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Compliance Committee to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters (Aarhus Convention)

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

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## **I. Introduction**

1. At its fifth session (Maastricht, 30 June–1 July 2014), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision V/9f on compliance by the Czech Republic with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).

## **II. Summary of follow-up action with decision V/9f since the Committee's first progress review**

2. By letter of 20 October 2015, the secretariat sent the Committee's first progress review on the implementation of decision V/9f to the Party concerned together with a reminder of the request by the Meeting of the Parties to provide its second progress report to the Committee by 31 October 2015, and at the latest by 31 December 2015, on the measures taken and the results achieved thus far in implementation of the recommendations set out in decision V/9f.

3. On 30 October 2015, the Party concerned provided an update on its progress to implement decision V/9f and indicated that it would provide further information by the extended deadline of 31 December 2015.

4. At the Committee's request, on 6 November 2015 the secretariat forwarded the Party concerned's update to the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 inviting it to provide its comments by 27 November 2015. The communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 provided its comments on 27 November 2015.

5. On 30 December 2015, the Party concerned provided its second progress report on the measures it had taken to implement decision V/9f.

6. At the Committee's request, the secretariat forwarded the second progress report to the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 inviting it to provide its comments by 22 January 2016. The communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 submitted its comments on 22 January 2016.

7. At its fifty-second meeting (Geneva, 8-11 March 2016), the Committee reviewed the implementation of decision V/9f in open session. The Party concerned and the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 took part in the session by audio conference. Following the discussion in open session, the Committee commenced the preparation of its second progress review on the implementation of decision V/9f in closed session.

8. On 7 April 2016, the secretariat invited the Party concerned and communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 to submit the comments made during the open session at the Committee's fifty-second meeting in writing, as well as any additional comments they wished to make, by 12 April 2016. Neither the Party concerned nor the communicant submitted any further comments.

9. On 31 October 2016, the Party concerned provided its third progress report. The secretariat forwarded the third progress report to the communicant inviting it to provide its comments by 21 November 2016. On 2 December 2016, the communicant submitted its comments on the third progress report.

10. At its fifty-fifth meeting (Geneva, 6-9 December 2016), the Committee held an open session to review the progress made by the Party concerned to implement decision V/9f in

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the light of its third progress report. The Party concerned took part in the session by audio conference. The communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 did not take part though invited to do so.

11. After taking into account the Party concerned's third progress report and the communicant's comments thereon as well as the information provided during the audio conference at the fifty-fifth meeting, the Committee adopted its second progress review at its virtual meeting on 22 December 2016. It thereafter instructed the secretariat to send the adopted second progress review to the Party concerned and the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70.

#### **Party concerned's second progress report**

12. In its letter of 30 October 2015, the Party concerned stated that the concerns of the Compliance Committee and those of the European Commission were duly taken into account during the preparation of the new version of the Environmental Impact Assessment Act (Act No. 100/2001 Coli.) (EIA Act). The Party concerned reported that the amendment (Act No. 39/2015 Coli.) came into force on 1 April 2015 and had brought far-reaching changes to public participation in proceedings subject to article 6 of the Convention as well as access to justice in accordance with article 9, paragraphs 2 and 3, of the Convention. The Party concerned enclosed the EIA Act in Czech language and reported that it was also available on the web page of the Ministry of the Environment and that an English translation was currently being prepared.

#### ***Paragraph 4 (a) and (b) of decision V/9f***

13. In its second progress report provided on 30 December 2015, the Party concerned reported that anyone, i.e. any natural person or legal entity, may submit comments both during the various stages of the EIA process and in proceedings following the EIA process ("subsequent proceedings") which, the Party concerned stated, are proceedings in accordance with article 6 of the Convention. The authority conducting the EIA process is obliged to state how it has settled such comments in its EIA statement and, similarly, any authority conducting a subsequent proceeding is obliged to include such information in its decision. Moreover, NGOs can become parties to subsequent proceedings related to the EIA process, which gives them additional rights, e.g. a right to peruse the file or a right to appeal. In this regard, section 9c of the EIA Act states:

"(1) The public may submit comments on the project in a subsequent proceeding. Comments may be submitted within 30 days of the date of publication of the information according to Section 9b, paragraph 1 on an official board [of the authority responsible for conducting the subsequent proceeding], 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."

