



## Economic and Social Council

Distr.: General  
28 July 2017

Original: English

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### Economic Commission for Europe

Meeting of the Parties to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters

#### Sixth session

Budva, Montenegro, 11–13 September 2017

Item 7 (b) of the provisional agenda

**Procedures and mechanisms facilitating the implementation of the Convention:  
Compliance mechanism**

### Report of the Compliance Committee\*

#### Compliance by Czechia with its obligations under the Convention

##### *Summary*

This document is prepared by the Compliance Committee pursuant to the request set out in paragraph 19 of decision V/9 of the Meeting of the Parties (ECE/MP.PP/2014/2/Add.1) and in accordance with the Committee's mandate set out in paragraph 35 of the annex to decision I/7 of the Meeting of the Parties on review of compliance (ECE/MP.PP/2/Add.8).

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\* The present document is being issued without formal editing

## 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 Czechia with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).

## II. Summary of follow-up

2. The Party concerned provided its first progress report on the implementation of decision V/9f on 30 December 2014.

3. At the Committee's request, on 2 January 2015 the secretariat forwarded the first progress report of the Party concerned to the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70, inviting it to provide its comments by 23 January 2015. The communicant provided its comments by 22 January 2015.

4. 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. The secretariat's letter indicated that the Party concerned should 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.

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

6. On 27 November 2015, the communicant provided comments on the second progress report by the Party concerned.

7. On 30 December 2015, the Party concerned provided information supplementing its second progress report.

8. On 22 January 2016, the communicant provided comments on the supplementary information submitted by the Party concerned.

9. At its fifty-second meeting (Geneva, 8–11 March 2016), the Committee reviewed the implementation of decision V/9f in open session with the participation by the Party concerned and the communicant by audio conference.

10. On 31 October 2016, the Party concerned submitted its third progress report.

11. On 2 December 2016, the communicant provided comments on the third progress report by the Party concerned.

12. At its fifty-fifth meeting (Geneva, 6–9 December 2016), the Committee reviewed the implementation of decision V/9f in open session with the participation by the Party concerned by audio conference. Despite being invited, the communicant did not take part in the session.

13. By letter of 3 January 2017, the secretariat sent the Committee's second progress review on the implementation of decision V/9f to the Party concerned. The secretariat's letter informed the Party concerned that all measures necessary to implement decision V/9f should be completed by, and reported upon, by no later than 31 January 2017.

14. On 31 January 2017, the Party concerned submitted further information with regard to its implementation of decision V/9f.

15. On 21 February 2017, the communicant provided comments on the further information submitted by the Party concerned.
16. At its fifty-sixth meeting (Geneva, 28 February – 3 March 2017), the Committee reviewed the implementation of decision V/9f in open session with the participation by the Party concerned in person and by audio conference and the communicant by audio conference.
17. On 17 March 2017, the secretariat at the Committee's request asked the Party concerned to provide translations of certain provisions of its legislation, and the Party concerned did so on 22 March 2017.
18. On 31 March 2017, the communicant provided the text of a relevant Constitutional Court judgment.
19. On 3 April 2017, the Party concerned provided additional information replying to the Committee's second progress review as well as questions put to it during the Committee's fifty-sixth meeting.
20. The Committee adopted its report to the sixth session of the Meeting of the Parties on the implementation of decision V/9f through its electronic decision-making procedure on 20 July 2017 and thereafter requested the secretariat to send it to the Party concerned and the communicant.

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

21. In order to fulfil the requirements of paragraphs 4 and 6 of decision V/9f, the Party concerned would need to provide the Committee with evidence that:

(a) Members of the public concerned, including tenants and non-governmental organizations (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;<sup>1</sup>

(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;<sup>2</sup>

(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;<sup>3</sup>

(d) To the extent that the environmental impact assessment (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;<sup>4</sup>

(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

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<sup>1</sup> Decision V/9f, para. 4 (a).

<sup>2</sup> *Ibid.*, para. 4 (b).

<sup>3</sup> *Ibid.*, para. 4 (c).

