

## **EXPLANATORY MEMORANDUM**

### **A. General Part**

A draft amendment which amends and alters the Act No. 541/2004 Coll. on the Peaceful Use of Nuclear Energy (the Atomic Act) and on alterations and amendments to some acts, as amended, and amending and supplementing Act No. 50/1976 Coll. on Land-Use Planning and on Construction Order (the Building Act), as amended, is submitted by Members of the National Council of the Slovak Republic Róbert Puci and Maroš Kondrót.

The presented amendment reflects the needs resulting from the current practice of the Nuclear Regulatory Authority of the Slovak Republic within its supervisory activities, mainly with respect to administrative proceedings related to nuclear installations, which are kept on record by the Nuclear Regulatory Authority of the Slovak Republic. The main objective is in particular to improve the economy and streamline administrative proceedings. Activities that are subject to supervision by the Nuclear Regulatory Authority of the SR relate to the protection of the environment and thus generate increased public interest, which may be reflected in the increased number of participants in proceedings from among the public, to which the proposed legislation reacts.

One of the basic requirements imposed on administrative authorities in the exercise of public powers is transparency. Part of the requirement for transparency in the decision-making of a supervisory authority in the field of the nuclear safety of nuclear installations is also the enhanced duty to inform the participants in decision-making processes in this area. The proposed legislation contributes to informing the public about individual acts of the Nuclear Regulatory Authority of the Slovak Republic addressed to participants in administrative proceedings and is thus fully in accordance with the principle of transparency.

At the same time, it regulates the process of handling information by the Nuclear Regulatory Authority of the Slovak Republic that has been granted special protection by law, i.e. sensitive information, classified information, bank secrets, tax secrets, trade secrets, telecommunications secrets, postal secrets, or the duty not to disclose imposed or granted by law. The proposed amendment respects the international commitments of the Slovak Republic regarding access to environmental information.

Pursuant to Act No. 50/1976 Coll. on Land-Use Planning and on Construction Order (the Building Act), as amended, the Nuclear Regulatory Authority of the SR is another building office for the buildings of nuclear facilities and buildings related to nuclear facilities in a complex that is separated by the boundaries of nuclear facilities. In several cases, parallel proceedings are conducted before the Nuclear Regulatory Authority of the SR as a nuclear safety supervisory authority and at the same time as a special building office. The proposed amendment therefore refines the regulation of proceedings conducted under the Atomic Act and the Building Act, taking into account their mutual relations.

The submitted amendment respects the international and European commitments of the Slovak Republic related to the protection of the environment, namely the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental

Matters (the Aarhus Convention) (hereinafter referred to as the “Aarhus Convention”) and Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC. Similarly, the draft law also takes into account the recommendations of the Committee of Ministers of the Council of Europe, and in particular Recommendation No. R (87) 16 of the Committee of Ministers of the Council of Europe on administrative procedures affecting a large number of persons, and Recommendation No. CM/Rec(2007)7 of the Committee of Ministers of the Council of Europe on good administration.

The submitted draft law has no adverse social effects, effects on the business environment, the environment or the digitisation of society and does not have any impact on the general government budget.

The draft law is in accordance with the Constitution of the Slovak Republic, constitutional laws, laws and other generally binding legal regulations of the Slovak Republic, with the judgments of the Constitutional Court of the Slovak Republic, with EU law and with the international treaties by which the Slovak Republic is bound.

It is proposed that the Act should take effect on 1 August 2019.

## **B. Special Part**

### **Ad Art. I**

#### Ad par. 1

It is a legislative and technical amendment. The proposed legislation refines the legal regulation which, according to the current legal status in Article 19, defines the issue of permission for the stage of commissioning of a nuclear installation and for trial operation and also adds such permissions in the interest of the consistency of the legal regulation in Article 5, which lists permissions or authorizations issued by the Nuclear Regulatory Authority of the Slovak Republic required for the use of nuclear energy.

#### Ad par. 2

The amendment of the relevant provision refines the regulation of non-disclosure of sensitive information to participants in proceedings under the Atomic Act. According to the current wording of Article 8 par. 3, sensitive information shall not be made available to the participants in proceedings to whom that status arises from a separate regulation. The relevant footnote refers to Articles 24 and 25 of Act No. 24/2006 Coll., as amended, i.e. regulates the situation where participation in proceedings conducted under the Atomic Act occurred as a result of the participation of the persons concerned in proceedings under the above stated legislation on environmental impact assessments. Given the purpose and objective of the non-disclosure of sensitive information, the proposed draft harmonises this regime for all participants in proceedings under the Atomic Act (with the exception of the applicant himself). The proposed amendment proposes to exclude from the group of persons to whom sensitive information will not be disclosed for authorization or permission the applicant, as in this case he/she is the initiator of the administrative proceedings who initiated the administrative proceedings and decides on his/her rights, protected interests or obligations.

