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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

#### Seventh session

Geneva, 18–20 October 2021

Item 7 (b) of the provisional agenda

#### **Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism**

### **Report of the Compliance Committee on compliance by Czechia\*\*\*\***

#### *Summary*

This document is prepared by the Compliance Committee pursuant to the request set out in paragraph 21 of decision VI/8 of the Meeting of the Parties (ECE/MP.PP/2017/2/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.

\*\* This document was submitted late owing to additional time required for its finalization.



## I. Introduction

1. At its sixth session (Budva, Montenegro, 11–13 September 2017), 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 VI/8e on compliance by Czechia with its obligations under the Convention (see ECE/MP.PP/2017/2/Add.1).

## II. Summary of follow-up

2. At its sixtieth meeting (Geneva, 12–15 March 2018), the Committee reviewed the implementation of decision VI/8e in open session with the participation by audio conference of representatives of the Party concerned and the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70. Observer European ECO Forum also took part in the open session. In addition, the communicant of communications ACCC/C/2010/50 and ACCC/C/2012/70 provided a written statement on 15 March 2018.

3. On 26 March 2018, the communicant of communication ACCC/C/2012/71 submitted an email concerning the implementation of decision VI/8e.

4. On 1 October 2018, the Party concerned submitted its first progress report on decision VI/8e, on time.

5. On 5 October 2018, the secretariat forwarded the first progress report to the communicants of communications ACCC/C/2010/50, ACCC/C/2012/70, and ACCC/C/2012/71, and observers OEKOBUEO and Nuclear Transparency Watch, inviting their comments by 1 November 2018.

6. On 31 October 2018, the communicant of communication ACCC/C/2012/71 submitted comments on the first progress report by the Party concerned. No other comments were received.

7. After taking into account the information received from the Party concerned and the communicants, the Committee prepared its first progress review and adopted it through its electronic decision-making procedure on 21 February 2019.

8. On 25 February 2019, the secretariat forwarded the Committee's first progress review to the Party concerned and the communicants of communications ACCC/C/2010/50, ACCC/C/2012/70 and ACCC/C/2012/71 and observers OEKOBUEO and Nuclear Transparency Watch.

9. At its sixty-third meeting (Geneva, 11–15 March 2019), the Committee reviewed the implementation of decision VI/8e in open session, with the participation by audio conference of representatives of the Party concerned and the observer OEKOBUEO. Though invited, the communicants of communications ACCC/C/2010/50, ACCC/C/2012/70 and ACCC/C/2012/71 did not take part.

10. On 14 March 2019, the Party concerned and the observer OEKOBUEO provided written versions of the statements they had delivered during the open session on decision VI/8e held during the Committee's sixty-third meeting.

11. On 24 July 2019, the secretariat wrote to the Party concerned to remind it of the deadline of 1 October 2019 set out in paragraph 7 (a) of decision VI/8e for the Party concerned to provide its second progress report.

12. On 1 October 2019, the Party concerned submitted its second progress report on decision VI/8e, on time.

13. On 2 October 2019, the secretariat forwarded the second progress report by the Party concerned to the communicants of communications ACCC/C/2010/50, ACCC/C/2012/70 and ACCC/C/2012/71, inviting their comments thereon.

14. On 28 and 30 October 2019, respectively, the communicant of communication ACCC/C/2012/71 and observers OEKOBUERO and GLOBAL 2000 provided their comments on the Party concerned's second progress report.

15. After taking into account the information received, the Committee prepared its second progress review and adopted it through its electronic decision-making procedure on 3 March 2020. The Committee thereafter requested the secretariat to forward the second progress review to the Party concerned, the communicants of communications ACCC/C/2010/50, ACCC/C/2012/70 and ACCC/C/2012/71 and registered observers.

16. On 1 October 2020, the Party concerned submitted its final progress report on decision VI/8e, on time.

17. On the same day, the secretariat forwarded the final progress report by the Party concerned to the communicants of communications ACCC/C/2010/50, ACCC/C/2012/70 and ACCC/C/2012/71, inviting their comments thereon.

