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 consultation with other relevant state administration bodies. Due to reasons on the part of the Ministry of the Environment, the draft could not be prepared sufficiently in advance so that the public could be consulted before sending the final plan of action to the Aarhus Convention Compliance Committee on 1 July 2022. Therefore, at least the draft plan of action was sent to the Committee on 1 July 2022. This draft (both in Czech and English language version) was then sent by e-mail to the communicants and observers in the individual cases and published on the website of the Ministry of the Environment with a call for comments until 1 August 2022 (this deadline was subsequently extended to 8 August 2022). The Ministry finalised the plan of action based on the comments received. A more detailed response to the comments is provided in **Annex 2**. The final plan of action (both in Czech and English language version) will be published on the website of the Ministry of the Environment and the communicants and observers will be notified directly by e-mail.

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

Due 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.

C. Detailed plan of action	
Recommendation: **Para. 2 (a) (i) of decision VII/8e**	In paragraph 2 (a) (i) of decision VII/8e, the Meeting of the Parties requests the Party concerned to: (a) Take the necessary legislative, regulatory and administrative measures to ensure that: (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;
Proposed measures to fulfil recommendation	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 **Annex 1**. 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. Any member of the public also has the possibility to initiate a review procedure pursuant to § 94 et seq. Act No. 500/2004 Coll., Code of Administrative Procedure (hereinafter only "**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 opened, this decision 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 abolished in the review procedure. In addition to the above, we would like to draw the attention to a proposal for a legislative amendment of § 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 **Annex 1** for more information.
Outline of the steps necessary to implement the proposed measures	Legislative amendment (§ 31 (1) of the Public Health Protection Act): - The proposal is prepared, in the coming months the government will decide on its submission. - The next steps of the legislative process will follow: approval in the Chamber of Deputies, Senate, signature of the President. - It is currently expected that the law will be effective in mid-2023. Information on noise exemptions that have been granted should be published on the new online platform in the first half of 2024.

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	The main measures aimed at meeting the recommendation are already effective. An additional measure (publishing of information on noise exemptions that have been granted in a special map application) will be implemented in the first half of 2024.

Recommendation: **Para. 2 (a) (ii) of decision VII/8e**	In paragraph 2 (a) (ii) of decision VII/8e, the Meeting of the Parties requests the Party concerned to: (a) Take the necessary legislative, regulatory and administrative measures to ensure that: (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;
Proposed measures to fulfil recommendation	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. As a concrete measure to ensure the fulfilment of the Committee's recommendation in the future, we propose the option of incorporating this recommendation into an internal directive and into a methodological guidance that would explicitly address this issue. At the level of the Ministry of the Environment, we have started the preparation of an internal directive that will address this issue in relation to plans and programmes relating to the environment that are being prepared directly under the responsibility of this Ministry. In relation to plans and programmes that are being prepared outside of 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: • Methodology for the preparation of public strategies (Ministry of Regional Development) • Methodology for involving the public in the preparation of government documents (Ministry of the Interior) • Manual for involving the public in the preparation of government documents (Ministry of the Interior) • 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) 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.

Outline of the steps necessary to implement the proposed measures	Internal directive of the Ministry of the Environment: - Preparation of the text of the internal directive until the end of 2022. - Inter-ministerial comment procedure and approval of the directive by 1 October 2023 at the latest. Amendment of a suitable methodological guidance with a wider scope: - Identification of the methodological guidelines that are most suitable for the incorporation of the recommendations. - Discussion with the relevant state administration bodies (until the end of 2022). - Addition of the requirements arising from the Aarhus Convention to the selected methodological guidelines (as soon as possible[1]).
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 (internal directive of the Ministry of the Environment) / as soon as possible (methodological guidance with a wider scope).

[1] In case of the Methodology for the participation of non-state non-profit organizations in advisory and working bodies and in the creation of state administration documents, this possibility will only arise following the evaluation of its pilot implementation, i.e. in 2025.

