

## **Progress Report**

**The Slovak Republic submits the second Progress Report in accordance with the decision VI/8i in the light of the findings and recommendations of the Compliance Committee Aarhus Convention to the case ACCC/C/2013/89/Slovakia**

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## Introduction

*The second Progress Report was prepared by the Nuclear Regulatory Authority of the Slovak Republic (hereinafter 'UJD SR') which pursuant to Section 29 of Act No. 575/2001 Coll. on the Organization of Government Activities and the Organization of the Central State Administration is a central government authority for the area of nuclear regulation in the Slovak Republic.*

*On 20 June 2017, the Slovak Republic received findings concerning the communication ACCC/C/2013/89 regarding access to justice with respect to an extension to the Mochovce nuclear power plant. In paragraph 103 of the findings, the Committee found that 'the Party concerned has failed to comply with Article 4, paragraph 4 as well as Article 6, paragraph 6 in conjunction with Article 4, paragraph 4 of the Convention by providing access to nuclear-related environmental information.'*

*The above mentioned finding concerning communication ACCC/C/2013/89 was incorporated into the Meeting of the Parties's Decision VI/8i.*

*The submitted Progress Report has been prepared under the obligations of the Slovak Republic as the party of the Aarhus Convention and in accordance with the decision VI/8i on compliance by the Slovak Republic, registered under reference No. ECE/MP.PP/2017/2/Add.1<sup>1</sup>, endorsed and adopted by the Parties at the sixth session of the Meeting of the Parties to the Aarhus Convention (MOP 6) on 11 – 13 September 2017 in Budva, Montenegro.*

*Decision VI/8i reads as follows:*

*The sixth session of the Meeting of the Parties to the Aarhus Convention, acting under paragraph 37 of the annex to its decision I/7 on the review of compliance,*

*Taking note of the findings of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters on communication ACCC/C/2013/89<sup>2</sup> concerning compliance by Slovakia in connection with public participation in decision-making and access to justice with respect to an extension to the Mochovce nuclear power plant, including paragraphs 74 and 75 thereof,*

*Encouraged by the willingness of Slovakia to discuss in a constructive manner with the Committee the compliance issues in question,*

- 1. Endorses the finding of the Committee that in the context of a decision-making procedure subject to article 6 of the Convention, and with respect to requests for information under article 4 generally, the Party concerned has failed to comply with article 4, paragraph 4, and also article 6, paragraph 6, in conjunction with article 4, paragraph 4, of the Convention:*

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<sup>1</sup> The full text of addendum to the report of the sixth session of the Meeting of the Parties (ECE/MP.PP/2017/2/Add.1) is available in English, French and Russian from [http://www.unece.org/env/pp/aarhus/mop6\\_docs.html#/](http://www.unece.org/env/pp/aarhus/mop6_docs.html#/).

<sup>2</sup> ECE/MP.PP/C.1/2017/13.

- a) By adopting an approach in the Directive on Sensitive Information whereby whole categories of nuclear-related environmental information are unconditionally declared as confidential and for which (contrary to the general legal regulation in the Freedom of Information Act) no release is possible;
  - b) For failing to require that any grounds for refusal are interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information relates to emissions into the environment;
2. *Recommends* that the Party concerned take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that when providing access to nuclear-related information within the scope of article 2, paragraph 3, of the Convention, any grounds for refusal under article 4, paragraph 4, of the Convention are interpreted in a restrictive way and taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment;
3. *Requests* the Party concerned:
- a) To submit to the Committee detailed progress reports on 1 October 2018, 1 October 2019 and 1 October 2020 on the measures taken and the results achieved in the implementation of the above recommendations;
  - b) To provide such further information as the Committee may request in order to assist it to review the progress of the Party concerned in implementing the above recommendations;
  - c) To participate (either in person or by audio conference) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered;
4. *Undertakes* to review the situation at its seventh session.