18. On 29 October 2020, the observer OEKOBUERO submitted its comments on the Party concerned's final progress report.

19. The Committee completed its draft report to the seventh session of the Meeting of the Parties on the progress by the Party concerned to implement decision VI/8e through its electronic decision-making procedure on 30 June 2021. In accordance with paragraph 34 of the annex to decision I/7, the draft report was then forwarded on 1 July 2021 to the Party concerned, the communicants and registered observers with an invitation to provide comments by 15 July 2021.

20. At its seventy-first meeting (Geneva online, 7–9 July 2021), the Committee reviewed the implementation of decision VI/8e in open session with the participation via virtual means of the Party concerned and the observer OEKOBUERO. Though invited, the communicants of communications ACCC/C/2010/50, ACCC/C/2012/70 and ACCC/C/2012/71 did not take part.

21. On 14 and 15 July 2021, respectively, the communicant of communication ACCC/C/2012/71 and the Party concerned sent comments on the Committee's draft report. No other comments were received.

22. After taking into account the information received, the Committee finalized and adopted its report to the seventh session of the Meeting of the Parties on the implementation of decision VI/8e through its electronic decision-making procedure on 20 July 2021 and thereafter requested the secretariat to send it to the Party concerned, the communicant and observers.

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

23. In order to fulfil the requirements of paragraph 3 of decision VI/8e, the Party concerned would need to provide the Committee with evidence that it has taken the necessary legislative, regulatory and administrative measures to ensure that:

(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;

(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.

24. In order to fulfil the requirements of paragraph 6 of decision VI/8e, the Party concerned would need to provide the Committee with evidence that it provides:

(a) A legal framework to ensure that when selecting means of notifying the public under article 6 (2), public authorities are required to select such means as will ensure effective notification of the public concerned, bearing in mind the nature of the proposed activity and

including, in the case of proposed activities with potential transboundary impacts, the public concerned outside the territory of the Party concerned;

(b) The necessary arrangements to ensure that:

(i) When conducting transboundary procedures in cooperation with the authorities of affected countries, the competent public authorities make the necessary efforts to ensure that the public concerned in the affected countries is in fact notified in an effective manner;

(ii) There will be proper possibilities for the public concerned, including the public outside the territory of the Party concerned, to participate at the subsequent stages of the multistage decision-making procedure regarding the Temelín nuclear power plant (NPP).

25. The Committee welcomes the three progress reports received from the Party concerned, which were submitted on time.

26. The Committee also welcomes the comments provided by the communicant of communication ACCC/C/2012/71 and observers OEKOBUERO, Nuclear Transparency Watch and GLOBAL 2000.

**Paragraph 3 (a) of decision VI/8e: Access to review procedures to challenge any acts/omissions allegedly violating national law relating to noise**

27. With respect to the recommendation in paragraph 3 (a) of decision VI/8e, the Committee recalls paragraph 89 (f) of its findings on communication ACCC/C/2010/50 to which the recommendation relates:

By not ensuring that members of the public are granted standing to challenge the act of an operator (private person) or the omission of the relevant authority to enforce the law when that operator exceeds some noise limits set by law, the Party concerned fails to comply with article 9, paragraph 3.<sup>1</sup>

28. In its first progress report on decision VI/8e, the Party concerned stated that, in future steps, its working group on the elaboration of the National Actions Portfolio on Environment and Health would discuss the obstacles to effective access to justice and that concrete steps on this issue were expected in early 2019.<sup>2</sup> The Committee expresses its disappointment that while, in its first progress review, it had urged the Party concerned to use the working group as an opportunity to work towards legislative or other measures to ensure that 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, the Party concerned has provided no evidence that any such measures have to date been taken.

29. In its final progress report, the Party concerned reports that it is continuing its work on the elimination of noise through both legislative and non-legislative means. In this context, it refers to the draft State Environmental Policy, which it submits was open to wide public participation and which contains a list of types of measures that are expected to help to reduce noise including awareness-raising and access to noise information.<sup>3</sup>

30. While welcoming the measures taken by the Party concerned to eliminate noise, the Committee points out that paragraph 3 (a) specifically concerns the access for members of the public to administrative or judicial procedures to challenge acts and omissions which contravene provisions of national law relating to noise. As the Committee already made clear in its first and second progress reviews,<sup>4</sup> decreasing the need for access to justice is not the same thing as granting access to justice for members of the public to challenge acts and omissions by an operator or competent authority contravening provisions of national law relating to noise.

