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Economic Commission for Europe

Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

Fifth session

Maastricht, the Netherlands, 30 June and 1 July 2014

Item 5 (b) of the provisional agenda

Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism

Draft decision V/9f concerning compliance by the Czech Republic with its obligations under the Convention

Prepared by the Bureau

The Meeting of the Parties,

Acting under paragraph 37 of the annex to its decision I/7 on the review of compliance,

Taking note of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (ECE/MP.PP/2014/9), as well as the findings of the Committee on communication ACCC/C/2010/50 (ECE/MP.PP/C.1/2012/11) concerning access to justice in environmental matters, the Committee's report on the implementation of the recommendations contained in those findings (ECE/MP.PP/2014/14) and the findings of the Committee on communication ACCC/C/2012/70 (ECE/MP.PP/C.1/2014/9, forthcoming) concerning public participation in the implementation of the European Union's Emission Trading System;

Encouraged by the Czech Republic's willingness to discuss in a constructive manner the compliance issues in question with the Committee,

1. *Endorses* the following findings of the Committee with regard to communication ACCC/C/2010/50:

(a) Through its restrictive interpretation of "the public concerned" in the phases of the decision-making to permit activities subject to article 6 that come after the

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environmental impact assessment (EIA) procedure, the system of the Party concerned fails to provide for effective public participation during the whole decision-making process, and thus is not in compliance with article 6, paragraph 3, of the Convention;

(b) By failing to impose a mandatory requirement that the opinions of the public in the EIA procedure are taken into account in the subsequent stages of decision-making to permit an activity subject to article 6, and by not providing an opportunity for all members of the public concerned to submit any comments, information, analyses or opinions relevant to the proposed activities in those subsequent phases, the Party concerned fails to comply with the requirement in article 6, paragraph 8, of the Convention to ensure that in the decision due account is taken of the outcome of the public participation;

(c) The rights of non-governmental organizations (NGOs) meeting the requirements of article 2, paragraph 5, to access review procedures regarding the final decisions permitting proposed activities, such as building permits, are too limited, to the extent that the Party concerned fails to comply with article 9, paragraph 2, of the Convention;

(d) By limiting the right of NGOs meeting the requirements of article 2, paragraph 5, to seek review only of the procedural legality of decisions under article 6, the Party concerned fails to comply with article 9, paragraph 2 of the Convention;

(e) To the extent that the EIA screening conclusions serve also as the determination required under article 6, paragraph 1 (b), members of the public should have access to a review procedure to challenge the legality of EIA screening conclusions. Since this is not the case under Czech law, the Party concerned fails to comply with article 9, paragraph 2, of the Convention;

(f) By not ensuring that members of the public are granted standing to challenge the act of an operator (private person) or the omission of the relevant authority to enforce the law when that operator exceeds some noise limits set by law, the Party concerned fails to comply with article 9, paragraph 3. Similarly, in cases of land-use planning, by not allowing members of the public to challenge an act, such as a land-use plan, issued by an authority in contravention of urban and land-planning standards or other environmental protection laws, the Party concerned fails to comply with article 9, paragraph 3, of the Convention;

2. *Endorses* the following findings of the Committee with regard to communication ACCC/C/2012/70:

(a) The application, including its National Investment Plan, prepared by the Party concerned under the revised rules for the European Union Emissions Trading System is a plan within the purview of article 7 of the Convention and therefore article 6, paragraphs 3, 4 and 8, apply to its preparation;

(b) By not providing sufficient time for the public to get acquainted with the draft and submit comments, the Party concerned failed to comply with article 7, in conjunction with article 6, paragraph 3, of the Convention;

(c) Given that the preparation process for the application was initiated on 31 October 2009 and that, officially, the general public had only seven days to get acquainted with the draft and submit comments, starting on 19 August 2011, that is, almost two years after the start of the preparation process, the Committee finds that the Party concerned failed to comply with article 7, in conjunction with article 6, paragraph 4, of the Convention, because no early public participation was ensured, when all options were open;

(d) By failing to show through its written and oral submissions how the outcome of public participation was duly taken into account, the Party concerned failed to comply with article 6, paragraph 8, of the Convention;

3. *Welcomes* the recommendations made by the Committee during the intersessional period with regard to its findings on communication ACCC/C/2010/50, in accordance with paragraph 36 (b) of the annex to decision I/7;

4. *Also welcomes* the willingness of the Party concerned to accept those recommendations, namely, to ensure that:

(a) Members of the public concerned, including tenants and NGOs fulfilling the requirements of article 2, paragraph 5, are allowed to effectively participate and submit comments throughout a decision-making procedure subject to article 6;

(b) Due account is taken of the outcome of public participation in all phases of the decision-making to permit activities subject to article 6;

(c) NGOs fulfilling the requirements of article 2, paragraph 5, have the right to access review procedures regarding any procedures subject to the requirements of article 6, and in this regard they have standing to seek the review of not only the procedural but also the substantive legality of those decisions;

(d) To the extent that the EIA screening process and the relevant criteria serve also as the determination required under article 6, paragraph 1 (b), as to whether a proposed activity is subject to the provisions of article 6, the public concerned, as defined in article 2, paragraph 5, is provided with access to a review procedure to challenge the procedural and substantive legality of those conclusions;

(e) Members of the public are provided with access to administrative or judicial procedures to challenge acts of private persons and omissions of authorities which contravene provisions of national law relating to noise and urban and land-planning environmental standards;

5. *Welcomes also* the recommendation made by the Committee during the intersessional period with regard to its findings on communication ACCC/C/2012/70, in accordance with paragraph 36 (b) of the annex to decision I/7;

6. *Further welcomes* the willingness of the Party concerned to accept that recommendation, namely, that the Party concerned, in future, shall submit 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;

7. *Welcomes in addition* the efforts made by the Party concerned to start a process of legislative changes and encourages it to speed up the process;

8. *Invites* the Party concerned to submit to the Committee periodically (on 31 December 2014, 31 October 2015 and 31 October 2016) detailed information on further progress in implementing the recommendations set out above;

9. *Undertakes* to review the situation at its sixth session.