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United Nations Economic Commission for Europe  
Environment, Housing and Land Management Division  
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**Comments of the Frank Bold Society on the developments with respect to implementation of decision VI/8e on compliance by Czech Republic**

**1. On recommendations from findings C/50 and C/70**

The meeting of Parties reaffirmed that the Czech Republic shall take 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) 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

With respect to recommendation a), there has been no legislative development since the last report by the Czech Republic and since the MOP. 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) to carry on the source of the noise is issued.

In general, participation in the administrative procedure is usually a precondition for filling an application to review a decision (permit) by the court in the Czech legal system. It is correct to say that in a few cases (namely with respect to the decisions issued according to the Nuclear Safety Act), courts accepted standing of NGOs to challenge acts issued in procedures in which the NGOs were not parties. According to our knowledge, however, this is not a standard approach of the administrative courts. We are also not aware about any case in which in such situation standing was granted to either an affected individual or an NGO with respect to a noise permit (exception).

Therefore, we do not believe that recommendation a) has been met. The legislation should be changed so that members of the public could participate in the administrative procedures concerning the noise standards, namely the exceptions from the noise limits, with the rights of parties, and subsequently have access to challenge the permits at courts.

Also with respect to recommendation b) nothing has changed, in our view, since the last report by the Czech Republic and since the MOP. There are no indications of any formal

or informal measures (e.g. methodological instructions) taken to meet this recommendation.

## **2. On recommendations from findings C/71**

According to recommendations accepted by the Czech Republic with regard to communication ACCC/C/2012/71, the Party concerned should provide:

(a) A legal framework to ensure that when selecting means of notifying the public under article 6, paragraph 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;

Despite the EIA Act and related laws were subject to an extensive amendment at the end of 2017, no legislative measures have been adopted to meet any of the recommendations. As for notifications of the public about the proposed activities and decision making procedures under article 6 of the Convention, the only means of notification in general is a public notice of an office carrying out either the EIA procedure or the subsequent decision-making (the public notice must be both “physical” and on the website of the office). The duty to publish the information about EIA procedure also by other common means (by newspapers, broadcasting etc.) was cancelled in 2015.

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 notify actively and directly the public concerned outside the territory of the Czech Republic. We are also not aware of any not legislative measures (methodological etc.) in this respect.

As concerns decision-making procedure regarding the Temelín nuclear power plant, the public concerned will, according to the EIA and Building act, have right to participate in the zoning and building permit procedures. The general public, including individuals and NGOs outside the territory of the Czech Republic, will have right to submit comments in these procedures. According to the possible interpretation of the EIA Act (which has been however not confirmed by the jurisprudence), the NGOs from the other countries should have right to become parties to the decision-making procedures and to challenge the decisions under the same conditions as the Czech-based NGOs.

However, the public does not have right to participate in some important stages of the multistage decision-making – namely in the procedures according to the Nuclear Safety

Act, where the technology for the nuclear power plant is permitted. These procedures are not on the exhaustive list of the “subsequent procedures” according to the EIA Act, where the public participation and access to justice is granted to the public concerned.

Moreover, due to the recent amendments of the Building and Nature Protection Acts, the possibility of NGOs participation in environmental decision-making procedures in general, outside of the scope of the enumerated procedures for projects requiring (full) EIA, was significantly limited. It can be therefore concluded that contrary to the recommendations of the decision VI/8e and at odds with the Convention, the standard of the participatory rights has been decreased in the Czech Republic in the recent years.

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