

## DRAFT Plan of action for decision VII/8e (Czechia)

Through paragraph 7 (a) of decision VII/8e concerning the compliance of Czechia, the Meeting of the Parties to the Aarhus Convention has requested the Party concerned to submit a plan of action, including a time schedule, to the Committee by 1 July 2022 regarding the implementation of the recommendations contained in that decision.

The text of decision VII/8e is available at: <https://unece.org/env/pp/cc/decision-vii8e-concerning-czechia>

In preparing its plan of action, the Party concerned was invited by the Compliance Committee to take into account the Committee's information note for Parties on preparing their plan of action. The Committee's information note, which contains step-by-step guidance for Parties on how to complete their plan of action, is available at: <https://unece.org/env/pp/cc/implementation-decisions-meeting-parties-compliance-individual-parties>

### **A. Description of the process by which the plan of action has been prepared**

The draft plan of action was prepared by the Ministry of the Environment after consulting other relevant state administration bodies. Due to reasons on the part of the Ministry of the Environment, the draft plan of action could not be prepared well in advance so that the public could be consulted before it was sent to the Aarhus Convention Compliance Committee (the deadline for submission was set by the Meeting of the Parties on 1 July 2022 without the possibility of extension). As a consequence, the draft plan of action will be published in Czech and English right after its submission to the Compliance Committee. For the period of 4 weeks, the public will be given the opportunity to comment on the draft plan of action. Communicants and observers in the individual cases covered by the plan will be notified by e-mail about the publication of the plan and about the possibility to provide their comments. The Ministry of the Environment will take due account of the comments received and prepare a final plan of action, which will be then submitted to the Committee. The final plan of action will also be published on the website of the Ministry of the Environment.

### **B. General character of the measures that will be needed to implement the recommendations in the MOP decision**

With regard to the diverse nature of individual recommendations, various types of measures are proposed to implement them. These are proposals for legislative changes, a proposal to amend certain methodological guidelines and one proposal for a technical solution. In other cases, reference is made to the current case law of the Czech courts.

<b>C. Detailed plan of action</b>	
<b>Recommendation: Para. 2 (a) (i) of decision VII/8e</b>	In paragraph 2 (a) (i) of decision VII/8e, the Meeting of the Parties requests the Party concerned to: <p style="text-align: center;">(a) Take the necessary legislative, regulatory and administrative measures to ensure that:</p> <p style="text-align: center;">(i) 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;</p>
Proposed measures to fulfil recommendation	<p>The public concerned currently has access to justice in matters concerning the granting of noise exemptions. Reference can be made to a current judgment of the Supreme Administrative Court, which allows the owner and occupant of a neighbouring land to file an action against a decision to grant a noise exemption – in more detail see extracts listed in the <b>Annex</b>. According to that judgment, the criterion for access to justice (cf. Article 9 (3) of the Aarhus Convention) is the fact that the noise exception intervenes with the plaintiff's “legal sphere”, that is to say, the plaintiff is a person concerned.</p> <p>Any member of the public also has the possibility to initiate a review procedure pursuant to Section 94 et seq. Act No. 500/2004 Coll., Code of Administrative Procedure. Anyone can initiate a review procedure, but the question of whether there is reasonable doubt if the decision is in accordance with the law (i.e. whether the review procedure is appropriate in the given case) has to be assessed by the competent administrative authority – the person, who initiated the procedure, does not have a right to have the procedure actually carried out, it is up to the competent authority. In practice, there are cases where the review procedure has led to the abolition of a noise exemption. The last review procedure took place in 2020, namely in the case of two noise exemptions for the road on Jana Želivského Street in Prague (one exemption for road transport and one exemption for tram transport). The Ministry of Health found these exceptions unsatisfactory, as they did not in fact address further reduction of noise pollution in the area. Both these noise exceptions were repealed in the review procedure.</p> <p>In addition to the above, we would like to draw the attention to a proposal for a legislative amendment of Section 31 (1) of the Public Health Protection Act. This proposal should significantly facilitate public access to information about noise exemptions that have been granted, which can be considered a basic precondition for an effective exercise of the above-mentioned rights. See the <b>Annex</b> for more information.</p>
Outline of the steps necessary to implement the proposed measures	<p>Legislative amendment (Section 31 (1) of the Public Health Protection Act):</p> <ul style="list-style-type: none"> <li>- The proposal is prepared, in the coming months the government will decide on its submission.</li> <li>- The next steps of the legislative process will follow: approval in the Chamber of Deputies, Senate, signature of the President.</li> <li>- It is currently expected that the law will be effective in mid-2023.</li> </ul>
Actors involved	Ministry of the Environment (Legislative Department as the National Focal Point to the Aarhus Convention), Ministry of Health (Legislative Department).

