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### **Aarhus Convention Secretariat**

c/o Fiona Marshall

Palais des Nations

8-14 Avenue de la Paix

1211 Geneva 10, Switzerland

Vienna, 12 June 2023

### **Regarding: Comments on request for advice**

Dear Secretariat,

Dear Ms. Marshall,

ÖKOBÜRO – Alliance of the Austrian Environmental Movement and GLOBAL 2000 appreciate the opportunity to comment on the request for advice of Czechia regarding the implementation of decision VII/8e adopted by the Meeting of the Parties to the Aarhus Convention.

While the communicants value the offer of the Compliance Committee to the Parties concerned to request advice even in times of high case volume and appreciate the Party's effort to correctly implement the measures necessary to meet the requirements set out in decision VII/8e, the communicants do not consider the proposed measures sufficient. Regarding the specific questions in the request for advice, the communicants kindly ask the Committee and the Party concerned to take note of the following remarks:

As already stated in the communicant's comments on Czechia's Action Plan, the communicants do not consider the proposed measures sufficient to fulfil the Committee's recommendations regarding the notification of members of public during (transboundary) EIA proceedings. Also the Committee expressed concern with the measures suggested in the action plan in its e-mail dated 9 December 2022 and invited the Party concerned to submit a request for advice regarding the implementation of the recommendations set out in paragraph 2 (b) (i) and (ii) of decision VII/8e.

Regarding the notification of the public in a transboundary context, which is of special interest for the communicants, ÖKOBÜRO and GLOBAL 2000 would like to reiterate the following concerns:

The Party concerned intends to make use of the same mechanisms of notification for persons located on Czech territory and foreign territory via the CENIA platform that is currently under construction. The Party concerned also stresses that the notification of Parties located outside of Czech territory requires the cooperation of other States. While this issue is understandable, the communicants would like to stress that even though information processes under other Conventions (such as the Espoo Convention) might be applicable, the responsibility to effectively notify affected Parties lies with the responsible authority of the Party concerned. The Party concerned must either make the necessary efforts to ensure that the affected Party carries out sufficient information of the public on its territory or carry out the notification itself.<sup>1</sup> While the communicants appreciate the efforts of the Party concerned to clarify the "necessary efforts" in order to ensure effective notification through the authorities of the affected Party, the communicants must stress that it would also be a possibility for the Party concerned to notify the public itself. Czechia may want to establish a mechanism whereby members of the public can request to be notified about specific proceedings or a particular type of proceedings.<sup>2</sup> The communicants take note of and appreciate the fact that Czechia is currently working on including such a mechanism in the CENIA platform. In the meantime, for example a mailing list could be used as a supplement to making the "necessary efforts" to ensure that the authorities of the affected Party carry out the notification process. The communicants also would like to point out that even though the communicants appreciate Czechia's efforts to simplify the monitoring of government websites by providing a single weblink, the ACCC clearly stated that 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."*<sup>3</sup> Even if members of the public do not have to check a multitude of websites but a single web link, the current situation still forces them to proactively check the CENIA system for new information. In

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<sup>1</sup> ACCC/C/2012/71 (Czechia) para 76.

<sup>2</sup> Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters para 21.

<sup>3</sup> ACCC/C/2012/71 (Czechia) para 72.

this regard the communicants would like to recall the ACCC's findings on communication ACCC/C/2004/8 (Armenia) where it held that the mere fact that the public may be able to access a decision subject to article 6 through an electronic database did not satisfy the requirement of article 6, para 9, if the public has not been promptly and effectively informed of that fact. Even though these findings concern article 6 para 9 of the Aarhus Convention, it supports the communicants view that the issue at hand is not the official platform or database where the information is published, but the fact that members of the public are required to proactively monitor said platform or database. The communicant would thus like to stress that in our view, active notification of members of the public, may it be through the authorities of the affected Party or through the authorities of the Party concerned, is required to fully implement the recommendations set out in paragraph 2 (b) (i) and (ii) of decision VII/8e.