*The Slovak Republic, considering the non-confrontational, non-judicial and consultative nature of the findings and recommendations (Article 15 of the Aarhus Convention), took note of the Compliance Committee's findings and recommendations regarding the Slovak communication ACCC/C/2013/89. The Slovak Republic, as a party to the Convention, fully avows its principles, and will continue to act to fulfil its obligations arising therefrom.*

***As requested in the decision VI/8i, the Slovak Republic submitted to the Committee the first Progress Report on 1 October 2018. The Slovak Republic, as further requested, submits the second Progress Report to the Aarhus Convention Compliance Committee Secretary on time, i.e. 1<sup>st</sup> October 2019.***

The second Progress Report would like to provide the Committee with the information on recent developments in the legal order of the Slovak Republic following Decision VI/8i adopted during the sixth session of the Meeting of the Parties.

The Committee in the First Progress Report Review concerning the implementation of Decision VI/8i required to identify the types of information listed in Sections 3.1 and 3.2 of the Directive on Identification and Removal of Sensitive Information from Documents that are to be Made

Available to the Public (hereinafter 'Directive') that the Slovak Republic considers to contain an environmental information within the meaning of Article 2 (3) of the Aarhus Convention.<sup>3</sup>

As a result, the Committee invited the Slovak Republic to ensure that grounds for exemption from disclosure of the environmental information listed under sensitive information in Sections 3.1 and 3.2 of the Directive are interpreted restrictively, “taking into account the public interest served by disclosure; and whether the information requested relates to emissions into the environment.”<sup>4</sup>

UJD SR identified the relevant areas that required the adoption of necessary legislative, regulatory and administrative measures in order to bring the respective parts of legislation into conformity with the Aarhus Convention. The second Progress Report consists of two main parts, specifically evaluating and addressing each set of the Committee's recommendations enshrined in the First Progress Review.<sup>5</sup>

## **1. Obligation to identify information listed in Sections 3.1 and 3.2 of the Directive on Identification and Removal of Sensitive Information from Documents that are to be Made Available to Public is considered environmental information within the meaning of Article 2 (3) of the Aarhus Convention**

The Directive was subject to an amendment and an addition following Decision VI/8i. Within the scope of its central governmental authority overseeing the use of nuclear energy in the Slovak Republic, UJD SR engaged in necessary regulatory action. Accordingly, clarification and detailed identification of environmental information pursuant to the Aarhus Convention were addressed.

The respective amendment and addition of the Directive was approved and entered into force on 14 June 2019. The amendment to the text introduced new definition terms of sensitive information and information concerning the environment. Article 3 of the Directive and its respective Sections 3.1 and 3.2 were mainly affected in this regard. In order to put the wording of the Directive into compliance with the provisions of the Aarhus Convention, Article 3 established the definition framework for two cardinal terms (sensitive information and environmental information).

The analysis of the respective amendment is outlined below. The consolidated version of the amended text of the Directive is attached in Annex 1.

### **1.1. Sensitive Information**

Pursuant to Article 4 (4) of the Aarhus Convention, there are some optional exceptions to the general rule on providing the access to environmental information when certain interests,

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<sup>3</sup> First Progress Review on the Implementation of Decision VI/8i on Compliance by Slovakia with its Obligations under the Convention [hereinafter First Progress Review], 21 February 2019, para. 24.

<sup>4</sup> First Progress Review, para. 25.

<sup>5</sup> First Progress Review, para. 24, 25.

including public security, are adversely affected.<sup>6</sup> In order for the exception to be accepted, two essential elements must be met. Namely, it must be considered whether the information concerns emissions to the environment; and the grounds for refusal as stipulated in Article 4 (4) must generally be interpreted restrictively.<sup>7</sup> The information concerning nuclear installations would possibly be exempted from disclosure, in case no information regarding the environment would be contained therein, and the ground for refusal would be interpreted restrictively.

The Directive in Section 3.1 lists the documentation containing sensitive information as stipulated in the Act No. 541/2004 Coll. on Peaceful Uses of Nuclear Energy (Atomic Act).<sup>8</sup> The list precisely defines categories of sensitive information that must be protected against undesired release.