Final date by when implementation of recommendation will be completed	1 October 2023.
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<p><b>Recommendation: Para. 2 (a) (ii) of decision VII/8e</b></p>	<p>In paragraph 2 (a) (ii) of decision VII/8e, the Meeting of the Parties requests the Party concerned to:</p> <p>(a) Take the necessary legislative, regulatory and administrative measures to ensure that:</p> <p>(ii) 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;</p>
<p>Proposed measures to fulfil recommendation</p>	<p>As already stated in the previous communication with the Committee, the Czech Republic takes the issue of public participation during the preparation of plans and programmes relating to the environment seriously and is convinced that in practice it is applied in accordance with the requirements of the Aarhus Convention. As a concrete measure to ensure the fulfilment of the Committee's recommendation in the future, we propose the possibility of incorporating this recommendation into an internal or methodological guidance that would explicitly address this issue.</p> <p>At the level of the Ministry of the Environment, we are planning to prepare an internal directive that would address this issue in relation to plans and programmes relating to the environment that are being prepared directly under the responsibility of this Ministry.</p> <p>In relation to plans and programmes that are being prepared outside the responsibility of the Ministry of the Environment, we have preliminarily identified several methodological guidelines which are dealing with the issue of public participation in the preparation of plans and programmes in more general terms and which could become a suitable platform for explicit incorporation of the requirements arising from Article 7 of the Aarhus Convention:</p> <ul style="list-style-type: none"> <li>• Methodology for the preparation of public strategies (Ministry of Regional Development)</li> <li>• Methodology for involving the public in the preparation of government documents (Ministry of the Interior)</li> <li>• Manual for involving the public in the preparation of government documents (Ministry of the Interior)</li> <li>• Methodology for the participation of non-state non-profit organizations in advisory and working bodies and in the creation of state administration documents (Office of the Government of the Czech Republic)</li> </ul> <p>In cooperation with the above-mentioned state administration bodies, the Ministry of Environment will try to identify which of the methodological guidelines would be the most suitable for this purpose, and following this, it will discuss the possibility of their future modification so that they explicitly include the requirements arising from Article 7 in conjunction with Article 6 (3), (4) and (8) of the Aarhus Convention.</p>

Outline of the steps necessary to implement the proposed measures	<p>Internal directive of the Ministry of the Environment:</p> <ul style="list-style-type: none"> <li>- Preparation of the text of the internal directive until the end of 2022.</li> <li>- Inter-ministerial comment procedure and approval of the directive by 1 October 2023 at the latest.</li> </ul> <p>Amendment of a suitable methodological guidance with a wider scope:</p> <ul style="list-style-type: none"> <li>- Identification of the methodological guidelines that are most suitable for the incorporation of recommendations (approx. until 1 October 2022).</li> <li>- Discussion with the relevant state administration authorities (approx. until 1 December 2022).</li> <li>- Addition of the requirements arising from the Aarhus Convention to one or more selected methodological guidelines.</li> </ul>
Actors involved	Ministry of the Environment (Legislative Department as the National Focal Point to the Aarhus Convention + Department of Environmental Policy and Sustainable Development), Ministry for Regional Development (Department of Strategies and Analyses of Regional Policy and of Housing Policy), Office of the Government of the Czech Republic.
Final date by when implementation of recommendation will be completed	1 October 2023.