<sup>4</sup> *Ibid.*, para. 4 (d).

provisions of national law relating to noise and urban and land-planning environmental standards.<sup>5</sup>

(f) Plans and programmes similar in nature to the National Investment Plan are submitted to public participation as required by article 7, in conjunction with the relevant paragraphs of article 6, of the Convention.<sup>6</sup>

22. The Committee welcomes the three progress reports received from the Party concerned, which were submitted on time, as well as the further information provided on 30 December 2015, 31 January, 22 March and 3 April 2017.

23. The Committee also welcomes the comments and information provided by the communicant on 22 January and 27 November 2015, 22 January and 2 December 2016 and 21 February and 31 March 2017.

24. 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.<sup>7</sup> However, since the requirements that must be met under national law to be deemed to have an interest under article 2, paragraph 5, of the Convention is not within the scope of decision V/9f, the Committee will not examine this point further in the context of its review of the decision.

**Paragraph 4 (a) of decision V/9f: Right of public concerned to participate throughout the decision-making procedure**

25. With respect to the recommendation in paragraph 4 (a) of decision V/9f, the Committee recalls paragraph 70 of its findings on communication ACCC/C/2010/50, to which the recommendation relates:

Members of the public must also be able to examine and to comment on elements determining the final building decision throughout the land planning and building processes. Moreover, public participation under the Convention is not limited to the environmental aspects of a proposed activity subject to article 6, but extends to all aspects of those activities.<sup>8</sup>

26. The Committee must accordingly ascertain whether members of the public, including tenants and NGOs as specifically mentioned in paragraph 4 (a) of decision V/9f, have the right to receive information and to comment on elements determining the final building decision, with these elements not being limited to environmental aspects.

27. As an initial point, the Committee notes that prior to the entry into force of the new EIA Act, the EIA procedure ended with a non-binding EIA opinion which had to be taken into account in subsequent permitting procedures.<sup>9</sup> Pursuant to section 9a, paragraph 1, of the EIA Act, the non-binding opinion has been replaced with a binding EIA statement.<sup>10</sup>

28. Concerning the right of the public to have access to all information relevant to the decision-making, section 9b, paragraphs 1 and 4, of the EIA Act list various information that

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<sup>5</sup> Ibid., para. 4 (e).

<sup>6</sup> Ibid., para. 6.

<sup>7</sup> Communicant's comments on the second progress report, 27 November 2015, p. 2.

<sup>8</sup> ECE/MP.PP/C.1/2012/11, para. 70.

<sup>9</sup> Ibid, para. 71.

<sup>10</sup> English translation of selected provisions of the EIA Act, provided by the Party concerned on 31 March 2017, p. 1.

the public authorities are required to make public in the context of the subsequent proceedings.<sup>11</sup>

29. The Committee notes that pursuant to article 9b, paragraph 4 (b), of the EIA Act, the administrative authority shall ensure the availability of “other underlying documents for the issuance of decision, whose publishing the administrative authority considers effective.”<sup>12</sup> The Committee considers that, on its face, this wording appears to give the administrative authority undue discretion to provide access to such documents only if it considers it “effective” to do so, rather than giving the public concerned access to all information relevant to the decision-making as required by article 6, paragraph 6, of the Convention. However, while not precluding the possibility to examine this point further if relevant evidence is put before it in a future case, the Committee has received no evidence that the application of this provision in practice prevents the public concerned from having access to examine all information relevant to the decision-making in practice.

30. Regarding the public’s right to submit comments, section 9, paragraph 8, and section 9c, paragraphs 1 and 2, of the EIA Act provide for a right for the public to submit comments both during the preparation of the EIA statement and afterwards in the “subsequent proceedings”.<sup>13</sup> From the Committee’s review of the legislation, the topic of the comments does not appear to be limited to commenting only on the environmental aspects of proposed activity.

31. The Committee notes that, in addition to the above, certain members of the public may become “parties to the proceedings” which gives them additional rights, including the right to peruse the file and a right to appeal.<sup>14</sup> In this regard, the Party concerned reported that NGOs have the possibility to become a “party to the subsequent proceedings”,<sup>15</sup> though the communicant submitted that in practice the legislation is applied in a manner that permits NGOs to become parties to some proceedings, including those concerning zoning and building and mining permits, but not others, for example, proceedings under the Water Protection Act or the Air Protection Act.<sup>16</sup> The communicant points out that other members of the public, such as tenants, lack the right to become “parties to subsequent proceedings”.<sup>17</sup> The Party concerned did not contradict this point, but rather submitted that this was compensated by other possibilities to participate,<sup>18</sup> though the communicant submitted that these were also insufficient.<sup>19</sup>

32. Concerning the right to peruse the administrative file, the Committee emphasizes that it would not be consistent with the Convention if only some members of the public concerned are given access to all the information relevant to the decision-making while others are not. While not precluding the possibility to examine this further if relevant evidence is put before it in a future case, in the context of the present review the Committee has not been provided

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<sup>11</sup> English translation of selected provisions of the EIA Act, provided by the Party concerned on 31 March 2017, pp. 2-3.

