

## **DE's comments on the draft advice by the ACCC to CZ concerning the implementation of paragraph 2 (b) (i) and (ii) of decision VII/8e**

### General comments:

The draft advice provides valuable guidance for the transposition of article 6 paragraph 2 of the Aarhus Convention. The relevance of its content may go far beyond the case of decision VII/8e. For that reason, we welcome that the ACCC gave all Parties the opportunity to submit comments. We highly appreciate the additional effort that the ACCC is putting into drafting the advice with considering all the Parties' comments.

The notification of the public concerned plays a crucial role for the public participation being effective. Therefore it is important that responsible authorities handle this procedural step with due diligence. To facilitate that, the legal framework has to provide not only clear but also manageable requirements to avoid legal uncertainties.

In general, however, it should be taken into account that the Espoo Convention contains specific procedural regulations for the implementation of public participation in projects with potentially significant environmental impacts in a transboundary context. In this respect, it is essential to ensure a coherent interpretation of the Aarhus Convention and the Espoo Convention with regard to the obligations of the country of origin and the affected country. This applies in particular in cases where the areas of application overlap and both parties are contracting parties to both conventions. Against this background, it should be examined by the Committee how the fundamental statements made by the Committee fit in with the requirements of the Espoo Convention (which is also applicable in the majority of the cases).

### Specific comments:

Inter alia paragraphs 19, 27, 65 refer to digital means that can be used to notify the public concerned. The Committee points out that those means alone will not suffice to fulfil the obligation of article 6 (2) as it cannot be expected from members of the public to proactively check any website on a regular basis. Couldn't that be expected to change with the digital transformation? Aren't in fact the digital means already the first choice of big parts of the public (concerned) to gather information about administrative or political plans and projects?

In paragraphs 31 and 38 the Committee states that article 6 (2) applies in a transboundary context whether or not the affected state is also a Party to the Aarhus Convention and/or the Espoo Convention. As far as this concerns the Aarhus Convention, the Committee seems to draw this conclusion from article 3 (9). Doesn't the wording of article 3 (9) also relate to the territorial scope of the Aarhus Convention ("Within the scope of the relevant provisions of this Convention,...")?

In paragraph 32 (b) the Committee states that the competent authority of the party concerned will have to carry out notification of the public concerned in the affected state itself although the competent authority of the affected state fails or refuses to notify its public. The committee further explains that this is to the ultimate responsibility of the party of origin for ensuring that public participation procedure complies with Article 6. To what extent is the special procedural provision of Article 3 (4) of the Espoo Convention taken into account in case of the applicability both of the Espoo Convention and the Aarhus Convention? To what extent is this conclusion taking into account that the Espoo Convention is based on the principle that both the party of origin and the affected party

are obliged with regard to ensure effective public participation, e.g. Articles 3 (8) and Article 4 (2) of the Espoo Convention and that furthermore these provisions do not apply if the affected Party indicates that it does not intend to participate in the environmental impact assessment procedure, or if it does not respond within the time specified in the notification (Art. 3 (4) of the Espoo Convention)?

In paragraph 40 the Committee uses the term "ultrahazardous activities" to determine which means of notification could be seen as effective. Are there any criteria to determine if activities, esp. other than nuclear power plants, should be deemed as "ultrahazardous"? And how can a Party decide which project has a local scope and which a national scope?