Recommendation: **Para. 2 (b) (i) of decision VII/8e** **(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)**	In paragraph 2 (b) (i) of decision VII/8e, the Meeting of the Parties requests the Party concerned to: (b) Demonstrate that it provides: (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;
Proposed measures to fulfil recommendation	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 operates 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.[2] In order to increase the efficiency of notifying the foreign 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 which would, at the same time, avoid excessive burden on the entities responsible for carrying out the assessment procedure. This solution would consist 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. 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. 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 it is interested in information about projects that may affect them. We therefore consider this measure sufficient to fulfil the above recommendation. In the event that the Committee would not consider this measure to be sufficient, we would like to ask for advice on how, in its opinion, the Czech Republic could achieve the fulfilment of the recommendation.

[2] 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

Outline of the steps necessary to implement the proposed measures	Technical measure – a new search filter in the CENIA information system: - Implementation no later than until 1 October 2023, probably earlier.
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, probably earlier.

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).

Recommendation: **Para. 2 (b) (ii) a of decision VII/8e** **(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)**	In paragraph 2 (b) (ii) a of decision VII/8e, the Meeting of the Parties requests the Party concerned to: (b) Demonstrate that it provides: (ii) The necessary arrangements to ensure that: 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;
Proposed measures to fulfil recommendation	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 operates 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.[3] In order to increase the efficiency of notifying the foreign 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 which would, at the same time, avoid excessive burden on the entities responsible for carrying out the assessment procedure. This solution would consist 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. 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. 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 it is interested in information about projects that may affect them. We therefore consider this measure sufficient to fulfil the above recommendation. In the event that the Committee would not consider this measure to be sufficient, we would like to ask for advice on how, in its opinion, the Czech Republic could achieve the fulfilment of the recommendation.

[3] 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

Outline of the steps necessary to implement the proposed measures	Technical measure – a new search filter in the CENIA information system: - Implementation no later than until 1 October 2023, probably earlier.
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, probably earlier.

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).

Recommendation: **Para. 2 (b)(ii) b of decision VII/8e**	In paragraph 2 (b) (ii) b of decision VII/8e, the Meeting of the Parties requests the Party concerned to: (b) Demonstrate that it provides: (ii) The necessary arrangements to ensure that: 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;
Proposed measures to fulfil recommendation	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. 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. 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 **Annex 1** for more information). The proposed legislation is based on the practice that is currently already 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).
Outline of the steps necessary to implement the proposed measures	Legislative amendment (§ 9f of the Act on the Environmental Impact Assessment): - The proposal is prepared, in the coming months the government will decide on its submission. - The next steps of the legislative process will follow: approval in the Chamber of Deputies, Senate, signature of the President. - It is currently expected that the law will be effective on 1 July 2023.
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 July 2023.

Recommendation: **Para. 6 (a) of decision VII/8e**	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: (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;
Proposed measures to fulfil recommendation	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 § 22 (1), (2) and (3) and § 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 § 22 (1), (2) and (3) and § 204 of the Atomic Act, public participation is allowed – see the **Annex 1** for more information. 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 **Annex 1** for a more detailed explanation. We are aware that the public may not currently be fully aware of their rights and options arising from the Atomic Act in its currently applicable 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.
Outline of the steps necessary to implement the proposed measures	Informing the public about the possibilities of participation in proceedings under the Atomic Act: - Analysis of public awareness in the above matters. - If necessary, taking additional measures to increase the level of awareness.
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	We consider the recommendation as fulfilled. The additional measure will be implemented by 1 October 2024.

Recommendation: **Para. 6 (b) of decision VII/8e**	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: (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;
Proposed measures to fulfil recommendation	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 request 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 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. 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.
Outline of the steps necessary to implement the proposed measures	Provision of relevant case law: - Search for relevant case law and translation of key extracts into English. - Submission to the Aarhus Convention Compliance Committee by 1 December 2022.
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	We consider the recommendation as fulfilled. The case law will be sent by 1 December 2022.

Annex 1: Further information

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 § 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 § 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.

