

**Secretariat of the Aarhus  
Convention**

Palais des Nations  
1211 Geneva  
Switzerland

In Prague on 9 February 2023

**Request for advice from the ACCC**

Dear Aarhus Convention secretariat,

the Czech Republic would like to kindly make use of the offer by the Compliance Committee to request advice in cases where the Party concerned needs further guidance in the implementation of the relevant recommendations by the Compliance Committee. We would be grateful if you could forward this request to the Compliance Committee. Thank you very much for your continuing support and cooperation.

Kind regards

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Ministry of the Environment of the Czech Republic

## **Request for advice from the Aarhus Convention Compliance Committee**

In its brief summary outlining some concerns regarding Czechia's plan of action, specifically with respect to paragraph 2 (b) (i) and (ii) of decision VII/8e, the Compliance Committee noted the following: "... *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*". We highly appreciate the willingness of the Compliance Committee to provide us with guidance in this matter. We would therefore like to make use of this offer and ask the Committee for certain clarifications regarding the implementation of its recommendation in paragraph 2 (b) (i) and (ii) of decision VII/8e.

### **1. Sufficiency of the measures already proposed**

It is not entirely clear from the information available, whether the Committee finds the measures proposed in the plan of action sufficient to fulfil its recommendation or not – its invitation to submit this request tends to indicate the latter, but we did not receive any further clarification on this matter. First of all, we would therefore like to ask whether the bellow means used to notify the public are sufficient to fulfil the Committee's recommendation in paragraph 2 (b) (i) and (ii) of decision VII/8e.

There are two aspects to this question which may be addressed separately:

#### ***1a) Notification of the public in the territory of the Czech Republic***

Information about the EIA process and all related documents are published in the CENIA system ([https://portal.cenia.cz/eiasea/view/eia100\\_cr](https://portal.cenia.cz/eiasea/view/eia100_cr)) and on the official boards of the municipalities and regions that may be affected by the project. Information about the subsequent proceedings is published on the official board of the administrative authority responsible for the relevant administrative procedure.

Official boards are accessible to the public at all times. They are primarily "physical" boards (usually in the building of the municipal/regional office or in its immediate vicinity), but their content has to be published also in a manner allowing for remote access.

This follows directly from § 16 and § 9b of the Act on Environmental Impact Assessment ([English translation](#)) in connection with § 26 of the Administrative Code ([English translation](#)). In our view, this means of notification is adequate, timely and effective and as such, it satisfies the requirements of Article 6(2) of the Aarhus Convention.

### **1b) Notification of the public outside of the territory of the Czech Republic**

In case of transboundary assessments, the same means of notification are used.

Information about the EIA process (incl. all relevant documents) is being published in the CENIA information system (i.e. online). In the plan of action, we have proposed a technical measure which would increase the efficiency of notifying the foreign public about the ongoing EIA processes. It consists in the introduction of a new search filter within the existing CENIA information system, under which it would be quite easy to display information about all new projects that are subject to transboundary assessment (i.e. in relation to which cross-border effects are expected) at any time and always in one place. All entities interested in this type of information could use this simple tool to access current information about ongoing transboundary assessments at any time, without checking the official boards, websites of various public administration bodies or other sources of information. This measure is currently being implemented.

Notification on an official board of a municipal/regional/national office (i.e. online and offline) is also foreseen, however, its effectiveness in practice depends on the cooperation of the public administration authorities in the affected countries. We cannot interfere with the national procedures of the affected countries and it is rather unclear to us, how could we make "the necessary efforts" to ensure that the affected Party has notified the public concerned in an adequate, timely and effective way as suggested by the Committee in its findings in case ACCC/C/2012/71 (para. 72). There are no Czech "official boards" which could be used directly by the Czech authorities outside of the territory of the Czech Republic. The Ministry of the Environment therefore has to rely on the cooperation of the foreign public administration bodies that they publish the relevant information on their own official boards or in other way depending on their own legislation. This principle is also reflected in the draft § 9f of the Act on Environmental Impact Assessment (regarding the subsequent proceedings), which is currently in the legislative process.