<sup>12</sup> *Ibid.*, p. 3.

<sup>13</sup> Third progress report from the Party concerned, 31 October 2016, p. 2.

<sup>14</sup> *Ibid.*, see also communicant’s comments on the third progress report, 2 December 2016, and communicant’s comments on further information from the Party concerned, 21 February 2017, p. 1.

<sup>15</sup> Third progress report of the Party concerned, 31 October 2016, p. 2, and further information from the Party concerned, 31 January 2017, p. 1.

<sup>16</sup> Communicant’s comments on the third progress report, 2 December 2016.

<sup>17</sup> *Ibid.* See also communicant’s comments on the second progress report, 27 November 2015, p. 1, as well as communicant’s comments on further information from the Party concerned, 21 February 2017, p. 1.

<sup>18</sup> Further information from the Party concerned, 31 January 2017, p. 1.

<sup>19</sup> Communicant’s comments on further information from the Party concerned, 21 February 2017, p. 1.

with evidence to show that the right of “parties to the proceeding” to peruse the administrative file means in practice that those parties have access to information relevant to the decision-making that other members of the public concerned do not have.

33. With respect to a right to appeal, the Committee notes that this goes beyond the scope of article 4 (a) of decision V/9f, which concerns article 6 of the Convention, and the Committee will therefore not consider it further here.

34. Based on the above considerations, the Committee considers that, in contrast to the legal situation at the time of the Committee’s findings on communication ACCC/C/2010/50, the legal framework of the Party concerned now permits members of the public “to examine and to comment on elements determining the final building decision throughout the land planning and building processes. Moreover, public participation...is not limited to the environmental aspects of a proposed activity subject to article 6, but extends to all aspects of those activities”.<sup>20</sup> Accordingly, while noting the concerns set out in paragraphs 29 and 32 above, and not precluding the possibility to examine those points further if relevant evidence is put before it in a future case, the Committee finds that the Party concerned has met the requirements of paragraph 4 (a) of decision V/9f.

#### **Paragraph 4 (b) of decision V/9f: Taking account of the outcome of public participation**

35. Regarding paragraph 4 (b) of decision V/9f, the Committee welcomes the progress made by the Party concerned. The Committee notes that in accordance with annexes 5 and 6 of the EIA Act, the EIA statement must include “settlement” of the comments received on the notification and on the expert report.<sup>21</sup> Furthermore, article 9c, paragraph 2, of the amended EIA Act requires the administrative authority “to refer to the settlement of the comments from the public in the grounds of its decision”.<sup>22</sup>

36. The Committee notes the communicant’s submissions that this provision is still to be tested in practice and also that the obligation to take comments of the general public into account is weaker than for those of the parties in the proceedings.<sup>23</sup> With respect to the communicant’s second point, as the Committee noted in its second progress review, the communicant has not provided any legislative excerpts or examples from practice to substantiate its submission that the obligation with respect to the comments from the general public is weaker.<sup>24</sup>

37. In keeping with its considerations in paragraph 32 above, the Committee emphasises that a system whereby only the comments of certain members of the public are duly taken into account, while others are disregarded or considered to “count less” by the decision-making authorities, would not be consistent with the Convention. However, while not precluding the possibility to examine this point further should relevant evidence be put before it in a future case, the Committee cannot conclude in the abstract that the system instituted by the Party concerned would lead to such a result.

38. Based on the above considerations and while noting the concern in paragraph 37 above, the Committee finds that the Party concerned has met the requirements of paragraph 4 (b) of decision V/9f.

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<sup>20</sup> See para. 25 above.

<sup>21</sup> Third progress report from the Party concerned, 31 October 2016, p. 2.

<sup>22</sup> Ibid.

