

The Slovak republic thanks the Aarhus Convention Compliance Committee for preparing the Draft report of the Aarhus Convention Compliance Committee on the implementation of decision IV/9e of the Meeting of the Parties concerning compliance by Slovakia.

Additionally, we welcome the opportunity to comment on the draft report prior to its finalisation and adoption for the fifth Meeting of the Parties.

We would like to make the following comments regarding substantive issues on the Draft report:

- 1. The Slovak Republic can not support the proposed recommendations of the Aarhus Convention Compliance Committee (hereinafter referred to as “ACCC”). The Slovak Republic sees no reason to submit annual “Progress report” from 2014 to 2016. We consider it as the inadequate administrative burden for the Slovak Republic from ACCC. The Slovak Republic sent to the Secretariat of the ACCC “Progress report” on 01 December 2011 and “Implementation Report” on 30 November 2012. The actual legislative process of preparing new acts and amendments is lengthy and therefor “Progress Report” in 2014 would not probably provide any new information to ACCC about the legislation. We give thorough consideration to the ACCC to reconsider submission the “Progress report” three years in a row, but on the other hand, we suggest to apply the Slovak Republic to notify the ACCC if the legislation of the Slovak Republic will be changed in intervene in the decision-making process, environmental impact assessments and other. The Slovak Republic is not only State party of the Aarhus Convention but also member of the European Union - the Act No. 24/2006 Coll. on the assessment of environmental impact and amending certain laws (hereinafter referred to as “EIA Act”) doesn’t reflect only the Aarhus Convention but also the Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.**
2. We appreciate that the ACCC takes into account all submissions both of communicant and Party concerned. Recommendations of the ACCC approved by Meeting of the Parties pointed towards modification of the legislation for cases when old permits are reconsidered or updated, or the activities are changed or extended compared to previous conditions. However, the submissions of the communicant constantly point to authorization procedure Nuclear Power Plant MO 34. In its submissions the communicant solves the specific situation of the MO 34, not the status of legislation of the Slovak Republic for authorization procedures relating to old projects. Furthermore, we would like to inform the ACCC about actually ongoing change of Slovak legislation related to public participation. Upcoming changes to the EIA Act will enable unambiguous definition of public concerned as a party in screening procedure to changes of existing activities and also in the subsequent permitting procedure.

3. The Slovak Republic so far has acted in accordance with the findings and recommendations set out in the decision IV/9e adopted by the Parties at the fourth session of the Meeting of the Parties to the Aarhus Convention (MOP 4) from 27 June to 1 July 2011 in Chisinau considering their non-confrontational, non-judicial and consultative nature in accordance to which the Slovak Republic has to review its legal framework so as to ensure that early and effective public participation is provided for in decision-making when old permits are reconsidered or updated or the activities are changed or extended compared to previous conditions in accordance with the Aarhus Convention.

4. In accordance with the appeal of Greenpeace Slovakia to review the legality of the decision and the procedure of the administrative authority – Nuclear Regulatory Authority of the Slovak Republic (hereinafter referred to as NRA) issuing the decision no. 246/2008, to which relate NRA decision no. 266/2008 and no. 267/2008 of 14 August 2008, authorizing the change construction before completion of MO 34, the Supreme Court of the Slovak Republic, as the court of appeal issued on 27 June 2013 the judgement ref. to procedure 5Sžp/21/2012, which was submitted to NRA on 9 August 2013. The Supreme Court regarding Greenpeace Slovakia appeal on 2 July 2012 decided to change the first instance judgement of the Regional court in Bratislava ref. to procedure 4S/125/2009 and abolished NRA decision no. 79/2009 of 28 April 2009 and the case returned to the Nuclear Regulatory Authority for further proceedings.

The Supreme Court ordered the NRA by the mentioned judgement “to re-discuss the matter and decide on it with the participation of Greenpeace Slovakia; NRA will be required to deal with all relevant objections of participants of the administrative procedure (Section 59 par. 1 of the Administrative Code) and will decide that its conduct and decision will be in accordance under the provisions of Section 4 and Section 47 of the Administrative Code and is obliged in detail to reason its point of view on the objections raised”. The judgement of the Supreme Court admitted Greenpeace Slovakia the status of a party with all rights in the proceedings relating to change before the completion of MO 34.

The Judgment of the Supreme Court no. 5Sžp/21/2012 of 27 June 2013, which entered into force on 19 August 2013, was released after nearly five years of the date on which originally came into force decision no. 246/2008.

