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in Environmental Matters

### Compliance Committee

#### Forty-fifth meeting

Maastricht, the Netherlands, 29 June–2 July 2014

Item 7 of the provisional agenda

**Communications from members of the public**

### Findings and recommendations with regard to communication ACCC/C/2012/70 concerning compliance by the Czech Republic\*

Adopted by the Compliance Committee on 20 December 2013

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\* This document is a late submission owing to editorial and secretariat capacity constraints and the need to give priority to the processing of documents for the fifth session of the Meeting of the Parties (Maastricht, the Netherlands, 30 June and 1 July 2014).



## I. Introduction

1. On 9 May 2012, the Czech non-governmental organization (NGO), Environmental Law Service (Ekologický právní servis) (the communicant), submitted a communication to the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) alleging the failure of the Czech Republic to comply with its obligations under article 7, in conjunction with article 6, paragraphs 3, 4 and 8, of the Convention.

2. Specifically, the communication alleges that the Party concerned prepared its application to the European Commission for free allocation of allowances, including its national investment plan, under the revised rules for the European Union (EU) Emissions Trading System (ETS), without proper public participation, as required under article 7, in conjunction with article 6, paragraphs 3, 4 and 8, of the Convention.

3. At its thirty-seventh meeting (Geneva, 26–29 June 2012), the Committee determined on a preliminary basis that the communication was admissible.

4. Pursuant to paragraph 22 of the annex to decision I/7 of the Meeting of the Parties to the Convention, the communication was forwarded to the Party concerned on 16 August 2012. On the same date, a letter was sent to the communicant. Both were asked to address a number of questions by the Committee.

5. The communicant and the Party concerned responded to the Committee's questions on 29 October 2012 and 14 January 2013, respectively.

6. At its thirty-ninth meeting (Geneva, 11–14 December 2012), the Committee agreed to discuss the content of the communication at its fortieth meeting (Geneva, 25–28 March 2013).

7. On 8 March 2013, the communicant provided additional information to the Committee, including comments on the response of the Party concerned of 14 January 2013.

8. The Committee discussed the communication at its fortieth meeting, with the participation of representatives of the communicant and the Party concerned. At the same meeting, the Committee confirmed the admissibility of the communication. During the discussion, the Committee put a number of questions to both the communicant and the Party concerned and invited them to respond in writing after the meeting.

9. The communicant and the Party concerned submitted their responses on 2 and 5 May 2013, respectively.

10. The Committee completed its draft findings at its forty-second meeting (Geneva, 24–27 September 2013). In accordance with paragraph 34 of the annex to decision I/7, the draft findings were then forwarded for comments to the Party concerned and to the communicant on 11 November 2013. Both were invited to provide comments by 9 December 2013.

11. The Party concerned and the communicant provided comments on 4 and 6 December 2013, respectively.

12. At its forty-third meeting (Geneva, 17–20 December 2013), the Committee proceeded to finalize its findings in closed session, taking account of the comments received. The Committee then adopted its findings and agreed that they should be published as a formal pre-session document to its forty-fifth meeting. It requested the secretariat to send the findings to the Party concerned and the communicant.

## II. Summary of facts, evidence and issues<sup>1</sup>

### A. Legal framework

#### Emissions trading

##### *European Union law*

13. The EU ETS is the main market-based tool of the EU climate change policy aiming at reducing greenhouse gas emissions. The system is based on a cap-and-trade approach, i.e., a limit (cap) is put on overall emissions from high-emitting industrial sectors, while companies can buy and sell emission allowances as long as the overall limit remains unaffected.

14. The system was established through the ETS Directive<sup>2</sup> and originally included the possibility for companies to receive some of their allowances from Governments for free. The most recent revision of the system aims at phasing out the free allocation of allowances, starting in 2013, with the objective that all allowances are auctioned by 2020.

15. However, the shift from free allocation to complete auctioning varies from industry to industry and country to country. For instance, in the power generation sector, all allowances must be bought, but for some countries, including the Czech Republic, there is still a possibility to continue granting a limited number of free allowances to existing power plants until 2019. At the same time, these countries should invest in the modernization of the power sector at an investment value that is at least as high as the value of the free allowances (ETS Directive, article 10c, para. 1).