<sup>1</sup> ECE/MP.PP/C.1/2012/11, para. 89.

<sup>2</sup> Party's first progress report, 1 October 2018, p. 1.

<sup>3</sup> Party's final progress report, 1 October 2020, p. 1.

<sup>4</sup> Committee's first progress review, para. 12; Committee's second progress review, para. 22.

31. The Committee expresses its strong disappointment that, despite the Committee's invitation to the Party concerned to submit evidence in its final progress report of legislative, regulatory or administrative measures to fulfil the recommendation in paragraph 3 (a) of decision VI/8e, the Party concerned merely reports that: "over the period of one year since the last progress report was submitted, it was not possible to change the legal situation as far as the possibility of challenging the acts by administrative authorities are concerned."<sup>5</sup>

32. In the light of the foregoing, the Committee finds that the Party concerned has not yet met the requirements of paragraph 3 (a) of decision VI/8e nor made any concrete progress in that direction.

**Paragraph 3 (b) of decision VI/8e: Plans and programmes similar to the National Investment Plan**

33. In its second progress review, the Committee invited the Party concerned, together with its final progress report, to specify what legislative, regulatory or administrative measures have been taken, if any, since the National Investment Plan was approved by the Party concerned on 21 September 2011 in order to ensure that the non-compliance identified by the Committee in its findings on communication ACCC/C/2012/70<sup>6</sup> cannot occur again during the preparation of a plan or programme within the scope of article 7 in the future. In particular, the Committee invited the Party concerned to specify what, if any, measures have been taken since 21 September 2011 to ensure that:

(a) The public has sufficient time to get acquainted with a draft plan or programme and to submit comments (article 7, in conjunction with article 6 (3));

(b) Early public participation is ensured during the preparation of a draft plan or programme, when all options are open (article 7, in conjunction with article 6 (4));

(c) The outcome of public participation is duly taken into account in a transparent and traceable way (article 7, in conjunction with article 6 (8)).

34. In its final progress report, the Party concerned states that, in its second progress report, it had tried to provide the Committee with examples of plans that would demonstrate that it was committed to ensure public participation in the preparation of plans and programmes similar to the National Investment Plan. It notes that the Committee concluded that the information provided in its second progress report did not describe any "legislative, regulatory and administrative" measures that it had taken to ensure that, in future, plans and programmes similar to the National Investment Plan would be subject to public participation as required by article 7 of the Convention. The Party concerned states that, at this point of time, it is not able to state any progress on meeting the Committee's expectations.

35. The Committee expresses its disappointment that, despite the Committee having provided clear guidance in its second progress review as to how the Party concerned might demonstrate it had fulfilled paragraph 3 (b) of decision VI/8e, the Party concerned in its final progress report does not report on any of the matters listed in paragraph 33 (a)–(c) above.<sup>7</sup> Rather, the Party concerned merely states that it is not at this time able to report any progress.

36. Based on the foregoing, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 3 (b) of decision VI/8e.

**Paragraph 6 (a) of decision VI/8e: Legal framework that requires public authorities to select such means as will ensure effective notification**

37. The Committee recalls paragraph 79 of its findings on communication ACCC/C/2012/71 to which the recommendation relates:

By not providing a clear requirement in its legal framework to ensure that public authorities, when selecting means of notifying the public, are bound to select such means which, bearing in mind the nature of the proposed activity, would ensure that

<sup>5</sup> Party's final progress report, 1 October 2020, p. 1.

<sup>6</sup> ECE/MP.PP/C.1/2014/9, para. 24.

