

Compliance Committee to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters (Aarhus Convention)

**Second progress review of the implementation of decision VI/8i  
on compliance by Slovakia with its  
obligations under the Convention**

Contents

	<i>Page</i>
I. Introduction .....	2
II. Summary of follow-up action on decision VI/8i .....	2
III. Consideration and evaluation by the Committee .....	3
IV. Conclusions and recommendations .....	9

## **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 a communicant of communication ACCC/C/2013/89 (GLOBAL 2000).

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. The Committee thereafter requested the secretariat to forward the 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 and representatives of the communicants of communication ACCC/C/2013/89 (OEKOBUERO and GLOBAL 2000).

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, the communicants of communication ACCC/C/2013/89 (OEKOBUERO and GLOBAL 2000) submitted an update.

10. On 9 August 2019, at the request of the Committee, the UNECE Executive Secretary wrote to the Minister of Foreign Affairs 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 secretariat at the Committee's request 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, a communicant of communication ACCC/C/2013/89 (Greenpeace) 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. The Committee thereafter requested the secretariat to forward the second progress review to the Party concerned and the communicants of the communication ACCC/C/2013/89 and the registered observers.

### **III. Considerations and evaluation by the Committee**

17. 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 has 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**

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

18. The Party concerned and the communicants of communication ACCC/C/2013/89 (OEKOBUERO and GLOBAL 2000), have each reported on various amendments to the Atomic Act and Building Act adopted on 10 September 2019. The amendments, inter alia:

- Extended the permitted grounds under which documents held in the administrative file may not be disclosed;
- Extended the non-disclosure of sensitive information to all parties to a proceeding except for the applicant;
- Amended the means of communication of public notice and which procedural acts should be so notified;
- Amended the deadlines for submission of written statements;
- Excluded extraordinary legal remedies.<sup>1</sup>

19. Having reviewed the information provided, including the explanatory memorandum to the amendment of the Atomic Act and Building Act, the Committee considers all but the first of the above-listed amendments to be outside the scope of its review on decision VI/8i. Accordingly, apart from the first of the above-listed amendments which is examined in paragraphs 42-52 below, the Committee will not consider these amendments further in the context of its present review.

20. The observer Mr. Haverkamp requests the Committee to examine the compliance with article 3(8) of the Convention of the Party concerned.<sup>2</sup> The Committee makes clear that, if put before it in accordance with its communication procedure, it considers any allegation of non-compliance with article 3(8) to be a serious matter. However, compliance with article 3(8) is not within the scope of the Committee's review of paragraph 2 of decision VI/8i.

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<sup>1</sup> Party's second progress report, 1 October 2019, pp. 8-10, and annex 2, and update from the communicants of communication ACCC/C/2013/89 (OEKOBUERO and GLOBAL 2000), 19 June 2019, pp. 1-2.

<sup>2</sup> Comments on the Party's statement of 15 March 2019 by observer Mr. Haverkamp, 8 April 2019, paras. 3 and 7, and comments on the Party's second progress report by observer Mr. Haverkamp, 30 October 2019, para. 1.

21. In the light of paragraphs 18-20 above, the Committee considers it appropriate to remind the Party concerned, communicants and observers that, in the context of its review of the implementation of decision VI/8i, it is only able to take into account matters within the scope of paragraph 2 of that decision.

#### *Role of observers*

22. With respect to the comments submitted on 18 April 2019 by the “Regional interest association of towns and municipalities – Mochovce with the seat in municipal offices in Vrable,” and re-submitted by the Party concerned as an annex to its second progress report, the Committee underlines that it excludes no one from submitting comments, provided that those comments concern matters within the scope of the Committee’s review, in this case paragraph 2 of decision VI/8i. This is the case irrespective of whether the comments are submitted by one or more members of the public as defined in article 2(4) of the Convention or one or more public authorities as defined in article 2(3). The Committee accordingly makes clear that it has taken into account the comments submitted by the regional interest association of towns and municipalities on 18 April 2019.

#### **Paragraph 2 of decision VI/8i**

23. The Committee welcomes the second progress report of the Party concerned, which was submitted on time. The second progress report is moreover clear, detailed, well-structured, and provides supporting documents both in Slovak and English. All these features assist the Committee in its considerations and serve the interests of transparency. In this regard, the Committee considers that the reporting of the Party concerned may serve as a model to other Parties.