16. To make use of this derogation, a member State has to submit to the European Commission an application containing, among other things, a national plan with information about modernizing its energy sector (upgrading infrastructure and technologies, diversifying energy sources, etc.) (ETS Directive, article 10c, para. 5). The Commission then makes an assessment on whether the application should be admitted or rejected.

17. The Commission has issued a guidance document on the optional application of article 10c of Directive 2003/87/EC (2011/C 99/03) (Guidance Document). Among other things, the Guidance Document requires that “for the sake of transparency and to enable a well founded assessment of the application by the Commission, member States should publish an application before submitting it to the Commission to enable the Commission to consider information and views from other sources” (para. 60). In its annex VII the Guidance Document includes a template for the application pursuant to article 10c (para. 5), which also requires that “member States should summarize the process by which the application and the plan has been prepared and how the public has been informed and involved”.

##### *Czech law*

18. The Party concerned transposed the ETS Directive through Act No. 695/2004 Coll. on Terms of Trading with Greenhouse Gas Emission Allowances and on Amendments to

<sup>1</sup> This section summarizes only the main facts, evidence and issues considered to be relevant to the question of compliance, as presented to and considered by the Committee.

<sup>2</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC and Directive, as amended.

Certain Acts.<sup>3</sup> According to the Act, until 31 October 2009 the Ministry of Environment would invite electricity producers to submit documentation for the preparation of the application. Once finalized by the Ministry of Environment, the application would be submitted to the Government by 30 November 2010 and published in a manner that would allow remote access.

### **Strategic environmental assessment**

#### *European Union law*

19. Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (SEA Directive) defines plans and programmes as “plans and programmes ... as well as any modifications to them ... which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and ... which are required by legislative, regulatory or administrative provisions” (art. 2). The Directive does not apply to plans and programmes the purpose of which is to serve national defence or civil emergency or financial or budget plans and programmes (art. 3, para. 8).

#### *Czech law*

20. Act No. 100/2001 Coll. (the EIA Act) of the Party concerned transposes the SEA Directive. According to the Act, plans and concepts<sup>4</sup> as defined in the Act should be subject to environmental impact assessment (EIA) when they may have a serious environmental impact (art. 1, para. 2). A concept is a strategy, policy plan or programme prepared by a public authority and subsequently approved by a public authority.

## **B. Facts**

21. The Czech Republic was one of the member States eligible to submit an application to the European Commission to continue free allowances under article 10c of the ETS Directive and it decided to do so. The process started in 2009, when electricity producers holding emissions permits issued after 22 October 2009 were invited to submit documentation for the preparation of the application by the deadline of 30 June 2010. This documentation included information about the list of installations expected to be operating from 2013 to 2019 and a draft plan concerning the upgrading of installations and clean technologies (see Act 695/2004 Coll., sect. 10a).

22. The Ministry of Environment prepared its application (annex 1 to the communication) and published it in December 2010.

23. In the meantime, the European Commission published its Guidance Document on 31 March 2011 (see para. 17 above). The Ministry of Environment also invited electricity producers interested in the process to supplement their documentation, as required by the Guidance Document.

24. The application was finalized in August 2011 and posted on the website of the Ministry of Environment from 19 August to 26 August 2011. Due to an error, the national investment plan, one of the main documents accompanying the main application, was only

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<sup>3</sup> Translation provided by the communicant.

<sup>4</sup> The documentation submitted to the Committee refers to the term “conception” instead of concept, see communication, page 6.

uploaded on the website for consultation on 25 August 2011. The communicant submitted comments on 26 August 2011. The application was approved by the Government on 21 September 2011 (see annex 3 to the communication) and submitted to the Commission before the end of September 2011, that is, within the set deadline.

25. As required under the Guidance Document, the application, under the heading “transparency and public consultation”, states that the Ministry of Environment cooperated with the Ministry of Industry and Commerce, the Ministry of Finance and with representatives of the energy sector in the preparation of the national investment plan (annex 2 to the communication). The application further states that the plan will be released on the website of the Ministry of Environment for public consultations before its presentation to the Government, and that the Ministry will then take into account all comments received within the set deadline.<sup>5</sup>

26. The “methodical report” (annex II to the application),<sup>6</sup> states that the authorities of the Party concerned consider that the national investment plan is neither a concept nor a plan, but rather a financial and budget plan and programme, and thus no strategic environmental assessment (SEA) is necessary.

