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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

#### Seventh session

Geneva, 18–20 October 2021

Item 7 (b) of the provisional agenda

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

### **Report of the Compliance Committee on compliance by Slovakia\*\*\***

#### *Summary*

This document is prepared by the Compliance Committee pursuant to the request set out in paragraph 21 of decision VI/8 of the Meeting of the Parties (ECE/MP.PP/2017/2/Add.1) and in accordance with the Committee's mandate set out in paragraph 35 of the annex to decision I/7 of the Meeting of the Parties on review of compliance (ECE/MP.PP/2/Add.8).

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\* The present document is being issued without formal editing.

\*\* This document was submitted late owing to additional time required for its finalization.



## I. Introduction

1. At its sixth session (Budva, Montenegro, 11–13 September 2017), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision VI/8i on compliance by Slovakia with its obligations under the Convention (see ECE/MP.PP/2017/2/Add.1).

## II. Summary of follow-up

2. At its sixtieth meeting (Geneva, 12–15 March 2018), the Committee reviewed the implementation of decision VI/8i in open session with the participation by audio conference of representatives of the Party concerned and GLOBAL 2000, one of the communicants of communication ACCC/C/2013/89.

3. On 1 October 2018, the Party concerned submitted its first progress report on decision VI/8i, on time.

4. On 5 October 2018, the secretariat forwarded the first progress report to the communicants of communication ACCC/C/2013/89, inviting their comments by 1 November 2018. No comments were received.

5. After taking into account the information received, the Committee prepared its first progress review and adopted it through its electronic decision-making procedure on 21 February 2019. On 26 February 2019, the secretariat forwarded the Committee's first progress review to the Party concerned and the communicants of communication ACCC/C/2013/89.

6. At its sixty-third meeting (Geneva, 11–15 March 2019), the Committee reviewed the implementation of decision VI/8i in open session, with the participation by audio conference of representatives of the Party concerned. Though invited, no communicants or registered observers took part in the open session.

7. On 8 April 2019, observer Mr. Jan Haverkamp submitted comments on the statement delivered by the Party concerned at the open session on decision VI/8i at the Committee's sixty-third meeting.

8. On 18 April 2019, a regional interest association of towns and municipalities submitted an observer statement.

9. On 19 June 2019, OEKOBUERO and GLOBAL 2000, representing the communicants of communication ACCC/C/2013/89, submitted an update.

10. On 9 August 2019, the Executive Secretary of the United Nations Economic Commission for Europe wrote to the Minister of Foreign Affairs of the Party concerned at the request of the Committee to remind the Party concerned of the deadline of 1 October 2019 set out in paragraph 3 (a) of decision VI/8i for its second progress report.

11. On 30 September 2019, the Party concerned submitted its second progress report on decision VI/8i, on time.

12. On 2 October 2019, the secretariat forwarded the second progress report to the communicants of communication ACCC/C/2013/89 and observer Mr. Jan Haverkamp, inviting their comments thereon.

13. On 30 October 2019, observer Mr. Jan Haverkamp provided his comments on the second progress report by the Party concerned.

14. On 20 January 2020, the Committee asked the Party concerned to provide the text of relevant recent amendments to its Atomic Act. The Party concerned provided the requested legislation in Slovak language the same day, with an English translation on 4 February 2020.

15. On 4 February 2020, Greenpeace Slovakia, a communicant of communication ACCC/C/2013/89, provided comments on the legislation provided by the Party concerned on 20 January 2020.