For the related provisions of the law in the Czech and English versions see: https://portal.cenia.cz/eiasea/dokumenty/eia_legislativa?lang=en.

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.

The provisions of § 22 (1), (2) and (3) of the Atomic Act read as follows:

"**§ 22**

New decision on the issuance of a permit, cancellation and termination of a permit

(1) The Office will initiate a new procedure and issue a new decision on the issuance of a permit

a) based on the request of the permit holder,

b) if there has been a substantial change in the facts on the basis of which the original permit was issued, or

c) if there has been a change in the performance of the originally permitted activity that is essential from the point of view of nuclear safety, radiation protection, technical safety, non-proliferation of nuclear weapons, monitoring the radiation situation, handling a radiation emergency or security.

(2) The new decision issued pursuant to paragraph 1 cancels the original decision.

(3) In the proceedings according to paragraph 1 letter b) and c) the party to the proceedings is obliged to submit to the Office, upon request, the documents required for the

issuance of the new decision, which demonstrate a change in the facts compared to the state under which the original decision was issued, and the fulfilment of the conditions stipulated by law.

[…]"

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.

The provision of § 204 of the Atomic Act reads as follows:

"**§ 204**

Remedial measures

(1) If the Office discovers a deficiency in the activities of a person who performs activities related to the use of nuclear energy or activities within the framework of exposure situations, it may, depending on the nature of the identified deficiency, impose by decision on the person measures to remedy the identified deficiency and set a deadline for the implementation of the remedial measure.

(2) The person, to whom a remedial measure has been imposed, is obliged to immediately notify the Office of the method of implementation of the imposed measure and of its fulfilment.

(3) An appeal against a decision to impose remedial measures does not have a suspensory effect."

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).

Annex 2: Response to the comments received

1. On the public consultation in general

The communicants and observers in the individual cases were sent an e-mail with a draft plan of action in Czech and English on 4 July 2022. This e-mail contained a call for comments until 1 August 2022, i.e. a consultation period of 4 weeks was provided. Since the text of the draft was published on the website of the Ministry of the Environment only in the following days, the deadline for the submission of comments was later extended until 8 August 2022 (especially in relation to those members of public who were not notified by e-mail). The Ministry of the Environment received comments from representatives of Zelený kruh and joint comments from representatives of Ökobüro – Alliance of the Austrian Environmental Movement, GLOBAL 2000 and the Aarhus Convention Initiative, which were also supported by Ms. Brigitte Artmann.[4]

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

Request for amendment of § 31 (1) of the Act on the Protection of Public Health

In view of an advanced stage of the legislative procedure regarding the proposal in question, it was not possible to comply with the request for amendment of the provision of § 31 (1) of the Act on the Protection of Public Health. Regardless, it is expected that the map application, in which it will be possible to find information about noise exceptions that have been granted, will be operational and made available to the public approximately in the first half of 2024. This should fulfil the essence of this additional measure. Information on the noise exceptions will be publicly available in a way similar to how it is now, for example, in case of bathing waters (www.koupacivody.cz). Data on the exceptions will therefore be clearly presented to the public and the public will have free access to them.

3. Regarding recommendation para. 2 (a) (ii) of decision VII/8e

On the proposed text in general

We agree with the comment submitted by Zelený kruh stating that the current practice is not entirely satisfactory. We are particularly aware that in case of plans and programs that are not subject to SEA, requirements of the Aarhus Convention may not be fulfilled, as these requirements are currently not explicitly and fully reflected in the relevant methodological guidelines. The second part of the first sentence was removed from the

[4] Information on the public consultation is currently available here: https://www.mzp.cz/cz/dokumenty_aarhuska_umluva (ČJ) and here https://www.mzp.cz/en/convention_denmark_1998 (ENG). In September 2022, the website of the Ministry of the Environment regarding the Aarhus Convention was updated – original information about the plan was published here: https://www.mzp.cz/cz/umluva_pristup_informace.

proposed text in response to the comment.