<p><b>Recommendation: Para. 2 (b) (i) of decision VII/8e</b></p> <p><b>(Please, note that the proposed measures relating to this recommendation are the same as in relation to recommendation Para. 2 (b) (ii) a of decision VII/8e)</b></p>	<p>In paragraph 2 (b) (i) of decision VII/8e, the Meeting of the Parties requests the Party concerned to:</p> <p>(b) Demonstrate that it provides:</p> <p>(i) 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;</p>
<p>Proposed measures to fulfil recommendation</p>	<p>As follows from the previous communication with the Committee, the Czech Republic is convinced that its legal framework ensures effective notification of the public concerned about ongoing environmental impact assessments, which applies also to the public in other affected countries. Above all, the Czech Republic has a high-quality information system in which it is possible to find all information about ongoing assessments, including all related documents, at any time and from anywhere. In addition, information about ongoing assessments is published on official boards, which is a standard means of informing the public in cases where a larger number of people may be affected by a project. In case of a transboundary assessment, the same means are chosen for notifying the public about the ongoing assessment, with the only difference that their effectiveness in practice also depends on the cooperation of the public administration authorities in the affected countries, which are responsible for publishing relevant information on the territory of the affected state according to their national legal regulations, in which the Czech Republic cannot interfere in any way.</p> <p>Considering the lingering doubts about the necessity of adopting additional measures for the purpose of notifying the public about the ongoing EIA processes, we would like to propose a technical solution that would facilitate the foreign public's access to information about all ongoing transboundary assessments for which the Czech Republic is the country of origin, and at the same time, that would not excessively burden the entities responsible for carrying out the assessment procedure. This solution would consist in the introduction of a new special tab 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. Operation of the CENIA system is currently also available in English. Documents for which it is necessary to provide a translation are entered into the CENIA system both in Czech and in the appropriate foreign language version (English, German, Polish). A periodic check by the public for new information on this single web link would therefore ensure that all entities interested in this type of information could be sure that all the current information about ongoing transboundary assessments would be available to them at any time, even without checking the official boards, websites of various public administration bodies or other sources of information.</p>

Outline of the steps necessary to implement the proposed measures	<p>Technical measure – special tab in the CENIA information system:</p> <ul style="list-style-type: none"> <li>- Implementation no later than until 1 October 2023, probably earlier.</li> </ul> <p>In the event that the Committee would not consider this measure to be sufficient to fulfil the above recommendation, we would like to ask for advice on how, in its opinion, the Czech Republic could achieve the fulfilment of the recommendation. At the same time, however, we would like to ask the Committee to take into account the fact that the Ministry of the Environment cannot interfere with the national procedures of the affected states, cannot demand differences from their customs and therefore has to rely on the cooperation of the relevant public administration bodies from the affected states in the matter of publishing information on the territory of another states, which it cannot control in any way. It also does not have the capacity to individually notify all foreign entities that may be affected by the project (which, after all, would not even be desirable, since the Ministry would most likely never succeed in notifying them all, and at the same time it would establish discrimination against citizens of the Czech Republic who are normally notified by the above-mentioned means). We believe that the public should make at least a basic effort (i.e. monitoring of official boards or of the EIA information system) if they are interested in information about projects that may affect them.</p>
Actors involved	Ministry of the Environment (Legislative Department as the National Focal Point to the Aarhus Convention + Department of Environmental Impact Assessment and Integrated Prevention).
Final date by when implementation of recommendation will be completed	1 October 2023.

<p><b>Recommendation: Para. 2 (b) (ii) a of decision VII/8e</b></p> <p><b>(Please, note that the proposed measures relating to this recommendation are the same as in relation to recommendation Para. 2 (b) (i) of decision VII/8e)</b></p>	<p>In paragraph 2 (b) (ii) a of decision VII/8e, the Meeting of the Parties requests the Party concerned to:</p> <p>(b) Demonstrate that it provides:</p> <p>(ii) The necessary arrangements to ensure that:</p> <p>a. 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;</p>
<p>Proposed measures to fulfil recommendation</p>	<p>As follows from the previous communication with the Committee, the Czech Republic is convinced that its legal framework ensures effective notification of the public concerned about ongoing environmental impact assessments, which applies also to the public in other affected countries. Above all, the Czech Republic has a high-quality information system in which it is possible to find all information about ongoing assessments, including all related documents, at any time and from anywhere. In addition, information about ongoing assessments is published on official boards, which is a standard means of informing the public in cases where a larger number of people may be affected by a project. In case of a transboundary assessment, the same means are chosen for notifying the public about the ongoing assessment, with the only difference that their effectiveness in practice also depends on the cooperation of the public administration authorities in the affected countries, which are responsible for publishing relevant information on the territory of the affected state according to their national legal regulations, in which the Czech Republic cannot interfere in any way.</p> <p>Considering the lingering doubts about the necessity of adopting additional measures for the purpose of notifying the public about the ongoing EIA processes, we would like to propose a technical solution that would facilitate the foreign public's access to information about all ongoing transboundary assessments for which the Czech Republic is the country of origin, and at the same time, that would not excessively burden the entities responsible for carrying out the assessment procedure. This solution would consist in the introduction of a new special tab 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. Operation of the CENIA system is currently also available in English. Documents for which it is necessary to provide a translation are entered into the CENIA system both in Czech and in the appropriate foreign language version (English, German, Polish). A periodic check by the public for new information on this single web link would therefore ensure that all entities interested in this type of information could be sure that all the current information about ongoing transboundary assessments would be available to them at any time, even without checking the official boards, websites of various public administration bodies or other sources of information.</p>



