

From: ECE-Aarhus-Compliance

Sent: Friday, December 9, 2022 5:15 PM

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Subject: RE: Decision VII/8e (Czechia) - invitation to open session at Committee's 77th meeting (13-16 December 2022)

Dear Ms. Chaloupková,

Thank you for confirming that Czechia will participate in the open session to discuss its plan of action on decision VII/8e to be held next Thursday, 15 December, at the Compliance Committee's seventy-seventh meeting.

In my email of 3 December, I had indicated that the Committee would provide a brief summary outlining some concerns regarding the plan of action in advance of the meeting to assist the Party concerned to prepare for the open session. Please see the Committee's brief summary below:

Regarding paragraph 2 (a) (i) of decision VII/8e, the Committee explains that the focus of the recommendation is on the right of members of the public to challenge a contravention of a noise limit. However, the caselaw provided by the Party concerned to date appears to concern challenges brought by neighbours against decisions to grant noise exemptions. If the Party concerned wishes to use caselaw to demonstrate that it has met this recommendation, it will need to provide examples of challenges brought by members of the public in cases where an operator has contravened provisions of national law relating to noise.

With respect to paragraph 2 (b) (i) and (ii) of decision VII/8e, which concern notification of the public concerned in a transboundary context, the plan of action states that the Party concerned uses the same means to notify the public concerned in transboundary context as the public concerned in its own territory, though it notes that the effectiveness of its notification of the public concerned in affected States depends on those States' cooperation. The Committee points out that the obligation under article 6 (2) of the Aarhus Convention to ensure that the public concerned in affected States is effectively notified remains, even if the affected State itself does not cooperate. The Committee notes that the plan of action indicates that, should the Committee not consider the measures described in the plan of action sufficient, the Party concerned would like to ask for the Committee's advice on this point. The Committee invites the Party concerned to submit the specific questions upon which it would like advice to the Committee in writing.

Regarding the implementation of paragraph 2 (b) (ii) of decision VII/8e in the context of transboundary subsequent proceedings, the plan of action states that the Ministry of Environment has proposed a new section 9f of the EIA Act which should be approved by the government in the coming months. Under proposed section 9f (1) and (3) of the EIA Act, if the affected State decides not to exercise its rights under those provisions or to notify its public of their right to participate in the transboundary procedure, that is the end of the matter and there would be no further obligation on the competent authority of the Party concerned to ensure that the public concerned in the affected State is effectively notified. The Committee makes clear that, as already explained above, such an approach is not consistent with the Aarhus Convention, pursuant to which the rights of the public concerned in the affected State remain owed by the Party concerned even if the affected State itself does not wish to participate.

Regarding paragraph 6 (a) of decision VII/8e, the Party concerned challenges the Committee's finding that the regulatory review stage of a periodic safety review (PSR) is a reconsideration by the competent authority under article 6 (10). In this regard, the Committee recalls paragraphs 114 and 115 of its findings on C143 (Czechia):

“114. As to the regulatory review, point 2.18 [of the IAEA Safety Standards] states: “The regulatory body should review the PSR report prepared by the operating organization and the proposed safety improvements, should identify any issues it wishes to raise (for example, whether further safety improvements need to be considered), should review the proposed integrated implementation plan and should determine whether the licensing basis for the nuclear power plant remains valid.”

115. It is plain from this statement, particularly the final limb, that the PSR procedure necessarily entails a determination by the regulatory body as to whether, in the light of its review of the PSR report, the NPP

concerned should be permitted to continue to operate. This amounts to a decision, tacit or otherwise, under article 6. Accordingly, the requirements of article 6 (10) apply to that determination.”

The Committee reiterates that, as explained in the above findings, the regulatory review stage of a PSR is a reconsideration by the competent authority within the meaning of article 6 (10). As a result of the reconsideration, the competent authority may decide that the operating conditions require to be updated, or it may decide that they do not. Either way, the regulatory review stage is a reconsideration under article 6 (10) of the Convention.

With respect to paragraph 6 (a) of decision VII/8e, the Party concerned also refers to section 27 (2) of the Administrative Code, pursuant to which parties to the proceeding include “other persons concerned if their rights or obligations may be directly affected by the decision”. The Committee invites the Party concerned to clarify which members of the public, including environmental NGOs, would qualify as persons whose “rights or obligations may be directly affected by the decision” for the purposes of proceedings under sections 22 (1), (2) and (3) and section 204 of the Atomic Act.

Concerning paragraph 6 (b) of decision VII/8e, the Committee takes note of the caselaw provided by the Party concerned on 1 December 2022 and will review it, taking into account any comments received from communicants and observers thereon.

We hope the above summary is of assistance. Please do not hesitate to let me know if you have any questions. The link to join the open session will be sent to all registered participants this weekend, following the expiry of the deadline for registration later tonight.

We look forward to Czechia’s participation in the open session on 15 December.

Kind regards,
Fiona



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