#### *Amendments to the Directive on Sensitive Information*

24. In its second progress report, the Party concerned reports on amendments of its Directive on Sensitive Information which entered into force on 14 June 2019.<sup>3</sup> The amendments introduced new definitions of “sensitive information” and “information concerning the environment” into the Directive.<sup>4</sup>

25. The Party concerned states that the “the wording of the Directive further defines the character of sensitive information in a manner that indicates that an environmental information cannot be considered sensitive.”<sup>5</sup> It submits that the Directive lays down an exhaustive list of data which is considered sensitive, and identifies characteristic groups of sensitive information concerning nuclear installations and that “none of the listed information contains data regarding the environment.”<sup>6</sup> The Party concerned states that the detailed classification in the Directive now clearly distinguishes between the two separate terms and excludes their interchangeability.<sup>7</sup>

26. With respect to “sensitive information”, the Party concerned states that, pursuant to article 3(1) of the Directive, in order to ensure national security, public safety and the protection of citizens, such information contained in documentation shall not be released.<sup>8</sup>

27. With respect to what the Directive classifies as “environmental information”, the Party concerned states that the definition lists data, and that such environmental information, in particular emissions to the environment, and data on the amount and composition of radioactive waste, as defined in article 2(3) of the Convention, must be

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<sup>3</sup> Party’s second progress report, 1 October 2019, pp. 5-7, and annex 1.

<sup>4</sup> Party’s second progress report, 1 October 2019, p. 5.

<sup>5</sup> Party’s second progress report, 1 October 2019, p. 6.

<sup>6</sup> Party’s second progress report, 1 October 2019, p. 6.

<sup>7</sup> Party’s second progress report, 1 October 2019, p. 7.

<sup>8</sup> Party’s second progress report, 1 October 2019, p. 6.

disclosed without restriction.<sup>9</sup> At the same time, the Directive also includes a list specifying information that is not considered to be environmental information.<sup>10</sup>

28. The observer Mr. Haverkamp disputes the assertion by the Party concerned that none of the sensitive information listed in the Directive contains “data regarding the environment” (see para. 24 above).<sup>11</sup> Mr. Haverkamp claims that the “sensitive” information described by the Party concerned related to the safety and security of nuclear power stations is information that is vital to assessing the potential risk of emissions of radioactive substances in the case of a severe accident and it therefore falls within the definition of “environmental information” in article 2(3)(b) of the Convention.<sup>12</sup> He submits that nuclear safety and security measures are important factors preventing impact on the environment, or when insufficient, impacting the environment. He clarifies that he is not requesting full disclosure of all safety and security information, but he contends that it should only be exempted from disclosure following the application of the criteria under article 4(4) of the Convention.<sup>13</sup>

29. With respect to article 3(1) of the Directive, the Committee notes that, whereas under the previous article 3(1), documentation containing sensitive information could never be published, the amended article 3(1) stipulates that such documentation can be made available after the removal of the sensitive information.<sup>14</sup> The Committee welcomes this as a positive development.

30. The Committee also welcomes the new article 3(2) of the Directive,<sup>15</sup> which incorporates verbatim the definition of “environmental information” in article 2(3) of the Convention.

31. The Committee notes that there is some duplication between article 3(2) and 3(3)<sup>16</sup> of the Directive, and the legal effect of this duplication is not clear. The Committee invites the Party concerned to clarify this in its final progress report.

32. The Committee particularly welcomes the explicit statement in the new article 3(2) that:

“Environmental information as defined in article 2(3) of the Aarhus Convention (concerning in particular emissions into the environment, data on the amount and composition of radioactive waste) must be disclosed without restriction”.<sup>17</sup>

33. The Committee considers that, through the adoption of the new article 3(2) of the Directive, the Party concerned has made significant progress towards meeting the requirements of paragraph 2 of decision VI/8i.

34. The Committee, however, considers the new article 3(4) of the Directive to be problematic. Article 3(4) of the Directive states, in full, that:

“Environmental information referred to in Article 2 par. 3 of the Aarhus Convention, is not the following information:

- a) Identification and designation of facilities and structures, the room numbers and the description of the location, where they are located,
- b) Description, parameters and designation of equipment and technology;
- c) Resources and place of their storage;

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<sup>9</sup> Party’s second progress report, 1 October 2019, p. 7.