14. The Party concerned also provided English translations of other provisions of the EIA Act that it considered relevant, including section 6, paragraph 7; section 8, paragraph 3; section 9, paragraph 8; and annexes 5 and 6.<sup>1</sup>

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<sup>1</sup> An English translation of these provisions is set out in the Party concerned's second progress report dated 30 December 2015, page 1.

15. In its oral statement at the open session of the fifty-second meeting, the Party concerned agreed that tenants were not explicitly mentioned as a participant to the permitting procedure for development consents, but submitted that, as described above, any person is entitled to submit comments and to have them taken into account. The Party concerned accepted that there is a difference between being able to submit comments and being a participant to the procedure.

***Paragraph 4 (c) and (d) of decision V/9f***

16. In its second progress report, the Party concerned reported that NGOs can challenge both the procedural and substantive legality of decisions subject to article 6 of the Convention through judicial review. The court shall grant suspensory effect to the legal action or order a preliminary injunction if there is a risk that the implementation of the project may cause serious environmental damage. In the interests of ensuring broad access to court protection, NGOs can submit an appeal and then take legal action even if they were not parties to the proceedings preceding the issuance of the challenged decision.

17. In this regard, section 9c, paragraph 4, of the EIA Act states:

“An appeal against a decision issued in subsequent proceedings may be filed by the public concerned referred to in Section 3(i), point 2, even if it was not a party to the proceedings in the first instance.”

18. Furthermore, section 9d, paragraph 1 of the EIA Act provides:

“The public concerned referred to in Section 3(i), point 2, is entitled to bring a legal action to protect the public interest against the decision issued in a subsequent proceeding and challenge substantive or 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 a subsequent proceeding.”

19. Section 3(i), of the EIA Act states that “the public concerned” means:

- (1) a person who may be affected in his or 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 act the protection of the environment or public health, and whose main activity is not business or other for-profit activity, and which was founded at least three years before the date of the publication of the notice of initiation of the subsequent proceeding pursuant to Section 9b, paragraph 1, or alternatively before the date of the decision issuance according to Section 7, paragraph 6, or which is supported by the signatures of at least 200 persons.

20. The Party concerned provided an English translation of other relevant provisions of the EIA Act, including section 9c, paragraph 3 and section 9d, paragraph 2.<sup>2</sup>

21. The Party concerned reported that NGOs within the scope of article 2, paragraph 5, of the Convention may file an appeal and bring legal action with respect to a decision that a certain project will not be subject to an EIA procedure under the same conditions as set out above. In this respect, section 7, paragraph 9 of the EIA Act states:

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<sup>2</sup> Ibid.

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“The public concerned referred to in Section 3(i), point 2, is entitled to bring a legal action to protect public interest against a decision issued in the scoping and screening procedure, that the project or change of a project will not be assessed under this Act, 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 the scoping and screening procedure, that the project or change of a project shall not be assessed under this Act.”

22. The Party concerned provided English translations of other relevant provisions of the EIA Act, including section 7, paragraphs 6 and 10.

***Paragraph 4 (e) of decision V/9f***

23. With respect to noise, in its second progress report the Party concerned reported that 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. More generally, in cases where noise is not the result of a factory or similar facility operations, a neighbour can take legal action against noise if it is excessive to the location and substantially restricts normal use of the land.

24. In this regard, Sections 1013 of the Civil Code, Act No. 89/2012 Coll., states:

“(1) The owner shall refrain from everything that makes waste, water, smoke, dust, gas, odour, light, shading, noise, vibrations and other similar effects (imission) 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 imission 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 exceed the officially approved scope.”

25. Section 1042 of the Civil Code, No. 89/2012 Coll., provides that:

“An owner can seek protection against anyone who wrongfully infringes on intervenes in his ownership rights other than by withholding the item.”

26. Regarding land-use plans, the Party concerned reported that a land-use plan is issued in the form of a measure of a general nature and the law allows a request to be filed for review of its compliance with legal regulations as well as a proposal to be filed for its annulment. It stated that if the land-use plan is issued “in contravention of urban and land-planning standards or other environmental protection law”, it can be considered at variance with legal regulations and made subject to review proceedings. Commencement of review proceedings is left to the discretion of the appropriate administrative authority, but anyone can file a proposal for the commencement of such review. A proposal for annulment of a land-use plan can be filed within three years of the date when the land use plan became effective by the person who claims that his or her rights have been impaired thereby. The court shall decide on such a proposal. In this regard, section 174, paragraph 2 of the Code of Administrative Procedure, Act No. 500/2004 Coll., states:

“The compliance of a measure of a general nature with legislation may be considered in review proceedings. A resolution to commence review proceedings maybe issued within 3 years of the measure becoming legally effective....”