The Committee stated in the outline of concerns which was sent to us on 9 December 2022 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. It is also quite clear from its findings with regard to communication ACCC/C/2012/71 that the requirement to inform the public concerned in the affected countries in an adequate, timely and effective manner should be the sole responsibility of the competent authority of the Party of origin. Considering the specifics of a situation

requiring international cooperation, it seems to us that solely the notification in an online form (via the CENIA system incl. the newly proposed search filter and via the “online” versions of the official boards of the Czech authorities) should be considered as adequate, timely and effective. In our view, it provides the public with a “*reasonable chance to learn about proposed activities*”<sup>1</sup>. At the same time, of course, we will also continue to demand the publication of relevant information by the affected states, however, this form of notification cannot be under our full control.

In order to have a complete picture, we would like to note that we are aware of the view of the Committee provided in para. 76 of the findings in case ACCC/C/2012/71, according to which “*it is not reasonable to expect members of the public to proactively check the Ministry’s website on a regular basis just in case at some point there is a decision-making procedure of concern to them.*” Therefore, we are proposing to provide a single web link as a source of necessary information, as opposed to the requirement to monitor entire websites or social media (see below) of one or more public institutions. In the future, we would also like to introduce a notification system linked to the CENIA system.<sup>2</sup>

## 2. Proposal of other measures

In case the Committee finds that the above measures are not sufficient to fulfil its recommendation in paragraph 2 (b) (i) and (ii) of decision VII/8e, we would like to ask it for further advice regarding its implementation.

In its finding with regard to communication ACCC/C/2012/71 (Czechia), the Committee stated the following: “*Ensuring that the notification is effective may include, inter alia, publishing announcements in the popular newspapers and by other means customarily used in the affected countries, as well as by exploring possibilities for using more dynamic forms of communication (e.g., through social media).*” (findings, para. 72). However, from our point of view, these possibilities do not seem appropriate and/or feasible:

The possibility to publish announcements in “**popular newspapers**” (as a form of an “offline” notification) has not been foreseen by our legislation for several years as it does not appear to have any practical effects, especially taking into account the rapidly decreased readership of paper-based media in recent years. It also generates many questions and concerns, especially in relation to nuclear power plants (NPPs). According to

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<sup>1</sup> Cf. para. 71 of the findings in case ACCC/C/2012/71 (Czech Republic).

<sup>2</sup> This is currently not possible for technical reasons – we have to wait until a new system is set up.

the Committee's interpretation in para. 74 et seq. of the findings in case ACCC/C/2012/71 and in para. 74 et seq. of the findings in case ACCC/C/2013/91, the geographical range of persons who should be notified in a case of an NPP is almost unlimited, even though the possibility that they would be in fact affected by the project is very small (practically non-existent). It is therefore rather unclear to us, in which countries would the publication in "popular newspapers" need to be done (please, note that Czechia is located directly in the centre of Europe). It is also quite unclear how could we indicate which foreign newspaper is appropriate. Furthermore, we are aware that in its report to the MOP in case ACCC/C/2013/91 (United Kingdom), the Committee evaluated the measures proposed by the United Kingdom<sup>3</sup> and concluded, *inter alia*, that publication in print media of the affected States will not be necessarily effective and should be used only as a minimum requirement. From our point of view, this raises even more doubts about the effectiveness of investing public resources in this form of publication.

However, if the Committee were convinced of the appropriateness of this solution (even when taking into account aforementioned concerns), we would kindly ask it to clarify (1) whether a publication of a public notice in a newspaper would be a sufficient supplement to the already applied means of notification (CENIA system and official boards), (2) whether it would be sufficient to use it only in the case of transboundary assessments, when we cannot ensure publication on official boards outside of the territory of the Czech Republic with 100% certainty, (3) how to identify suitable newspapers and (4) how to define the territorial scope<sup>4</sup> of publications in the case of NPPs or other activities considered by the Committee as "ultrahazardous".

