Enclosure

1. In case that identical decision as in 2008 were to be taken today (2014), would the EIA be conducted?

Answer: Yes.

The EIA should be conducted upon two main reasons:

A/ The Ministry of the Environment of the Slovak Republic shall state whether the change will have such an adverse impact that an environmental impact assessment (EIA) is required (Section 18, of the EIA Act).

B/ According to existing interpretation of Slovak courts (even in case of NPP Mochovce 3&4 Unit) EIA is necessary when the old permits (i. e. permits issued prior to EIA Act effectiveness without previous EIA) are reconsidered or updated, or the activities are changed or extended compared to previous conditions.
Regarding EIA, the European Court of Justice (ECJ) has confirmed the vertical direct effect of Article 2(1) of the EIA Directive. Moreover in its judgement the ECJ expressed: "In a consent procedure comprising several stages, that assessment must, in principle, be carried out as soon as it is possible to identify and assess all the effects which the project may have on the environment."
This means that omission of the EIA in case of changes to old permits would be a breach of Slovak and European law.

Statement of NGOs:

1.1 The amendments of the EIA Act adopted in recent years did not influence the obligation to conduct an EIA in cases similar to the case of JEMO in 2008. The EIA Act still stipulates that any change of a proposed activity listed in Annex 8 of the EIA Act (which is the list of activities and thresholds for mandatory EIA or for screening procedure) shall be subject to a mandatory EIA if due to such change given thresholds are reached or exceeded (Article 18 paragraph 8 of the EIA Act No. 24/2006).

1.2 We (NGO) were insisting already in 2008 that an EIA was necessary for any further permission procedure, including in the **case of change of the original permission** which was issued in 1986. The Nuclear Authority refused our argumentation and they keep refusing so up today. Therefore I am surprised by their statement saying that in case an identical decision as in 2008 were to be taken today an EIA would be conducted. In procedures with Greenpeace Slovakia they keep saying that in case of change of the original permission (which was issued long **before** the EIA Act was adopted) the EIA is not a prerequisite for the procedure on change of the original permission.

1.3 The main issue of the case is whether the old permission issued before adopting any EIA Act should be subject to EIA. The EIA Act does not give a precise answer to this question. The legislation in this point has not changed since 2008.

1.4 As was the case in 2008, the responsible authority may well decide that no adverse impact is to be expected, without having executed a proper environmental assessment to that extent. Public participation in environmental decisions exists to guarantee that potential environmental impacts are recognised, potentially by the public if, for instance, the responsible authority has overseen certain issues. But the public can only do this, if it can practically participate. The conclusion whether a project can be expected to have an adverse effect on the environment should be the *outcome* of an EIA including public participation, not the starting point.

1.5 There still exist projects in Slovakia that could be revived on the basis of old pre-EIA permissions and procedures and that could have a large impact on the environment. The question and answers are not only formal issues.

2. In case that EIA would not be conducted how the participation of members of the public is to be assured?

In case that competent authority would not execute EIA the public concerned can participate in a permitting procedure according to Section 14 of the Administrative Procedure Code. Any person representing its concern for the decision on environmental matters is considered to be a party to the proceeding. According to decision of the ECJ in case C-240/09 (Lesoochranárske zoskupenie VLK) Slovak authorities and courts apply interpretation of procedural rules to fullest extent possible in favour of public concerned, including non-governmental organisations, in order to bring administrative or judicial proceedings in accordance with the objectives of Article 6 and article 9 of the Aarhus Convention.

Application of the law is now fully compliant with Aarhus Convention.

Statement of NGOs:

2.1 Again – We are very surprised by the statement of the Government – which is, however, not used in relevant cases. NGOs and other public concerned must put forth much effort to be recognised as a party to the proceedings in public interest law cases.

2.2 This statement of the Slovak Government: "Any person representing its concern for the decision on environmental matters is considered to be a party to the proceeding" is simply not true.

2.3 Any procedures (including all permission procedures) dealing with nuclear devices (such as power plants, etc.) are regulated by the Nuclear Act No. 541/2004. It stipulates in Article 8 paragraph 3 that **in case of proceedings preceded by an EIA a natural person or a legal entity shall be considered a party to the permission proceedings if such person was participating in the EIA**. This means that the claim of the public to be a party to the permission proceedings in case of nuclear devices **shall be based on its participation in**

previous EIA procedure. The Nuclear Act does not recognise any other situation for the public to be party to the proceedings regulated by this Act.

2.4 There is a general law on Administrative procedures – Administrative Procedure Code No. 71/1967. This law stipulates that among the parties to administrative proceedings there can also be a person who claims that his/her rights, legally protected interests or obligations can be affected by the decision – but only when this is proven (Article 14). This general statement is often used by the public to support their argumentation to become party to the proceedings – however, the administrative authorities generally refuse this argumentation stating that if there is a special law (such as the Nuclear Act) and if this law regulates procedures (including the list of parties to the proceedings), the general law (Administrative Procedure Code) is no applied.

2.5 Therefore the public which wants to participate in nuclear permission procedures must be either participating in previous EIA procedures, or must in rather sophisticated way prove that Article 14 of the general Administrative Procedure Act must be applied pointing at the case law of the Court of Justice of EU.

2.6 It is not guaranteed that the permitting procedure according to Section 14 of the Administrative Procedure Code takes viewpoints, concerns and information concerning the potential impact of the project on the environment into account. With that, the right of the public to participate in procedures concerning the potential impact on the environment is not guaranteed. This happened in the reaction of the responsible authority (UJD) in the Mochovce 3,4 case after the verdict of the Supreme Court. The UJD started a procedure which did not address potential impacts on the environment, nor presented any information concerning the potential impact on the environment. Currently, only the instrument of the Environmental Impact Assessment guarantees in Slovak law that potential environmental impacts of a decision or project are indeed taken into account. For that reason, referral to Section 14 of the Administrative Code is no guarantee for public participation in matters concerning the environment and irrelevant in relation to the Aarhus Convention, which addresses public participation in **environmental issues.**

2.7 It is unclear under Section 14 of the Administrative Procedure Code how other stakeholders than those already identified as having an interest (as indicated above, the code only talks about the “public concerned”) will be notified and are made aware of their right of participation.