27. Section 101a, paragraph 1 of the Code of Administrative Justice, Act No. 150/2002 Coll., provides:

“The petition seeking the annulment of a measure of a general nature or any part thereof may be filed by the person who claims that his or her rights have been prejudiced by a measure of a general nature issued by an administrative authority. If according to the Act such person is entitled to file a complaint or other petition in a matter that the measure of a general nature was applied to, such proposal to annul the measure of a general nature may only be made together with such petition.”

***Paragraph 6 of decision V/9f***

Paragraph 22(i) of the Committee’s first progress review

28. With respect to paragraph 6 of decision V/9f and paragraph 22(i) of the Committee’s first progress review, the Party concerned reported that the EIA Act (which includes regulation of the SEA procedure) specifies the projects and programmes that are to be assessed through an SEA procedure. It stated that 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. Generally speaking, public participation in the approval of plans and programmes is ensured by the SEA process and it is possible to generally define the plans and programmes where public participation is ensured. 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 drawn up or commissioned by a public authority and subsequently approved by the public authority or submitted for approval.

Paragraph 22 (ii) of the Committee’s first progress review

29. With respect to the list of criteria which it will apply in future to determine which plans and programmes are similar in nature to the National Investment Plan and thus will be subjected to public participation under article 7, the Party concerned stated that it will apply the criteria referred to in paragraph 28 above.

Paragraph 22 (iii) of the Committee’s first progress review

30. The Party concerned reported that no plans or programmes similar in nature to the National Investment Plan have been adopted since the National Investment Plan and there are no such plans or programmes foreseen to be considered in the near future that would need to be subjected to public participation under article 7 of the Convention.

31. In its oral statement during the open session at the fifty-second meeting, the Party concerned stated that, with respect to paragraph 22 of the Committee’s first progress review, if in the future plans similar to the National Investment Plan and which related to the environment were to be prepared, they would be subject to a SEA procedure. The Party concerned stated that the EIA Act, which regulates the SEA procedure, sets out certain specifications to determine which plans and programmes should be subject to a SEA procedure. However, it is not possible to make a more detailed list of criteria because the scope of the EIA Act and the SEA procedure is too wide, and the plans too different. The Party concerned stated that it considered its regulation of SEA procedure complied with the Convention’s requirements and it could not be found non-compliant just because it cannot provide a list of criteria.

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32. With respect to communicant's suggestion to screen the existing European Union legislation to assess which plans and programmes would be required in order to meet its requirements (see para. 46 below), the Party concerned stated that this suggestion would require some further analysis on its part.

#### **Party concerned's third progress report**

33. On the first page of its third progress report, dated 31 October 2016, the Party concerned provided an overview of the legislative changes made in the area of public participation and access to justice since 2010, in particular resulting from the amended EIA Act (No. 100/2001 Coll). The rest of the third progress report repeated the information provided in its second progress report regarding the measures the Party concerned had taken to address the requirements of decision V/9f.

#### **Comments on the Party concerned's second progress report**

##### ***Paragraph 4 (a) and (b) of decision V/9f***

34. With respect to the recommendation set out in paragraph 4(a) and (b) of decision V/9f, in its comments of 22 January 2016, the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 submitted that, except for article 9c of the EIA Act, the other provisions of the new EIA Act apply to the EIA procedure, which is, in the Party concerned's legal system, a separate procedure preceding the "actual" decision-making procedure on the development consent.

35. The communicant acknowledged that article 9c of the EIA Act might improve the possibilities of the general public to influence decision-making. However, the recommendation in paragraph 4(a) of decision V/9f explicitly mentions tenants. In this respect, the amended EIA Act has brought little improvement. The Building Act still explicitly excludes tenants from becoming parties to the administrative procedures through which land use and building permits are issued. This prevents them, inter alia, from being able to check the administrative files, to participate at hearings if held, and to launch administrative appeals.