#### Ad par. 3

The proposed amendment complements and refines the method of communication of the Nuclear Regulatory Authority of the SR with the so-called concerned public, whose participation in proceedings before the Nuclear Regulatory Authority of the SR results from a special regulation (Articles 24 and 25 of the Act No. 24/2006 Coll.) and the Aarhus Convention. For this purpose, footnote 11b is supplemented accordingly. In view of the fact that there may be a large number of persons, the Atomic Act already provides for the delivery of decisions to the concerned public by means of public notice. In order to ensure that the concerned public is effectively informed, it is proposed that, in these cases, calls, notices, summonses or other documents should be delivered in the course of the proceedings by means of public notice. Such a procedure is also in line with the principle of public administration transparency, which supports the Aarhus Convention precisely with a view to enhancing public participation in decision-making processes, as well as Recommendation No. CM/Rec (2007)7 of the Committee of Ministers of the Council of Europe on good administration.

At the same time, such legislation will contribute to streamlining proceedings (it is not necessary to demonstrate delivery individually to each member of the concerned public) and at the same time to better economic efficiency. Simultaneously, the possibility to communicate with the public through public notice is also admitted by the Aarhus Convention and Recommendation No. R (87) 16 of the Committee of Ministers of the Council of Europe on good administration with respect to a large number of persons. The relevant Recommendation takes into account and is based on the need to balance the requirements of good and efficient administration on the one hand with fair and effective protection in the cases of administrative proceedings involving a large number of persons on the other.

#### Ad par. 4

The proposed amendment supplements the wording of the Atomic Act with a special regulation concerning the handling of information by the Nuclear Regulatory Authority of the SR that falls into one of the following categories: sensitive information, classified information, bank secrets, tax secrets, trade secrets, telecommunications secrets, postal secrets or another duty not to disclose imposed or granted by law.

According to the obligation to protect such information and the duty not to disclose, based on the proposed wording of par. 11, the Nuclear Regulatory Authority of the SR is obliged to take all necessary measures preventing the disclosure of protected information for the inspection of files or delivery of written documents. It refines the regulation for the procedure of the Nuclear Regulatory Authority of the SR in proceedings under the Atomic Act as the obligation to protect such information under the current legislation also results from special regulations, e.g. Act No. 215/2004 Coll. on Protection of Classified Information, as amended; Act No. 483/2001 Coll. on Banks, as amended; Act No. 563/2009 Coll. on Tax Administration, as amended; Act No. 513/1991 Coll. - the Commercial Code, as amended; Act No. 351/2011 Coll. on Electronic Communications, as amended; and Act No. 324/2011 Coll. on Postal Services, as amended. Such a procedure is necessary and appropriate, in particular due to the specific nature of the relevant information, since disclosure of such information could seriously prejudice the rights and protected interests to which the legislator has given priority over the right of free access to information.

To avoid a situation where the Nuclear Regulatory Authority of the SR would disclose information constituting a trade secret or sensitive information during its activity, par. 12 introduces the obligation of the Nuclear Regulatory Authority of the SR to notify the applicant of the possibility of indicating the information they consider sensitive or constituting a trade secret. Such a procedure is not exceptional and is foreseen, for instance, also by Act No. 136/2001 Coll. on the Protection of Competition, as amended.

The assessment as such of whether the indicated information will be handled in a special regime, i.e. whether the information will not be made available to other participants in proceedings, is up to the Nuclear Regulatory Authority of the Slovak Republic. Under the proposed par. 13, the Nuclear Regulatory Authority of the Slovak Republic may ask an applicant who indicated certain information as sensitive or constituting a trade secret to give reasons in writing for the indication as a trade secret or sensitive information. The proposed wording of the Act implies that the Nuclear

Supervisory Authority of the Slovak Republic will consider when it is necessary to request such a written justification of the indication from the applicant. This will especially be the case where there are no obvious cases of trade secrets or sensitive information. If the Nuclear Regulatory Authority of the Slovak Republic does not accept the reasons for indicating certain information as sensitive or constituting a trade secret, they are obliged to inform the applicant of the same.

#### Ad par. 5

The proposed amendment reflects the specific status of issuing an approval for the next stage of commissioning. The commissioning of a nuclear installation is conditional on obtaining permission for the commissioning of a nuclear installation, but the commissioning process itself is divided into stages; whereas the continuation of the next stage is conditional on approval by the Nuclear Regulatory Authority of the Slovak Republic based on the assessment of the previous stage. It is therefore not typical administrative proceedings but a regulated technical activity for which permission has already been granted. This fact should therefore also be taken into account with respect to the procedural rules of the relevant process and the applicability of the general administrative regulation should be excluded.