<sup>7</sup> Party's final progress report, 1 October 2020, p. 1.

all those who potentially could be concerned, including the public outside its territory, have a reasonable chance to learn about the proposed activity, the Party concerned has failed to comply with article 6, paragraph 2, of the Convention with respect to its legal framework.<sup>8</sup>

38. The Committee recalls the Party concerned's statement that the Environmental Impact Assessment (EIA) Act (No. 100/2001 Coll.) provides the same rights for the public concerned both within and outside of the Party concerned.<sup>9</sup> While welcoming this statement, the Committee finds that none of its progress reports provide information to indicate that the Party concerned has taken any steps since the adoption of decision VI/8e to address the recommendation in paragraph 6 (a) of that decision. Rather, in its final progress report the Party concerned merely reports that it is currently discussing how to approach the issues identified under paragraph 6 of decision VI/8e in general.<sup>10</sup>

39. The Committee notes that despite the EIA Act and related laws having been subject to extensive amendment, none of these have addressed the recommendation of paragraph 6 (a) of decision VI/8e. Moreover, the Committee reiterates the concern it expressed in its first progress review that the 2015 amendment removing the requirement for public authorities to publish notices in newspapers or other media would appear to run directly counter to ensuring that these authorities select such means as will ensure effective notification.<sup>11</sup>

40. The Committee expresses its disappointment that the Party concerned has provided no evidence that a legal framework has to date been put in place to ensure that, when selecting means of notifying the public under article 6 (2), public authorities are required to select such means as will ensure effective notification of the public concerned, bearing in mind the nature of the proposed activity and including, in the case of proposed activities with potential transboundary impacts, the public concerned outside the territory of the Party concerned.

41. In the light of the foregoing, the Committee finds that the Party concerned has not yet met the requirements of paragraph 6 (a) of decision VI/8e.

**Paragraph 6 (b) (i) of decision VI/8e: Arrangements to ensure that the public concerned in the affected countries is notified in an effective manner**

42. As with paragraph 6 (a) of decision VI/8e, in its final progress report the Party concerned reports that it is in the middle of discussions on how to approach this issue. It acknowledges the Committee's requests to provide additional information but states that, at the moment, it is unable to provide satisfactory answers.<sup>12</sup>

43. The Committee recalls that, in its second progress report, the Party concerned had stated that recent public consultations provided evidence that the issues that were subject to communication ACCC/C/2012/71 were merely exceptional and do not indicate a systemic issue.<sup>13</sup>

44. Specifically, the Party concerned reported on the transboundary consultations held in Germany and Austria in April 2018 on the EIA documentation concerning the construction of new nuclear resources at the Dukovany NPP (Dukovany II). The Party concerned submitted that "at all consultations, all members of the public regardless of their nationality had an opportunity to effectively participate."<sup>14</sup> The Party concerned also states that no complaints have been received for lack of information related to the public consultation.<sup>15</sup>

45. While taking note of the information provided by the Party concerned, the Committee points out that in none of its three progress reports has the Party concerned informed the Committee of the "necessary arrangements" it has put in place, either with respect to the

<sup>8</sup> ECE/MP.PP/C.1/2017/3, para 79.

<sup>9</sup> Party's second progress report, 1 October 2019, p. 3.

<sup>10</sup> Party's final progress report, 1 October 2020, p. 2.

<sup>11</sup> Committee's first progress review, 25 February 2019, para 20.

<sup>12</sup> Party's final progress report, 1 October 2020, p. 2.

<sup>13</sup> Party's second progress report, 1 October 2019, p. 3.

<sup>14</sup> Ibid.

<sup>15</sup> Party's final progress report, 1 October 2020, p. 2.

public procedure for Dukovany II or more generally, to ensure that when conducting transboundary procedures within the scope of the article 6 of the Convention, the competent public authorities make the necessary efforts to ensure that the public concerned in the affected countries is in fact notified in an effective manner.

46. Based on the above, the Committee finds that the Party concerned has not yet met the requirements of paragraph 6 (b) (i) of decision VI/8e.

**Paragraph 6 (b) (ii) of decision VI/8e: Arrangements to ensure public participation at subsequent stages of decision-making procedure regarding the Temelín NPP**

47. As with paragraphs 6 (a) and (b) (i) of decision VI/8e, in its final progress report the Party concerned reports that it is in the middle of discussions on how to approach this issue. It acknowledges the Committee's requests to provide additional information but states that, at the moment, it is unable to provide satisfactory answers.<sup>16</sup>

48. The Committee considers the above statement by the Party concerned in its final progress report to be highly unsatisfactory. In its second progress review, the Committee invited the Party concerned, together with its final progress report, to provide "an update on the current stage of decision-making on the Temelín NPP".<sup>17</sup> However, the Party concerned has not to date provided the requested information to the Committee.