Information regarding nuclear installations requires thorough protection as its disclosure could endanger the nuclear safety in the country. In order to ensure national security, public safety and protection of citizens, such information contained in the documentation shall not be released, pursuant to Article 3 (1) of the Directive. Hence, documentation that contains sensitive information may only be disclosed to the public upon the removal of sensitive information therefrom.<sup>9</sup>

Section 3.2 of the Directive specifies the notion of “sensitive information” and provides a detailed analysis of the types of information that are exempted from the obligation of being disclosed. The provision breaks down the categories of information according to the source of their origin.<sup>10</sup> As a result, eventual sources are addressed in order to indicate where the information that is deemed sensitive may stem from in order to fall under one of the categories.<sup>11</sup> The wording of the Directive further defines the character of sensitive information in a manner that indicates that an environmental information cannot be considered as sensitive. In order to clarify any possible doubts whether an information about the environment could be kept from the disclosure, an exhaustive list of data regarded as sensitive information is laid down in the Directive. The Directive further identifies characteristic groups of sensitive information concerning the nuclear installation that are exempted from disclosure. None of the listed information contains data regarding the environment.

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<sup>6</sup> Art. 4 (4) Aarhus Convention, see also STEC, S., CASEY-LEFKOWITZ, S., & JENDROŠKA, J., *The Aarhus Convention: An Implementation Guide*. (2000), New York, United Nations, p. 53; see also EBBESSON et al., *The Aarhus Convention: An Implementation Guide*. (2nd ed., 2014), United Nations, pp. 86-87.

<sup>7</sup> STEC, S., CASEY-LEFKOWITZ, S., & JENDROŠKA, J., *The Aarhus Convention: An Implementation Guide*. (2000), New York, United Nations, p. 58; see also EBBESSON et al., *The Aarhus Convention: An Implementation Guide*. (2nd ed., 2014), United Nations, p. 90.

<sup>8</sup> Act No. 541/2004 Coll. on the Peaceful Use of Nuclear Energy (the Atomic Act) and on amendment and alternations of several acts as amended – the latest amendment as Act No. 87/2018 Coll. [hereinafter Atomic Act].

<sup>9</sup> Directive on Identification and Removal of Sensitive Information from Documents which are to be Made Available to Public from 14 June 2019 [hereinafter Directive], Art. 3 (1).

<sup>10</sup> Directive, Section 3.2.

<sup>11</sup> Directive, Section 3.2.

## **1.2. Environmental Information**

While the definition of sensitive information provides for exceptions to the general rule (that information must be made accessible to the public upon request), the definition of environmental information lists data that is disclosed by default. The Directive determines legal instruments that stipulate that information concerning the environment shall be revealed in its entirety. These are the Act No. 205/2004 Coll. on Collecting, Keeping and Disseminating Environmental Information<sup>12</sup> and the Aarhus Convention that both articulate the mandatory disclosure of environmental information to the public.<sup>13</sup>

It is stipulated in the Directive that pursuant to Article 2 (3) of the Aarhus Convention, information concerning emissions to the environment and the data concerning the content of radioactive waste must be made publicly available.<sup>14</sup> On the other hand, it lists and specifies which particular information is not considered as environmental information. Accordingly, concrete instances for which the general rule to disclose information does not apply are outlined. In other words, it is illustrated which information does not fall under the scope of Article 2 (3) of the Convention and, therefore, is not covered by the obligation of disclosure.<sup>15</sup> Detailed classification thus clearly distinguishes between the two separate terms and excludes their interchangeability. Besides that, the Directive further stipulates that environmental information (in particular emissions to the environment, data on the amount and composition of radioactive waste) as defined in Article 2 (3) of the Aarhus Convention must be disclosed without restriction.<sup>16</sup>

The Slovak Republic with the desire to fulfil the obligations arising out of Decision VI/8i proceeded with respective amendments of the Directive. Such an approach resulted in an explicit indication that information concerning the environment, in particular, but not limited to the data regarding emissions, and the amount and content of radioactive waste, must always be disclosed to the public in its entirety.<sup>17</sup>

## **1.3. Findings**

The purpose of the amendments to the Directive that are stated above was to specify and clarify the process of identifying and securing sensitive information, as prescribed by the Committee in its First Progress Review.<sup>18</sup> By adjusting the definition terms, there are good reasons to assume that nuclear-related information concerning the environment is interpreted in a restrictive way. The purpose of the wording used in the amended Directive was to provide the reader with an understanding that the refusal to disclose information pursuant to Article 2 (3) of the Aarhus Convention to the public must fall under one of the objectives provided for in Article 4 (4) of the Aarhus Convention.