Outline of the steps necessary to implement the proposed measures	<p>Technical measure – special tab in the CENIA information system:</p> <ul style="list-style-type: none"> <li>- Implementation no later than until 1 October 2023, probably earlier.</li> </ul> <p>In the event that the Committee would not consider this measure to be sufficient to fulfil the above recommendation, we would like to ask for advice on how, in its opinion, the Czech Republic could achieve the fulfilment of the recommendation. At the same time, however, we would like to ask the Committee to take into account the fact that the Ministry of the Environment cannot interfere with the national procedures of the affected states, cannot demand differences from their customs and therefore has to rely on the cooperation of the relevant public administration bodies from the affected states in the matter of publishing information on the territory of another states, which it cannot control in any way. It also does not have the capacity to individually notify all foreign entities that may be affected by the project (which, after all, would not even be desirable, since the Ministry would most likely never succeed in notifying them all, and at the same time it would establish discrimination against citizens of the Czech Republic who are normally notified by the above-mentioned means). We believe that the public should make at least a basic effort (i.e. monitoring of official boards or of the EIA information system) if they are interested in information about projects that may affect them.</p>
Actors involved	Ministry of the Environment (Legislative Department as the National Focal Point to the Aarhus Convention + Department of Environmental Impact Assessment and Integrated Prevention).
Final date by when implementation of recommendation will be completed	1 October 2023.

<p><b>Recommendation:</b> <b>Para. 2 (b)(ii) b of decision VII/8e</b></p>	<p>In paragraph 2 (b) (ii) b of decision VII/8e, the Meeting of the Parties requests the Party concerned to:</p> <p>(b) Demonstrate that it provides:</p> <p>(ii) The necessary arrangements to ensure that:</p> <p>b. 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 Temelín nuclear power plant;</p>
<p>Proposed measures to fulfil recommendation</p>	<p>According to the information that is currently available to us, the promoter of the project addressed in this recommendation has not yet completed the work on the documentation for the zoning permit procedure. The project has therefore not yet been permitted in any of the subsequent proceedings (zoning permit procedure, building permit procedure). Further steps within the project and permitting phases are fully within the competence of the project promoter.</p> <p>The public participation in the subsequent proceedings is ensured by the current legislation of the Czech Republic. The zoning permit procedure and the building permit procedure are both considered to be subsequent proceedings and the NGOs (both Czech and foreign) that meet the conditions laid down in Act No. 100/2001 Coll., on the Environmental Impact Assessment, can therefore participate in these proceedings with all the rights of a party to the proceeding and file an appeal and, if necessary, an administrative action against the decision that has been issued in the proceeding.</p> <p>At the same time, the Ministry of Environment prepared a draft of a new provision § 9f of the Act on the Environmental Impact Assessment, which is relevant in this context. This provision should regulate the mechanism of public participation in subsequent proceedings in more detail (see the <b>Annex</b> for more information). The proposed legislation is based on the practice that is currently being applied. The draft should be approved by the government in the coming months (it is linked to a draft of a more complex legislation in the field of environmental law, namely the so-called Act on a Single Environmental Permit).</p>
<p>Outline of the steps necessary to implement the proposed measures</p>	<p>Legislative amendment (Section 9f of the Act on the Environmental Impact Assessment):</p> <ul style="list-style-type: none"> <li>- The proposal is prepared, in the coming months the government will decide on its submission.</li> <li>- The next steps of the legislative process will follow: approval in the Chamber of Deputies, Senate, signature of the President.</li> <li>- It is currently expected that the law will be effective on 1 July 2023.</li> </ul>
<p>Actors involved</p>	<p>Ministry of the Environment (Legislative Department as the National Focal Point to the Aarhus Convention + Department of Environmental Impact Assessment and Integrated Prevention).</p>
<p>Final date by when implementation of recommendation will be completed</p>	<p>1 October 2023.</p>