27. During the processing of the application by the European Commission, the communicant, on 5 December 2011 and 2 April 2012, submitted comments/shadow reports to the Commission on the application of the Party concerned and raised concerns about the lack of EIA and public participation. The communicant discussed its first report with the Commission’s Directorate-General for Climate Action on 19 January 2012. In its decision approving the application from the perspective of State aid on 19 December 2012, the Commission addressed the comments submitted by the communicant on 2 April 2012.

28. Further to the Commission’s assessment, the Party concerned submitted its revised application on 12 June 2012, and followed up with additional information on 21 June 2012.<sup>7</sup>

29. On 6 July 2012, the Commission approved the application and the national investment plan (decision C (2012) 4576). In addition, the Commission’s Directorate-General for Competition concluded its assessment process on 19 December 2012.

### **C. Domestic remedies and admissibility**

30. On 14 October 2011, the communicant submitted an appeal to the Prime Minister through the Office of the Government, challenging the approval of the Czech application and the national investment plan. On 21 November 2011, the Ministry of Environment, assigned in the meantime to deal with this request, replied that due to the legal nature of the Government’s approval of the application, there was no possibility to appeal. In addition, the Ministry responded to the appeal as follows: no assessment was necessary because the documents at issue did not fall under the EIA Act; the publication of the documents on 19 August 2011 allowed for remote access; and the Plan was subject to additional amendments disclosed to the public at a later date, but still before the end of the consultation period.

31. On 20 January 2012, the communicant submitted a “measure against inactivity” to the Prime Minister (through the Office of the Government) for failure to issue a decision

<sup>5</sup> See section 6 of the application.

<sup>6</sup> Annex 1 to the communicant’s reply to the Committee’s questions of 29 October 2012. Annex 2 to the same reply, constitutes the updated (2012) version of the methodological report.

<sup>7</sup> Annex 3 to the communicant’s reply to the Committee’s questions of 29 October 2012.

upon its appeal of 14 October 2011. By letter of 28 February 2012, the Office replied that due to the legal nature of the Government's approval, no appeal was possible.

32. On 20 August 2012, the communicant brought an action before the courts for the ineffective "measure of inactivity" of the Prime Minister. On 21 December 2012, the Municipal Court of Prague dismissed the action as inadmissible, on the grounds that the decision being challenged was of a political and not an administrative nature.

33. On 15 August 2012, the communicant submitted a request for internal review of the Commission decision approving the application and the plan under the Aarhus Regulation.<sup>8</sup> The request concerned the actions of EU authorities and not the Party concerned. The request was rejected on formal grounds because, according to the Commission, the Commission decision on transitional free allowances did not fall under the definition of an "administrative act" under the Aarhus Regulation. The communicant has brought an action before the General Court, which is pending. According to the communicant, this should not be an obstacle for the Committee to review the present communication, because it relates to the actions of EU institutions and not to those of the Party concerned.

#### **D. Substantive issues**

34. The communicant alleges that in preparing its application to use the option of transitional free allocations for the modernization of electricity generation and its national plan under article 10c of the ETS Directive, the Party concerned failed to comply with article 7, in conjunction with article 6, paragraphs 3, 4 and 8, of the Convention.

35. In particular, the communicant alleges that the application at issue and the national investment plan included in the application are plans or programmes under article 7 of the Convention. This is supported by the definition of a plan or programme under the SEA Directive and the definition of a concept under the EIA Act. The communicant does not agree with the approach in the methodical report that the plan at issue concerns finances or budgets, and thus falls outside the scope of the SEA legislation (see para. 26 above), because the application and the plan primarily concern the strategy of the Party concerned in matters of sustainable energy, clean technologies and the environment. Therefore, in the view of the communicant an assessment including public participation was necessary.

36. The communicant claims that, once submitted to the Commission, the application and the national investment plan are final, i.e., no other projects and/or investments may be added. The Commission may reject the application as a whole or in part, and its decision is binding for the member State.

37. The communicant alleges that one week for public comments (19 August–26 August 2011) was only a pro forma consultation and did not allow for effective public participation under article 6, paragraph 3, of the Convention. In this connection, the communicant also alleges that the notice on the public consultations was poor and that the national investment plan — in the view of the communicant, the most essential part of the application — was not included in the documentation to be reviewed by the public that wished to participate.

