

On behalf of the Slovak Republic, we would like to take the position with respect to the Second Progress Review on the implementation of the decision VI/8i on compliance by Slovakia with its obligations under the Aarhus Convention. The following text summarizes and builds upon the statements presented by the Ministry of Environment and the Nuclear Regulatory Authority (UJD SR) at the audioconference on 13th of March 2020.

First of all, we would like to express appreciation for the positive evaluation provided by the Committee on the progress conducted by Slovakia so far, mainly with respect to the recognition that the clear, detailed and well-structured nature of the Second Progress Report is in line with the principle of transparency and can serve as a model to other Parties.

With regard to the Directive on Sensitive Information, the Committee welcomed the amendment of Article 3 (1), which resulted in the abandonment of a restrictive approach to access to information. The Committee determined a significant progress concerning the inclusion of the definition of “environmental information”, as stipulated by the Aarhus Convention in the wording of Article 3 (2) of the Directive.

We would like to add that the wording of Article 3 (1) of the Directive on Sensitive Information underscores that “documentation can be made available after removal of sensitive information”, which implicitly underlines the general approach of UJD SR to interpret refusal to grant access to information in a predictable, restrictive manner, recognizing the value of public interest served by disclosure.

We would now like to turn to the points that the Committee evaluated as insufficient for the purposes of achieving compliance with the Aarhus Convention.

In para. 24 of the First Progress Review, the Committee invited Slovakia to identify the types of information listed in the Directive on Sensitive Information it considers to include environmental information falling under the scope of Article 2 (3) of the Aarhus Convention. UJD SR proceeded with the request and amended the Directive, which apart from definitions of environmental information and sensitive information included categories of information it did not deem to be environmental information *per se*. The fact that UJD SR made a list of information that it does not consider to constitute environmental information, does not prevent UJD SR from evaluating each request for information in an individual manner and in line with

the conditions stipulated in Article 4 (3) and (4) of the Aarhus Convention. The practice of UJD SR to requests for environmental information always follows the necessary test in accordance with Article 4 (3) and (4) of the Aarhus Convention. Each request for information concerning the environment is weighed against the grounds of public security, while these are interpreted in a restrictive manner, taking into account the public interest served by disclosure and whether the information relates to emissions into the environment.

The Committee stated in para. 35 of the Second Progress Review that “*description, parameters and designation of equipment technology*” along with “*functionality, parameters and components of the system and its back-up*” would fall under Article 2 (3) (c) of the Aarhus Convention when affected by factors, such as substances, energy or radiation. For the sake of clarity, we would welcome if the Committee explicitly identified which particular information in the labelled categories listed in Article 3 (4) of the Directive concerns the environment in the meaning of Article 2 (3) (b) of the Aarhus Convention.

We would also like to note that the Committee did not provide any statement as to whether the request to access certain parts and chapters of the Pre-Operational Safety Report to Units 3 and 4 of the Mochovce Nuclear Power Plant, i. e. “*main components and operating modes of systems to mitigate the consequences of severe accidents*”, or “*instrumentation and control systems in the radioactive waste management*”, or “*activity of fission products in the code and under the PP cladding for Gd-II fuel with enrichment 4.25% (original fuel) and with enrichment of 4.87% (new fuel), 1,375 MWt*” can be classified as request for information that falls under the scope of the categories listed in Article 2 (3) of the Convention. Correspondingly, the Committee did not give its view on whether the redaction of sensitive information concerning the request submitted by GLOBAL 2000 to access information in the Pre-Operational Safety Report regarding eight specific areas, as described in the First Progress Report (pp. 10-11), constitutes, by itself, a non-compliant approach. In our opinion, the mere existence of a general approach, which is essentially in line with Article 4 (6) of the Aarhus Convention, does not in itself constitute non-compliance. We believe that it must be accompanied by a specific act or omission. In lieu of the fact that general assessment without the concrete evaluation of the UJD SR handling procedure in the specific case makes the definite understanding of compliance or non-compliance difficult, we would like to request the Committee to also consider this concrete example.