Regarding the possible usage of social media and newspapers, the communicant ventures to make the following suggestions:

The Party concerned correctly states that publication of official documents via the Ministry's Twitter account would require members of the public to read through irrelevant information before relevant information is posted. However, this issue could in the communicant's view be mitigated if an account was created that only contained information on for example transboundary EIA proceedings and follow-up proceedings or other proceedings that are likely to have transboundary effects. Posts could contain links to the CENIA platform so a doubling of the workload can be avoided. Cases could also be marked with hashtags to make information easier to find. Some platforms, such as Instagram, also allow users to follow certain hashtags. While it must be stressed that social media cannot be the only form of notification of members of the public<sup>4</sup> (since it is likely to exclude demographic groups from the participation process) its inherent advantage over the CENIA platform is that it already allows for notification, which is, in the communicant's view, essential to fulfil the requirements of decision VII/8e. Moreover, youth (activist) groups who nowadays play an important role in the environmental movement, are more likely to be reached by modern forms of notification. Thus, social media can be a powerful supplementary tool to the CENIA platform if one taps its full potential. Ukraine even introduced an environmental chat bot including a Telegram subscription service that updates users on proceedings that have an impact on the environment. Since Europeans tend to spend 2-3 hours a day on their smartphones (not including work time) it would be a missed opportunity not to make use of this development and find modern suitable ways to inform members of the public.

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<sup>4</sup> Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters para 65.

With regards to the territorial scope of the “public concerned” which the Party concerned asked the ACCC to clarify, it seems clear to the communicants that in case of NPP “*all those who potentially could be concerned, including the public concerned outside its territory, have a reasonable chance to learn about proposed activities.*”<sup>5</sup> The ACCC also stated that “when determining who is concerned by the environmental decision-making, the magnitude of the effects if an accident would indeed occur, whether the persons and their living environment within the possible range of the adverse effects could be harmed in case of an accident”<sup>6</sup> – no matter how small the risk of an accident might be. It follows that the public in every country that might be affected by a nuclear accident must be notified. The communicant knows that Czechia is located in the middle of Europe, which puts it at a disadvantage compared to for example the United Kingdom. However, the fact that because of Czechia’s location, a large number of people might be affected by a potential nuclear accident, cannot count as an argument to downsize the circle of members of the public that need to be informed of activities related to a NPP. When it comes to identifying suitable newspapers, the ACCC already confirmed that circulation, regularity of the publishing as well as popularity must be taken into account.<sup>7</sup> Suitable newspapers could be ones with high numbers of readers or also newspapers where local authorities announce laws, proceedings etc. It is true that the number of consumers of paper-based media is decreasing, but most newspapers are digitally available or feature some of their content for free online. In any case, the argument that supplementary means of notification (such as newspapers, social media) cannot reach 100% of the public concerned 100% of the time cannot be used to justify not taking supplementary measures of notification at all. While direct notification via an official platform is the preferred main method of notification, supplementary means of notification can and should expand the circle of members of the public that becomes aware of a decision-making process. It is clear that newspapers, social media etc cannot be the only form of notification, but a wide “catalogue” of methods of notification ensures that a variety of demographic groups have a reasonable chance to learn about the proposed activities.

The communicants hope that the Committee will be able to take our remarks into account.



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**Thomas Alge**  
OEKOBÜRO – Alliance of the  
Austrian Environmental Movement



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**Reinhard UHRIG**  
GLOBAL 2000 / Friends of the Earth Austria

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<sup>5</sup> ACCC/C/2006/16 (*Lithuania*), para 67; ACCC/C/2012/71 (*Czechia*) para 78–79.

<sup>6</sup> ACCC/C/2013/91 (*United Kingdom*) para 75.

<sup>7</sup> ACCC/C/2006/16 (*Lithuania*), para 67.