16. After taking into account the information received, the Committee prepared its second progress review and adopted it through its electronic decision-making procedure on 3 March 2020. On the same date, the secretariat forwarded the Committee's second progress review to the Party concerned, the communicants of communication ACCC/C/2013/89 and the observers.
17. At its sixty-sixth meeting (Geneva, 9–13 March 2020) the Committee reviewed the implementation of decision VI/8i in open session, with the participation by audio conference of representatives of the Party concerned and OEKOBUERO, GLOBAL 2000, and Greenpeace Slovakia, on behalf of the communicants of communication ACCC/C/2013/89.
18. On 13 March 2020, OEKOBUERO and GLOBAL 2000 submitted a written version of the statement they had delivered at the open session on decision VI/8i at the Committee's sixty-sixth meeting. On the same day, Greenpeace Slovakia also submitted the written version of its statement.
19. On 26 March 2020, the Party concerned submitted the written version of the statement it had delivered at the open session on decision VI/8i at the Committee's sixty-sixth meeting.
20. On 11 May 2020, the Party concerned provided an update regarding the amendment of the Directive on Sensitive Information along with the text of the amendment in English and Slovak language.
21. On 1 October 2020, the Party concerned submitted its final progress report on decision VI/8i, on time.
22. On the same day, the secretariat forwarded the final progress report to the communicants of communication ACCC/C/2013/89 and observer Mr. Jan Haverkamp, inviting their comments thereon.
23. On 11 January 2021 the Party concerned submitted an update regarding the amendment of the Atomic Act, which was followed by a further update on 16 May 2021.
24. On 28 May 2021, Mr. Peter Mihók provided a statement as an observer.
25. On 30 May and 2 June 2021, Mr. Michal Daniška submitted statements as an observer.
26. On 6 June 2021, the Party concerned provided comments on the observer statements submitted after 16 May 2021.
27. On 18 June 2021, the Party concerned submitted comments on the observer statement of 2 June 2021 along with an English translation of the proposed draft amendment to the Atomic Act.
28. On 21 June 2021, the Party concerned submitted further comments on the observer statements of 30 May and 2 June 2021.
29. The Committee completed its draft report to the seventh session of the Meeting of the Parties on the progress by the Party concerned to implement decision VI/8i through its electronic decision-making procedure on 4 July 2021. In accordance with paragraph 34 of the annex to decision I/7, the draft report was then forwarded on that date to the Party concerned, the communicants and observers with an invitation to provide comments by 19 July 2021.
30. At its seventy-first meeting (Geneva online, 7–9 July 2021), the Committee reviewed the implementation of decision VI/8i in open session with the participation by virtual means of representatives of the Party concerned and OEKOBUERO, on behalf of the communicants of communication ACCC/C/2013/89.
31. On 19 July 2021, observers Mr. Peter Mihók and Mr. Michal Daniška each submitted comments on the Committee's draft report. On the same date, the Party concerned confirmed that it had no comments on the draft report.
32. After taking into account the information received, the Committee finalized its report to the seventh session of the Meeting of the Parties on the implementation of decision VI/8i in closed session. It then adopted its report through its electronic decision-making procedure

on 20 July 2021 and thereafter requested the secretariat to send it to the Party concerned, the communicants and observers.

### III. Considerations and evaluation by the Committee

33. In order to fulfil the requirements of paragraph 2 of decision VI/8i, the Party concerned would need to provide the Committee with evidence that it had taken 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 (3) of the Convention, any grounds for refusal under article 4 (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.

#### General observations

##### *Quality of reporting*

34. The Committee welcomes the final progress report of the Party concerned, which is clear, well-structured and includes substantiating information in Slovak and English language. The Committee also appreciates the proactive approach taken by the Party concerned to provide updates and additional information to the Committee during the intersessional period. The Committee considers that the constructive engagement by the Party concerned and the quality of its reporting may serve as a model for other Parties

##### *Scope of the Committee's review*

##### Allegations by Mr. Daniška

35. In his statements of 28 and 30 May 2021, the observer, Mr. Michal Daniška, makes a number of allegations concerning access to nuclear-related environmental information as well as regarding public participation in decision-making and access to justice with respect to procedures under the Building Act.<sup>1</sup> Having examined Mr. Daniška's allegations, the Committee does not consider any of the matters raised to fall within the scope of its review of decision VI/8i. While not precluding the possibility to examine these matters if put before it in the context of a future communication, the Committee will not consider them in the context of its review of decision VI/8i.

##### Amendments to the Atomic Act and Building Act adopted on 10 September 2019

36. The Party concerned and OEKOBUERO and GLOBAL 2000, on behalf of the communicants of communication ACCC/C/2013/89, have each reported on various amendments to the Atomic Act and Building Act adopted on 10 September 2019. Having reviewed the information provided, the Committee in its second progress review determined that most of these amendments were outside the scope of its review of decision VI/8i. The Committee however considered that one of the amendments was potentially within the scope of decision VI/8i, namely the elaboration of additional grounds in article 8 of the Atomic Act under which documents held in the administrative file may not be disclosed, including "telecommunications secrets", "postal secrets", "bank secrets" and "tax secrets".<sup>2</sup>

37. In its second progress review, the Committee indicated that it failed to see how "telecommunications secrets" or "postal secrets" came within the scope of any of the grounds for refusal set out in article 4 (3) or (4) of the Convention. Accordingly, it appeared to the Committee that, rather than "ensuring that any grounds for refusal under article 4 (4) of the Convention are interpreted in a restrictive way", the Party concerned had, through the 10 September 2019 amendments, in fact added new grounds for refusal. The Committee thus invited the Party concerned in its final progress report to explain how the exemptions from disclosure for "telecommunications secrets" and "postal secrets" in paragraphs 11–13 of article 8 of the Atomic Act were consistent with the exhaustive list of grounds for refusal in

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<sup>1</sup> Statements by observer (Mr. Michal Daniška), 28 and 31 May 2021.