The possibility to explore possibilities for using "**more dynamic forms of communication, e.g. through social media**" (as a form of "online" notification) also raises some questions. If we consider e.g. using the Twitter page of the Ministry of Environment, interested parties would need to check it regularly or turn on the notifications from this page. In any case, they would need to monitor continuously a sum of rather

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<sup>3</sup> Press releases to the media in the EEA State(s) and/or other relevant States published, alongside any relevant translations, on the gov.uk website and linked to the British Embassy websites in any relevant State + Applicants will be asked to publish a press notice in the print media of each EEA State(s) where a significant effect on their environment has been identified / in the case of a NPP, the Applicant will be asked to publish a press notice in all neighbouring States regardless of whether significant effects are identified.

<sup>4</sup> In the report to the MOP regarding the communication ACCC/C/2013/91 (United Kingdom), the Committee stated that publication cannot be limited to states where a significant effect on the environment has been identified. As explained above, this approach leads to a conclusion that in case of an NPP, the geographical range of persons who should be notified is almost unlimited. Even with the best intentions, one cannot work with such an assumption, as it would generate completely disproportionate costs and workload.

irrelevant information before the relevant information is posted. The use of the CENIA system, where only the relevant and authorized information is listed, seems as a much more appropriate and targeted tool. The possibility of using social media also generates further questions and concerns:

- What kind of social media should be used?
- Information about what projects should be posted there – ranging from NPPs only or projects subject to transboundary assessment to all projects subject to EIA (in such a case we would simply substitute the CENIA system and generate substantial additional workload on one side and information fatigue on the other)?

### **Summary of questions:**

In view of the above, we would like to kindly ask the Committee for a more detailed advice on what measures need to be adopted in order to satisfy its recommendations, so that the purpose of effective notification is achieved and at the same time it does not generate an unreasonable financial, personnel and time burden.

- 1.** Are the measures proposed in Czechia's plan of action sufficient to fulfil the Committee's recommendation in paragraph 2 (b) (i) and (ii) of decision VII/8e?
- 2.** Could the Committee further elaborate on the criteria for "the necessary efforts" that the Party of origin may make to ensure that the affected Party has notified the public concerned effectively (findings in case ACCC/C/2012/71, para. 72)?
- 3.** If the answer to (1) is negative, can the Committee provide us with a more concrete guidance about which additional measures should be adopted, taking into account the abovementioned concerns about their feasibility and effectiveness in practice?

In relation to the possibility of using print media, the following questions need to be answered: (3a) whether a publication of a public notice in a newspaper would be a sufficient supplement to the already applied means of notification, (3b) whether it would be sufficient to use it only in the case of transboundary assessments, when we cannot ensure publication on official boards outside of the territory of the Czech Republic with 100% certainty, (3c) how to identify suitable newspapers and (3d) how to define the territorial scope of publications in the case of NPPs or other activities considered by the Committee as "*ultrahazardous*".

In relation to the possibility of using social media, the following questions need to be answered: (3e) What is the advantage of using social media over the possibility to use the CENIA system? (3f) What kind of social media should be used? (3g) Information about what projects should be posted there – ranging from NPPs only or projects subject to transboundary assessment to all projects subject to EIA?

4. Does the requirement for “a legal framework” contained in recommendation para 2 (b) (i) of decision VII/8e mean that whatever measures are to be adopted, they need to be enacted in law in order to fulfil the Committee’s recommendation?

Finally, we would like to suggest that this is a horizontal issue closely related to international cooperation among the Parties of the Convention and beyond – we would therefore like to propose to the Committee to provide for a possibility of all Parties to the Aarhus Convention to comment on its advice in this matter.

Thank you very much.