

Description of the process for revising or permitting changes of decisions of the Nuclear Regulatory Authority of the Slovak Republic concerning nuclear installations pursuant to legislation in force in 2014 in response to the alternative request of the ACCC of 11 April 2014 in case 2009/41/ACCC Slovakia

General introduction

1. Any procedure for change of currently permitted activities **connected with nuclear installations¹** must be carried out **materially either** only according to the **Atomic Act No. 541/2004 Coll.** as amended or **only according to the Building Act No. 50/1976 Coll.** as amended **or according to both acts. Such proceedings are always subject to Act No. 71/1967 Coll. on administrative proceeding as amended (Administrative Procedure Code).** The question which act is used for the changes, **depends on their technical character, scope, subject matter etc.** The competent environmental protection authority determines whether the change will have such an adverse impact that an environmental impact assessment (EIA) is required. **The general public has the right to participate in this process. A notice of change is published to which the public can respond and submit questions and comments.**

Legislation:

Article 45 of the Constitution of the Slovak Republic

Section 4 par. 1 subpar. d), section 4 par. 2 subpar. a) point 13., section 4 par. 2 subpar. f) point 2., section 5 par. 3 and par. 5 and section 35 of the Atomic Act

Section 68 of the Building Act

Section 18 of Act No. 24/2006 Coll. on environmental impact assessment (EIA Act)

Act No. 71/1967 Coll. on administrative proceeding (Administrative Procedure Code)

Aarhus Convention: compliance with article 6 par. 2 and article 6 par. 1 subpar. b) in connection with the second sentence of point 22 of Annex I.

2. In the majority of cases (except for a few exceptions in the area of safety supervision) the permitting procedure for changes begins with an **application by a party to proceedings.** After the application and the required documentation are filed the Nuclear Regulatory Authority opens proceedings and announces this on its website and electronic official noticeboard. In cases specified in law, procedures are announced by public notices in the municipalities whose cadastral territory includes the nuclear installation to which the procedure relate or a part thereof. **The Nuclear Regulatory Authority requires submission of an opinion of the Ministry of the Environment, before the decision, as to whether the requested change requires an EIA process or not. If the party does not submit such a document, proceedings**

¹Equivalent change permission procedures to those defined for nuclear installations are applied in all other areas where specialised authorities make decisions pursuant to special regulations. The Slovak Republic has chosen this approach in order to demonstrate clear compliance with the Aarhus Convention in a specific simulated case in which the ACCC found discrepancies.

shall be suspended and if the party does not comply with the duty to submit the opinion, proceedings shall be stopped.

Legislation:

Article 44 of the Constitution of the Slovak Republic
Section 3 par. 5, section 14, section 18, section 29, section 30 par. 1 subpar. d) of the Administrative Procedure Code
Section 59 and section 61 par. 5 of the Building Act
Section 18 of EIA Act
Section 8 par. 2 to par. 8 of the Atomic Act

Aarhus Convention: compliance with article 6 par. 2

3. During proceedings a party to proceedings can participate in the decision-making process by inspecting the case file, making procedural proposals and writing objections to the change.

Legislation:

Sections 19 and 23 of the Administrative Procedure Code
Section 8 par. 4 of the Atomic Act
Section 18, section 24a and section 24b and sections 25, 26 and 27 of EIA Act

Aarhus Convention: compliance with article 6 as a whole

4. Before a decision is issued each party to proceedings has the right to comment the records which are the basis of the decision and the method by which it was obtained, and also to request the supplementation of the records.

Legislation:

Section 33 par. 2 of the Administrative Procedure Code

Aarhus Convention: compliance with article 6 as a whole

5. After a decision is issued, any party to proceedings can file an appeal against the decision of first instance. Second instance proceedings according to the rules for first instance proceedings *mutatis mutandis*, including all the rights and duties of parties to proceedings.

Legislation:

Section 53 of the Administrative Procedure Code

Aarhus Convention: compliance with article 6 as whole and a part of article 9

6. If a party to proceedings believes that its rights have been violated in administrative procedure, it can file an action for judicial review of the legality of the administrative decision within the set period.

Legislation:

Article 46 par. 2 of the Constitution of the Slovak Republic

Section 247 of Act No. 99/1963 Coll. the Code of Civil Procedure
Section 70 of the Administrative Procedure Code

Aarhus Convention: compliance with article 9

7. Court judgements are binding for the administrative authority and when they enter into force and effect the administrative authority is obliged to proceed in accordance with the text of the judgement and take the actions laid down therein.