49. Likewise, in its second progress review, the Committee invited the Party concerned, together with its final progress report, to provide:

A list of all the subsequent procedures (including to the extent applicable any procedures under the Building Act and the Atomic Act) that are required under its legal framework to permit a NPP, and an explanation, with relevant legislative excerpts, as to in which of those subsequent procedures the public concerned, including the public outside the territory of the Party concerned, are entitled to participate in a manner meeting the requirements of article 6 of the Convention.<sup>18</sup>

50. However, the Party concerned's final progress report contains no such list nor any other information that could address the above matters.

51. In light of the foregoing, the Committee finds that the Party concerned has not yet met the requirements of paragraph 6 (b) (ii) of decision VI/8e, nor appears to have taken any steps to do so.

**Advisory assistance to the Party concerned**

52. As the Party concerned may be aware, the Committee's role in reviewing the implementation of decisions of the Meeting of the Parties on the compliance of individual Parties includes, pursuant to paragraph 36 (a) of the annex to decision I/7, the provision of advice and assistance to individual Parties regarding the implementation of the Convention.

53. In addition to the advice provided in its first and second progress review, the Committee stands ready to answer any questions that the Party concerned may have regarding the measures to be taken to fulfil the requirements of decision VI/8e, or the decision that supersedes it, at any open sessions to be held with the participation of the Party concerned during the intersessional period after the seventh session of the Meeting of the Parties.

54. Moreover, should the Party concerned ask it to do so, the Committee expresses its willingness to provide further detailed written advice or to undertake a mission to the Party concerned to meet with senior officials in order to assist them to better understand what will be required in order to fully meet the requirements of decision VI/8e or the decision that supersedes it. If the Party concerned may be interested to seek such advice or assistance from the Committee, it is encouraged to do so as soon as possible in the next intersessional period.

<sup>16</sup> Party's final progress report, 1 October 2020, p. 2.

<sup>17</sup> Committee's second progress review, 3 March 2020, para. 53.

<sup>18</sup> Ibid., para. 52.

## IV. Conclusions and recommendations

55. The Committee finds that the Party concerned has not yet met the requirements of paragraphs 3 or 6 of decision VI/8e, nor has made any apparent progress in that direction.

56. The Committee recommends to the Meeting of the Parties that it reaffirm decision VI/8e and request the Party concerned to take the necessary legislative, regulatory and administrative measures to ensure that:

(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;

(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.

57. The Committee further recommends that the Meeting of the Parties request the Party concerned to demonstrate that it provides:

(a) A legal framework to ensure that, when selecting means of notifying the public under article 6 (2), public authorities are required to select such means as will ensure effective notification of the public concerned, bearing in mind the nature of the proposed activity and including, in the case of proposed activities with potential transboundary impacts, the public concerned outside the territory of the Party concerned;

(b) The necessary arrangements to ensure that:

(i) When conducting transboundary procedures in cooperation with the authorities of affected countries, the competent public authorities make the necessary efforts to ensure that the public concerned in the affected countries is in fact notified in an effective manner;

(ii) There will be proper possibilities for the public concerned, including the public outside the territory of the Party concerned, to participate at the subsequent stages of the multistage decision-making procedure regarding the Temelín NPP.

58. The Committee recommends that the Meeting of the Parties request the Party concerned to:

(a) Submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the above recommendations;

(b) Provide detailed progress reports to the Committee by 1 October 2023 and 1 October 2024 on the measures taken and the results achieved in the implementation of the plan of action and the above recommendations;

(c) 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;

(d) Participate (either in person or by virtual means) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered.

59. Finally, the Committee recommends that, in the light of the lack of engagement and concrete action of the Party concerned during the intersessional period, the Meeting of the Parties issue a caution to the Party concerned to become effective on 1 January 2024, unless the Party concerned has fully satisfied the conditions set out in paragraphs 56 and 57 above and has notified the secretariat of this fact by 1 October 2023.

60. The Committee recommends that the Meeting of the Parties request the Committee to establish the successful fulfilment of paragraphs 56 and 57 for the purposes of paragraphs 59 above.