<sup>10</sup> Party’s second progress report, 1 October 2019, p. 7.

<sup>11</sup> Comments on the Party’s second progress report by observer Jan Haverkamp, 30 October 2019, p. 1.

<sup>12</sup> Comments on the Party’s second progress report by observer Jan Haverkamp, 30 October 2019, p. 1.

<sup>13</sup> Comments on the Party’s second progress report by observer Jan Haverkamp, 30 October 2019, p. 1.

<sup>14</sup> Party’s second progress report, 1 October 2019, annex 1, p. 1.

<sup>15</sup> Party’s second progress report, 1 October 2019, annex 1, pp. 1-2.

<sup>16</sup> Party’s second progress report, 1 October 2019, annex 1, p. 2.

<sup>17</sup> Party’s second progress report, 1 October 2019, annex 1, p. 1.

- d) The numbers and the description of technological units;
- e) Category of seismic resistance;
- f) Functionality, parameters and components of the system and its backup;
- g) Instrumentation and control systems;
- h) Ancillary systems for the safety systems, e.g. secondary cooling systems, diesel systems, fire water systems;
- i) Power supply: General arrangement, control, distribution.

These points are not related to emissions to the environment and are not essential for assessing the environmental impact of a nuclear installation. The non-disclosure of this information is in the interest of protecting the public, which would be exposed to an excessive risk in the event of a terrorist attack, and therefore this interest prevails over the interest of applicants for disclosure of this information.”<sup>18</sup>

35. The Committee cannot agree with the Party concerned that none of the information listed in new article 3(4) of the Directive is “environmental information” within the definition of article 2(3) of the Convention. For example, “description, parameters and designation of equipment and technology” and “functionality, parameters and components of the system and its back-up” in new article 3(4)(b) and (f) of the Directive are each very broadly labelled categories and the Committee considers that at least some of the information within these categories would constitute “conditions of...built structures” that could be affected by factors, such as substances, energy or radiation, within the definition of article 2(3)(c) of the Convention.

36. The Committee emphasises that this does not mean that the information listed in new article 3(4) of the Directive must necessarily be disclosed. However, as the Committee already held in its findings on communication ACCC/C/2013/89,<sup>19</sup> it is not possible for the Party concerned to deem a whole category of information that is, or that may include, “environmental information” not to be.

37. The Committee makes clear that the Convention does not prevent a Party from setting out in its legal framework a list of “sensitive” information deemed exempt from disclosure, so long as none of that information is “environmental information” within the meaning of article 2(3) of the Convention.

38. Moreover, a Party is not prevented from setting out a list of types of information that it has determined may potentially not be appropriate to disclose, for example, on the grounds of public safety under article 4(4)(b) of the Convention, even if some of that information could be environmental information. However, if a public authority receives a request for any environmental information on that list, it must for each such request carry out the test required of it under article 4(4) of the Convention to determine whether:

- (a) The specific information requested actually contains any environmental information within the meaning of article 2(3) of the Convention; and if so
- (b) All or any of that environmental information should be withheld on the ground of public safety, interpreted in a restrictive way, taking into account the public interest in disclosure and whether the information relates to emissions into the environment.

39. The Committee emphasises that the requirement in article 4(4) of the Convention that the grounds for refusal be interpreted restrictively means that *each time* that an official must decide on a potential exemption from disclosure under article 4(4), the official is required to apply any applicable grounds for refusal in a restrictive way. In contrast, in its second progress report, the Party concerned states that the Directive takes a “restrictive

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<sup>18</sup> Party’s second progress report, 1 October 2019, annex 1, p. 2.

<sup>19</sup> ECE/MP.PP/C.1/2017/13, para. 83.

approach”.<sup>20</sup> The Committee welcomes the statement by the Party concerned that the Directive has been drafted in a restrictive way. However, this does not in itself suffice to meet the requirement in article 4(4) that the grounds for refusal must be interpreted in a restrictive way. Furthermore, in order to comply with the requirement in article 3(1) of the Convention to establish a clear and transparent framework for its implementation, it will be necessary for the Directive, on its face, to explicitly require that officials, when deciding upon potential exemptions from disclosure of environmental information, apply any applicable grounds for refusal in a restrictive way.