#### Ad par. 6

The amendment to the relevant provision reflects the introduction of special legislation in par. 3 (delivery). Given the fact that the Atomic Act as the *lex specialis* has a different regulation in relation to the institute of delivery and remonstrance than that of the Administrative Code as the *lex generalis*, it is necessary to take this fact into account and exclude the applicability of the Administrative Code.

In order to increase the efficiency and economy of the proceedings, the regime related to the notification of the participants in proceedings on the filed remonstrance is combined with a call for a response before the decision is issued as per Article 33 par. 2 of the Administrative Code.

At the same time, with respect to specific proceedings under the Atomic Act, it is proposed to exclude the application of the institute of a new trial and the institute of a decision review outside the appeal proceedings as extraordinary remedies. Since in these cases these are not status decisions but, on the contrary, decisions which have as their subject the authorization of certain processes which are generally of a temporary nature and can be regarded as consumed by their implementation with respect to the principle of legal certainty, it is appropriate to exclude the application of the said extraordinary remedies. In view of the above stated, it can be concluded that the practical applicability of these types of extraordinary remedies (which by their nature interfere with the existing legal status and legal certainty, or processes already implemented in this case) is difficult to implement in the context of the proceedings under the Atomic Act. In addition, the Nuclear Regulatory Authority of the Slovak Republic regularly reviews the decisions they have issued and, if necessary, revises the conditions of the relevant decisions by means of changes to the decisions. Thus, this institute represents an existing legal instrument of the Nuclear Regulatory Authority of the Slovak Republic for taking into account any need for the revision of their previously issued valid decisions. The possibility of filing extraordinary remedies will be kept, including the possibility of judicial review within administrative justice and including the possibility for the court to award

a suspensive effect for administrative action. Thus, the legislation fully respects the right of participants in proceedings to judicial review as required by the Aarhus Convention, the Recommendations of the Committee of Ministers of the Council of Europe or other international documents. Taking into account the legislation governing the relations between the Atomic Act, the Building Act and the Administrative Code (according to which the Atomic Act is *lex specialis* in relation to the other acts listed above), the proposed exclusion of these extraordinary remedies will also be applicable to proceedings for the issue of permission under the Building Act, as foreseen in particular by Article 19 of the Atomic Act (i.e. proceedings for the issue of permission for the early use of a building, approval for temporary use of a building for trial operation, the final building approval).

#### Ad par. 7

The proposed provision refines the existing legal situation when the Nuclear Regulatory Authority of the Slovak Republic as a special building office issues permission and approvals for nuclear installations under the Building Act, but the issue of such permission was also partially regulated in the Atomic Act. The proposed wording will explicitly define that the Atomic Act is in relation to the proceedings for the issue of permission for the early use of a building, approval for temporary use of a building for trial operation, the final building approval and any changes thereof *lex specialis* in relation to the Building Act.

#### Ad par. 8

It is a transitional provision governing the application of changes adopted by the proposed amendment to proceedings already initiated under the Atomic Act.

### **Ad Art. II**

#### Ad par. 1

For the purpose of refining the legal regulation, it is proposed to add an internal reference to the relevant legal provision.

#### Ad par. 2 and 3

The proposed amendment reacts to a specific authorization regime regulated by the Atomic Act in which proceedings for the issue of permission for the early use of a building and later also proceedings for the issue of approval for temporary use of a building are conducted. Since the relevant binding opinions of the authorities concerned are obtained within the proceedings for the issue of permission for the early use of the building, in the interest of procedural efficiency and economy, it is proposed to avoid duplication of the submission of these opinions and omit the need to also reach an agreement with the authorities concerned at the stage of the proceedings for approval

for temporary use of the building. At the same time, it is proposed in this context that binding opinions issued in proceedings for the issue of permission for the early use of a building are also applicable in the framework of the building approval procedure in the scope to which they were issued for the purposes of the proceedings for the issue of permission for the early use of the building. As to the remainder, the obligation to ensure binding opinions for the purposes of the proceedings for the issue of a final building approval remains preserved.

Ad par. 4

The proposed wording refines the relation of procedural regulation with a special law, which in this case is the Atomic Act. This aligns the wording of the regime of procedural rules covering proceedings under the Building Act, thus strengthening its compatibility with the legislation under the Atomic Act.

**Ad Art. III**

It is proposed that the presented Act should take effect on 1 August 2019, taking into account the legislative deadline.