As far as the Decree on Permissible Pollution Levels is concerned, it is an implementing legislation, not a plan or program within the meaning of Article 7 of the Aarhus Convention. Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments is governed by Article 8 of the Aarhus Convention, which is not the subject of this case.

Sectoral and cross-sectoral approach

In the plan of action, we propose a combination of both approaches consisting of (1) adopting an internal directive at the level of the Ministry of the Environment, and (2) modifying appropriate methodological guidelines with a wider scope. Methodological guidelines, which were preliminarily identified, fall under the responsibility of various state administration bodies, with which we are going to cooperate in the course of implementation of the proposed measure. The text of the plan of action has been clarified in this respect.

Commenting on proposals in the eKLEP application and evaluation of public involvement

The comment concerning the issue of commenting on legislative proposals and of related evaluation of public involvement goes beyond the scope of this case. However, we take note of the comment. A similar discussion has already begun in connection with the formulation of measures in the Implementation Plan of the Czech Republic 2030 Strategic Framework for the years 2022-2025. According to its measure No. 27.1.b, within the "test period" from March 2023 to December 2024, it should be possible to involve Zelený kruh (as a selected umbrella NGO) in commenting within the interdepartmental comment procedure (for the consultation documents of laws, draft laws, government decrees and essential strategic documents). The test will be evaluated in 2025. The Implementation Plan was approved by the Government on 14 September 2022.

In connection with this, attention may be drawn also to measure No. 27.1.a of the Implementation Plan, which foresees the establishment of a unified place for information on consultations with a nationwide reach (i.e. a website should be established where all the basic information about ongoing consultations and the opportunities for public to participate in policy-making at the national level should be collected).

Pilot phase of the implementation of the Participation Methodology

The Ministry of the Environment will be involved in the pilot phase of the implementation of the Methodology for the participation of non-state non-profit organizations in advisory and working bodies and in the creation of state administration documents. We will monitor the interactions between the application of this methodology and the requirements of the Aarhus Convention and, following this, we count on the possibility to propose modification of the methodology after the end of the pilot process so that explicit information about the requirements arising from Article 7

of the Aarhus Convention is reflected in it.

4. Regarding recommendations para. 2 (b) (i) and (ii) of decision VII/8e

Notifications in the CENIA system

The functionality of notifications in the CENIA system would certainly be useful, but unfortunately the current information system does not allow its implementation (the implementation of this functionality is not technically possible). However, we take note of the comment and we will try to take it into account if a new information system for SEA/EIA is developed in the future.

Publication of relevant documents in the CENIA system

Relevant documents are always published in the CENIA system immediately after their receipt and processing by the competent authority.

Subsequent proceedings

Under normal circumstances, building inspection (*kolaudace*) and proceedings under the Atomic Act are not subsequent proceedings in the sense of Act No. 100/2001 Coll., on Environmental Impact Assessment. Subsequent proceedings are especially procedures for the issuance of zoning permits and procedures for the issuance of building permits, in which the public can participate after the EIA process is completed. The full list of all subsequent proceedings can be found in § 3 letter g) of the Act on Environmental Impact Assessment.[5]

Notification about the initiation of the subsequent proceeding and publication of documents

Regarding the comment pursuing direct notification of the persons who submitted comments within the EIA process about the initiation of the subsequent proceeding, we believe that such an obligation does not arise from Article 6(2) of the Aarhus Convention. The public is informed about the initiation of the subsequent proceeding in the form of a public notice (publication on the official board), which is in accordance with the introductory part of this provision. At the same time, information about where the documentation for the subsequent proceeding can be consulted is also published. In the case of NPP Dukovany, the documentation for the subsequent proceeding was uploaded to a cloud storage and sent to the affected countries, which published this information in accordance with their own legal regulations. The publication of documents relevant in the subsequent proceedings in the CENIA system is currently not possible for technical and organizational reasons.

[5] The text of the law in Czech and English is available here: https://portal.cenia.cz/eiasea/dokumenty/eia_legislativa?lang=en.