With respect to para. 40 of the Second Progress Review we would like to clarify and reiterate that all employees of UJD SR are obliged to comply with the provisions of the

Directive on Sensitive Information. It is in accordance with Article 111 (1) (a) of the Act No. 55/2017 Coll. on Civil Service Act, which stipulates that all civil servants, including the employees of UJD SR, are obliged to “*observe the Constitution of the Slovak Republic, legally binding acts of the European Union, legal regulations of the Slovak Republic, service regulations and other internal regulations in the execution of the civil service, apply them with due professional care and respect*”. As mentioned above, the approach to sensitive information adopted in Article 3 (1) of the Directive on Sensitive Information, i. e. that access to documentation is granted only after sensitive information is removed, articulates a general approach of UJD SR in this context.

Turning to the amendments to the Atomic Act, the Committee pointed out three inserted paragraphs concerning the obligations of UJD SR to take precautions to ensure that “*sensitive information, classified information, bank secrets, tax secrets, business secrets, telecommunication secrets, postal secrets or breach of the statutory or recognized confidentiality obligation are not made available when serving a decision or other documents or when viewing the file*”. UJD SR is obliged to secure confidentiality of protected interests under national law. Pursuant to the Explanatory Memorandum, these provisions were introduced in order to comply with confidentiality requirements enshrined in relevant national laws. Disclosure of such information could lead to serious harm to the rights and protected interests, confidentiality of which is provided for under national law, as requested by Article 4 (4) (a) of the Aarhus Convention. The entire documentation submitted during the licensing (authorization) process is submitted by an applicant who is a private entity. Considering the nature and extent of the documentation required in the authorization (licensing) process that has to be submitted by the applicant, the applicability of various confidentiality requirements under national laws cannot be ruled out. We agree that the inserted paragraph introduced more categories of information to be withheld from the disclosure; however, we would like to reiterate that these exceptions are essentially not related to information concerning the environment. At the same time, we would like to add that the amendment to the Atomic Act summarized the confidentiality requirements under relevant national laws – such as the 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 – in the respective provisions of the Atomic Act. So far, there have been no cases in the practice

of UJD SR concerning issues with verification and inappropriate use of legally protected categories of information. However, UJD SR cannot guarantee that such cases would not occur in the future.

Turning to the comments submitted by communicants, we would like to stress that we welcome an exchange with the representatives of the civil society, provided it is done in a constructive manner. We would like to underline that we do not dispute their position as communicants and observers. With respect to the comments submitted by Mr. Haverkamp, we would only like to point out that he does also not demand a full disclosure of all safety and security information, but he emphasizes that it should only be exempted from disclosure based on the strict application of the criteria under Article 4 (4) of the Aarhus Convention.

At the same time, we would also like to mention the opinion of the Regional Interest Association of Towns and Municipalities, which articulated the need to consider public security concerns in this context and an inherent need to balance them with the public interest served by disclosure. A written opinion was formulated following the regular plenary session where the development of the case was discussed among the representatives of municipalities and inhabitants living in the vicinity of the nuclear installation. In the written observation, they expressed their view regarding the issue of disclosing sensitive information that may potentially collide with their security interests. The Committee in para. 22 of the Second Progress Review stated that it took the observer statement submitted by the Regional Interest Association of Towns and Municipalities into account. However, the Committee did not evaluate it in its review despite that public security could constitute one of grounds for refusal within the meaning of Article 4 (4) (b) of the Aarhus Convention. Nevertheless, the comments of Mr. Haverkamp regarding his observations to the Second Progress Report were noted.

In this regard, we would like to note that the purpose of the Directive on Sensitive Information is to outline the handling procedure when assessing whether the information may be disclosed to the public or not. As stated earlier, the Directive on Sensitive Information makes it clear that an information concerning the environment shall not be considered as sensitive information and *vice-versa*. Therefore, the grounds for exemption from an information from disclosure follow the criteria stipulated by Article 4 (4) of the Aarhus Convention.

Furthermore, we have noted that written comments after the submission of the First and Second Progress Report were provided only by Mr. Haverkamp. No comments were received from the communicants in this case (GLOBAL 2000, OEKOBURO) in relation to the Second

Progress Report provided by Slovakia, nor were any comments received from them back in November 2018 upon the submission of the First Progress Report.

To conclude, we do believe that the Directive on Sensitive Information essentially addresses the necessary distinction between the information concerning the environment and sensitive information. The evaluation of the grounds for refusal to provide access to information to the public always follows a mandatory restrictive approach, considering that the grounds for exceptions need to be interpreted restrictively as well as the fact whether the requested information concerns the emissions into the environment.