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<sup>12</sup> Act No. 205/2004 Coll. on Collecting, Keeping and Disseminating Environmental Information and on Amendment and Supplementation of Certain Acts.

<sup>13</sup> Directive, Art. 3 (2), (3).

<sup>14</sup> Directive, Art. 3 (2).

<sup>15</sup> Directive, Art. 3 (4).

<sup>16</sup> Directive, Art. 3 (2).

<sup>17</sup> Directive, Art. 3 (2).

<sup>18</sup> First Progress Review, para. 24.

Moreover, the objective must be cumulatively accompanied by another requirement. That is the determined method of interpretation that imposes a restrictive approach in case of its application. Furthermore, it clarifies that information regarding the environment must always be released. Prior to the decision of a public authority on refusal to disclose information, a balancing test must be conducted. It requires to take into consideration specific reasons for the refusal, as well as the public interest that the disclosure would serve.<sup>19</sup> By balancing the two crucial elements, the public interest in keeping information concealed must override the purpose that the obligation of disclosure serves. As a result, the rationale behind the refusal can, therefore, only be accepted in special circumstances and exclusively, when the above prescribed conditions are fulfilled. For these reasons, it can be presumed that the Directive uses restrictive approach for the interpretation of the provision concerning nuclear-related information.

Another purpose of the Directive is to serve as a guidance on the process of assessing information that is aimed to identify the origin and content for its proper classification. Once the assessment is conducted, detected sensitive information must be isolated and subsequently removed from the documentation.<sup>20</sup> The effect brought by the amendment enables the rest of the information carried in the documentation to be accessed by the public after the removal of sensitive information. The aforementioned approach secures the restrictive interpretation of terms that the Committee found to be likely misleading in the past. To conclude, it is made clear in the text of the Directive that no information concerning the environment is contained in the list of sensitive information. The consolidated text of the Directive in a bilingual version is accessible to the public via the official webpage of UJD SR.<sup>21</sup>

The Slovak Republic believes that there is no need to further elaborate on the issue at hand, since it is presumed that the obligations imposed by Decision VI/8i were fulfilled. There are good reasons to assume that the Directive implemented the observations of the Committee and the grounds for refusal pursuant to Article 4 (4) of the Aarhus Convention to disclose nuclear-related information are interpreted restrictively. Moreover, the fact whether the information concerns the environment is also duly taken into account.

## **2. Obligation to provide evidence regarding the legislative, regulative, administrative measures and practical arrangements for the purpose of interpretation of nuclear-related information pursuant to Article 2 (3) of the Aarhus Convention**

### **2.1 Legislative measures**

With respect to legislative measures, the key piece of legislation concerning the use of nuclear energy for peaceful purposes is the Atomic Act.<sup>22</sup> Referenced legislation was recently amended. Members of the Parliament submitted the request to amend the Atomic Act and relevant parts of the Act No. 50/1976 Coll. on Spatial Planning and Building Regulations, and the Act No.

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<sup>19</sup> EBBESSON et al., *The Aarhus Convention: An Implementation Guide*. (2nd ed., 2014), United Nations, p. 90.

<sup>20</sup> Directive, Art. 1.

<sup>21</sup> Available at:

[https://www.ujd.gov.sk/ujd/WebStore.nsf/viewKey/Directive/\\$FILE/smernica\\_citlive\\_informacie\\_EN.pdf](https://www.ujd.gov.sk/ujd/WebStore.nsf/viewKey/Directive/$FILE/smernica_citlive_informacie_EN.pdf).

<sup>22</sup> Atomic Act.