Court’s judgement returns the status 5 years back to the day when the first instance decision no. 246/2008 dated 14 August 2008 originally took effect. Under these time line circumstances, logically thinking, it cannot be imagined, that since the judgement of the Supreme Court returned the case 5 years back (i.e. to the state as if the appeal against the first instance decision was filed on time), so it is not affecting the real state of the construction of MO 34, which in the course of five years of continuous civil works and technology and installation works has undergone major real changes. This means that the topical state of construction of MO 34 in 2013 is fundamentally different from the situation in 2008. During the five years period there have been many irreversible construction and technological changes implemented on the basis of design documentation approved by this decision no. 246/2008. Decision no. 246/2008 should be regarded as valid and effective and unquestioned for almost 5 years, since the action filed

as to the lawfulness of the decision does not suspend the validity and enforceability of the administrative decision.

On the basis of Section 55, par. 2 of the Administrative Code, the administrative body may exclude the suspensive effect of appeals in the following two cases: (i) when required by urgent public interest, or (ii) when there is a risk that the suspension of the decision sustains the party or anyone else irreplaceable loss.

On 21 August 2013 NRA issued a “Notice of reopened initiation of appealed building proceedings for change of construction before completion” and decision no. 761/2013 which excluded the suspensive effect of appeals. The notice and decision no. 761/2013 were published on the website of NRA, the electronic notice board of NRA in Bratislava, as well as on the websites and on the notice boards of Kalná nad Hronom and Nový Tekov municipalities. Separate letter was sent to Greenpeace Slovakia.

**By these steps NRA fulfilled the court’s judgment, that the case is returned for further proceedings, and that Greenpeace Slovakia should be treated as a party to the proceedings.**

Public participation is ensured so that everyone has the possibility to consult the documentation and to make comments from 15 October 2013 until 30 November 2013, which NRA as the permitting body will treat in a manner as prescribed by the law and will take them into account in its decision-making process within the legal and technical possibilities.

Comments in remonstrance procedure within 30 November 2013 were posted by Greenpeace Slovakia, Global 2000 and Fontis. 20 November 2013 Greenpeace Slovakia sent pleadings, requesting to stay the procedures and call NRA to account the final statement of EIA procedure and take the EIA procedure and stop the process of constructing.

NRA sent SE, a. s. on 03 December 2013 request for an opinion on the comments. Their opinion was delivered to NRA on 20 December 2013. On 25 November 2013 and 03 December 2013 the NRA sent to the Ministry of the Environment also requests for an opinion on the comments. The opinions of the Ministry of the Environment were received by NRA on 12 December 2013 and 19 December 2013.

**The public hearing was held on 27 February 2014 in Kalná nad Hronom, where general public was attended. Its representatives had also Greenpeace Slovakia. All the technical comments received to the NRA till 30 November 2013 were discussed at this public hearing. The judgment of the Supreme Court was filled and public participation was secured as Greenpeace Slovakia was party of the proceedings.**

- 5. As seen in the previous proceedings, Greenpeace Slovakia had the opportunity to defend themselves before the NRA’s procedure by action in court, which was successful. This opportunity has putative parties to any procedure. It is unquestionably secure access to justice.**

Judgement of the Supreme Court of the Slovak Republic on change of permits for Nuclear Power Plant MO 34 also shows that Slovak law provides protection of rights of the public concerned. The courts deal with individual actions from the public and, in case of failure of permitting authority, provide protection of individual rights by imposing duties to authority for remedy of situation.

Upon receipt of the judgement of the Supreme Court of the Slovak Republic the Nuclear Regulatory Authority immediately changed the procedure. The NRA involved public

concerned to the procedure on the appeal against the decision no. 246/2008, which authorized the changes. The NRA invited public concerned to comment the changes of the activity, enabled access to documentation to proposed changes, held a public hearing with the parties and public concerned and provides the members of the public concerned by opportunity to be a party to the proceedings, regardless whether they took opportunity to participate in environmental impact assessment in 2009-2010, or submitted their comments at present. Such steps of permitting authority indicate that the application practice has shifted and thus the procedure applied fulfils the requirements for public participation according to the Aarhus Convention.

