

## **Statement of the Slovak Republic with respect to the observer statements on the implementation of the decision VI/8i submitted after 16<sup>th</sup> of May 2021**

The Slovak Republic would like to use this opportunity to react to the observer statements commenting on the implementation of the Decision VI/8i, which were submitted after 16<sup>th</sup> of May 2021.

First of all, we would like to reiterate the need to focus only on the matters falling within the scope of the Decision VI/8i. In our view, only such matters can be taken into account when assessing the compliance of the Slovak Republic with the Aarhus Convention in the pertinent case.

The scope of the Decision VI/8i is delimited as follows:

*"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:*

*(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."<sup>1</sup>*

As a reaction to the Decision VI/8i and detailed assessment and recommendations of the Aarhus Convention Compliance Committee (further only “the Committee”) articulated in its first and second progress review, the Slovak Republic has undertaken its best efforts to address the matters considered as problematic by the Committee.

Specifically, the Nuclear Regulatory Authority of the Slovak republic (further only “NRA”) amended its Directive on Sensitive Information in order to explicitly reiterate the principle that any limitations to the access to information need to be interpreted in a restrictive manner, considering the public interest served by disclosure and whether the information requested relates to emissions into the environment. The Committee was informed of this amendment on 11<sup>th</sup> of May 2020.

Moreover, the Ministry of Environment of the Slovak Republic has also initiated a legislative process focusing on the removal of the reference to postal and telecommunications secrets from the text of the Atomic Act.<sup>2</sup> The legislative process is still pending; however, the fact that it has been officially initiated clearly demonstrates the genuine efforts of the Slovak Republic to implement the recommendations of the Committee in the context of the Decision VI/8i and the Committee’s progress reviews. While the intention was to proceed in a possibly timely manner, it is not possible to influence the dynamics and the pace of the legislative process.

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<sup>1</sup> Decision VI/8i: [https://unece.org/DAM/env/pp/compliance/MoP6decisions/Compliance by Slovakia VI-8i.pdf](https://unece.org/DAM/env/pp/compliance/MoP6decisions/Compliance%20by%20Slovakia%20VI-8i.pdf).

<sup>2</sup> <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2021/2>.

Furthermore, we would like to point out that the same objective in this regard pursues also the legislative proposal submitted to the National Council of the Slovak Republic (legislative body) on 28<sup>th</sup> of May 2021 by several members of the parliament.<sup>3</sup> While this legislative process is pending as well, it underscores the genuine efforts to bring the Slovak legal framework into compliance with the Decision VI/8i.

While not disputing the right of the observers to submit statements that they deem relevant, we would like to note that, in our view, only partial aspects of the observer statements can be considered as relevant in the context of the Decision VI/8i. We welcome that the observers have recognized the above-mentioned efforts of the Slovak Republic to remove the reference to postal and telecommunications secrets from the text of the Atomic Act.

While recognizing the complexity of the interfaces between the Aarhus Convention and the field of nuclear energy and nuclear security, we would like to reiterate that in the context of the pertinent process it is only possible to assess matters falling within the scope of the Decision VI/8i. We will not react to each statement of the observers that in our view does not fall within the scope of the Decision VI/8i in detail. We fully respect the right of the Committee to determine which aspects fall within and outside of the scope of the Decision VI/8i. However, we would like to clarify certain points.

The separate and prior case ACCC/C/2009/41, in the context of which it was *inter alia* concluded that the Slovak Republic is no longer in non-compliance with the Aarhus Convention, does not fall within the scope of the present decision VI/8i.<sup>4</sup> It is unreasonable to substantiate the allegations of non-compliance of the Slovak Republic in the context of the Decision VI/8i by referring to various shortcomings from the past, which have already been remedied.

In our view, the review of compliance in the context of the Decision VI/8i should not cover legislative proposals in the field of construction, building and spatial planning, which have not been adopted yet. The Ministry of Environment, the Ministry of Justice, the NRA and other relevant stakeholders pointed out *inter alia* the need to ensure compliance with the Aarhus Convention in the commenting procedure concerning these legislative initiatives. Irrespective of the fact that this matter is outside of the scope of the Decision VI/8i, it is not possible to claim non-compliance of the Slovak Republic with the Aarhus Convention based on the proposals that have not been adopted and the final wording of which is yet to be finalized based on the comments received in the commenting procedure.<sup>5</sup> More than 4,500 comments were submitted in the commenting procedure, so it is likely that the proposals will be substantially modified.

