Party concerned had not yet fulfilled the recommendations set out in paragraph 3 and 6 of decision VI/8e.

Paragraph 3(a) of decision VI/8e

19. With regard to paragraph 3(a) of decision VI/8e, in its second progress report the Party concerned reports that “the legal situation has not developed as far as the possibility to challenge the acts by administrative authorities are concerned.”¹

20. The Party concerned submits, however, that a draft amendment of Law 258/2000 Coll. on the protection of public health (Public Health Protection Act) will create stricter conditions for when noise exceptions can be granted and will thereby effectively address what it

¹ Party’s second progress report, 1 October 2019, p. 1.

considers to be the core issue in communication ACCC/C/2010/50 on this point.² At the time of its second progress report, the proposed amendment was undergoing its first reading in the Parliament – Chamber of Deputies (proposal no. 530/0).³

21. The Committee recalls that the Party concerned in its first progress report on decision VI/8e stated that in future steps, its working group on the elaboration of the National Action Portfolio on Environment and Health would discuss the obstacles to effective access to justice and that concrete steps on this issue were expected in early 2019.⁴ The Committee expresses its disappointment that it appears that in fact no concrete steps with respect to access to justice concerning contraventions of national law relating to noise have to date been taken.

22. At paragraph 12 of its first progress review on decision VI/8e, the Committee already made clear that putting in place a legal framework under which fewer time-limited exceptions (TLEs) would be granted is not at all the same as granting access to administrative or judicial procedures for members of the public to challenge acts and omissions by an operator or competent authority when an operator contravenes provisions of national law relating to noise. To reiterate:

“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.”⁵

23. The Committee accordingly invites the Party concerned in its final progress report to submit the text, together with an English translation thereof, of any legislative, regulatory or administrative measures it has by then taken to ensure:

(a) 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 relating to noise;

(b) 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;

as well as an approximate timeline for the adoption of any of the measures still then in draft form.

24. In light of the above, the Committee considers that the Party concerned has not yet fulfilled the requirements of paragraph 3(a) of decision VI/8e, nor has it demonstrated any concrete progress in that direction.

Paragraph 3(b) of decision VI/8e

25. Concerning paragraph 3(b) of decision VI/8e, in its second progress report the Party concerned reports on two recent examples which it claims demonstrate that it is committed to ensure public participation during the preparation of plans and programmes.⁶

26. The first example concerns the National Energy and Climate Plan (NECP) of the Party concerned. The second example concerns the preparation of its State Environmental Policy, which it claims builds on existing efforts to improve and protect the environment until 2050.⁷

² Party's second progress report, 1 October 2019, p. 1.

³ Party's second progress report, 1 October 2019, p. 1.

⁴ Party's first progress report, 1 October 2018, p. 1.

⁵ Committee's first progress review, 21 February 2019, para. 12.

⁶ Party's second progress report, 1 October 2019, p. 2.

⁷ Party's second progress report, 1 October 2019, p. 2.

The Party concerned provides an outline of the public participation procedures carried out with respect to each document.

27. The Committee welcomes the statement of the Party concerned that it is committed to ensuring public participation during the preparation of plans and programmes. It also takes notes of the information provided by the Party concerned regarding the public participation procedures carried out regarding its NECP and State Environmental Policy. It considers that the NECP, being a plan prepared pursuant to European Union legislation for submission to the European Commission and related to energy and the fulfilment of European Union climate change policy, might indeed be considered to be “similar in nature” to the National Investment Plan at issue in communication ACCC/C/12/70.

28. However, the Committee points out that the information provided by the Party concerned still does not describe any “legislative, regulatory and administrative measures” that it has taken to ensure that it will, in future, submit plans and programmes similar in nature to the National Investment Plan to public participation as required by article 7 of the Convention.