<p><b>Recommendation: Para. 6 (a) of decision VII/8e</b></p>	<p>In paragraph 6 (a) of decision VII/8e, the Meeting of the Parties recommends that the Party concerned take the necessary legislative, regulatory, administrative or other measures to ensure that:</p> <p>(a) When the operating conditions of a permit issued under the 1997 or 2016 Atomic Act, or any legislation that supersedes the 2016 Atomic Act, are reconsidered within the meaning of article 6 (10) of the Convention, the provisions of article 6 (2)–(9) will be applied mutatis mutandis and where appropriate, bearing in mind the objectives of the Convention. This includes, but is not limited to, the reconsideration of the duration of the permit or the 10-year periodic safety reviews;</p>
<p>Proposed measures to fulfil recommendation</p>	<p>In relation to this recommendation, we would like to draw attention to the legislative amendments that are directly related to the issues addressed by it and that came into effect after the decision on the (re)authorization of the operation of the Dukovany NPP, i.e. they could not yet manifest themselves in relation to the case resolved before the Aarhus Convention Compliance Committee, or could be only partly reflected in relation to the permits for units 2 to 4 of the NPP. The amendments are related to Section 22 (1), (2) and (3) and Section 204 of the Atomic Act, as well as to the regulation contained in the new Decree on Requirements for Safety Assessment According to the Atomic Act. In the case of proceedings pursuant to Section 22 (1), (2) and (3) and Section 204 of the Atomic Act, public participation is allowed – see the <b>Annex</b> for more information.</p> <p>We believe that the amendments adopted after 2017 essentially meet the Committee's recommendations derived from Article 6 (10) of the Aarhus Convention, as they enable public participation in precisely those procedures that are intended for reconsiderations or updates of operating conditions in the sense of Article 6 (10) of the Aarhus Convention. The amendments follow a longer-term trend of legislative development in the field of atomic law, which led to a change in the practice of issuing (repeated) permits for operation of nuclear facilities – the permits were issued for an indefinite period and further changes in operating conditions must therefore be addressed through other instruments. As we stated in our previous communication with the Committee, the periodic safety review is not a procedure in which operating conditions can be reconsidered or updated. However, it can be a basis for some of the above procedures, in which the reconsideration or update of the operating conditions could take place. See the <b>Annex</b> for a more detailed explanation.</p> <p>In addition to the above, the competent authorities are currently investigating other possibilities of involving the public concerned in some proceedings related to nuclear facilities and with a more general overlap, without jeopardizing security interests in particular.</p> <p>We are aware that the public may not currently be fully aware of their rights and options arising from the Atomic Act in the currently effective version. Therefore, we would like to propose additional measures (in addition to the above-mentioned legislative measures that have already been adopted and are effective), in which we would analyse the level of public awareness of these matters and, if necessary, take additional measures (information campaigns, workshops, etc.) to increase awareness.</p>

Outline of the steps necessary to implement the proposed measures	<p>Meeting of representatives of the Ministry of Environment with representatives of the State Office for Nuclear Safety on the question of other options for the involvement of the public concerned in some proceedings with a more general overlap:</p> <ul style="list-style-type: none"> <li>- The meeting is planned for August or September 2022, after which we will be able to provide further information.</li> </ul> <p>Informing the public about the possibilities of participation in proceedings under the Atomic Act:</p> <ul style="list-style-type: none"> <li>- Analysis of public awareness in the above matters.</li> <li>- If necessary, taking additional measures to increase the level of awareness.</li> </ul>
Actors involved	Ministry of the Environment (Legislative Department as the National Focal Point to the Aarhus Convention + Department of Environmental Impact Assessment and Integrated Prevention), State Office for Nuclear Safety.
Final date by when implementation of recommendation will be completed	1 October 2024.