6. The Slovak Republic so far has acted in accordance with the findings, requests, feedbacks and questions which have been requested by the ACCC. The Slovak Republic submitted the “Progress report” in 2011 and also the “Implementation report” in 2012.
7. Point 2 – poorly written the number of the decision “255/2008”, the correct number is “266/2008”.
8. Point 6 – “It called upon the Committee to request the Party concerned for clarification on whether it is guaranteed that the public concerned would have the right to participate in an early and effective manner in the outstanding permitting procedures before the nuclear power plant entered into operation” – in this case, we can found that before the commissioning of the nuclear power plant MO 34 public participation is ensured sufficiently. The EIA process before the operation, which took place between 2008 and 2010, has been made. The final opinion was issued on 28 April 2010, and has taken into account the comments of all participants and stakeholders and the NRA have to take into consideration these statements in the following licensing procedure, which will be licensing using of the building according the Building Act and licensing the commissioning of the nuclear power plant according the Atomic Act. In this case, **it will be a first closest possible change which alters the legal and factual status of the object of the nuclear facility to a new state “in action”**. In this case, therefore, be taken into account public participation based on its participation in the EIA process, which took place and was completed on 28 April 2010.
9. Point 17 – “The communicant and observer noted that there was uncertainty as to the possibility for members of the public to participate in the ongoing decision-making processes with respect to the issuance of a building permit for an operator;” The construction permission wasn’t issued to the operator in 2008. Construction permission was issued in 1986 and that it is still valid. **The NRA issued three significant decisions:**
  - ◆ Decision no. 246/2008 issued by the Nuclear Regulatory Authority of the Slovak Republic, which authorized the change construction before the completion of MO 34 – issued under the Civil Construction Act.
  - ◆ Decision no. 266/2008 issued by the Nuclear Regulatory Authority of the Slovak Republic, which authorized the change on the selected facilities affecting nuclear safety – issued under the Atomic Act.
  - ◆ Decision no. 267/2008 issued by the Nuclear Regulatory Authority of the Slovak Republic, which authorized the change in the document “Preliminary Safety Report NPP Mochovce 3 and 4”– issued under the Atomic Act.

The claims in Section 17 are misleading because there wasn't construction permission for an operator.

10. Point 21 - In accordance with the findings and recommendations of the ACCC the Slovak Republic has reviewed the legal framework since March 2010 and has carried out the amendments in the relevant legislation concerning the public participation in decision-making processes, especially in the EIA Act, which extended the activities for which it is necessary to carry out the EIA process and also extended subjects, including the participation of each individual, thereby ensuring the early and effective public participation in decision-making EIA process.

In the Progress report, as well as in the Implementation report were described in detail the specific legislative changes that have resulted in precisely specification of the term the public concerned both for the natural and legal persons. As regards the provisions on public concerned, the restricting conditions have been dismissed (e.g. the number of persons/members of civic initiative) and the spectrum of administrative proceedings, where the civic initiative, civic association and non-governmental organisation can be a party to subsequent permitting procedures, has been extended. This is **the important extension of the rights of the public** that is interested in taking part in decision-making on environmental matters so that it has sufficiently efficient instruments to promote their requirements, so that it is notified of reasons of a refusal of such requirements and so that it has an opportunity to question the decision at a court. Both natural and legal persons should have an open access to the court, being one of the pillars of the Aarhus Convention.

**Old, still valid permits issued under the applicable laws and effective at the time of their issue, cannot be changed and no intervention is possible, in order to preserve the rule of law – the principle of legal certainty and non-retroactivity, except to the decision of a national court in case of action filed on time.**

In general, the jurisprudence with respect to preserve the principle of legal certainty and non-retroactivity rule means that legislative changes in the law, i.e. their amendments shall be applied in the future, i.e. from the moment of their entry into force and effect. For more details see the transitional and final provisions of a specific law.

In the event that at the present there would be a situation that the old valid permit is going to be revised, then it shall be proceeded according to the law in force at the time, when this permit is to be amended, supplemented or repealed, i.e. under the current legislation. In that case, for the old valid permits the current provisions of amended laws on ensuring active public participation in the decision-making process is applied.

**The Slovak Republic can not support the statement that if the old permits were to be taken today, the process would be the same as in 2008. Slovak legislation in the public participation has undergone major changes since 2008 so that this problem would not occur again. The public participation under the current legislation should be ensured. In the draft report is only the hypothetical consideration which has no real justification, proof of this is the re-parsing procedure MO 34, which is implemented in full and broad public participation.**

**Communicant's allegation in its letter dated 8 March 2013 that "if the decisions of the Slovak Nuclear Regulatory Authority issued in 2008 were issued today, the process would be the same as in 2008 to 2010 and the public would not be granted**

**right to participate in the procedure” is not true. Present situation is significantly different from the conditions in 2008 regarding permitting procedures on changes of the activities. In 2008, there was no procedure for issuing environmental authority position on changes of existing activities. This procedure was adopted by changes of legislation in 2009.**

**The Slovak Republic considers these arguments purely hypothetical, not based on real example and this is only the confusing of the ACCC and the other Member States.**

11. By the Act No. 287/2009 Coll. amending and supplementing EIA Act, Section 18 of the EIA Act has been changed by
- removal of thresholds for changes of the activities already permitted which, according to the Aarhus Convention and also EIA Directive have no thresholds or limit values, and
  - complementarity of the procedure for issuing environmental authority position on changes of existing activities.

During procedure the notice about the proposed change is published on the website of the Ministry of Environment of the Slovak Republic and so the public is informed about the change of activity.

