

On Second progress review of the implementation of decision V/9f on compliance by Czech Republic with its obligations under the Convention

According to the Second progress review of the implementation of decision V/9f on compliance by Czech Republic with its obligations under the Convention, points 64–67, the Czech Republic has not yet fully met the recommendations set out paragraph 4 (a), (d), (e) and (f) and paragraph 6 of decision V/9f.

We provide below the Czech Republic statement on individual points:

Ad 66. (a) (i)

The public, i.e. any natural person or legal entity, may submit comments both in the various stages of the EIA process and in related proceedings, that are proceedings in accordance with Article 6 of the Convention. The authority conducting the EIA process is obliged to mention how it has dealt with such comments in its EIA statement and, similarly, any authority conducting subsequent proceedings related to the EIA process is obliged to mention such information in its decision. Moreover, NGOs can become parties to subsequent proceedings related to the EIA process, which gives them additional rights enabling their effective involvement – e.g. a right to peruse the file or a right to appeal.

Tenants can participate in these proceedings as members of the public; they may submit their comments in all proceedings following the EIA process. Their rights can be also defended through landlord or NGOs, that can become parties to the proceedings:

Pursuant to the Building Act, tenants can participate in the proceedings. In the zoning proceedings, tenants may become a participant as members of the public since the early stage. The administrative authority is obliged to consider the comments and to dispose of them in the reasoning of the measure, as arises from both the general provisions of Administrative Code (Section 172) and specific proceedings according to the Building Act. In relevant cases, settlement of the comments can be a part of background document for issuing opinion on strategic impact assessment (SEA opinion).

The most frequent proceedings subsequent to both zoning and EIA are zoning proceedings. If the opinion on the environmental impact assessment has been issued for the application, building office may order the public oral debate about the application. The public oral debate is always ordered by building office, if the application concerns the area not covered by a zoning plan.

The reason enabling public participation in the proceedings pursuant to the Building Act, are also the provisions of Section 70 of the Nature and Landscape Protection Act. The associations may become a party to these administrative proceedings, thus giving them significant rights in the proceedings.

Relevant provisions:

Act No. 100/2001 Coll. on Environmental Impact Assessment and Amending Some Related Acts (hereinafter the “EIA Act“), as amended

- Section 6, paragraph 7 of the EIA Act:

(7) The public, the public concerned, the administrative authorities concerned and the local governments concerned may submit their comments on the notification to the appropriate authority in writing within 20 days of publication of information on the notification. The respective authority need not take into account comments submitted after the deadline.

- Section 8, paragraph 3 of the EIA Act:

(3) The public, the public concerned, the administrative authorities concerned and the local governments concerned may submit their comments on documentation to the respective authority within 30 days of publication of information on the documentation. The authority need not take into account comments submitted after the deadline.

- Annex No. 5 - Requirements of the opinion:

Settlement of all comments received on the documentation (notification)

- Article 9, paragraph 8 of the EIA:

(8) The public, public concerned, administrative authorities concerned and local governments concerned may submit comments on the opinion to the respective authority in writing within 30 days of publication of information thereon or to comment on the opinion at a public hearing pursuant to Section 17. The authority need not take into account comments submitted after such deadline going forward.

- Annex No. 6 - Requirements of the statement (EIA):

7. Settlement of comments received on the documentation (notification)

8. Settlement of comments on the opinion”

- Section 9b, paragraphs 1 and 2 of the EIA Act:

(1) The public may submit comments on the project in the subsequent proceedings. Comments may be submitted within 30 days of publication of the information according to Section 9b, paragraph 1 on an official notice board, unless a longer deadline is stipulated by a special legal regulation or by the administrative authority responsible for conducting the subsequent proceedings.

(2) The administrative authority is obliged to refer to the settlement of the comments from the public in the grounds of its decision.

Act No. 183/2006 Coll., on zoning and building code (hereinafter the "Building Act"), as amended

- Section 33 of the Building Act:

Zoning policy draft

(4) The Ministry publishes, in a method enabling the remote access, the zoning policy draft, including the assessment of the impact on the area sustainable development, determines the date and place for public hearing 35 days prior to the hearing and determines the term for the submission of remarks by the public, which is not allowed to be shorter than 60 days.