71/1967 on Administrative Procedure (Administrative Code).<sup>23</sup> The submitted proposal for the amendment was prepared in order to simplify the access to information in administrative proceedings concerning the peaceful use of nuclear energy in the Slovak Republic.<sup>24</sup> The proposal was submitted along with the explanatory note stating the need for respective legislative changes.<sup>25</sup> Transparency demands and increasing interest of the public in environmental matters set the requirement for administrative bodies to act in accordance with these principles.<sup>26</sup> UJD SR as an independent governmental authority responsible for nuclear supervision gives due regard to the prevention of possible risks to the safety of public health, property and the environment.<sup>27</sup> In order to keep up with these standards, the quality policy is focused on improving the regime concerning the access to information.<sup>28</sup> Bearing in mind transparency requirements, the proposed development towards the approach balancing the right to information with the need to strengthen protection of specific categories of information was considered in the explanatory memorandum.<sup>29</sup> Further, methods designed to balance the position of the parties in administrative procedures and their administration by UJD SR were also addressed in the proposal. In particular, the regime of “sensitive information, classified information, banking secrecy, tax secrecy, business secrecy, telecommunication secrecy, postal secrecy, or other confidentiality requirements imposed by the law” was extended.<sup>30</sup>

The current state of the Atomic Act grants a possibility for refusal to disclose sensitive information only to those parties to the proceedings whose procedural status originated in *lex specialis*.<sup>31</sup> The proposal therefore generalized the status of sensitive information and in case an information qualifies as sensitive, refusal of disclosure applies generally to all parties to the proceedings.<sup>32</sup> Exceptions apply only for the applicant, as his or her rights and obligations are the subject of the merits.<sup>33</sup> Proposed legislative changes were ought to resolve the lengthy duration of the administrative proceedings concerning the issuance of procedural permissions in the licensing process by public notice. The communication route of public notice would thus apply not only to decisions, but mainly to procedural acts, such as summons and calls for action. Most importantly, the idea behind the proposed amendment was to adjust the system of documents’ delivery service in the administrative procedures pursuant to the Atomic Act. In practice, it would result in the strengthening of transparency, effectiveness, eliminating delays in proceedings, and ensuring procedural economy.<sup>34</sup>

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<sup>23</sup> Act No. 50/1976 Coll. on Spatial Planning and Building Regulations, Act No. 71/1967 on Administrative Procedure (Administrative Code).

<sup>24</sup> Explanatory Memorandum, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=464109> (Annex 2).

<sup>25</sup> *Ibid.*, p. 1.

<sup>26</sup> *Ibid.*, p. 1.

<sup>27</sup> Quality Policy of the UJD SR, available at:

[https://www.ujd.gov.sk/ujd/WebStore.nsf/viewKey/Quality\\_manual\\_2019/\\$FILE/Politika\\_kvality\\_EN.pdf](https://www.ujd.gov.sk/ujd/WebStore.nsf/viewKey/Quality_manual_2019/$FILE/Politika_kvality_EN.pdf).

<sup>28</sup> *Ibid.*

<sup>29</sup> *Supra* note 24, p. 1.

<sup>30</sup> *Ibid.*, p. 1.

<sup>31</sup> Act No. 24/2006 Coll. on Environmental Impact Assessment and on Amendments and Supplements to Certain Acts, [hereinafter Act No. 24/2006 Coll. on Environmental Impact Assessment], Art. 24, 25.

<sup>32</sup> *Supra* note 24, p. 3.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

The proposal further suggested alteration in the communication approach of UJD SR with the representatives of the public who are parties to the proceedings pursuant to Article 24 and 25 of the Act No. 24/2006 Coll. on Environmental Impact Assessment and the Aarhus Convention.<sup>35</sup> Given the large involvement of the public in administrative procedures concerning the environment, the documents' delivery service via public notice was recommended in relation to procedural matters.<sup>36</sup> These changes would in practice establish uniform time limits for all parties to the proceedings for submission of observations and other forms of communication. To simplify international delivery of documents, the deadline for submission of written statements would be uniformly applied – from the date of public notice issuance.