<b>Recommendation: Para. 6 (b) of decision VII/8e</b>	<p>In paragraph 6 (b) of decision VII/8e, the Meeting of the Parties recommends that the Party concerned take the necessary legislative, regulatory, administrative or other measures to ensure that:</p> <p style="padding-left: 40px;">(b) Members of the public concerned meeting the requirements of article 9 (2), including environmental non-governmental organizations, have access to a review procedure to challenge the substantive or procedural legality of decisions, acts and omissions under the 1997 or 2016 Atomic Act, or any subsequent legislation, that are subject to the provisions of article 6 of the Convention;</p>
Proposed measures to fulfil recommendation	<p>As already stated in the previous communication with the Committee, according to Czech law and its interpretation by the Czech courts, the public concerned has the possibility to go to court and demand a review of the legality of the decision taken. This possibility is given both in cases where the public concerned is a participant to the proceeding before an administrative body (participation in the administrative proceeding establishes the right to appeal and to file an action), and in cases where the public concerned is not a participant to this proceeding. If the public concerned is not a party to the proceeding before an administrative body, the condition for the standing to file an action is the fact that the adopted decision affects the “legal sphere” of the plaintiff, i.e. in other words, that the plaintiff is public concerned. If the decision does not interfere with the “legal sphere” of the plaintiff, then the plaintiff is not public concerned, i.e. Article 9 (2) of the Aarhus Convention does not apply (nor does this recommendation of the Committee). The question of whether the “legal sphere” of an environmental NGO can be affected in a given case, and thus whether it will be granted standing to file an action, must be resolved in a court proceeding. Czech courts are taking into account the requirements of the Aarhus Convention when interpreting Czech law. The requirements of this Convention will therefore be taken into account when assessing the question of standing of environmental NGOs.</p> <p>For the above reasons, we do not believe that this recommendation requires further action. Instead, we would like to submit to the Committee a wider selection of the case law of the Czech courts (i.e. beyond the judgment of the Supreme Administrative Court of 18 April 2014, File No. 4 As 157/2013 – 33, which was repeatedly referred to in the proceedings before the Committee), which refers to standing to file an action in cases where the plaintiff is not a party to the proceeding before an administrative authority, and also to the interpretation of Czech law in accordance with the Aarhus Convention.</p>
Outline of the steps necessary to implement the proposed measures	Provision of relevant case law: <ul style="list-style-type: none"> <li>- Search for relevant case law and translation of key extracts into English.</li> <li>- Submission to the Aarhus Convention Compliance Committee by 1 December 2022.</li> </ul>
Actors involved	Ministry of the Environment (Legislative Department as the National Focal Point to the Aarhus Convention + Department of Environmental Impact Assessment and Integrated Prevention), State Office for Nuclear Safety.
Final date by when implementation of recommendation will be completed	1 October 2024.

**Annex:**

**Regarding recommendation para. 2 (a) (i) of decision VII/8e:**

1. As regards access to justice, the Czech Republic can state that even under the current legislation there is an observable tendency in the case law of the courts in the sense that the state is obliged to effectively protect individuals against the consequences of excessive noise pollution, as already declared by the European Court of Human Rights in the Deés case against Hungary. Thus (as shown e.g. in the case decided on 2 May 2019 by the Supreme Administrative Court under File No. 7 As 308/2018 – 31) the access to justice is strengthened even for entities which, according to the still valid and effective law, are not party to the proceedings on noise exemptions in the first instance, but considering the degree of interference with the sphere of their rights, they are directly affected by such a decision (e.g. owners of surrounding land, buildings, etc.).

Key extracts from the judgment of the Supreme Administrative Court of 2 May 2019, File No. 7 As 308/2018 – 31:

[13] Unlike § 65 (2) of the Administrative Procedure Code, § 65 (1) does not make the possibility to file an action conditional on the plaintiff's prior participation in the administrative procedure. [...]

[14] Even the fact that the plaintiff did not challenge the decision on the noise exemption by appeal does not, according to the established case law of the Supreme Administrative Court, make it impossible to hear the case in substance. [...]

[16] [...] It follows from the established case law of the Supreme Administrative Court that standing to file actions in the administrative justice should not be linked to the existence of precisely specified public subjective material rights of the plaintiff, but to the alleged interference with his legal sphere.

[18] In the action, the plaintiff claimed that the decision in question (the noise exception) interferes with his legal sphere. *Inter alia*, he stated that he and his wife owned land No. X located in the cadastral area of B., which included the family house No. X, which is located in close proximity to road No. II/602, i.e. the road for which a noise exemption has been granted. The plaintiff's property (in which he also lives) is covered by the part of the noise exception entitling the road administrator to exceed the hygienic noise limits, which clearly affects the plaintiff's legal sphere. [...]

[64] At the same time, the Supreme Administrative Court is fully aware of the difficulty of the complainant's position when granting a noise exemption, and of the complexity of issuing such a decision. It is also aware of the financial demands of noise control measures, organizational and technical context associated with the implementation of such measures, etc. However, the law is drafted as described above. [...] The Supreme

Administrative Court is also aware of the consequences of the above-mentioned case law, including that which allows for substantive review of cases brought by persons who were not parties to administrative proceedings. However, this case law is well-established, supported by the findings of the Enlarged Chamber of this court and has been delivered in cases having a similar basis to the present case [...]. [...]