<sup>23</sup> Communicant’s comments on the second progress report by the Party concerned, 27 November 2015, p. 2 and communicant’s comments on the third progress report by the Party concerned, 2 December 2016.

<sup>24</sup> Committee’s second progress review, 3 January 2017, para. 57.

**Paragraph 4 (c) of decision V/9f: Access for NGOs to review procedures subject to article 6**

39. With respect to paragraph 4 (c) of decision V/9f, the Party concerned in its second and third progress reports referred the Committee to section 9c, paragraph 4, and section 9d, paragraph 1, of the EIA Act, which give NGOs the possibility to challenge the procedural and substantive legality of decisions subject to article 6 of the Convention without requiring them to be parties to the proceedings preceding the issuance of the challenged decision (“the subsequent proceedings”).<sup>25</sup>

40. The communicant concurred with the Party concerned that these provisions provided access to NGOs and reported that there had been cases in which NGOs had been granted standing accordingly.<sup>26</sup> The communicant further submitted that, if this practice of the court continued, the Party concerned would fulfil the requirements of paragraph 4 (c) of decision V/9f.<sup>27</sup>

41. The Committee welcomes the progress made by the Party concerned in this regard. Having assessed section 9c, paragraph 4, and section 9d, paragraph 1, of the EIA Act, the Committee finds that the Party concerned has met the requirements of paragraph 4 (c) of decision V/9f.

**Paragraph 4 (d) of decision V/9f: Access to review procedures for screening decisions for the public concerned**

42. Concerning paragraph 4 (d) of decision V/9f, the Party concerned in its second and third progress reports referred the Committee to section 7, paragraphs 6, 9 and 10, of the EIA Act, which gives a right to NGOs fulfilling the requirements of section 3, paragraph (i), point 2, of the EIA Act to challenge the substantive and procedural legality of screening decisions.<sup>28</sup> The Committee notes that the communicant concurs that NGOs meeting the requirements of article 3, paragraph (i), point 2, of the amended EIA Act have the right to ask the court to review an EIA screening decision.<sup>29</sup>

43. While welcoming the above amendments to the EIA Act, the Committee points out that the above provisions apply only to NGOs and the Party concerned has not put before the Committee any provisions that would provide other members of the public concerned with access to a review procedure to challenge the legality of screening decisions. In its further information submitted on 31 January 2017, the Party concerned stated that members of the public other than NGOs fulfilling the requirements of section 3, paragraph (i), point 2, of the EIA Act, have access to the courts under section 65, paragraph 1 and 2, of the Code of Administrative Justice, which require the applicant to show that “their rights have been prejudiced” by the act in question.<sup>30</sup> The communicant contests this interpretation, pointing out that article 7, paragraph 6 of the EIA Act explicitly declares that NGOs have the right to submit an administrative appeal, which is the pre-condition for court action. The communicant argues that given that the EIA Act establishes a specific right of action for a

<sup>25</sup> Third progress report of the Party concerned, 31 October 2016, p. 3.

<sup>26</sup> Communicant’s comments on the second progress report, 27 November 2015, p. 2 and communicant’s comments on the third progress report, 2 December 2016.

<sup>27</sup> Communicant’s comments on the second progress report, 27 November 2015, p. 2.

<sup>28</sup> Third progress report of the Party concerned, 31 October 2016, pp. 3-4, and further information from the Party concerned, 31 January 2017, pp. 5-6.

<sup>29</sup> Communicant’s comments on the second progress report, 27 November 2015, p. 2 and communicant’s comments on the third progress report by the Party concerned, 2 December 2016.

<sup>30</sup> Further information from the Party concerned, 31 January 2017, pp. 5-6, and further information from the Party concerned, 3 April 2017, p. 1.

specific class of persons, it is unlikely that a court would grant standing for other members of the public under the general access to justice rules.<sup>31</sup>

44. The Committee notes that under the legal framework of the Party concerned at the time of its findings on communication ACCC/C/2010/50 it was not possible to seek judicial review of screening decisions at all because they could not be examined separately from the subsequent permits. In its findings on communication ACCC/C/2010/50, the Committee held that members of the public concerned should have access to a review procedure to challenge the legality of the outcome of the EIA screening process. Since this was not the case under Czech law, the Committee found that the Party concerned failed to comply with article 9, paragraph 2 of the Convention.<sup>32</sup> The Committee considers that section 7 of the EIA Act now clarifies that the screening decision constitutes a stand-alone decision, which can in itself be subject to challenge, at least by NGOs meeting the requirements of article 3, paragraph (i), point 2, of the EIA Act.