In general, it is true that direct notification of persons who submitted comments within the EIA process about the initiation of the subsequent proceeding, as well as publication of all related documents on a unified online platform, would be useful, however, we are limited by technical deficiencies in the existing information systems and also by the requirements for the protection of personal data (GDPR). Nevertheless, we take note of both comments. If possible, we will try to take them into account in future in connection with the digitization in the field of construction law and/or in the preparation of a new information system for SEA/EIA.

5. Regarding recommendations para 6 (a) and (b) of decision VII/8e

Additional explanation about public participation in the proceedings

Retrospective participation of the public in the proceedings for the issuance of the operation permit of NPP Temelín and NPP Dukovany is not possible in accordance with the applicable law. These proceedings have already been concluded. All reactors of the Czech NPPs that are currently in operation are permitted to operate for an indefinite period of time. Proceedings for the issuance of an operation permit of a nuclear facility pursuant to § 9 para. 1 letter f) of the Atomic Act will therefore no longer take place in these cases. Whenever the factual need requires an update or reconsideration of the operating conditions of a NPP that is already in operation, the State Office for Nuclear Safety should commence one of the administrative procedures mentioned above in the text of the plan of action – proceeding for issuing a new decision on the original permit (§ 22), proceeding to cancel a permit (§ 22) or proceeding to impose remedial measures (§ 204). Depending on the specific circumstances of the given situation, these proceedings can be initiated either at the request of the operator or *ex officio*. In these proceedings, participation of the affected persons is permitted in accordance with the general legislation contained in § 27 of the Administrative Code. The Office must therefore identify potential participants and inform them of the initiation of proceeding and of their rights. In the event that a participant is omitted, the procedure according to § 28 of the Administrative Code shall be followed.

§ 27

(1) Parties to procedure (hereinafter referred to as a "party") shall be

a) in procedures regarding an application, applicants and other persons concerned to whom the decision of the administrative body necessarily applies due to common rights or obligations with the applicant;

b) in ex officio procedures, persons concerned whose right or obligation is to be established, changed or cancelled by the decision or in respect of whom the decision is to declare that they have or have not a right or obligation.

(2) Parties shall be also other persons concerned if their rights or obligations may be directly affected by the decision.

(3) Parties shall be also persons stipulated by a special law. Unless stipulated otherwise by a special law, they shall have the position of parties as referred to under paragraph

2, unless the decision is to establish, change or cancel a right or obligation of theirs or declare them as having or not having a right or obligation; in such a case their position shall be that of parties referred to under paragraph 1.

§ 28

(1) Should any doubts arise, a party shall be considered also a person claiming to be a party, unless the opposite is evidenced. The administrative authority shall issue a resolution on whether a person is or is not a party; the resolution shall be notified to the person whose involvement in the procedure has been decided upon only, and other persons shall be advised thereof. The procedure stipulated by the previous sentence shall not hinder further consideration and decision of the case in question.

(2) If a person in respect of whom it had been concluded by resolution that he/she is not a party, filed an appeal against such resolution, and the appeal was granted, and in the meantime the person missed an act it could have executed as a party, it shall be entitled to execute such act within the timeline of 15 days of the notification of the decision on appeal; the provisions of § 41 para. 6, sentence two shall be likewise applicable.

Special regime with a limited public participation applies to a group of specific procedures for issuing permits listed in § 9 of the Atomic Act. Among them, individual cases can be found that are focused on changes to already permitted activities and, technically speaking, can also lead to an update or reconsideration of operating conditions. However, these permits allow specific activities with a limited scope and a highly complex technical nature. Only specific aspects related to nuclear safety, radiation protection, technical safety, monitoring of the radiation situation, management of radiation emergencies and security are affected – not directly or comprehensively the interests of the environment. With regard to this very specific nature, these permits are aimed at a specific addressee and primarily affect his rights and obligations. However, they are usually supplemented by other decisions of other state administration bodies, such as a zoning permit or a building permit, which regulate more general aspects of the project and which, in this sense, also concern the rights and interests of the public – hence the public can participate in them.