29. The Committee accordingly invites the Party concerned, together with its final progress report due on 1 October 2020, to specify what legislative, regulatory or administrative measures have been taken, if any, since the National Investment Plan was approved by the Party concerned on 21 September 2011⁸ in order to ensure that the noncompliance identified by the Committee in its findings on communication ACCC/C/2012/70⁹ cannot occur again during the preparation of a plan or programme within the scope of article 7 in the future. In particular, the Committee invites the Party concerned to specify what, if any, measures have been taken *since 21 September 2011* to ensure that:

(a) The public has sufficient time to get acquainted with a draft plan or programme and to submit comments (article 7, in conjunction with article 6(3));

(b) Early public participation is ensured during the preparation of a draft plan or programme, when all options are open (article 7, in conjunction with article 6(4));

(c) The outcome of public participation is duly taken into account in a transparent and traceable way (article 7, in conjunction with article 6(8)).

30. In light of the above, the Committee considers that the Party concerned has not yet demonstrated that it has met the requirements of paragraph 3(b) of decision VI/8e.

Paragraph 6(a) of decision VI/8e

31. In its second progress report the Party concerned states that it is willing to include the public from the concerned territories outside of its territory in procedures relevant to paragraph 6 of decision VI/8e pursuant to the relevant provisions of the EIA Act, which it claims provides the public concerned of an affected country the same rights as the public concerned of the country of origin, i.e., the Party concerned.¹⁰

32. The Committee welcomes the statement of the Party concerned regarding its willingness to include the public from territories outside of its territory in procedures for proposed activities with potential transboundary impacts and its statement that the EIA Act provides the same rights for the public concerned both within and outside of the Party concerned. However, its second progress report contains no information to indicate that the Party concerned has taken any steps since the adoption of decision VI/8e to address the recommendation in paragraph 6(a) of that decision.

33. The Committee accordingly invites the Party concerned in its final progress report to provide evidence, including the text of the relevant measures together with an English translation thereof, that a legal framework has been put in place to ensure that when selecting

⁸ ECE/MP.PP/C.1/2014/9, para. 24.

⁹ ECE/MP.PP/C.1/2014/9, para. 65.

¹⁰ Party's second progress report, 1 October 2019, p. 3.

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 the Party concerned.

34. In the light of the above, the Committee considers that the Party concerned has not yet fulfilled the requirements of paragraph 6(a) of decision VI/8e, nor has it demonstrated any concrete progress in that direction.

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

35. With regard to paragraph 6(b)(i) of decision VI/8e, in its second progress report the Party concerned states that it is committed to ensuring effective public participation. It submits that its recent public consultations provide evidence that the issues that were the subject of communication ACCC/C/2012/71 were an exceptional occurrence, not a systematic issue.¹¹

36. Specifically, the Party concerned reports that in April 2018, international consultations on the EIA documentation concerning the construction of new nuclear resources at the Dukovany Nuclear Power Plant (Dukovany II) were held with Germany and Austria.

37. It reports that in May 2018, a public hearing was held in Hungary and in June 2018 public hearings were held in Vienna, in Munich and at an ice hockey stadium in Trebic, in the Party concerned. The Party concerned submits that “at all consultations, all members of the public regardless of their nationality had an opportunity to effectively participate.”¹²

38. With regard to the hearing held in Trebic regarding Dukovany II, the Party concerned states that the start of the hearing at 12:00pm was chosen to facilitate the participation of foreign participants. The location of the Trebic ice hockey stadium was chosen considering its accessibility for all participants, being not far from the NPP site and close to Austria, as well as for its capacity to accommodate all those wishing to participate. The hearing was simultaneously translated into German, Polish and Hungarian and all participants received headphones. Finally, the Party concerned reports that participants who had further questions could subsequently re-apply to ensure that everybody could ask all their questions, and that the public hearing was closed only when there were no more questions.¹³

39. The communicant of communication ACCC/C/2012/71 claims that “nothing has changed” since the Committee issued its findings on her communication.¹⁴ Specifically, the communicant submits that with respect to the notification of EIA procedures by the Party concerned, including that for Dukovany II, a member of the public in a neighbour state Germany “either is able to find such public participation procedure and can participate or is not able to find it.”¹⁵

40. In addition, the communicant in ACCC/C/2012/71 expresses her concern about an October 2019 statement by the Prime Minister of the Party concerned in which he stated that the Party concerned will “push through” with building new nuclear power plants (NPPs) “even if they are in breach of European Union law”.¹⁶

41. The Committee takes note of the information provided by the Party concerned regarding the public participation procedure it has carried out with respect to Dukovany II more generally.