(6) Ministry sends copies of statements, comments and respective results of consultation according to the paragraphs 3–5 to the Ministry of the Environment as a background document for issuing opinion to the draft according to section 10g of the EIA Act, which

is not the opinion according to section 4 article 2. Ministry of the Environment delivers the opinion within 30 days after the delivery of background documents.

(8) The Ministry takes into account the results of assessment of the impacts on area sustainable development, statements, remarks of the municipalities and public and possible statements of neighbouring countries and the results of consultations and it will modify the development policy draft.

- Section 37 of the Building Act

Draft of the regional development principles

(3) Regional authority delivers the draft of the development principles and the assessment of the impact to the sustainable development by a public notice. Within 30 days after the delivery, everybody may submit remarks. There are not taken into account the remarks which are submitted later.

(6) Regional authority sends the draft of the development principles, assessment of impact to the sustainable development, statements, comments and respective results of consultation according to the paragraphs 2–5 to the Ministry of the Environment as a background document for issuing opinion to the draft according to section 10g of the EIA Act, which is not the opinion according to section 4 article 2, and...

- Section 39 of the Building Act

(2) Objections to the draft of the development principles may be filed by the municipalities concerned, owner, manager, operator of the technical infrastructure and by the representatives of the public.

(4) Regional office assesses the results of debate and elaborates the draft of the decision on objections, taking into account the public interests. The draft is send to the respective authorities and the Ministry with the invitation to present their statements/opinions within 30 days after the delivery.

- Section 47 Municipal plan specification of the Building Act

(2) Procurer delivers the draft of the plan specifications by a public notice. Within 15 days from the delivery, anybody may submit his/her remarks.

- Section 50 Urban plan before approval of the Building Act

(3) Procurer delivers the plan before approval and The assessment of the impacts on the area sustainable development, if elaborated, by a public notice. Within 30 days from the from the delivery, anybody may submit his/her written remarks to the procurer.

(5) If the assessment of the impacts on the area sustainable development is elaborated, the procurer sends the statements, comments and respective results of consultations according to the paragraphs 2–4 to the competent authority as a background document for issuing opinion to the draft according to section 10g of the EIA Act, which is not the opinion according to section 4 article 2.

- Section 52 Plan proceedings of the Building Act

(2) Remarks against the plan before approval may be submitted only by the owners of the grounds and structures, which are affected by the drafted solutions, investor and the representative of the public.

(3) At the latest 7 days after the public debate anybody may submit their remarks and the affected persons their objections pursuant to paragraph 2, within which they must state the reasoning, data from the Land Registry documenting the affected rights and delimit the area, which is affected by the objection.

Act No. 500/2004 Coll., Administrative Code

- Section 172 of the Administrative Code

(4) Every person whose rights, duties or interests may be directly affected due to the measure of a general nature may submit to the administrative body his comments on the draft measure in writing or orally in the case of a public hearing. The administrative body shall be obliged to consider the comments to be documentary materials for the measure of a general nature and to dispose of them in the reasoning of the measure.

(5) Owners of real property whose rights, duties or interests relating to the exercise of their proprietary rights may be directly affected by the measure of a general nature, or other persons, if so provided by the measure, may file with the administrative body reasoned objections to the draft measure of a general nature in writing within 30 days of the day of its publishing. A time default may not be waived. The objections shall be decided by the administrative body issuing the measure of a general nature. If the disposal of objections leads to a solution having a direct impact on the eligible interests of any person in a manner different from the draft measure and should the change apparently not be to the persons benefit, the administrative body shall ascertain his position.

Act No. 114/1992 Coll., on nature and landscape protection, as amended

- Section 70

Participation of Citizens

(2) A civic association or its organisational unit the main mission of which, according to its statutes, is nature and landscape protection (hereinafter "civic association") shall be entitled, provided it has a legal personality, to request that the relevant state administration authorities inform it in advance of all intended interventions and initiated administrative proceedings which could affect interests of nature and landscape protection protected according to this Act. The request is valid for the period of one year from the day of its filing, and may be filed repeatedly. It must be specified concerning its matter and locality.