40. Finally, in accordance with article 4(6) of the Convention, the Directive should make clear that if the competent authority determines, in a particular case, that some of the requested environmental information should be withheld, the rest of the requested documentation should be made available after the removal of the exempted information. The Committee has welcomed in paragraph 29 above that the new article 3(1) of the Directive includes such a requirement for the handling of “sensitive information”, but the Directive should make clear that a similar requirement will apply once any exempted environmental information has been redacted.

41. In the light of the above, the Committee considers that, while the introduction of the new article 3(2) to the Directive on Sensitive Information is a significant positive step, the Directive on Sensitive Information does not yet comply with the requirements of article 4(4) of the Convention and thus the Party concerned has not yet met the requirements of paragraph 2 of decision VI/8i.

#### *Amendments to the Atomic Act*

42. In its second progress report, the Party concerned reports on various amendments to its Atomic Act. The amendments were approved by Parliament on 10 September 2019 and were to enter into force on 1 October 2019.<sup>21</sup>

43. As the Committee points out in paragraph 18 above, most of these amendments are outside the scope of the Committee’s review of decision VI/8i. With respect to matters which may be relevant to decision VI/8i, in its second progress report the Party concerned reports that the regime of sensitive information, classified information, banking secrecy, telecommunications secrecy, postal secrecy and other confidentiality requirements under the Atomic Act has been extended.<sup>22</sup>

44. Specifically, the following three paragraphs have been inserted into the Atomic Act’s article 8 (“Particulars and issue of consent or authorization”):

“(11) The Office shall take precautions to ensure that sensitive information, classified information, bank secrets, tax secrets, business secrets, telecommunications secrets, postal secrets or breach of the statutory or recognized confidentiality obligation are not made available when serving a decision or other document or when viewing the file.

(12) The Office shall notify the applicant to indicate which information or documents it considers to be classified, bank secrets, tax secrets, business secrets, telecommunications secrets, postal secrets or which it considers sensitive information.

(13) The Authority may require the applicant to provide written justification for marking information or documents as classified information, bank secrecy, tax secrets, business secrets, telecommunications secrets, postal secrets or sensitive information. If, despite its justification, the Authority concludes that the information and supporting documents submitted do not satisfy the requirements of classified information, bank secrecy, tax secrecy, business secrets,

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<sup>20</sup> Party’s second progress report, 1 October 2019, pp. 7-8.

<sup>21</sup> Party’s second progress report, 1 October 2019, p. 12.

<sup>22</sup> Party’s second progress report, 1 October 2019, p. 9.

telecommunications secrecy, postal secrecy or that this is not sensitive information, it shall notify the applicant in writing.”<sup>23</sup>

45. With respect to the above amendment, the communicants of communication ACCC/C/2013/89 (OEKOBUERO and GLOBAL 2000) claim that the amendment would enable the Nuclear Regulatory Authority to classify any type of documents submitted via postal service or e-mail as “sensitive information.”<sup>24</sup> They claim that important information concerning administrative procedures or letters sent to the authority by other institutions or participants in the procedures could thus be withheld in a manner inconsistent with the general rule that postal secrecy does not apply to information contained in the administrative file.<sup>25</sup>

46. The Committee also takes note of the Decision of the President of the Party concerned of 17 July 2019 in which the President returned the proposed amendment to the Parliament:

“Article 4 of the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (hereinafter referred to as the “Aarhus Convention”) defines the international commitment of the Slovak Republic to ensure access to environmental information. In national legislation, Act No. 211/2000 Coll. on the free access to information and on amendments and supplements to certain acts (the Freedom of Information Act), as amended, is a general regulation for making information available. However, this Act does not provide a telecommunications or a postal secret with special protection on the grounds that it is the content of transmitted reports and the secret can only be legally interfered with in real time by opening letters, interception or recording of telecommunications, not ex post through a request for access to information.