36. As regards NGOs, the communicant stated that the amended EIA Act established additional requirements not existing in the current legislation for NGOs to participate in administrative procedures with a status of a party and to have standing before the court: NGOs will either have to prove that they have been active in environmental protection for more than 3 years, or gather at least 200 signatures supporting their participation in the administrative procedure or lawsuit.

37. In the light of the above, the communicant submitted that the recommendation in paragraph 4 (a) of decision V/9f was not fully met. With respect to the recommendation in paragraph 4 (b) of decision V/9b, the communicant stated that if the amended EIA Act was followed in practice it could meet that recommendation but it was necessary to wait to see how the amendment will be implemented in practice.

38. In its oral statement at the open session of the fifty-second meeting, the communicant submitted that it was important to distinguish between the right to submit comments, and the right to participate in the procedure. The communicant agreed with the Party concerned that under the EIA Act any person could provide comments regarding a proposed development consent; however, the right to submit comments did not amount to effective participation in the procedure as such. In this regard, tenants were still explicitly excluded from being a party to administrative procedures. This means that they were not allowed to access the case file, to participate in the hearing if one was held, to appeal against the administrative decision or to seek other remedies.

***Paragraph 4(c) of decision V/9f***

39. The communicant stated that the information provided by the Party concerned was correct. The amendment to the EIA explicitly established that NGOs meeting the requirements set out in paragraph 36 above were deemed to have substantive rights with respect to decisions subsequent to the EIA procedure and there are examples of court decisions which accept that NGOs are entitled to seek the review of both procedural and substantive legality of the environmental permits. If this becomes a standard practice of the courts, it would be possible to consider paragraph 4 (c) as fulfilled.

***Paragraph 4(d) of decision V/9f***

40. With respect to the recommendation in paragraph 4(d) of decision V/9f, the communicant remarked that the amendment of the EIA Act established the right of NGOs meeting the requirements of article 3(i) of the EIA Act to ask the court to review a screening decision that has concluded an EIA is not required. However, other members of the public concerned do not have this right. The communicant stated that the recommendation in paragraph 4 (d) of decision V/9f is therefore not fully met.

***Paragraph 4(e) of decision V/9f***

41. With respect to the recommendation in paragraph 4(e) of decision V/9f concerning noise, the communicant stated that no legislative or other measures had been taken to ensure that members of the public are provided with access to administrative or judicial procedures to challenge acts of private persons and omissions of authorities which contravene provisions of national law relating to noise. The situation is unchanged from when the Committee's findings on communication ACCC/C/2010/50 were adopted.

42. In this regard, the communicant submitted that the provisions of the Civil Code cited by the Party concerned were not relevant. The recommendation in paragraph 4(e) concerned the right to challenge acts of private persons and omissions by authorities which contravene provisions of national law relating to noise. There is no direct link between the possibility to bring a private nuisance lawsuit under the Civil Code and the need for instruments to challenge the exceeding of the noise limits set by environmental regulation. Moreover, with regard to private nuisance cases, article 1013(2) of the Civil Code cited by the Party concerned has worsened the legal position of neighbours in cases where the nuisance, including noise, is due to an officially approved operation as it is no longer possible to ask the civil court to issue an injunction to stop or limit the operation.

43. Regarding judicial review of land use plans, the communicant stated that, based on the decision of the Constitutional Court of 30 May 2014, there seemed to have been a shift in the jurisprudence of the administrative courts. According to that decision and subsequent caselaw, NGOs under some conditions should have standing to challenge land use plans in court.

***Paragraph 6 of decision V/9f***

44. With respect to paragraph 22 (i)-(iii) of the Committee's first progress review concerning paragraph 6 of decision V/9f, the communicant submitted that the Party concerned had taken no formal measures to meet these recommendations. The amendments to the EIA Act had no relevance in this respect. It noted that the statement of the Party concerned regarding the recommendation in paragraph 22 (i) of the Committee's first progress review was not very clear.

45. With respect to paragraph 22(iii) of the Committee's first progress review, the communicant questioned the correctness of the Party concerned's statement that "no plans or programmes similar in nature to the National Investment Plan have been adopted yet". The communicant reported that a Transitional National Plan had been adopted under the



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Industrial Emissions Directive 2010/75/EC and it could be presumed that similar plans and programmes would occur in the future.

46. In its oral statement at the open session of the fifty-second meeting, the communicant submitted that it was already possible to foresee which kind of plans and programmes would need to be adopted in the next year or so in order to meet the requirements of European Union law. So as a starting point, the Party concerned could at least already screen existing European Union legislation to assess what kind of plans and programmes it would need to prepare in the short term future.