(3) Under the conditions and in the cases pursuant to paragraph 2, a civic association shall be entitled to participate in administrative proceedings, provided it submits, in writing, a notification of its participation within 8 days of the day when the respective administrative authority notified it of the initiation of the proceedings; in this case, it is in a position of a party to the proceedings. The day of notification of the initiation of the proceedings shall be regarded as the day of its delivery in written form, or the first day of its publication on the official board of the administrative authority, and, simultaneously, in the way enabling remote access.

Act No. 183/2006 Coll., on zoning and building code (hereinafter the "Building Act"), as amended

- Section 85 of the Building Act

(1) *The participants to the zoning proceedings are*

- a) *the applicant,*
- b) *the municipalities within whose territory the requested project is to be implemented.*

(2) *Furthermore, the participants to the zoning proceedings are*

- a) *the owner of the plot or structure where the requested project is to be implemented, if this is not the applicant, or the person who has other substantive rights to this plot or structure,*
- b) *the persons whose right of ownership or other substantive right to adjacent structures or adjacent plots on them may be directly impacted by the zoning decision,*
- c) *the persons stipulated by special legal regulation.*

(3) *The participants to the proceedings are not the tenants of apartments, commercial premises or plots.*

- Section 87 of the Building Act

Planning permission proceedings commencement

If the opinion on the environmental impact assessment was issued for the application, building office may order the public oral debate about the application. The public oral debate is always ordered by building office, if the application concerns the area not included in a zoning plan .

Ad 66. (a) (ii)

When in the subsequent screening, it is decided that the project will not be assessed in the EIA process, it is also possible to seek judicial protection against such a decision. It means that NGOs under Article 2, paragraph 5 of the Convention shall have access to a review procedure before a court of law to challenge both the substance of the issued decision and compliance of the content of the decision. General provision of Code of Administrative Justice applies for any other person; it states that *anyone who's rights have been prejudiced by an act of an administrative authority may seek the cancellation of such a decision.*

Relevant provisions:

- Section 3(i) of the EIA Act:
 - “i) the public concerned*
 - 1. *a person who may be affected in his/her rights or obligations by a decision issued in subsequent proceedings*
 - 2. *a legal entity of private law, whose subject of activity is according to its founding decree the protection of the environment or public health, and whose main activity is not business or other for-profit activity, which was founded at least three years before the date of the publication of information related to the subsequent procedure according to Section 9b, paragraph 1, or alternatively before the date of the decision issuance according to Section 7, paragraph 6, or supported by the signatures of at least 200 persons.”*
- Section 7, paragraph 6 of the EIA Act:
 - “(6) If the respective authority arrives at the conclusion that a project or change thereto will not be assessed in accordance herewith, it shall issue a decision in this respect, which is*

the first act in the proceedings. The decision shall stipulate the basic information about the project, in the extent of points B.I.1 to B.I.4 and B.I.6 of Annex 3 hereto, that the respective authority adhered to when assessing the principles set out in Annex 2 hereto. The decision shall be published in the way specified in Section 16 and delivered by way of a public notice. The notifier and the public concerned referred to Section 3(i), point 2 shall have the right to challenge the decision. The public concerned shall document fulfilment of the conditions under Section 3(i), point 2 in the appeal.”

- Section 7, paragraphs 9 and 10 of the EIA Act:

“(9) The public concerned referred to in Section 3(i), point 2, may seek by a legal action an annulment of a decision issued in the subsequent proceedings, that the project or change thereto will not be assessed in accordance herewith, and challenge substantive and procedural legality of this decision. For the purposes of the procedure under the first sentence it shall be deemed that the public concerned referred to in Section 3(i), point 2 has rights which may be impaired by the decision issued in preliminary procedure, and that the project or change thereto will not be assessed in accordance herewith.

(10) The court shall decide on a complaint against a decision issued in subsequent proceedings within 90 days of the complaint being delivered to the court.”

- Section 65 paragraph 1 and 2 of the Code of Administrative Justice:

Legal standing

„(1) Anyone who claims that their rights have been prejudiced directly or due to the violation of their rights in the preceding proceedings by an act of an administrative authority whereby the person’s rights or obligations are created, changed, nullified or bindingly determined (hereinafter “decision”) may seek the cancellation of such a decision, or the declaration of its nullity, unless otherwise provided for by this Act or by a special law.”