In addition, the submitted proposal indicated to exclude extraordinary legal remedies for subjects of proceedings of temporary nature.<sup>37</sup> It must be stated that in the light of the Aarhus Convention, such exclusion leaves the possibility to seek review before a court to challenge the legality of decisions intact.<sup>38</sup> The explanatory note declared that the proposal for the amendment is fully compliant with the international commitments of the Slovak Republic as well as its membership in the European Union.<sup>39</sup>

### **2.1.1 Other relevant circumstances**

In this respect, UJD SR would like to take a position in relation to the letter of 12 June 2019 from Mrs. Dana Mareková (Letter) addressed to the National Council requesting to vote against the above stated legislative proposal.<sup>40</sup> The arguments rejecting the suggested amendment of the Atomic Act were based on the opinion of Mrs. Kristína Babiaková.<sup>41</sup> The Letter summarized concerns of adopting the submitted legislative proposal due to its possible weakening of procedural guarantees, transparency and public participation in respective proceedings. In the conclusion, there was a statement given in relation to the decision-making of UJD SR.<sup>42</sup> Given the fact that the statement draws doubts about the quality of the national supervision over nuclear safety, on 8 July 2019 UJD SR requested Mrs. Mareková to provide clarification on the alleged deficiencies.<sup>43</sup> UJD SR called for specification of alleged misconduct, list of legal provisions alleged to be breached, and the evidence to substantiate such claims.<sup>44</sup> UJD received the requested statement on 17 September 2019.<sup>45</sup> Several points regarding the decision-making processes of UJD SR and the practice concerning public participation in the environmental

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<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*, p. 5.

<sup>39</sup> *Ibid.*, pp. 1-2, referring to the Aarhus Convention, 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. The legislative proposal takes into account also the Recommendations of the Committee of Ministers of the Council of Europe, in particular the Recommendation No. R (87) 16 on Administrative Proceedings Involving a Large Number of Persons and the Recommendation No. CM / Rec (2007) 7 on Good Governance.

<sup>40</sup> Letter from Mrs. Mareková from 12 June 2019, (Annex 3).

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> Request of UJD SR from 08 July 2019 sent to Mrs. Mareková, (Annex 4).

<sup>44</sup> *Ibid.*

<sup>45</sup> Response from Mrs. Mareková from 17 September 2019, (Annex 5).

impact assessment (EIA) were raised by Mrs. Mareková. On 23 September 2019, UJD SR provided an explanation and clarification of the facts that were omitted in her statement.<sup>46</sup> UJD SR added missing information to the substance of Mrs. Mareková's claims and determined areas of the decision-making processes that fall outside the scope of its authority. Furthermore, it was stated that UJD SR believes that rights enshrined in international conventions, in particular in the Aarhus Convention, were not infringed.

The Slovak Republic would like to draw the attention of the Committee to the opinion of the Regional Association of Towns and Municipalities around Mochovce.<sup>47</sup> With increasing requirements on the accessibility of nuclear-related information, it is necessary to take into consideration the interests of the citizens living in the adjacent areas to the Mochovce Nuclear Power Plant. Since the adjacent public could potentially be directly affected by the operation of the power plant, their concerns regarding the disclosure of sensitive information beyond necessity must also be given due consideration.<sup>48</sup> The Slovak Republic as a democratic state governed by the rule of law must put utmost attention to the security and well-being of its citizens.<sup>49</sup> Therefore, it would be disproportionate to take into account solely the interests of domestic and foreign NGOs without considering the legitimate interests of the narrow public that could potentially be affected by the power plant's operation. Moreover, the public living in the vicinity to the nuclear facility expressed full confidence in the quality of the national supervision over nuclear safety in the country.<sup>50</sup> According to the view of democratically elected representatives of the Regional Association of Towns and Municipalities Mochovce, they are against the disclosure of sensitive information beyond what is necessary.

### **2.1.2 Status of legislative changes to the Atomic Act**

The legislative proposal submitted by two Members of the Parliament was approved by the National Council of the Slovak Republic (National Council) on 27 June 2019. The document was vetoed by the decision of the President of the Slovak Republic (hereinafter 'President's decision') and returned to the National Council on 17 July 2019 for reconsideration.<sup>51</sup> According to available information, reservations were addressed in the President's decision.<sup>52</sup> In particular that the proposed text carried deficiencies in the process of handling specific categories of information for which specific protection applies.<sup>53</sup> In the President's decision it was argued that in order to preserve the subsidiarity of judicial protection and due to particular importance of a retrial and review outside the appeals procedure, the exclusion of extraordinary remedies should be left out from the legislation.<sup>54</sup> Furthermore, it was suggested to erase the

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<sup>46</sup> Statement of UJD SR from 23 September 2019, (Annex 6).