<sup>2</sup> Committee's second progress review, 3 March 2020, para. 18.

article 4 (3) and (4) of the Convention, or otherwise to provide evidence in its final progress report that those exemptions have by that date been deleted.<sup>3</sup>

38. In its final progress report, the Party concerned reports that the Nuclear Regulatory Authority (UJD SR) is currently drafting a new Atomic Act which should represent a comprehensive amendment of the legislation applicable to the peaceful use of nuclear energy. In this context, in order to bring the legal framework into compliance with the recommendations in the Committee's second progress review, UJD SR has arranged for the deletion of the terms "telecommunication secrets" and "postal secrets" from the text of the proposed new Atomic Act.<sup>4</sup>

39. The Party concerned subsequently reports that, in the latest (28 May 2021) version of the proposed amendment the references to "bank secrets" and "tax secrets" have also been deleted.

40. The Committee welcomes these proposed amendments and emphasizes that the grounds for refusal set out in article 4 (3) and (4) of the Convention are exhaustive. However, having reviewed the information provided since its second progress review, the Committee considers that, in contrast to the exemptions from disclosure in the Directive on Sensitive Information, those set out in article 8 of the Atomic Act do not in fact come within the scope of its review on decision VI/8i. In this regard, the Committee recalls its findings on communication ACCC/C/2013/89, on which the recommendation in paragraph 2 of decision VI/8i is based. In those findings, the Committee held:

The Committee finds 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.<sup>5</sup>

41. Based on the foregoing, while welcoming the 28 May 2021 text of the proposed amendment to article 8 of the Atomic Act, and reiterating that the grounds for refusal set out in article 4 (3) and (4) of the Convention are indeed exhaustive, the Committee concludes that the amendments to article 8 of the Atomic Act are not within the scope of its review of decision VI/8i.

42. Accordingly, while not precluding the possibility to examine section 8 of the Atomic Act if put before it in the context of a future communication, the Committee will not examine the proposed amendment to article 8 in the context of its review of decision VI/8i.<sup>6</sup>

#### **Paragraph 2 of decision VI/8i - Directive on Sensitive Information**

43. In its second progress review, the Committee welcomed the new article 3 (2) of the Directive on Sensitive Information that entered into force on 14 June 2019 and which incorporates verbatim the definition of "environmental information" in article 2 (3) of the Convention.<sup>7</sup> The Committee also welcomed the amendment to article 3 (1) of the Directive which stipulates that documentation containing sensitive information can be made available

<sup>3</sup> Committee's second progress review, 3 March 2020, paras. 50–51.

<sup>4</sup> Party's final progress report, 1 October 2020, pp. 8–9.

<sup>5</sup> ECE/MP.PP/C.1/2017/13, para. 103.

<sup>6</sup> Committee's second progress review, 3 March 2020, para. 19.

<sup>7</sup> *Ibid.*, para. 30.

after the removal of the sensitive information, and no longer provides that such documentation can never be published.<sup>8</sup>

44. In its final progress report, the Party concerned informed the Committee that a new paragraph had been added to article 3 (1) of the Directive, after the definition of “sensitive information”. The new paragraph provides that:

Each request for information shall be considered individually. Any restrictions on access to information within the meaning of the above definition shall be interpreted in a restrictive manner, taking into account the public interest served by disclosure of environmental information and whether the information requested relates to emissions into the environment.<sup>9</sup>

45. The Committee welcomes the insertion of the above paragraph in article 3 (1) of the Directive. The Committee considers this amendment to address its request to put in place a clear and transparent legal framework requiring that officials, when deciding on potential exemptions from disclosure of environmental information, apply any grounds for refusal in a restrictive manner. The Committee also notes that the amendment to article 3 (1) of the Directive mirrors the last paragraph of article 4 (4) of the Convention by stating that any ground for refusal to access to information shall be interpreted restrictively and must take into account both the public interest served by disclosure of environmental information as well as whether the information requested relates to emissions in the environment.

