

**Secretariat of the Aarhus
Convention**

Palais des Nations
1211 Geneva
Switzerland

In Prague on 1 December 2022

Brief response to the comments to Czechia's Plan of action

Dear Aarhus Convention secretariat,

thank you very much for forwarding the comments on Czechia's plan of action provided by ÖKOBÜRO – Alliance of the Austrian Environmental Movement, GLOBAL 2000 and Aarhus Konvention Initiative. Upon studying them, we came across a few statements that could benefit from a brief clarification. We would therefore like to add the below to the explanations provided in the plan of action.

1. Page 2 *"Czechia has not clarified whether the notification provided on the platform includes even the minimum information requirements stated in Article 6 (2) a-f nor if the information is available in English at the respective responsible authorities."* etc.

All information according to § 16 of the [Act on Environmental Impact Assessment](#) is always provided in the CENIA system. Information on when and how the public can get involved (i.e. that it is possible to comment on the notification and on the documentation) is also provided in the relevant documents. In relation to the subsequent proceedings, information according to § 9b (1) of the Act on Environmental Impact Assessment is being published on the official board of the administrative authority who is responsible for the subsequent proceeding.¹ We believe that the amount of information published is in line with the requirements of Article 6 (2) a) – e) of the Aarhus Convention. In addition, we are currently planning to prepare a general information note that will explain the mechanism of public participation in the process of EIA and in subsequent proceedings – this note will also be published directly in the CENIA system. We

¹ For a more detailed explanation regarding the comment on publication of documents relevant to the subsequent proceedings in the CENIA system, see the plan of action p. 22–23 (English version).

would like to stress again that in our view, Article 6(2) of the Aarhus Convention does not require direct notification as suggested by the communicants.²

Documents regarding transboundary assessments are available in Czech and in other languages if relevant (Polish, German or Hungarian). These documents are translated either in whole or in part (relevant chapters). Translation of all documents relevant to the subsequent proceedings (e.g. of the whole documentation for the procedure for issuance of a zoning permit) would be extremely expensive and time-consuming – these documents are consisting of hundreds or thousands of pages. The relevant administrative procedures are conducted in Czech.³ It is not a usual practice to provide translations of all documents in other countries either and, in our view, the Aarhus Convention does not impose such an obligation.

2. Page 3 *“While it is true that the EIA procedure also covers the influence of ionising radiation, it must be noted that for example the EIA procedure in the case of Temelín 3+4 was conducted as a blackbox procedure, meaning that the exact type of reactor is only chosen after the conclusion of the EIA procedure.”* etc.

The information provided in this paragraph is not entirely accurate. First, the use of the blackbox procedure is very rare in the Czech Republic – it was used only twice (in relation to NPPs). If it is used, there is always a subsequent proceeding according to the Building Act with full public participation, where all relevant information is already well known. It is not true that a procedure according to Article 9 of the Atomic Act could be the only procedure where the technicalities of a specific reactor and its influences on the environment would be discussed. In fact, it is not envisaged that any environmental effects of the project would be discussed in this procedure other than those that were already discussed in EIA or that will be discussed in the subsequent proceedings according to the Building Act (both with public participation).⁴

Second, if the blackbox procedure is used in EIA, the worst possible scenario regarding the environmental impacts of the project is assessed. Therefore, the environmental impacts of the project cannot be underestimated or not evaluated in these cases – rather the opposite. There

² See the plan of action, page 22 (English version).

³ However, note that in administrative procedures conducted by the State Office for Nuclear Safety, an officially certified translation into Czech for documents submitted in English is not required. <https://www.suib.cz/elektronicka-uredni-deska/prohlaseni-k-uredne-overenemu-prekladu-pisemnosti-ve-spravnim-rizeni>.

⁴ For a more detailed explanation regarding the relationship between the procedures under the Building Act and the Atomic Act, see the plan of action, p. 24–25 (English version).

cannot be a situation where any of the final solutions of the project would have significant negative impacts on the environment other than those that were already assessed in EIA. The conformity of the project with the project assessed in EIA was verified in the procedure for the issuance of a zoning permit for the NPP Dukovany. A similar verification will also take place in the procedure for the issuance of the building permit. The concerns of the communicants do not seem to be justified in this respect.

3. Page 4 *"The Party concerned claims that whether the public can participate in such proceedings is regulated by sections 27, 28 of the Administrative Code."* etc.

The communicants ask for a clarification on the relationship between §§ 27 and 28 of the [Administrative Code](#) and § 19 (1) of the Atomic Act. Upon discussing this matter with the State Office for Nuclear Safety we confirm that the exception according to § 19 (1) of the Atomic Act does not apply in procedures under § 22 and § 204 of the Atomic Act, i.e. public participation according to § 27 and § 28 of the Administrative Code is indeed foreseen in these cases (it is not "doubtful" as the communicants suggest in the last paragraph of the document).

Regarding the application of § 27 and § 28 of the Administrative Code, the relevant administrative authority must actively examine whether there are any parties that may be affected by the decision (and the State Office for Nuclear Safety performs such consideration routinely). Moreover, anybody may claim to be a party and must be dealt with as such until otherwise is proven. The Administrative Code does not distinguish between natural or legal persons, therefore any entity with legal personality, including NGOs, may apply these rights. The only condition is that the person's rights or obligations may be directly affected by the final decision. The Administrative Code also provides for a remedy in case that any party is omitted during the administrative procedure (§ 84 of the Administrative Code).

To enable implementation of these rights, the Czech legal framework contains various tools to inform possible participants about the initiation of administrative procedures. Specific right to be informed is established by § 70(2) of the Act no. 114/1992 Coll. on Nature and Landscape Protection (any NGO, whose main purpose is protection of nature and landscape can ask to be informed about initiation of any procedures that may affect the interests protected by this Act; the request is valid for 1 year and it may be raised repeatedly). The administrative authority also publishes a public notice about the initiation of the administrative procedures on its official

board (§ 25(1) and § 26 of the Administrative Code) in order to inform any unknown parties.⁵ Similar approach is applied in case of procedures with more than 30 participants and in case of subsequent proceedings to EIA (§ 144 of the Administrative Code, § 9b(3) of the Act on Environmental Impact Assessment).

4. Page 5 "*However, even if the Czech authorities would guarantee the public concerned party status in the abovementioned proceedings according to sections 22 and 204 of the Atomic Act, this is only of any use if such proceedings are started up.*" etc.

Again, the information provided in this paragraph is not entirely accurate. The public actually has a petition right. It can file a motion to commence an *ex officio* procedure according to § 42 of the Administrative Code. There is no actual right to have the *ex officio* procedure initiated, however, if the motion is justified, the State Office for Nuclear Safety will and, with respect to the general principles of good administration (§ 2 – § 8 of the Administrative Code), must initiate it. Subsequently (in case that the procedure has not been initiated), it is also possible to request the superior administrative authority to take action against inactivity of the administrative authority according to § 80(2) of the Administrative Code.

For the rest, we would like to refer to the information already provided in the plan of action and also in the supplement to the argumentation contained in the plan of action with a selection from case-law of Czech courts, which will be sent to the Committee by 1 December 2022.

We would be grateful if you could forward this clarification both to the communicants and to the Compliance Committee. Thank you very much for your support and cooperation.

Kind regards

Alena Chaloupková

National focal point to the Aarhus Convention

Ministry of the Environment of the Czech Republic

⁵ For the State Office for Nuclear Safety, cf. <https://www.sujb.cz/elektronicka-uredni-deska>.