The [Nuclear Regulatory] Authority does not perform such activities as interception or examination for the purpose of identifying unlawful conduct. Therefore, it is practically impossible to imagine that they would come into contact with the content of messages that are confidential as a telecommunications or postal secret; therefore, such new legislation is unreasonable and undesirable in terms of the protection of participants in proceedings. Moreover, such new paragraphs of the Atomic Act are materially indefensible as an administrative authority cannot inform and ask a legal or natural person to give reasons for the existence of a postal secret, a telecommunications secret, a bank or tax secret. They exist for objective reasons, outside those stated by the relevant person, and the administrative authority cannot form an opinion about their existence based on subjective arguments of the person concerned. These types of secrets do not have a subjective component according to their definitions in special regulations. Only a trade secret has a subjective component according to Article 17 of the Commercial Code, whereas an entrepreneur must be able to give reasons for its existence under the Commercial Code. Only then can the administrative authority grant such a piece of information protection as a trade secret.”<sup>26</sup>

47. In her Decision of 17 July 2019, the President concluded that the words “telecommunications secret”, “postal secret”, “classified information”, “bank secret” and “tax secret” should be deleted from the proposed amendments to article 8(11)-(13).<sup>27</sup>

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<sup>23</sup> Email from the Party concerned enclosing paragraphs 11-13 of article 8 of the Atomic Act, 4 February 2020.

<sup>24</sup> Update from the communicants of communication ACCC/C/2013/89 (OEKOBUERO and GLOBAL 2000), 19 June 2019, p. 1.

<sup>25</sup> Update from the communicants of communication ACCC/C/2013/89 (OEKOBUERO and GLOBAL 2000), 19 June 2019, p. 1.

<sup>26</sup> Party’s second progress report, 1 October 2019, annex 8, pp. 1-2.

<sup>27</sup> Party’s second progress report, 1 October 2019, annex 8, p. 4.

Despite this, on 10 September 2019, the amendments were adopted by the Parliament of the Party concerned in their entirety.<sup>28</sup>

48. In reviewing the progress made by the Party concerned to fulfil paragraph 2 of decision VI/8i, the Committee must assess whether the Party concerned has 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 in the environment.

49. The Committee emphasizes that the grounds for refusal set out in article 4(3) and (4) of the Convention are exhaustive. There are no other grounds for refusal permitted under the Convention. Accordingly, Parties may not introduce into their legal frameworks any other grounds through which requests for access to environmental information under article 4 of the Convention may be denied than those set out in article 4(3) and (4) of the Convention. Nor, in the context of a decision-making procedure subject to article 6 of the Convention, may they assert any grounds other than those contained in article 4(3) and (4) to deny access to any information relevant to the decision-making under article 6(6).

50. The Committee fails to see how “telecommunications secrets” or “postal secrets” come within the scope of any of the grounds for refusal set out in article 4(3) or 4(4) of the Convention. Accordingly, it appears 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 has, through the 10 September 2019 amendments, in fact added new grounds for refusal.

51. The Committee thus invites 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 are consistent with the exhaustive list of grounds for refusal in articles 4(3) and 4(4) of the Convention, or otherwise to provide evidence in its final progress report that those exemptions have by that date been deleted.

52. In the light of the above, the Committee considers that the Party concerned has not yet fulfilled the requirements of paragraph 2 of decision VI/8i and, through the addition of paragraphs 11-13 to article 8 of the Atomic Act, may have moved further away from doing so.

## **IV. Conclusions**

53. The Committee considers that the Party concerned has not yet fulfilled the requirements of paragraph 2 of decision VI/8i.

54. With respect to the Directive on Sensitive Information, the Committee invites the Party concerned, together with its final progress report due on 1 October 2020, to provide evidence that it has by that date taken the necessary legislative, regulatory and administrative measures 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, taking into account:

- (a) The public interest served by disclosure; and
- (b) Whether the information requested relates to emissions into the environment.

55. With respect to the 10 September 2019 amendments to the Atomic Act, the Committee invites the Party concerned, together with its final progress report, to either:

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<sup>28</sup> Party’s second progress report, 1 October 2019, p. 12.

(a) Explain how the exemptions from disclosure for “telecommunications secrets” and “postal secrets” in paragraphs 11-13 of article 8 of the Atomic Act are consistent with the exhaustive list of grounds for refusal in articles 4(3) and 4(4) of the Convention; or

(b) Provide evidence that the exemptions from disclosure for “telecommunications secrets” and “postal secrets” in paragraphs 11-13 of article 8 of the Atomic Act have by that date been deleted.

56. The Committee reminds the Party concerned that all measures necessary to implement decision VI/8i must be completed by, and reported upon, by no later than 1 October 2020, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision VI/8i.

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