46. The Party concerned further reports that the text of article 3 (2) of the Directive has been amended to provide, after the statement that “environmental information as defined in article 3 (2) of the Aarhus Convention ... must be disclosed without restriction”, that:

“in case the request for information concerns documentation which cannot be disclosed without restriction, the environmental information shall be made available after the removal of information which cannot be disclosed due to security reasons.”<sup>10</sup>

47. The Committee welcomes the above amendment to article 3 (2) of the Directive. The Committee considers that this amendment addresses the requirement in article 4 (6) of the Convention to ensure that, if the public authority determines, in a particular case, that some of the requested environmental information should be withheld, the rest of the requested information should be made available after the removal of the exempted information.<sup>11</sup>

48. In its second progress review, the Committee invited the Party concerned to clarify the legal effect of the duplication of the definitions of “environmental information” contained in article 3 (2) and (3) of the Directive. The Party concerned explained that the reason for the inclusion of both definitions is to provide the terms as stipulated by the respective legal provisions in the Slovak legal order. While article 3 (2) includes verbatim the definition of environmental information in the Convention, article 3 (3) includes the definition of information as articulated in article 2 (1) of the Act No. 205/2004 Coll. on collecting, keeping and disseminating environmental information and on amending and supplementing some acts as amended. The Party concerned clarifies that the two definitions are not supposed to create legal duplicity, but rather to complement one another in laying down the substantive basis of the terms used in the Directive.<sup>12</sup>

49. In the light of the above explanation, so long as the above duplication does not have the effect of limiting the scope of “environmental information” as provided for in article 2 (3) of the Convention in practice, and does not give rise to inconsistencies and a lack of clarity in the legal framework of the Party concerned, the Committee considers that, based on the information before it, this does not appear to be inconsistent with the Convention.

50. The Committee also takes note of the information provided by the Party concerned that article 111 (1) (a) of the Act No. 55/2017 Coll. on civil service as amended obliges the employees of UJD SR to apply the applicable legal framework, namely the Directive on

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<sup>8</sup> Committee’s second progress review, 3 March 2020, para. 29.

<sup>9</sup> Party’s email enclosing amended Directive on Sensitive Information, 21 May 2020, annex.

<sup>10</sup> Ibid.; Party’s final progress report, 1 October 2020, p. 7.

<sup>11</sup> See the Committee’s second progress review, 3 March 2020, para. 40.

<sup>12</sup> Party’s final progress report, 1 October 2020, pp. 7–8.

Sensitive Information. The Party concerned submits that this will ensure that the restrictive approach to exempting sensitive information from disclosure set out in the amended Directive will be applied in practice.<sup>13</sup>

51. In its second progress review, the Committee indicated that it considered article 3 (4) of the Directive, as then in force, to be problematic, in so far as it stated that none of the information listed thereunder could be considered “environmental information” within the definition of article 2 (3) of the Convention. In its review, the Committee pointed out that some of the categories of information included in the list were so broadly formulated that it was not possible to exclude that they might constitute environmental information within the definition of article 2 (3) of the Convention.<sup>14</sup>

52. In its final progress report, the Party concerned reports that it has amended article 3 (4) of the Directive to remove the reference to “environmental information” and to instead include a list of documentation that “*may* contain sensitive information within the meaning of article 3 (1)” of the Directive.<sup>15</sup>

53. Having reviewed the new wording of article 3 (4) of the Directive, the Committee notes that it in fact provides that “documents containing the following information *shall* be considered as documentation also containing sensitive information within the meaning of article 3 (1) of the Directive”.<sup>16</sup>

54. The Committee queries as to whether the use of the word “shall” in this provision could in practice create a presumption that all the information listed in article 3 (4) of the Directive is “sensitive information”. The Committee therefore welcomes that the last sentence of article 3 (4) now requires that “each request for information shall be assessed on an individual basis, while any restriction on access to information that is considered sensitive due to security reasons shall be interpreted in a restrictive manner, taking into account the public interest served by disclosure of environmental information and whether it relates to emissions into the environment.”

55. The Committee also welcomes that the second paragraph of article 3 (4) also now makes clear that “information from documentation that can be considered as environmental information within the meaning of article 3 (2) and (3) of the Directive and that is not considered as sensitive within the meaning of article 3 (1) of the Directive shall be made accessible.”

56. Based on the foregoing, the Committee finds that the Party concerned has met the requirements of paragraph 2 of decision VI/8i.

## IV. Conclusions

57. The Committee welcomes the constructive engagement of the Party concerned and the quality of its reporting throughout the intersessional period, which the Committee considers may serve as a model for other Parties.

58. The Committee finds that the Party concerned has met the requirements of paragraph 2 of decision VI/8i.

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<sup>13</sup> Party’s final progress report, 1 October 2020, p. 8.

<sup>14</sup> Committee’s second progress review, 3 March 2020, paras. 34–35.

<sup>15</sup> Party’s final progress report, 1 October 2020, p. 7, emphasis added.

<sup>16</sup> Email enclosing amended Directive on Sensitive Information (English version), p. 2, emphasis added.