### **Comments on the Party concerned's third progress report**

47. On 2 December 2016, the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 submitted its comments on the Party concerned's third progress report. The communicant submitted that the overview of legislative developments described on the first page of the Party concerned's third progress report was correct, except for the statement that "the possibility for environmental NGOs to take part in the whole range of proceedings subsequent to EIA procedure is guaranteed". The communicant submitted that the EIA Act is formulated in an ambiguous way in this respect. In practice, the authorities are interpreting the EIA Act's wording as enabling NGOs to participate in subsequent proceedings concerning zoning and building permits, mining permits and some others, but not those, for example, under the Water Protection Act or Air Protection Act.

48. With respect to the recommendations in paragraph 4(a)-(b) of decision V/9f, the communicant submitted that the Party concerned's description of the relevant provisions of the EIA Act was in principle correct, subject to the point raised in the previous paragraph concerning the lack of clarity regarding the term "subsequent" proceedings. Regarding paragraph 4(a) of decision V/9f, the communicant reiterated its previous comments regarding the situation of tenants (see paragraph 35 above) who, under the Building Act, are still explicitly excluded from becoming parties to the administrative procedures in which land use and building permits are issued. Concerning paragraph 4(b) of decision V/9f, the communicant again stated that it will be necessary to wait to see the long-term application of the EIA amendment in practice (see paragraph 37 above) but it was clear from the legislation that, in the proceedings subsequent to the EIA, the obligation to take comments of the general public into account is weaker than the duty to consider comments and objections by the parties to the proceedings.

49. With regard to the recommendations in paragraph 4(c), (d) and (e) of decision V/9f, the communicant reiterated the points made in its comments on the Party concerned's second progress report (see paragraphs 39-42 above).

50. With regard to the recommendations in paragraph 6 of decision V/9f, the communicant stated that it was not aware of any measures taken by the Party concerned to meet the recommendations. The communicant further submitted that the description of the applicable provisions of the SEA procedure provided by the Party concerned makes it questionable whether proposals for plans and programs which are similar in nature to the National Investment Plan would be subjected to the requirements of article 7 of the Convention, be it via SEA or by any other means.

### III. Considerations and evaluation by the Committee

51. In order to fulfil the requirements of the decision V/9f, the Party concerned would need to provide the Committee with evidence that:

- (a) Members of the public concerned, including tenants and NGOs fulfilling the requirements of article 2, paragraph 5, are allowed to effectively participate and submit comments throughout a decision-making procedure subject to article 6;
- (b) Due account is taken of the outcome of public participation in all phases of the decision-making to permit activities subject to article 6;
- (c) NGOs fulfilling the requirements of article 2, paragraph 5, have the right to access review procedures regarding any procedures subject to the requirements of article 6, and in this regard they have standing to seek the review of not only the procedural but also the substantive legality of those decisions;
- (d) To the extent that the EIA screening process and the relevant criteria serve also as the determination required under article 6, paragraph 1 (b), as to whether a proposed activity is subject to the provisions of article 6, the public concerned, as defined in article 2, paragraph 5, is provided with access to a review procedure to challenge the procedural and substantive legality of those conclusions;
- (e) Members of the public are provided with access to administrative or judicial procedures to challenge acts of private persons and omissions of authorities which contravene provisions of national law relating to noise and urban and land-planning environmental standards.

52. In its first progress review, which reviewed the Party concerned's first progress report and the comments received from the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 on that report, the Committee invited the Party concerned in its second progress report or otherwise by 31 December 2015:

- (a) With respect to the recommendation set out in paragraph 4 of decision V/9f, to explain clearly the measures it has taken and/or proposes to take to address each of those recommendations and to submit the texts of any legislative, regulatory or administrative measures intended to implement those recommendations that are available either in draft or final form at that time, together with English translations thereof, as well as an approximate timeline for the adoption of any of the proposed measures still then in draft form.
- (b) With respect to paragraph 6 of decision V/9f to provide:
  - (i) The list of the types of plans and programmes that it will in future ensure are subjected to public participation under article 7 of the Convention; or
  - (ii) The list of criteria which it will apply in future to determine which plans and programmes are "similar in nature to the National Investment Plan" and thus will be subjected to public participation under article 7 of the Convention; or
  - (iii) A list of the types of plans and programmes that it has already determined will be subjected to public participation under article 7 together with a set of criteria to identify which other as yet unknown types of plans and programmes may in fact be "similar in nature to the National Investment Plan" and thus need to be subjected to public participation under article 7 of the Convention.