In this regard, it is necessary to highlight that this system constitutes a case of complex decision-making, in which the national legislation requires the issuance of several decisions for the authorization of an activity covered by Article 6 of the Aarhus Convention.[6] These decisions are independent, but they follow and influence each other. The legislation provides the possibility of public participation in proceedings with a more general focus, in which the main parameters of the project and its effects on the environment are addressed (especially procedures for the issuance of zoning permits and procedures for the issuance of building permits). Meanwhile, proceedings according to § 9 of the Atomic Act are of a more technical nature and they do not change the essential parameters of the project that have an impact on the environment.

In practice, therefore, it also follows that decisions on permits pursuant to § 9 of the Atomic Act cannot contravene with decisions issued in the above-mentioned procedures of a more general nature (especially zoning permits and building permits). For the purposes of zoning permits,

[6] Cf. the Maastricht Recommendation on Promoting Effective Public Participation in Decision-making in Environmental Matters, paras 41 and 42, available at: https://unece.org/DAM/env/pp/Publications/2015/1514364_E_web.pdf.

building permits and other decisions pursuant to Act No. 183/2006 Coll., on spatial planning and building regulations (Building Act), the State Office for Nuclear Safety issues a binding opinion pursuant to § 208 letter q) of the Atomic Act (the binding opinion concerns aspects of nuclear safety, radiation protection, technical safety, monitoring of the radiation situation, management of radiation emergencies and security). This binding opinion is binding on authorities that make decisions under the Building Act. At the same time, they must be in full compliance with the permits issued under the Atomic Act, which are adopted concurrently for the related issues, as all state authorities, including the State Office for Nuclear Safety, must make decisions and act consistently and predictably (cf. the basic principles of the administrative authorities operation set out in § 2 et seq. of the Administrative Code). Pursuant to § 149 of the Administrative Code, the participants in the proceedings (in this case, in particular, participants in proceedings for the issuance of a zoning permit and of a building permit) may challenge the content of the binding opinion of the State Office for Nuclear Safety in their appeal against the decision taken in the given administrative proceeding (proceedings for the issuance of zoning permits and of building permits). In case of illegality, the binding opinion can also be annulled or changed in the framework of a review procedure. For the same reasons, it also follows that the decisions according to § 9 of the Atomic Act must also take into account any relevant objections raised by the public in the proceedings for the issuance of zoning permits and of building permits. All these proceedings are materially linked and they cannot be perceived in isolation.

From the above information, it is clear that the mechanism of public involvement in the Czech Republic is complex – above, we are providing only an indicative overview of the possibilities that result from the currently effective legislation. With this in mind, an additional measure is proposed in the plan of action, according to which there will be a closer analysis of the entire system of public involvement in proceedings under the Atomic Act, and following this, further steps will eventually be proposed in order to increase the efficiency of informing the public about the possibilities of involvement in the relevant processes.

Additional explanation regarding the access to justice

In case of an administrative procedure in which the public can participate in accordance with the general legislation contained in § 27 of the Administrative Code (i.e. in particular procedures pursuant to § 22 or pursuant to § 204 of the Atomic Act, or procedures for the issuance of zoning permits and procedures for the issuance of building permits conducted pursuant to the Building Act, including if it is a subsequent proceeding pursuant to the Act on Environmental Impact Assessment), standard means of access to justice are provided – the party to the proceeding has the option to file an appeal against the decision pursuant to § 81 of the Administrative Code and, subsequently, the possibility to file a lawsuit against the decision pursuant to § 65 of Act No. 150/2002 Coll., Code of Administrative Justice.

In case of an administrative procedure in which the participation of the public is excluded (i.e., in particular, a permit procedure pursuant to § 9 of the Atomic Act), it is permitted, in accordance with the cited case law, to file a lawsuit against the decision pursuant to § 65 of Act No. 150/2002 Coll., Code of Administrative Justice, provided that the plaintiff is affected by the decision in his/her legal sphere.