38. The communicant further alleges that, considering that the preparation of the application and the plan were initiated in 2009 and sufficient opportunities were given to the private sector to contribute, members of the public did not have the opportunity to

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<sup>8</sup> Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.

participate early in the procedure, and thus the Party concerned failed to comply with article 6, paragraph 4, of the Convention.

39. The communicant also alleges that neither its comments nor any of the comments submitted by members of the public were duly taken into account, and that the Party concerned failed to comply with article 6, paragraph 8, of the Convention.

40. The communicant claims that if an assessment had been carried out as required under EU law and the law of Party concerned, in principle these shortcomings would have been avoided.

41. The communicant finally argues that even if the Commission makes the final decision, a member State has a certain level of responsibility; it is the member State that decides whether and how to make use of the option for free allowances under EU law and thus exercises great discretion on the modalities and the effects of the final decision, such as the number of free allowances to be allocated. The only possibility for members of the public to provide comments on basic questions such as whether or not to apply for this option, and to what extent, is during the national consultations stage, before Government approval, and before the decision reaches the next level of decision-making (i.e., at the Commission).

42. The Party concerned refutes the communicant's allegations. Its primary argument is that there is no requirement under EU or Czech law for the carrying out of public consultations, rather the only requirement is that the application and the plan be published before submission to the Commission.

43. The Party concerned argues that, although it was under no requirement to do so, it allowed for public consultation, and that this occurred before the formal requirement for publication. The documentation was available on the website for almost one month before it was submitted to the Commission, public comments were invited, and the comments received were taken into account. Indeed, a number of other ministries, industry operators and associations and NGOs, including the communicant, submitted comments of a technical nature and their comments were addressed.

44. The Party concerned further claims that the actual and final decision is taken by the Commission and not the member State. Accordingly, the decision approving the application and the plan is not an administrative decision subject to appeal. In addition, members of the public had the possibility to submit comments until the final decision was issued by the Commission. The final version of the application, as approved by the Commission in July 2012, was very different from the version submitted in September 2011.

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

45. The Czech Republic deposited its instrument of accession on 6 July 2004. The Convention entered into force for the Czech Republic on 4 October 2004.

46. The Committee first looks at whether the application as a whole, including accompanying documentation, such as the national investment plan, falls within the scope of article 7 and then examines whether the requirements for public participation were met by the public concerned.

47. The Committee notes that the preparation of the application was a long process whereby the Party concerned was responsible for preparing the application for submission to the Commission and thereafter the Commission, together with the Party concerned, further elaborated the application until its final approval by the Commission. The Committee will focus only on the obligations arising for the Party concerned from the

Convention during the preparation of the application, and will not extend its review to EU compliance with the Convention (not being the Party concerned). However, the Committee notes the complexity of decision-making in a multi-level government structure, such as the one between the EU and its member States, including the Party concerned, and encourages further cooperation and coordination of actions with respect to the implementation of the Convention.

**Application for transitional free allowances as a plan or programme (art. 7)**

48. Whether the application at issue falls under article 7 of the Convention is determined by the following two criteria: whether the document is a plan or programme and whether it is related to the environment.

49. First, what constitutes a “plan” is not defined in the Convention. The fact that a document bears in its title the word “plan” does not necessarily mean that it is a plan under article 7 of the Convention; rather, it is necessary to consider the substance of the document (see findings on communications ACCC/C/2005/11 (Belgium) (ECE/MP.PP/C.1/2006/4/Add.2), para. 29; ACCC/C/2005/12 (Albania) (ECE/MP.PP/C.1/2007/4/Add.1), para. 65; and ACCC/C/2008/27 (United Kingdom of Great Britain and Northern Ireland) (ECE/MP.PP/C.1/2010/6/Add.2), para. 41). For instance, in the present case, the document at issue was an “application” that included the “national investment plan”. The Committee looks at the contents and the legal effects of the application as a whole, to determine whether it falls under article 7 of the Convention.

50. It is acknowledged that the application relates to the environment since it proposes measures in the energy sector that affect or are likely to affect the elements of the environment. This is further supported by the fact that paragraph 60 of the 2011 Guidance Document states that “any application submitted by a member State should be considered environmental information”.