¹¹ Party’s second progress report, 1 October 2019, p. 3.

¹² Party’s second progress report, 1 October 2019, p. 3.

¹³ Party’s statement delivered at the Committee’s 63rd meeting, 14 March 2019, p. 2.

¹⁴ Comments on the Party’s second progress report by the communicant of communication ACCC/C/2012/71, 28 October 2019, p. 1.

¹⁵ Ibid.

¹⁶ Ibid.

42. However, the Committee points out that the recommendation in paragraph 6(b)(i) of decision VI/8e specifically concerns the arrangements put in place by the Party concerned to ensure that the public concerned in the affected countries is in fact notified in an effective manner. The Committee regrets that the Party concerned has not reported on this aspect of the public participation procedure for Dukovany II at all. Nor has the Party concerned reported on any arrangements that it may have put in place more generally to ensure that when conducting transboundary procedures within the scope of the article 6 of the Convention, 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.

43. The Committee accordingly invites the Party concerned in its final progress report to 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. This may include relevant information concerning the arrangements for the notification of the public concerned in the affected countries that were made with respect to the public participation procedure for the Dukovany II nuclear power plant.

44. In the light of the above, the Committee considers that the Party concerned has not yet demonstrated that it has fulfilled the requirements of paragraph 6(b)(i) of decision VI/8e.

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

45. With respect to paragraph 6(b)(ii), the Party concerned has provided no information since the Committee's first progress review on what arrangements, if any, it has to date put in place to ensure that there will be proper possibilities for the public concerned, including the public outside the territory of the Party concerned, to participate at the subsequent stages of the multistage decision-making procedure regarding the Temelín nuclear power plant, and thereby to meet the requirements of paragraph 6(b)(ii).

46. In this regard, the Committee recalls paragraph 29 of its first progress review in which the Committee pointed out that:

“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.”¹⁷

47. The Committee notes that, in their comments on the second progress report by the Party concerned, observers OEKOBUERO and GLOBAL 2000 again highlight the omission of procedures under the Nuclear Act from the list of “subsequent procedures” set out in the EIA Act.¹⁸

48. In their comments, OEKOBUERO and GLOBAL 2000 also state that a 2017 amendment (225/2017 Coll.) to the Building Act has introduced changes “clearly serving to obstruct public participation” in the building permit procedure, which they point out is a subsequent procedure to the EIA procedure. They report that such changes include, inter alia, a new complex system for gathering signatures in a short period of time, which will then be valid for only 18 months.¹⁹

49. While noting their concerns, the Committee considers that OEKOBUERO and GLOBAL 2000 have not identified any provisions of the Convention that they allege to have been breached by the Building Act's 2017 amendments nor provided the text of any relevant

¹⁷ Committee's first progress review, 21 February 2019, para. 29.

¹⁸ Comments on the Party's second progress report observers (OEKOBUERO and GLOBAL 2000), 30 October 2019, p. 1.

¹⁹ Ibid., pp. 1-2.

amendments that they allege do so. Nor have they explained how the Building Act's 2017 amendments impact upon the fulfilment by the Party concerned of paragraph 6(b)(ii) of decision VI/8e. The Committee is therefore not in a position to examine the 2017 amendments to the Building Act further in the context of its second progress review.

50. In its first progress review the Committee invited the Party concerned, together with its second progress report, to provide the Committee with:

(a) 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;

(b) 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.²⁰

51. The Committee expresses its disappointment that, despite the Committee's clear invitation for the Party concerned to address the two above points in its second progress report, the Party concerned has not addressed either. This means that the Party concerned has to date provided no relevant information on the basis of which the Committee can assess the extent to which the Party concerned has met the requirements of paragraph 6(b)(ii) of decision VI/8e. The Committee expresses its concern at the lack of constructive engagement by the Party concerned in this regard.