45. Since at the time of the Committee's findings on communication ACCC/C/2010/50 screening decisions were not subject to judicial review at all, the issue of exactly which members of the public concerned should be entitled to challenge such decisions was not part of the Committee's considerations and the Committee consequently did not make a specific recommendation on this point. The Committee notes that the Party concerned and the communicant hold different views as to whether other members of the public besides NGOs would now be able to challenge screening decisions and that the point is yet to be tested in practice. Given this context, the Committee considers that an examination of which members of the public concerned are entitled to challenge such decisions is beyond the scope of paragraph 4 (d) of decision V/9f. The Committee notes that this does not preclude it from examining this issue if brought before it, with relevant evidence, in a future case.

46. Based on the above considerations and taking into account the scope of the findings on communication ACCC/C/2010/50, the Committee finds that the Party concerned has met the requirements of paragraph 4 (d) of decision V/9f.

**Paragraph 4 (e) of decision V/9f: Access to review procedures to challenge acts/omissions allegedly violating national law relating to noise as well as urban and land-planning environmental standards for the public**

47. Regarding paragraph 4 (e) of decision V/9f, the Committee notes that this 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: urban and land-planning environmental standards and noise.

*Urban and land-planning environmental standards*

48. The Committee notes that the Party concerned and the communicant agree that paragraph 4 (e) is met with respect to urban and land-planning environmental standards.

49. The Party concerned referred in that regard to the possibility for any member of the public to make a request to the public authorities who may then exercise their discretion as to whether to apply for legal review before the courts based on section 174, paragraph 2, of

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<sup>31</sup> Communicant's comments on further information from the Party concerned, 21 February 2017, p. 2.

<sup>32</sup> ECE/MP.PP/C.1/2012/11, para. 82. See also para. 80 of the communication ACCC/C/2010/50 dated 14 June 2010, where the communicant refers in this context to decisions of the Supreme Administrative Court, ref. no.6 As 52/2006-155 and ref. no. 2 As 68/2007-50.

the Code of Administrative Procedure (Act No. 500/2004 Coll.).<sup>33</sup> The Committee notes that this provision does not in itself give the public access to review procedures because it is left to the public authorities to decide whether a case will be initiated or not.

50. The Party concerned further submitted that persons which claim that their rights have been prejudiced by the general measure concerned can also file a proposal to annul the measure via a petition to the courts in accordance with section 101a, paragraph 1 and section 101b, paragraph 1, of the Code of Administrative Procedure.<sup>34</sup>

51. On that point, the communicant submits that, starting from a decision of the Constitutional Court dated 30 May 2014, there has been a positive change in the jurisprudence of the courts.<sup>35</sup> In that case, the Constitutional Court, taking into account the Aarhus Convention, ruled that a local environmental NGO was wrongly denied standing under section 101a, paragraph 1, of the Code of Administrative Procedure.<sup>36</sup> The Committee is satisfied that, if the jurisprudence established therein would continue to be applied, the Party concerned would comply with article 9, paragraph 3, as regards acts and omissions allegedly violating national land planning and environmental standards.

52. In light of the above change in jurisprudence, the Committee finds that the Party concerned has met the requirements of paragraph 4 (e) of decision V/9f as regards acts and omissions allegedly violating national land planning and environmental standards.

#### *Noise*

53. The Committee notes that no legislative or other measures have been introduced to meet the requirements of paragraph 4 (e) with respect to noise since decision V/9f was adopted.

54. The Party concerned has referred the Committee to section 1042 of the Civil Code, which entitles an owner to seek protection against anyone who wrongly infringes on his ownership rights.<sup>37</sup> However, the Party concerned has not put before the Committee any legislative measure that would give any other members of the public who could be affected by noise besides neighbouring land-owners standing to challenge the act of an operator or the omission of the relevant authority to enforce the law when the operator exceeds noise limits set by law. In this context, the Committee takes note of the communicant's submission that section 1013, paragraph 2, of the Civil Code has worsened the situations for neighbours entitled to bring a challenge under section 1042 of the Civil Code,<sup>38</sup> as it is no longer possible to ask the civil court to issue an injunction to stop or limit the noise. The Committee considers, however, that this matter is outside the scope of paragraph 4 (e) of decision V/9f, which concerns standing under article 9, paragraph 3, so the Committee will not examine it further here.