„(2) A complaint against a decision of an administrative authority can be made even by a party to the proceedings before the administrative authority who is not entitled to file a complaint under paragraph 1, if the party claims that his or her rights have been prejudiced by the administrative authority’s acts in a manner that could have resulted in an illegal decision.”

Ad 66. (a) (iii)

As regards noise, the Civil Code states that if pollution (which includes noise) is the result of the officially approved operations of a factory or similar facility, a neighbour has the right to financial compensation, and if the operations exceed the officially approved scope, the neighbour has the right to have the operator refrain from such excess operations, and can take legal action to this end. It should be added that, generally, in other cases – i.e., in cases where noise is not the result of a factory or similar facility operations – a neighbour can take legal action against any noise that is excessive to the location and substantially restricts normal use of the land.

Relevant provisions:

- Section 1013 of Act No. 89/2012 Coll., the Civil Code:

(1) The owner shall refrain from everything that makes waste, water, smoke, dust, gas, odour, light, shading, noise, vibrations and other similar effects (immission) penetrate the property of another owner (neighbour) to a degree that is excessive for the location and that substantially restricts normal use of the land; this also applies to animals entering

the land. Directing pollution to a different owner's land is prohibited regardless of the degree of such pollution or level of intrusion, unless doing so is based on a specific legal reason.

(2) If the immission is due to the officially approved operations of a factory or similar facility, a neighbour only has the right to financial compensation for loss or damage, even if the loss or damage was caused by circumstances that officials did not take into consideration when approving the operations. The above shall not apply if the operations do not exceed the officially approved scope."

- Section 1042 of Act No. 89/2012 Coll., the Civil Code:
"An owner can seek protection against anyone who wrongfully infringes on intervenes in his ownership rights other than by withholding the item."

Ad 66. (b)

The Environmental Assessment Act includes also legal provisions of SEA and specifies the projects and programmes that are to be assessed under the SEA process. It is not possible to compile in advance a specific list of plans and The Environmental Assessment Act specifies the projects and programmes that are to be assessed under the SEA process. It is not possible to compile in advance a specific list of plans and programmes with respect to which public participation under Article 7 of the Convention can be ensured during their approval and we believe the absence of such a list cannot be a *reason* for *non-compliance* with the Convention.

Generally speaking, public participation in approving plans and programmes is ensured in the Czech Republic by the SEA process and it is possible to generally define the plans and programmes where public participation is ensured. . The EIA Act in section 10a – see below - sets the definition resp. set of criteria to be fulfilled by plans and programs being subject of the SEA process. This includes such plans and programmes (and changes thereto) that lay down the framework for future allowance of projects assessed under the EIA process and that are elaborated or awarded by the public administration authority and then approved by the public administration authority or submitted for approval. Any documents similar in nature to the National Investment Plan fulfilling the definition of conception under the EIA Act would need to be subjected to public participation under as stipulated by the Convention.

Relevant provisions:

- Section 10a of the EIA Act:
(1) The subject of environmental impact assessment of a conception (hereinafter the "assessment of a conception") pursuant to this Act shall be
 - a) conceptions which set the framework for future permits of plans set forth in Annex No. 1, prepared in the field of agriculture, forestry, hunting, fishery, surface or groundwater management, the energy industry, industry, transport, waste management, telecommunications, tourism, land-use planning, regional development and environment, including nature protection, conceptions for which, in view of their possible effect on the environment, the necessity of their assessment follows from a special regulation and furthermore conceptions co-financed by European Community funds; these conceptions shall always be subject to assessment, if the affected territory is comprised of the territorial area of more than one municipality,*
 - b) conceptions pursuant to letter a), if the affected territory is comprised of the territorial area of only one municipality, if so laid down in a fact-finding procedure pursuant to § 10d,*
 - c) changes of conceptions pursuant to letters a) and b) if so laid down in a fact-finding procedure pursuant to § 10d.*

(2) The subject of assessment pursuant to this Act shall not be

a) conceptions prepared only for the purposes of the state defence,

b) conceptions prepared for cases of extraordinary events which are likely to significantly and directly endanger the environment or the health, safety or property of persons^{4a},

c) financial and budgetary conceptions.