2. The Ministry of Health initiated an amendment to Section 31 (1) of Act No. 258/2000 Coll., on the Protection of Public Health, which, after the amendment, should read as follows:

### § 31

#### **[Operation of some sources of noise and vibration]**

(1) If, during the use or operation of an existing source of noise or vibration, with the exception of noise from air traffic, for serious reasons it is not possible to ensure that the hygienic limits according to § 30 (1) are not exceeded, a person may apply to the competent public health protection authority for the permit of a milder hygienic limit than which is set in the implementing legislation. In the process of issuing the permit, the public health protection authority will in particular assess whether the person has documented that noise or vibration will be reduced to a reasonably achievable level. A reasonably achievable level is defined as the ratio between the costs of noise or vibration control measures and their contribution to reducing the harmful effects of noise or vibration, which is also determined with regard to the number of natural persons exposed to excessive noise or vibration. [...] The permit of a milder hygiene limit is registered electronically through the information system of the Ministry of Health.

(2) [...]

It follows from the last sentence of the proposal that the Ministry of Health will register in electronic form all exceptions to the hygienic noise limit. This registration will take place through the information system “Register of general and communal hygiene”, which is already in operation. Due to the fact that this register also contains personal and other sensitive data concerning the entire agenda of general and communal hygiene, it is intended to make the issued decisions to grant noise exceptions publicly available through an interactive map application, from which everybody would obtain the following information:

1. the section (stationing) of the road for which the exemption is granted,
2. the increased hygienic limit for which the exemption is granted,
3. validity (from-to) of the exemption.

Until now, the public has been receiving this information mainly on the basis of requests for information pursuant to the Act on Free Access to Information. The proposal therefore significantly simplifies the way in which the public will be informed, widely increasing the extend of information provided to the level of the entire Czech Republic. The simple availability of information on noise exceptions is a basic precondition for the exercise of subsequent public rights, including access to justice.

**Regarding recommendation para. 2 (b)(ii) b) of decision VII/8e:**

**§ 9f**

**“Transboundary subsequent proceedings”**

(1) If the subject of a subsequent proceeding is a project subject to an transboundary assessment pursuant to § 13 as a whole, the administrative authority responsible for conducting the subsequent proceeding shall, within 15 days of the commencement of the procedure, inform the affected country of the possibility for its public, the public concerned and the territorial self-governing units concerned to exercise the rights referred to in § 9c (1) to (3) in the subsequent proceeding; the right pursuant to Section 9c (1) applies also to the affected authorities of the affected country. In the event that the affected country does not notify the administrative authority responsible for conducting the subsequent proceeding in writing that it is not interested in exercising the rights of its subjects and administrative authorities referred to in the first sentence, the administrative authority responsible for conducting the subsequent proceeding shall send it the information referred to in § 9b (1) and § 9b (4) a) and the relevant documentation for the subsequent proceeding. At the same time, it shall invite it to publish the information and project documentation referred to in the preceding sentence in its territory in a manner consistent with its national law for the purpose of notifying the entities and administrative authorities referred to in the first sentence about that information and documentation, and it shall ask it to provide information on how and when that notification was made. If the administrative authority responsible for conducting the subsequent proceeding does not receive the information referred to in the preceding sentence within 2 months of the date on which the affected country was invited to provide it, it shall be deemed not to be interested in exercising the rights of its entities and administrative authorities referred to in the first sentence.

(2) The deadlines for the exercise of the rights of the entities and administrative authorities referred to in the first sentence of paragraph (1) arising from § 9c (1) to (3) shall begin to run at the moment of notification of the information referred to in § 9b (1) and § 9b (4) (a) and the relevant documentation for the subsequent proceedings in the territory of the affected country within the meaning of the third sentence of paragraph (1).

(3) If the subject of the subsequent proceeding is a project subject to transboundary assessment pursuant to § 13 as a whole, the administrative authority responsible for conducting the subsequent proceeding shall, within 15 days of the issuance of a decision in this procedure, inform the affected country of the possibility for its public concerned to exercise the rights referred to in § 9c (4) in respect of this decision. If the affected country does not notify the administrative authority responsible for the subsequent proceeding in writing that it is not interested in exercising the rights of its entities referred to in the first sentence, the administrative authority responsible for the subsequent proceeding shall send it the decision issued in that procedure. At the same time, it shall invite it to publish it in its territory in a manner consistent with its national law for the purpose of notifying the entities referred to in the first sentence about the decision and it shall ask it to provide information on how and when that notification was made. If the administrative authority responsible for conducting the subsequent proceeding does not receive the information referred to in the preceding sentence within 2 months of the date on which the affected country was invited to send it, it shall be deemed not to be interested in exercising the rights of its entities referred to in the first sentence.

