

Marta Kubová  
Aarhus Convention Focal Point

Prague 31 December 2014

**Ref: Decision V/9f concerning compliance by Czech Republic with its obligations under the Aarhus Convention**

Dear Mrs. Marshall,

In a letter dated 28 November 2014 (Ref.: Decision V/9f), the Czech Republic was invited to submit, by 31 December 2014, the information on its progress in implementing the recommendations set out in the decision V/9f adopted at the fifth session of the Meeting of the Parties to the Aarhus Convention. Accordingly, we note the following:

Ad 1. Progress in implementing the recommendations of the Committee with regard to communication ACCC/C/2010/50

On 25 April 2013, the European Commission instituted infringement procedure against the Czech Republic due to the incorrect transposition of the EIA Directive (Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment). Some of the concerns raised by the Aarhus Convention Compliance Committee to national legislation are essentially the same as the Commission's objections. Following a detailed analysis, it has been decided to make conceptual changes that have the full potential to allay the reservations of both the European Commission and the Aarhus Convention Compliance Committee. In other words, the proposed amendments to the law will render all criticism groundless. The path we have opted to follow is also in keeping with the pending review of the EIA Directive, in which the Council and the European Parliament are working on changes to the future text of the EIA Directive.

Committee's concerns were therefore reflected in amendments to relevant legislation which the Czech Republic has undertaken to make in the pending infringement procedure on the EIA Directive. In this respect, the Czech Republic drew up an amendment to national law and submitted it for approval in 2014. In this moment, proposed draft amendment was approved by the Chamber of Deputies and was sent for consideration to the Senate.

As this entails a fundamental overhaul of the existing system for the authorisation of projects from the perspective of their environmental impact, to safeguard legal certainty, the new legislation will apply to projects notified after the amendment comes into effect (there will be transitional provisions dictating that the authorisation of projects notified before the new legislation enters into effect are to be completed under the previous regulations).

The propose change comprise these basic elements:

- unlike the current setup, EIA procedure will result in a separate environmental authorisation (administrative decision);
- the term “public concerned” will be explicitly defined;
- in proceedings prior to the issue of environmental authorisation, the public concerned, as thus defined, will enjoy rights under the EIA Directive, including judicial protection, i.e. they will be able to challenge the resultant environmental authorisation in court from both the substantive and procedural aspects;
- all projects (in construction), prior to approval in zoning/building-permit proceedings, will have to be authorised for their impact on the environment, i.e. they will require a single environmental authorisation encompassing the existing output from the process of assessing environmental impacts (an EIA opinion) and other administrative acts issued in relation to the environment (binding opinions, exemptions, authorisations, etc.) which are currently issued at later stages of project authorisation;
- a particular feature of the single environmental authorisation will be its automatic binding nature;
- as a result, this authorisation will fully take account of all environmentally-related matters, i.e. they will no longer be addressed in zoning/building-permit proceedings;
- authorisations will either lay down conditions, or will simply be limited to an unconditional statement that authorisation is or is not granted (depending on the situation);
- the public concerned (including foreign entities) will have the opportunity to take part in proceedings on an environmental authorisation and, after this, they will have the right to challenge only that authorisation in court.

Besides legal persons, including foreign entities, who meet the criteria in question, the definition of “public concerned” will include those natural persons who may be affected by a project. This same scope of the public concerned will then be able to challenge the resultant authorisation judicially by bringing an administrative action (including an action for inaction) with no requirement of prior participation (the submission of comments) in proceedings.

Ad 2. Progress in implementing the recommendations of the Committee with regard to communication ACCC/C/2012/70

Recommendation made by the Committee, that in future plans and programmes similar in nature to the National Investment Plan have to be submitted to public participation as required by article 7, was communicated to the relevant section. The recommendation should be followed in future, in similar cases.

Sincerely,

Marta Kubová

Mrs. Fiona Marshall  
Minister of the Secretary to the Aarhus Convention Compliance Committee  
Economic Commission for Europe  
**UNITED NATIONS**