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53. The Committee welcomes the second and third progress reports of the Party concerned, which were submitted on time, and the information contained therein. The Committee also welcomes the helpful analysis contained in the communicant's comments on the Party concerned's second and third progress reports.

54. As an initial point, the Committee takes note of the communicant's submissions regarding the criteria in the amended EIA Act for NGOs to participate in administrative procedures with a status of a party and to have standing before the court. However, since compliance with article 2, paragraph 5, of the Convention is not the subject of decision V/9f the Committee will not examine this point further in the context of its review of that decision.

55. With respect to paragraph 4(a) of decision V/9f, the Committee welcomes the measures taken by the Party concerned to ensure that NGOs fulfilling the requirements of article 2, paragraph 5 are allowed to effectively participate and to submit comments in decision-making procedures subject to article 6. The Committee accordingly finds that the Party concerned has satisfied the requirements of paragraph 4(a) of decision V/f with respect to NGOs fulfilling the requirements of article 2, paragraph 5.

56. The Committee notes with concern, however, that the Party concerned has not provided any information on measures taken to allow tenants as members of the public concerned to effectively participate and submit comments throughout decision-making procedures subject to article 6 of the Convention. The Committee thus finds that the Party concerned has not yet fulfilled the requirements of paragraph 4(a) with respect to tenants.

57. Regarding paragraph 4(b) of decision V/9f, the Committee welcomes the progress made by the Party concerned, including article 9(c), paragraph 2 of the amended EIA Act which requires the administrative authority "to refer to the settlement of the comments from the public in the grounds of its decision". The Committee notes the communicant's submissions that this provision is still to be tested in practice and moreover, the obligation to take comments of the general public into account is weaker than for those of the parties in the proceedings (see paragraphs 37 and 48 above). With respect to the communicant's second point, the Committee notes that the communicant has not provided any relevant legislative excerpts or examples from practice to substantiate its submission. The Committee accordingly finds, that, subject to relevant evidence being provided to the Committee that the authorities are not taking due account of the outcome of public participation in all phases of decision-making to permit activities subject to article 6, the Party concerned has fulfilled the requirement of paragraph 4(b) of decision V/9f.

58. With respect to paragraph 4(c) of decision V/9f, the Committee welcomes the progress made by the Party concerned. Both the Party concerned and the communicant agree that the requirements of paragraph 4(c) have been met. The Committee accordingly finds that the Party concerned has fully met the requirements of paragraph 4(c) of decision V/9f.

59. Concerning paragraph 4(d) of decision V/9f, the Committee welcomes the progress made by the Party concerned and notes that the communicant agrees that, under the amended EIA Act, NGOs meeting the requirements of article 3(i) of the EIA Act have the right to ask the court to review an EIA screening decision that has concluded an EIA is not required. However, the Committee notes with concern that the Party concerned has not provided any information on measures taken to ensure that other members of the public concerned, as defined in article 2, paragraph 5, also have this right. The Committee accordingly finds that, the Party concerned has fulfilled the requirements of paragraph 4(d) of decision V/9f with respect to NGOs within the scope of article 3(i) of the EIA Act, but it has not yet met the requirements of paragraph 4 (d) with respect to other members of the public concerned, as defined in article 2, paragraph 5 of the Convention.

60. Regarding paragraph 4(e) of decision V/9f, the Committee notes that that recommendation addresses access to administrative or judicial procedures to challenge acts of private persons and omissions of authorities which contravene provisions of national law relating to two separate issues: noise and urban and land-planning standards. With respect to the latter issue, the Committee notes that the Party concerned and the communicant agree that this part of the recommendation is met, and the Committee accordingly finds that the Party concerned has satisfied the requirements of paragraph 4(e) of decision V/9f with respect to urban and land-planning standards.