52. The Committee accordingly invites the Party concerned, together with its final progress report due on 1 October 2020, to provide the following:

(a) An update on the current stage of decision-making on the Temelín nuclear power plant;

(b) For any stages of the multistage decision-making procedure on the Temelín nuclear power plant that have taken place since the Committee's findings on communication ACCC/C/2012/71 were adopted on 13 September 2016, a description of the arrangements that were provided at each of those subsequent stages to ensure that the public concerned, including the public outside the territory of the Party concerned, had proper possibilities to participate;

(c) A list of all the subsequent procedures (including to the extent applicable any procedures under the Building Act and the Atomic Act) that are required under its legal framework to permit a NPP, and an explanation, with relevant legislative excerpts, as to in which of those subsequent procedures the public concerned, including the public outside the territory of the Party concerned, are entitled to participate in a manner meeting the requirements of article 6 of the Convention.

53. In light of the above considerations, the Committee considers that the Party concerned has not fulfilled the requirements of paragraph 6(b)(ii) of decision VI/8e and expresses its disappointment at the lack of constructive engagement from the Party concerned to that end.

IV. Conclusions

54. The Committee considers that the Party concerned has not yet fulfilled the recommendations set out in paragraph 3 and 6 of decision VI/8e.

55. The Committee invites the Party concerned together with its final progress report due on 1 October 2020 to:

²⁰ Committee's first progress review, 21 February 2019, para. 32.

(a) With respect to paragraph 3(a) of decision VI/8e, to submit the text, together with an English translation thereof, of any legislative, regulatory or administrative measures it has by then taken to ensure:

- (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 relating to noise;
- (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;

as well as an approximate timeline for the adoption of any of the measures still then in draft form.

(b) With respect to paragraph 3(b) of decision VI/8e to specify what legislative, regulatory or administrative measures have been taken, if any, since the National Investment Plan was approved by the Party concerned on 21 September 2011²¹ in order to ensure that the noncompliance identified by the Committee in its findings on communication ACCC/C/2012/70²² cannot occur again during the preparation of a plan or programme within the scope of article 7 in the future. In particular, to specify what, if any, measures have been taken since 21 September 2011 to ensure that:

- (i) The public has sufficient time to get acquainted with a draft plan or programme and to submit comments (article 7, in conjunction with article 6(3));
- (ii) Early public participation is ensured during the preparation of a draft plan or programme, when all options are open (article 7, in conjunction with article 6(4));
- (iii) The outcome of public participation is duly taken into account in a transparent and traceable way (article 7, in conjunction with article 6(8)).

(c) With respect to paragraph 6(a) of decision VI/8e, evidence, including the text of the relevant measures together with an English translation thereof, that a legal framework has been 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 the Party concerned;

(d) With respect to paragraph 6(b)(i) of decision VI/8e, 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. This may include relevant information concerning the arrangements for the notification of the public concerned in the affected countries that were made with respect to the public participation procedure for the Dukovany II nuclear power plant;

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

- (i) An update on the current stage of decision-making on the Temelín nuclear power plant;
- (ii) For any stages of the multistage decision-making procedure on the Temelín nuclear power plant that have taken place since the Committee's findings on communication ACCC/C/2012/71 were adopted on 13 September 2016, a description of the arrangements that were provided at each of those subsequent stages to ensure

²¹ ECE/MP.PP/C.1/2014/9, para. 24.

²² ECE/MP.PP/C.1/2014/9, para. 65.

that the public concerned, including the public outside the territory of the Party concerned, had proper possibilities to participate;

(iii) A list of all the subsequent procedures (including to the extent applicable any procedures under the Building Act and the Atomic Act) that are required under its legal framework to permit a NPP, and an explanation, with relevant legislative excerpts, as to in which of those subsequent procedures the public concerned, including the public outside the territory of the Party concerned, are entitled to participate in a manner meeting the requirements of article 6 of the Convention.

56. The Committee reminds the Party concerned that all measures necessary to implement decision VI/8e must be completed by, and reported upon, by no later than 1 October 2020, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision VI/8e.