The legislative proposal, which was subsequently withdrawn, cannot represent a valid framework for assessment of the compliance of the Slovak republic with the Aarhus Convention in the context of the Decision VI/8i either.<sup>6</sup> Nevertheless, it is unclear how could a mere reference to “intellectual property” as a ground for limiting access to information constitute a violation of the Aarhus Convention,

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<sup>3</sup> <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=8289>.

<sup>4</sup> Report by the Compliance Committee for the 5th session of the Meeting of the Parties (2014): Compliance by Slovakia with its obligations under the Convention, [https://unece.org/DAM/env/pp/mop5/Documents/Category\\_II\\_documents/ECE.MP.PP.2014.19.add.1.E.final\\_01.pdf](https://unece.org/DAM/env/pp/mop5/Documents/Category_II_documents/ECE.MP.PP.2014.19.add.1.E.final_01.pdf). In the context of the statement I. of Mr. Mihok.

<sup>5</sup> Reaction to the statement I. of Mr. Daniska on “[t]he new Building Act(s) proposal.”

<sup>6</sup> Reaction to the statement II. of Mr. Daniska on “[n]he reason for declaring documents as confidential according to the Atomic Act.”

considering that the Aarhus Convention itself in its Art. 4, para. 4 e.) lists intellectual property as one of the valid exceptions from the general rule to provide access to information, provided it is interpreted restrictively etc.<sup>7</sup>

In general, we would like to react to the statements concerning the Act No. 211/2000 on Freedom of Information (further only “Freedom of Information Act”) as amended. The Freedom of Information Act applies to all public authorities, municipalities, self-governing territorial bodies, as well as legal and natural persons with the statutory authority to decide about rights and obligations of natural and legal persons in the context of public administration.<sup>8</sup> At the same time, it applies to all legal persons established under the law or by a state authority, self-governing territorial body or municipality, meeting the conditions stipulated by the law.<sup>9</sup> The exceptions from the right to information under the Freedom of Information Act reflect the spirit of the Aarhus Convention. For instance, it is possible to restrict access to information due to the reasons of public safety in the context of the safety of nuclear installations.<sup>10</sup> However, such grounds limiting access to information need to be interpreted restrictively.<sup>11</sup> Moreover, the Freedom of Information Act underscores the need to provide access to environmental information to the widest extent possible.<sup>12</sup>

In our view, the Freedom of Information Act represents a sound legal basis compatible with the Aarhus Convention, which enables the public to gain access to information from public authorities and legal persons established by those authorities.

The NRA fulfils its information obligations in accordance with the Freedom of Information Act. Since 2020, the NRA has received four requests for information falling within the area of information related to the management of the Radioactive Waste. These requests contained a large number of questions. These questions were exhaustive and very detailed and also focused on a long time scale. It was necessary to re-study the archived files and therefore in some cases it was necessary to extend the deadline for answering questions. The NRA provided all the data at its disposal and in certain cases went even beyond its obligations under the Freedom of Information Act. In several cases, supplementary questions were subsequently answered. In rare cases, the NRA was unable to provide the requested response, as it either did not have the data in question or was forced to correct the response in terms of the content of sensitive information or personal data. The observer statement contains 2 specific submissions (from 27.11.2020 and 23.2.2021), when the public allegedly unsuccessfully requested data about how much radioactivity is carried to the waste water from wet filtration of flue gases from RAW incineration and data about radioactivity streams during RAW preconditioning, incineration and post-treatment. The NRA responded to both of these questions with exhaustive answers (22.12.2020 and 15.3.2021). The answer was in the range of 6 pages with multiple attachments. The NRA provided all the information at its disposal. The mentioned 16-working day time limit for processing of the request according to the Freedom of Information Act is not standard, it is an extended period, applied especially in the case of particularly large applications or questions.

With respect to the practical aspects related with access to information in nuclear-related matters administered by the NRA, we would like to emphasize that the NRA is employing all possible electronic means of communication and publishes all information not only physically outside of the building, but also on the electronic board and on its official web site. The public can follow these activities by web

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<sup>7</sup> The Aarhus Convention: An Implementation Guide (UNECE 2nd ed., 2014) , p. 78, 88-89 .