61. The Committee notes, however, that no legislative or other measures have been taken to meet the requirements of paragraph 4(e) with respect to noise since decision V/9f was adopted. While Section 1042 of the Civil Code entitles an owner to seek protection against anyone who wrongly infringes on his ownership rights, the Party concerned has not put before the Committee any legislative measure that would ensure that any other members of the public besides an owner (neighbour) has standing to challenge the act of an operator (private person) or the omission of the relevant authority to enforce the law when the operator exceeds noise limits set by law. Accordingly, the Committee finds that the Party concerned has not yet met the requirements of paragraph 4 (e) of decision V/9f with respect to noise.

62. In relation to paragraph 6 of decision V/9f, the Committee notes that the Party concerned has not provided evidence of any steps it has taken to ensure that, in the future, plans and programmes similar in nature to the National Investment Plan are submitted to public participation as required by article 7. The Committee notes the communicant's suggestion that the Party concerned could screen existing European Union legislation to identify what kind of plans and programmes relating to the environment it would need to prepare in the next year or so pursuant to that legislation (see para. 46 above). The Committee encourages the Party concerned to consider taking up the communicant's suggestion as a proactive means to implement paragraph 6 of decision V/9f. Given that to date the Party concerned has provided no evidence of any steps taken to ensure that, in future, plans and programmes similar in nature to the National Investment Plan are submitted to public participation as required by article 7, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 6 of decision V/9f.

63. In the light of the above, while welcoming the steps taken by the Party concerned to date, the Committee finds that the Party concerned has not yet fully met the recommendations set out in paragraph 4 (a), (d) and (e) and paragraph 6 of decision V/9f.

## **IV. Conclusions**

64. The Committee finds:

- (a) The Party concerned has satisfied the requirements of paragraph 4(a) of decision V/f with respect to NGOs fulfilling the requirements of article 2, paragraph 5, but has not yet fulfilled the requirements of paragraph 4(a) with respect to tenants;
- (b) Subject to evidence being provided to the Committee that the authorities are not taking due account of the outcome of public participation in all phases of decision-making to permit activities subject to article 6, the Party concerned has fulfilled the requirement of paragraph 4(b) of decision V/9f;
- (c) The Party concerned has fully met the requirements of paragraph 4(c) of decision V/9f;
- (d) The Party concerned has fulfilled the requirements of paragraph 4(d) of decision V/9f with respect to NGOs within the scope of article 3(i) of the EIA Act,

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but it has not yet met the requirements of paragraph 4 (d) with respect to other members of the public concerned, as defined in article 2, paragraph 5 of the Convention;

(e) The Party concerned has satisfied the requirements of paragraph 4(e) of decision V/9f with respect to urban and land-planning standards, but has not met the requirements of paragraph 4 (e) of decision V/9f with respect to noise;

(f) The Party concerned has not yet fulfilled the requirements of paragraph 6 of decision V/9f.

65. In the light of the above, while welcoming the steps taken by the Party concerned to date, the Committee finds that the Party concerned has not yet fully met the recommendations set out in paragraph 4 (a), (d) and (e) and paragraph 6 of decision V/9f.

66. In order for the Committee to prepare its report to the sixth session of the Meeting of the Parties on the implementation of decision V/9f, the Committee invites the Party concerned by 31 January 2017:

(a) With respect to the recommendations set out in paragraph 4 of decision V/9f to provide the Committee with evidence, including the texts of the relevant measures together with English translations thereof, that:

(i) In accordance with paragraph 4(a) of decision V/9f, members of the public concerned, including tenants, are allowed to effectively participate and submit comments throughout decision-making procedures subject to article 6 of the Convention;

(ii) With respect to paragraph 4(d) of decision V/9f, to the extent that the EIA screening process and the relevant criteria serve also as the determination required under article 6, paragraph 1 (b) as to whether a proposed activity is subject to the provisions of article 6, other members of the public concerned, as defined in article 2, paragraph 5, as well as NGOs, are provided with access to a review procedure to challenge the procedural and substantive legality of EIA screening decisions;

(iii) In accordance with paragraph 4(e) of decision V/9f, members of the public other than owners are provided with access to administrative or judicial procedures to challenge acts of private persons and omissions of authorities which contravene provisions of national law relating to noise standards.

(b) With respect to the recommendation set out in paragraph 6 of decision V/9f, to provide an explanation of the steps it has taken to ensure that, in future, plans and programmes similar in nature to the National Investment Plan are submitted to public participation as required by article 7 of the Convention.

67. The Committee informs the Party concerned that all measures necessary to implement decision V/9f must be completed by, and reported upon by no later than 31 January 2017, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision V/9f.