51. Among other things, the Czech application for the allocation of free emission allowances proposed measures for investment into equipment and for the modernization of infrastructure and clean technologies in the electricity sector for a period of seven years. To this end, the accompanying plan envisaged the implementation of 350 projects throughout the territory. Through the application, including the accompanying documentation, the Party concerned set out its investment direction in the sector and proposed specific projects for the accomplishment of the plan. On the basis of this, the Committee finds that the application, including the accompanying documentation, is a plan under article 7 of the Convention.

52. It is submitted by the Party concerned that once approved by the Government and submitted to the Commission, the application underwent considerable changes. The Committee notes that article 7 requires appropriate provisions to be made for the public to participate during the preparation of the plan. Whether the plan was further amended when it passed to the next level of government (i.e., the Commission) before its finalization and adoption does not alleviate the obligations arising for the Party concerned during the period that it carried the main responsibility for the preparation of the substantive elements of the application.

53. For these reasons, the Committee finds that the application, including its national investment plan, prepared by the Party concerned under the revised rules for the EU ETS, is a plan within the purview of article 7 of the Convention and therefore article 6, paragraphs 3, 4 and 8, apply to its preparation.

**Time frames for public participation procedure (art. 6, para. 3)**

54. The official consultation period for the application was from 19 to 26 August 2011. During the discussion with the Committee at its fortieth meeting, the Party concerned agreed that the one-week period was short, but submitted that overall there were plenty of opportunities for the public to participate.

55. During the discussion, the Party concerned also mentioned that the documentation relating to the application was available on the Ministry's website from 3 December 2010. While indeed the documentation was published on 3 December 2010, formally the general public had only seven days for getting acquainted with the draft and submitting comments. Despite the fact that some members of the public had been able to submit comments outside the scope of these seven days, the Committee finds that the Party concerned failed to ensure a reasonable time frame for public participation in the case of such a document, since the general public was not aware of the ongoing consultation on the application.

56. It was further submitted that although the application was available from 19 August 2011, due to an error the national investment plan was only published on the website on 25 August 2011, without providing for an extension of the deadline for submission of comments. This meant that the public concerned had one day to study the plan, digest the information and provide comments.

57. The Committee considers that providing the public with seven days to get acquainted with the draft documents and to submit comments, let alone allowing it one day for the same purpose, cannot be considered a reasonable time frame for the public to prepare and participate effectively in the preparation of a document of the magnitude of the national investment plan. Therefore, the Committee considers that, by not providing sufficient time for the public to get acquainted with the draft and submit comments, the Party failed to comply with article 7, in conjunction with article 6, paragraph 3, of the Convention.

**Early participation, when all options are open (art. 6, para. 4)**

58. Given that the process to prepare the application was initiated on 31 October 2009 and that formally the general public had only seven days to get acquainted with the draft and submit comments, starting on 19 August 2011, that is, almost two years after the start of the application's preparation, the Committee finds that the Party concerned failed to comply with article 7, in conjunction with article 6, paragraph 4, of the Convention, because no early public participation was ensured, when all options were open.

59. In this respect, it is noted that article 7 provides that "the public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention". This provision should not be used by public authorities in a way so as to restrict public participation, but rather as a way of making public participation more effective. In the present case, it is accepted that the input by private stakeholders engaged in electricity production was essential in that it provided specific technical details indispensable for the preparation of the application. The Committee considers that there was a considerable span of time for participation of private stakeholders compared to that granted to other members of the public, to the extent that the authority exercised its discretion in a way that ran counter to the objectives of the Convention; in particular "to encourage widespread public awareness of, and participation in, decisions affecting the environment and sustainable development" by involving, among others, NGOs promoting environmental protection. While the closer inclusion of the private stakeholders in the process may have been justified, there was still an obligation on the public authority to act in accordance with the objectives of the Convention and not to abuse this provision to

effectively bar or significantly reduce the effective public participation of other members of the public.

**Due account of the public participation (art. 6, para. 8)**

60. There is a clear obligation arising from article 7 on public authorities to seriously consider the outcome of public participation in the preparation of plans. However, the Convention does not specify how this should be done in practice.