<sup>8</sup> § 2, para. 1 of the Freedom of Information Act.

<sup>9</sup> § 2, para. 2 and 3 of the Freedom of Information Act.

<sup>10</sup> § 11, para. 1 i) of the Freedom of Information Act.

<sup>11</sup> § 12 of the Freedom of Information Act.

<sup>12</sup> § 3, para. 2; § 10, para. 2 of the Freedom of Information Act.

site tracker in order not to miss any new information and to be able to observe the procedural limits and to exercise its right to get involved in the procedures and to raise comments/objections to the draft decisions and decisions. Providing online access to all license documentation is almost technically impossible. In addition, without prior blackening, it could be in conflict with the protection of intellectual property, the protection of personal data and the protection of sensitive information.

Furthermore, observer statements on the page 4 are in our view incorrect and misleading.<sup>13</sup>

In the point 1, the observer claims that office hours are only 9:00 – 12:00 on workdays. It is not true. The observer and other participants had the opportunity to study the documentation throughout the workday, not only at the specified hours. If someone requests a longer time to inspect the file and the responsible employee has time, it is possible to extend this time to inspect the file. Similarly, if there is a large amount of documentation, a party who is interested in studying the documentation may come to inspect the file several times as necessary.

The statement in the point 2 that, in some cases, the only opportunity to study the documentation is during the local inspection of the respective facility is misleading. This procedural step is preceded by a sufficiently long period of time from the announcement of the beginning of the relevant administrative proceedings, when it is possible for the public to use standard procedures to acquaint with documentation, such as inspection of files and relevant documents, to obtain extracts and copies of the files etc.

Regarding the point 3 the NRA states that these sets of documents contain sensitive information and for this reason cannot be disclosed in entirety. The classification level results from the classification level of the Physical Protection Plan of Integral Storage of Radioactive Waste.<sup>14</sup> The approach articulated in the amended version of the Directive on Sensitive Information is not affected hereby.

With regard to the obstacles concerning effective access to information, we would like to mention that there is no underlying legal obligation that would require the administrative body to publish all documentation submitted throughout the authorization process online. Moreover, online publication of documentation in its entirety would also be rather problematic from the technical point of view given that the majority of files administered by the NRA falls under the scope of Act No. 215/2004 Coll. on the protection of classified information, and therefore require a special handling approach. The NRA as an administrative body must take necessary measures not to disclose classified information, bank secrecy, tax secrecy, trade secrecy or breach of a duty of professional secrecy in accordance with its legal obligations.<sup>15</sup> With reference to the redacted text in the documentation in administrative files, the NRA proceeds rigorously in line with the Directive on Sensitive Information, and in the event that the documentation contains information which cannot be disclosed in its entirety due to security reasons,

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<sup>13</sup> Reaction to the statement IV. Of Mr. Daniska “Other obstacles in effective access to information.”

<sup>14</sup> The Slovak Republic is obliged to implement the requirements of the Convention on Physical Protection of Nuclear Material and Nuclear Facilities, which underscores as one of its fundamental principles the responsibility of the state. It states that “the responsibility for the establishment, implementation and maintenance of a physical protection regime within a State rests entirely with that State.” Further, it underscores confidentiality as another of its fundamental principles. It states that “the State should establish requirements for protecting the confidentiality of information, the unauthorized disclosure of which could compromise the physical protection of nuclear material and nuclear facilities. The state must protect documentation which could be used to plan or carry out activities to cause disruption or destruction of a nuclear installation, and thereby adversely affect the public safety 3b) and cause environmental or economic damage.”

<sup>15</sup> Art. 23 (3) of the Administrative Code.

environmental information is made available following the removal of sensitive information.<sup>16</sup> As noted above, the amended version of the Directive on Sensitive Information explicitly reiterates the principle that any limitations to the access to information need to be interpreted in a restrictive manner, considering the public interest served by disclosure and whether the information requested relates to emissions into the environment.

Moreover, JAVYS has also information obligations in relation to the public determined by the Slovak legislation, e.g. the obligations of the license holder in the Atomic Act to inform the public about the state of nuclear safety of nuclear facilities and the management of Radioactive Waste and Spent Nuclear Fuel, information obligations under the Radiation Protection Act and obligations arising from the legislation falling within the competences of the Ministry of the Environment of the Slovak Republic.