Based on the position from environmental authority permitting authority may continue the permitting procedure – in case that position declares that the change cannot have significant adverse effects on the environment – otherwise environmental impact assessment procedure follows.

Participation of the public concerned in the permitting procedures is possible on the basis of its active participation, in environmental impact assessment procedure and also in the subsequent permitting procedure itself. Even in case that the environmental impact assessment procedure does not take place, Slovak law allows participation of public concerned on the basis of a broad interpretation of the definition of a party in Administrative Procedure Act. This interpretation has been provided by the courts practice (also judgment of European Court of Justice C-240/09 Slovak brown bears) and is now accepted and applied by the public authorities, and on this basis the interested public is granted the status of a party to procedure. This fact is omitted by communicant when alleging that the procedure at Nuclear Regulatory Authority would be the same as between 2008 and 2010.

At the same time we use the opportunity to inform you about the current upcoming changes in national legislation, in particular the law on environmental impact assessment. Amendments made under the Act No. 24/2006 Coll. on environmental impact assessment, as amended by the proposed amendment are the result of efforts to comprehensively remove the transposition deficit in respect of the Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment which was remonstrated to the Slovak Republic in the infringement procedure (procedure no. 2013/2034 against the Slovak Republic under article 258 of the Treaty on the functioning of the European Union) the communication of the European Commission of 21 March 13 - the letter no. C (2013) 1558 final. According to the Commission, the main lack of the current Act No. 24/2006 Coll. on environmental impact assessment, as amended consequences insufficient

environmental connection impact assessment process of the proposed activities with subsequent procedures by authorizing because it creates a space for failure to respect the results of the environmental impact assessment process, which cannot guarantee or ensure the full rights of the public concerned have participated in these proceedings respectively having an interest in the outcome of decision-making in environmental matters. The draft amendment for that reason also implements part of the requirements contained in the Aarhus Convention, which are also transposed into the content of articles 6 and 7 of the EIA directive. The force of law is envisaged by the end of 2014.

12. Greenpeace Slovakia submitted also a protest against decision no. 761/2013 to the Attorney General and objected to the alleged unlawfulness of the NRA's decision no. 761/2013, by which the suspensory effect was denied. But, the Attorney General denied such protest in its notification of the 11 November 2013 due to lack of fulfillment of conditions. On 24 October 2013 Greenpeace Slovakia submitted the action to the Regional Court in Bratislava under Section 247 of Civil Procedure Code to review the legality of NRA's decision no. 761/2013, which excludes the suspensive effect of the appeal.

NRA statement from 18 November 2013 was sent to the court and the case is still running. **Greenpeace Slovakia has the opportunity of national actions and submissions from decisions of MO 34. This legal possibility Greenpeace Slovakia full advantage.**

13. Point 36 – “The Committee is not however convinced that the Party has sufficiently reviewed its legal framework so as to ensure early and effective public participation in decision-making in such cases.” The Slovak Republic does not know how differently and how other should further review the legal framework in relation to the public participation in the licensing process.

14. Point 37 – “The Committee considers that the Party concerned has not to date made it sufficiently clear to the Committee that this would indeed be the case. In so finding, the Committee wishes to make clear that it is not asking the Party concerned to re-take the 2008 decisions, but simply to show that if a similar decision was taken today, early and effective public participation would be provided.” The Slovak Republic would like to note to this statement that it is the non-governmental organization, relying on the decision ACCC/C/2009/41, seeking the annulment of decision no. 246/2008. As pointed out in paragraph 37, **the ACCC doesn't asking to re-take the 2008 decision.**

15. In recent opinion from 19 December 2013 Oekobuero argues that the Mochovce case falls in the small potential gap between thresholds of the EIA directive and those in the Aarhus Convention. Aarhus Convention nor the EIA Directive does not provide any thresholds for nuclear power plants, on the contrary it states that this activity is assessed regardless of any limits. Like the Convention in its Appendix 1, the Directive also determines public participation for the approval of such activity changes, which could have a significant impact on the environment. Regarding this position the Slovak Republic does not see any contradiction of its legislation to the Aarhus Convention.

16. We understand that the aforementioned facts demonstrate possibility of effective public participation in the permitting procedures even for cases when old permits are reconsidered or updated, or the activities are changed or extended compared to previous conditions.

We also ask the ACCC to indicate whether the forthcoming changes in legislation of the Slovak Republic will be sufficient to ensure compliance with the Aarhus Convention and if appropriate, to modify its conclusions and recommendations for the Meeting of the Parties.

If the ACCC still disputes our legislative changes such as poor implementation of the decision IV/9e, therefore we would request the ACCC to expressed itself in a particular formulation of specific legislation, what would its considered the fulfilment of its recommendations.