

Attachment:

Regarding recommendation a)

- already in the preceding hearings we highlighted that even though the term „public concerned“ is not explicitly defined in the Czech legislation, in total we maintain that the Czech Republic fulfills the requirements of Art. 6 of the Convention while it secures to both interested individuals as well as NGO´s promoting environmental protection participation in processes of decision-making in decisions on specific activities
- The ACCC rightly states that the NGO´s and the affected owner can participate in the procedures according to Act. No. 183/2006 Coll., on land use planning and the rules of building procedure (the „Building Act“). To this it must be added that the above mentioned decision-making process is also open to individuals who DO NOT dispose of substantial rights that could be affected by the proposed activity, as is the case with the tenants (see Art. 89, section 1 of the Building Act – everyone can put forward comments...and Art. 91, section 4 of the Building Act – in the decision, the authorities always take into account comments made by public)
- We would like to reiterate that in the current frame of legislation the terms „tenant“ and „owner“ are two entirely different legal concepts. According to the Civil Code, the tenant is the person, to whom the lessor cedes an object (against payment) to be used in agreed time-frame. Thus, the relation of the tenant to the object is always intermediated. Against this, the owner disposes of direct and sole legal possession of a concrete object. The ownership right is the most powerful and most extensive right. Agreements between lessors and tenants are very often concluded only for a short period of time and are marked by significant fluctuation

Regarding recommendation b)

- as it was already indicated in the previous comment the permitting procedure (after the EIA) grants the public sufficient means to effectively participate in all the procedures
- moreover, also the outcome of the EIA process, where the public plays a significant role, are BINDING for the ensuing (permitting) procedures (see Art. 10 Section 1 of Environmental Assessment Act: „the opinion is issued also based on the public comments... see Art. 10 Section 4 of Environmental Assessment Act: „without the opinion it is not possible to issue a decision needed for carrying out the project“)

Regarding recommendation c)

- on the level of state legislation, there are no legal obstacles for NGO´s to participate in permitting procedures and NGO´s are, according to Art. 70 section 2 and 3 of the Act No. 114/1992 on the protection of nature and landscape, full fledged participants („civic association have legal standing in the administrative procedures that can affect aspects of nature- and landscape protection...)

Regarding recommendation d)

- current legislation does not exclude the possibility of the review of final decisions permitting proposed activities. The limited right of NGO's to seek review only of the procedural legality of decisions under Art. 6 of the AC follows from the practice of Administrative Courts

Regarding recommendation e)

- the EIA screening conclusions is not the exclusive moment where it is decided whether the public will have the possibility to participate in permitting procedures
- in terms of the EIA screening conclusions the decisions are „only“ about the EIA being or not being carried out. Furthermore, even if the project is not bound to be assessed in the full EIA process, based on the EIA screening conclusions, the public have the possibility to participate in the permitting procedures (Building Act – for NGO's and owners, Act. No. 70 Coll., on the protection of nature and landscape – for NGO's)

Regarding recommendation f)

- according to 101a) of the Act No. 150/2002 Coll., the Code of Administrative Justice, everyone who can be affected by the land-use plan can challenge it. Usually, the affected public are the owners of plots of land in the concerned area. In the particular case of the Supreme Court decision 6 Ao 5/2010, however, legal standing was granted also to a NGO. The court stated, referring to the EIA Directive and Aarhus Convention, that also NGOs (not only “affected owners”) may claim the protection of their rights, including to a favourable environment.