55. In the light of the foregoing, the Committee finds that the Party concerned has not yet met the requirements of paragraph 4 (e) of decision V/9f with respect to acts and omissions allegedly violating national law relating to noise.

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<sup>33</sup> Third progress report of the Party concerned, 31 October 2016, p. 5.

<sup>34</sup> Ibid.

<sup>35</sup> Communicant's comments on the second progress report by the Party concerned, 27 November 2015, pp. 2-3, and communicant's comments on the third progress report by the Party concerned, 2 December 2016.

<sup>36</sup> Constitutional Court judgement (I. ÚS 59/14), received from the communicant on 31 March 2017.

<sup>37</sup> Third progress report of the Party concerned, 31 October 2016, pp. 4-5, and further information from the Party concerned, 31 January 2017, pp. 6-7.

<sup>38</sup> Communicant's comments on the supplementary information to the second progress report provided by the Party concerned, 22 January 2016, p. 2.

**Paragraph 6 of decision V/9f: Submit plans and programme similar to the National Investment Plan to public participation**

56. 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 future, plans and programmes similar in nature to the 2011 National Investment Plan are submitted to public participation as required by article 7.

57. In its second progress review, the Committee noted 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. The Committee encouraged the Party concerned to consider taking up the communicant's suggestion as a proactive means to implement paragraph 6 of decision V/9f.<sup>39</sup>

58. In its additional information provided on 3 April 2017, the Party concerned stated that, pursuant to section 10c of the EIA Act, the Ministry of Environment is to be informed of all strategic environmental assessment (SEA) proceedings. It also stated that it maintains an online system of ongoing SEA proceedings, including future envisaged plans requiring SEA which have not been drafted yet. The Party concerned submitted that it cannot be aware of any other plans or programmes before they are envisaged and that it is not aware of any envisaged plans similar to the National Investment Plan that are due to be adopted in the near future.<sup>40</sup>

59. The Committee notes that the above measures may be a positive step with respect to plans and programmes subject to SEA proceedings. However, the National Investment Plan was not subject to SEA<sup>41</sup> and the Committee has not been provided with any evidence to indicate that if it, or a plan similar in nature, was prepared at the present time it would now be subject to SEA or would otherwise be subject to public participation.

60. 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.

## IV. Conclusions

61. Based on the above, the Committee finds the Party concerned has met the requirements of paragraph 4 (a), (b), (c) and (d) of decision V/9f. While welcoming the steps taken by the Party concerned, the Committee finds that the Party concerned has not yet fully met the recommendations set out paragraph 4 (e) and paragraph 6 of decision V/9f.

62. The Committee recommends to the Meeting of the Parties that it reaffirms decision V/9f and requests the Party concerned to take the necessary legislative, regulatory and administrative measures to ensure that:

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<sup>39</sup> Committee's second progress review, 3 January 2017, para. 62.

<sup>40</sup> Further information from the Party concerned, 3 April 2017, p. 2.

<sup>41</sup> See para. 26 of the Committee's findings on communication ACCC/C/2012/70 (ECE/MP.PP/C.1/2014/9): "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."

(a) Members of the public are granted access to administrative or judicial procedures to challenge acts and omissions by an operator or competent authority when an operator contravenes provisions of national law relating to noise;<sup>42</sup>

(b) 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.<sup>43</sup>

63. The Committee further recommends that the Meeting of the Parties request the Party concerned:

(a) To provide detailed progress reports to the Committee by 1 October 2018, 1 October 2019 and 1 October 2020 on the measures taken and the results achieved in the implementation of the above recommendations;

(b) To provide such additional information as the Committee may request in between the above reporting dates in order to assist the Committee to review the progress by the Party concerned in implementing the above recommendations;

(c) To participate (either in person or by audio conference) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered.

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<sup>42</sup> Decision V/9f, para. 4 (e).

<sup>43</sup> *Ibid.*, para. 6.