The permitting process according to the presently valid Act. No. 50/1976 Coll. on Spatial Planning and Building Regulation (further only “Building Act”) clearly acknowledges and allows for public participation in all relevant proceedings. The public is informed through the standard NRA’s channels as well as through the municipality’s official boards. The public is informed about the initiation of the procedures via standard communication channels which include official notice board stationed at the entrance to the NRA’s headquarter building, official notice board in the adjacent municipalities to respective nuclear installations, electronic notice board located on the NRA’s web page, as well as on the Central Public Administration Portal at [www.slovensko.sk](http://www.slovensko.sk) via public notice.

A number of other relevant departmental state administration bodies participate in NRA’s proceedings. These bodies issue their own opinions, binding opinions, decisions or other statements in accordance with special regulations in the licensing process, and they also inform the public through their channels, websites etc. The right of the public to participate in permitting procedures is unquestionable and it is also guaranteed in the context of the Act No. 24/2006 Coll. on Environmental Impact Assessment.

The public has an exclusive status of a party with all possibilities to participate in the proceedings, express its opinions, and thus influence the course of the proceedings. For instance, the public shall be informed of the initiation of the relevant administrative proceedings; may see the content of the file; make copies of the documentation, if its nature allows; may monitor communication between the administrative authorities; it may submit comments and may become acquainted with the documents concerning the prepared decision and the reasons which led the administrative body to issue it; it shall also have access to the opinions and statements of the other authorities concerned if it has participated in any way in the proceedings in question; it may comment on draft decisions being prepared and, subsequently, it may apply ordinary / extraordinary appeals (legal remedies) against decisions.

The public actively uses these opportunities in proceedings administered by the NRA. The pending approval procedure for the Integral Storage of Radioactive Waste, the construction procedure for the expansion of the storage capacities of the Interim Spent Nuclear Fuel Storage, the premature use of the Incinerator construction and others, may serve as examples.

Due to the broad cross-sectional scope of the construction proceedings for the construction of nuclear installations, there is a number of other state administration bodies involved that issue binding opinions, decisions, or other statements which are quintessential for the licensing process. Those authorities simultaneously inform the public about their partial sub-proceedings through their respective communication channels. The observer statement concerning the possibility to study the documentation during an oral hearing connected with the site examination procedure is misleading. This procedural step is preceded by a sufficiently long period of time from the notification of the start of the relevant

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<sup>16</sup> Art. 3 (2) of Directive on Sensitive Information:

[https://www.ujd.gov.sk/ujd/WebStore.nsf/viewKey/Directive/\\$FILE/Directive\\_on%20Identification\\_2020.pdf](https://www.ujd.gov.sk/ujd/WebStore.nsf/viewKey/Directive/$FILE/Directive_on%20Identification_2020.pdf).

administrative procedure. In addition to that, construction proceedings and proceedings pursuant to the Atomic Act administered by the NRA are mostly preceded by (or run in parallel to) related proceedings administered by other state administration bodies (e.g. environmental impact assessment processes at the Ministry of the Environment of the Slovak Republic, authorisation processes of nuclear facilities falling within the scope of radiation protection at the Radiation Protection Authority), in which partial licensing according to specific regulations is carried out, and thus the public also has the opportunity to get acquainted with the information related to these areas. The parties to the proceedings, as well as other interested parties, have the right to consult the administrative files, make excerpts from the documents contained therein, and receive copies upon request.<sup>17</sup> Similarly, the right to access the file applies to the whole duration of the administrative proceeding and it is undeniable that the interested parties may exercise it at their discretion and at any given moment following a prior request. The public may be acquainted with the documents underlying the decision to be taken, the reasons which led the administrative body to issue it and the public may also raise objections. The inputs provided by the public within the framework of the decision-making process are implemented in the NRA's administrative decisions.

All the aforementioned practical aspects related to the access to information in nuclear-related matters provide the public with broad and ample opportunities to participate in decision-making in an early, transparent, and effective manner. We believe that this framework creates the necessary prerequisites for a comprehensive and timely information basis enabling the public to participate effectively in decision-making processes.

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<sup>17</sup> Art. 23 (1) of the Administrative Code.