<sup>47</sup> Opinion of democratically elected representatives of the Regional Association of Towns and Municipalities Mochovce, (Annex 7).

<sup>48</sup> *Ibid.*, p. 1.

<sup>49</sup> Constitution of the Slovak Republic, Art. 1.

<sup>50</sup> *Supra* note 47, p. 1.

<sup>51</sup> Decision of the President of the Slovak Republic from 17 July 2019 on the return of the draft legislation, No. 3133-2019-KPSR, available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=469348> (Annex 8).

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

following words: “classified information, banking secrecy, tax secrecy, telecommunications secrecy, postal secrecy.”<sup>55</sup>

The negotiations regarding the proposed legislative change culminated during the 49<sup>th</sup> session of the National Council on 10 September 2019. Members of the Parliament approved the amendment proposed in its entirety and refused to accept reservations provided in the President’s decision. The approved piece of legislation was sent to the editorial of the Collection of laws and its expected entry into force is on 1 October 2019.<sup>56</sup>

## **2.2 Regulative, administrative measures and practical arrangements**

The Committee was notified of the course of the administrative procedure concerning the authorization for the commissioning of the nuclear installation Mochovce 3, 4 Unit in the First Progress Report of the Slovak Republic of 1 October 2018.<sup>57</sup> In the response to the Committee’s First Progress Review, UJD SR adopted further measures in relation to the issuance of relevant permissions, including the authorization for an early use of the construction of the Mochovce 3, 4 Unit installation. UJD SR under the authority of supervision over nuclear safety asked the holder of respective authorizations (Operator) to revise the Pre-Operational Safety Report.

The document is one of the key records in the licencing process of the Mochovce 3, 4 Unit, and in accordance with the Directive must be submitted without sensitive information. The original version of the Pre-Operational Safety Report was made available to the Committee prior to the submission of the First Progress Report. A revised version of the document will not contain redacted text and will therefore be accessible to the public without endangering national security interests. The access to the document will be provided to all parties to the administrative proceedings and will enable them to take a position or send remarks and comments. In terms of the time horizon, the publication of the revised Pre-Operational Safety Report is estimated on 15 October 2019. Chapter 13 of the Pre-Operational Safety Report concerning the impacts on the environment is enclosed in Annex 9.

## **Conclusion**

The Slovak Republic is convinced that this Second Progress Report addresses the necessary legislative, regulatory, administrative and practical measures taken in order to ensure that nuclear-related information falling within the scope of Article 2 (3) of the Aarhus Convention is, indeed, interpreted restrictively. Accordingly, the grounds for refusal to disclose information to the public always serve a higher purpose of national and, especially, nuclear safety. When assessing specific information, due regard is given to the fact whether information requested relates to emissions into the environment.

The Directive and its terminological basis serves as an interpretive guidance that defines terms (sensitive information and environmental information) in order to exclude any possible uncertainties and concerns that environmental information would falsely be declared sensitive.

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<sup>55</sup> *Ibid.*

<sup>56</sup> Available at: <https://www.nrsr.sk/web/Default.aspx?sid=schodze/hlasovanie/hlasklub&ID=42681>.

<sup>57</sup> First Progress Report of the Slovak Republic.

The Directive firstly analyses both terms in isolation and subsequently explores their interoperability, avoiding the possibility of causing deliberate confusion.

Disclosure of environmental information is of utmost importance, considering the character of environmental information in the light of Art. 2 (3) of the Aarhus Convention. The Directive strives to respect this underlying principle. As a result of the adopted regulatory measures, environmental information was distinguished from sensitive information and therefore is believed to fulfil the recommendations issued by the Committee.<sup>58</sup>

The Slovak Republic is of the opinion that for all the foregoing reasons the recommendations of the Committee were properly incorporated into the national legal order, *i.e.* relevant legislative, administrative and regulatory measures were taken to comply with Article 4 (4) and Article 6 (6) of the Aarhus Convention.

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<sup>58</sup> First Progress Review, paras. 24-25.