61. It is recognized that the public authority preparing the plan is ultimately responsible for policymaking and has to consider a number of factors, including the comments of the public. This may lead to a final plan that may not always be accepted by the public. However, the authority should be able to demonstrate how the comments were considered and why it did not follow the views expressed by the public. As already stated, “the requirement of article 6, paragraph 8, that public authorities take due account of the outcome of public participation, does not amount to the right of the public to veto the decision” (see Committee’s commentary on communication ACCC/C/2008/29 (Poland) in the report of its twenty-fourth meeting (Geneva, 30 June–3 July 2009) ECE/MP.PP/C.1/2009/4, para. 29). Yet, “while it is impossible to accept in substance all the comments submitted, which may often be conflicting, the relevant authority must still seriously consider all the comments received” (findings on communication ACCC/C/2008/24 (Spain) (ECE/MP.PP/C.1/2009/8/Add.1), para. 99).

62. The Committee notes that for decisions on specific activities, fulfilment of the requirement of article 6, paragraph 8, is to be proven through fulfilment of article 6, paragraph 9. In contrast, a requirement to make accessible the reasons and considerations on which the decision is based is not expressly provided for in article 7 of the Convention. Nevertheless, the Party concerned has the obligation to demonstrate that it has fulfilled its obligations under article 6, paragraph 8. The Committee notes that in the process of preparing a plan this obligation could be fulfilled by following the procedure set out in article 6, paragraph 9, or any other way the Party concerns chooses to demonstrate that it has taken “due account” of the outcome of the public participation.

63. In the present case, the Party concerned, in its application to the European Commission referred to in paragraph 22, mentions that “the Ministry of the Environment will thoroughly settle all duly submitted comments”. The Party concerned was not able to show through its written and oral submissions how the outcome of public participation was duly taken into account. The Committee appreciates that the Party concerned had to operate under extremely tight deadlines to ensure that its application to the Commission was submitted within the set deadline and that free allowances were eventually awarded for the transitional period 2013–2019 according to the new EU regime on ETS. Nevertheless, the Committee considers that the application at issue certainly did not constitute an emergency situation and that there would have been a possibility for enhanced openness and transparency of the process from its start in October 2009, so that public participation would not have been jeopardized. For these reasons, the Committee finds that, by failing to show through its written and oral submissions how the outcome of public participation was duly taken into account, the Party concerned failed to comply with article 6, paragraph 8, of the Convention.

#### **IV. Conclusions and recommendations**

64. Having considered the above, the Committee adopts the findings and recommendations set out in the following paragraphs.

## **A. Main findings with regard to non-compliance**

65. The Committee finds that:

(a) The application, including its national investment plan, prepared by the Party concerned under the revised rules for the EU ETS is a plan within the purview of article 7 of the Convention and therefore article 6, paragraphs 3, 4 and 8, apply to its preparation (para. 53).

(b) By not providing sufficient time for the public to get acquainted with the draft and submit comments, the Party concerned failed to comply with article 7, in conjunction with article 6, paragraph 3, of the Convention (para. 57).

(c) Given that the preparation process for the application was initiated on 31 October 2009 and that formally the general public had only seven days to get acquainted with the draft and submit comments, starting on 19 August 2011, that is, almost two years after the start of the application's preparation, the Committee finds that the Party concerned failed to comply with article 7, in conjunction with article 6, paragraph 4, of the Convention, because no early public participation was ensured, when all options were open (para. 58).

(d) By failing to show through its written and oral submissions how the outcome of public participation was duly taken into account, the Party concerned failed to comply with article 6, paragraph 8, of the Convention (para. 63).

66. Furthermore, the Committee, while noting the complexity of decision-making in a multi-level government structure such as the one between the EU and its member States, encourages the EU in designing a common framework for its member States to implement the Convention, to ensure the compatibility of that framework with the Convention and to fulfil its responsibility to monitor that its member States, including the Czech Republic, in implementing EU law, properly meet the obligations resting on them by virtue of the EU being a party to the Convention (see findings on communication ACCC/C/2010/54 (EU) (ECE/MP.PP/C.1/2012/12), para. 76).

## **B. Recommendations**

67. The Committee, pursuant to paragraph 36 (b) of the annex to decision I/7 of the Meeting of the Parties, and noting the agreement of the Party concerned that the Committee take the measures request in paragraph 37 (b) thereof, recommends that 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.

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