Legislation:

Article 46 par. 2 of the Constitution of the Slovak Republic
Section 250j par. 7 of the Code of Civil Procedure

Aarhus Convention: compliance with article 9

**Repeated proceedings on an appeal concerning permission for change of a building
before completion
of MO 34 from the Supreme court decision in August 2013 to the present²**

1. Judgement of the Supreme Court of the Slovak Republic no. Šzp/21/2012 entered into force on 19 August 2013. This cancelled the original decision of the Nuclear Regulatory Authority no. 79/2009 on an appeal and ordered the procedure to be repeated with Greenpeace Slovakia as a party to proceedings.

Legislation:

Article 46 par. 2 of the Constitution of the Slovak Republic
Section 250j par. 7 of the Code of Civil Procedure
Section 70 of the Administrative Procedure Code

Aarhus Convention: compliance with article 6 and article 9

2. The Nuclear Regulatory Authority announced the start of proceedings on 21 August 2013 with a notice of repeated appellate proceedings that was sent by registered letter to all known parties to proceedings and also published on the website of the Nuclear Regulatory Authority, the electronic official noticeboard of the Nuclear Regulatory Authority and as a public notice on the official noticeboards of the villages Kalná nad Hronom and Nový Tekov and on the websites of the villages. It also set a period, place and time, in which parties to proceedings could study the documentation and submit questions and comments (from 15 October 2013 to 30 November 2013, in the information centre at Mochovce).

Legislation:

Section 3 par. 5, section 18 par. 2 and par. 3 of the Administrative Procedure Code
Section 61 par. 5 of the Building Act

Aarhus Convention: compliance with article 4 and article 6

² The Slovak Republic presents the process in these procedure as proof of the application of the above legislative provisions in a specific case where the permit for the MO 34 NPP is the subject of a renewed decision procedure.

3. The parties to proceedings inspected documentation, made copies, wrote their comments, questions and proposals (15 October 2013 – study of documentation, copying; 29 November 2013 delivery of comments and questions to the Nuclear Regulatory Authority).

Legislation:

Section 19, section 23 par. 1, 2 and 4 and section 33 par. 1 of the Administrative Procedure Code

Aarhus Convention: compliance with article 4 and article 6

4. The Nuclear Regulatory Authority carried out a detailed analysis of the received comments and questions, evaluated them and contacted the Ministry of the Environment with a request for a statement on the performed EIA and additional material questions and comments of the parties to proceedings belonging to the public concerned (December 2013 – 31 January 2014).

Legislation:

Section 18 of EIA Act

Section 3 and section 46 of the Administrative Procedure Code

Aarhus Convention: compliance with article 6

5. The Nuclear Regulatory Authority in cooperation with the municipalities and other authorities concerned organised a public hearing on the received comments and questions on 27 February 2014. Notification was distributed according to the same method as the previous notices, i.e. it was sent by registered letter to a specific list of known parties and was also published on the website of the Nuclear Regulatory Authority, the electronic official noticeboard of the Nuclear Regulatory Authority and a public notice on the official noticeboards and websites of the villages Kalná nad Hronom and Nový Tekov. The minutes of the public hearing were sent by registered letter to all known parties to proceedings immediately after they are prepared.

Legislation:

Section 3 par. 5 of the Administrative Procedure Code

Section 61 par. 5 of the Building Act

Aarhus Convention: compliance with article 4 and article 6

6. On 21 March 2014 the Nuclear Regulatory Authority invited to comments of the records which are the basis of the decision and the method by which it was obtained.

Legislation:

Section 33 par. 2 of the Administrative Procedure Code

Aarhus Convention: compliance with article 4 and article 6

In conclusion, we state that the same process (only with the difference that the start would not be a court decision but a request of a party to proceedings) would be followed **in all proceedings on a new permit or a change to an existing permit.** Such proceedings would be **begun by the request** of a party to proceedings and the same procedural steps would be followed as in the repeated appellate proceedings above. All rights of the public under the Aarhus Convention are fully implemented and compliance with the relevant articles of the Aarhus Convention is indicated for each step.

We would like to emphasise that **none** of the provisions of the Aarhus Convention **give** the public concerned **a legal title to material acceptance** of information, opinions and comments **and the implementation of proposals from the public.** This fact is also stated in the judgement of the Supreme court no. Sžp/21/2012 on page 15.