(4) The deadlines for the exercise of the rights of the entities referred to in the first sentence of paragraph (3) arising from § 9c (4) shall begin to run at the moment of notification of the decision in the territory of the affected country within the meaning of the third sentence of paragraph (3).

(5) If only a part or stage of a project subject to transboundary assessment pursuant to § 13 is the subject of a subsequent proceeding and this part or stage cannot in itself have a significant effect on the environment in the territory of the affected country, the provisions of paragraphs (1) to (4) shall not apply. In the event of doubt by the



applicant for a decision in the subsequent proceeding or by the administrative authority competent to conduct the subsequent proceeding whether a part or stage of a project within the meaning of the first sentence may have a significant transboundary environmental impact on the territory of the affected country, the competent authority shall issue a statement within 15 days of the date on which the request for a statement is received.

(6) The administrative authority responsible for conducting the subsequent proceeding shall proceed in the acts referred to in paragraphs (1) to (5) in cooperation with the Ministry.

### **Regarding recommendation para. 6 (a) of decision VII/8e**

1. § 22 (1), (2) and (3) of the Atomic Act introduces a new procedure to issue a new permit replacing the former decision, *inter alia* in cases if there has been a material change in the facts on the basis of which the original permit was issued, or if there has been a change in the performance of the originally permitted activity, which is relevant from the point of view of nuclear safety, radiation protection, technical safety, non-proliferation of nuclear weapons, monitoring the radiation situation, radiation extraordinary event management or security (i.e. also in cases where the operating conditions of the activity shall be reconsidered or updated by the competent authority in the sense of Article 6 (10) of the Aarhus Convention). The question of who is a party to this procedure is assessed in the new proceeding according to the legal state and factual circumstances at the time of the new proceeding. Participation is determined under the general legal regulation in § 27 of the Administrative Code, according to which the persons concerned are also participants if their rights or obligations may be directly affected by the decision.

2. § 204 of the Atomic Act regulates the possibility of the State Office for Nuclear Safety to impose by decision measures to remedy any identified deficiencies in the activities of a person who performs activities related to the use of nuclear energy or activities in exposure situations. In justified cases, decision on remedial measures may lead to reconsideration or update of operating conditions. Administrative proceedings on the imposition of remedial measures, including the question of participation, are governed by general legal regulation – in the case of participation, it is the regulation contained in § 27 of the Administrative Code, according to which the persons concerned are also participants, if their rights or obligations may be directly affected by the decision.

3. The Decree on Requirements for Safety Assessment according to the Atomic Act contains in § 13 to 22 new legal regulation regarding the performance of Periodic Safety Reviews. A Periodic Safety Review is a systematic subtype of the safety assessment, performed by the holder of the operation permit in regular cycles. As such, it does not constitute reconsideration or update of the operating conditions of the permit, since it focuses exclusively on evaluation of the level of safety and compliance with legal requirements (it is an internal review and assessment). Neither the Periodic Safety Review nor its results have any direct effect on the permitted activity or on the rights and obligations of persons. No formal proceedings are held within it, no decision is issued and no state administration body is directly involved in it. Only the results of the Periodic Safety Review are provided to the State Office for Nuclear Safety, and if any deficiency is revealed by it regarding the operation of the facility, the State Office for Nuclear Safety is going to initiate some of the above procedures. Any outputs of the Periodic Safety Review, which are used

as a basis for reconsideration or update the operating conditions, will be reflected in the relevant administrative procedure. In this procedure, the parties to the procedure (see above) will be able to comment on them.

Although the Periodic Safety Review lacks the nature of reconsideration or update of the operating conditions and its nature factually excludes direct participation of third parties (e.g. due to its extensive and long-term performance with high expertise demands), the general public is given access to the related information. The State Office for Nuclear Safety provides information on its activities, including on its review and assessment activities. Information about the Periodic Safety Review can be obtained on the basis of Act No. 106/1999 Coll., on Free Access to Information, to the extent not compromising rights of third parties (in particular, information that is subject to intellectual property rights or trade secrets is excluded).