



Towards an end of flat-rate non-transparency in the Slovak nuclear sector?

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Summary

In the 2000s, the Slovak Nuclear Regulatory Authority (NRA) faced significant challenges with respecting a rather strict tenor of the Slovak Freedom of Information Act (FOIA) (1). Since May 2010, a controversial FOIA amendment allowed the NRA to consider the complete content of nuclear sector documents confidential, in contrast with the previous practice of blacking out confidential and/or sensitive information (2). A significant amount of evidence suggests that this FOIA amendment was made as a part of long-term efforts to dispose NGOs of their former rights for real participation in the Environmental Impact Assessment (EIA) and permit procedures of related investment projects, in particular to disallow NGO participation in decision-making regarding the Mochovce nuclear power plant (NPP) completion (3). Moreover, the European Commission (EC) had threatened Slovakia with withholding the refund of about €8 billion from the EU structural funds in 2009 because of removing NGO rights in the EIA Act amendment from 2007, on a top of launching an infringement procedure against Slovakia because of removal in 2008, in order to force Slovakia to correct the EIA Act “back into its original compatibility with the EU *Acquis*” (3). Furthermore, the Slovak Supreme court had confirmed earlier findings from the UNECE Aarhus Convention Compliance Committee (ACCC) of non-compliance with regards to the permit procedures for the completion of the Mochovce NPP, in order for the Slovak authorities to finally start an EIA procedure for this nuclear sector project that would at least fulfill the countries international obligations (4).

In 2019, the Slovak parliament approved a new FOIA amendment, which provided for yet more reasons to classify information/documents falling under the Slovak Atomic Act as confidential, which directly became subject of further UNECE ACCC findings and requests for Slovakia to correct its FOIA in particular with regards to nuclear sector information/documents (5). This was explicitly reflected in the pre-election program document of the political party with the acronym OĽaNO which, quite as a surprise, in the end won the Parliamentary elections in Slovakia held on 29 February 2020 (6). CEPTA, a member organisation of Nuclear Transparency Watch (NTW), will keep on following the developments in this regards and update the NTW members.

The historical and factual context of non-transparency particularly/only of nuclear sector information

(1) Despite a rather strict Freedom of Information Act (FOIA), in force since 2001, the Slovak Nuclear Regulatory Authority (NRA) got known for its unwillingness to disclose nuclear safety related information. Before nuclear sector information received a special legal status under the FOIA (as explained in the next paragraph), the NRA refused to disclose to NGOs for example information about the sizes of the accident zones of Slovak NPPs [1].

(2) An indirect amendment of the FOIA with the Act no. 145/2010 Coll., in force since May 2010, concerned specifically and solely nuclear sector documents. In contrast to the common practice of blacking out sensitive information, this Law amendment re-classified complete documents containing at least one bit of information that could lead to disruption/invasion of a nuclear facility as confidential. As examples of documents whose legal status was reclassified as confidential, the Act no. 145/2010 Coll. explicitly mentioned all types of documents listed in the Annexes 1 and 2 of the Atomic Act.

(3) The above outlined indirect amendment of the FOIA from 2010 re-classifying many types of nuclear sector documents as confidential needs to be understood in its full factual context. The first relevant key fact is that the above mentioned Act no. 145/2010 Coll. was not an amendment of the FOIA, but instead an amendment of the Environmental Impact Assessment (EIA) Act. Moreover, this EIA Act amendment had to be made because Slovakia was forced by the EU in order to make the Slovak EIA Laws compatible with the *EU Acquis Communautaire* in the field of NGO rights for participation in project permit procedures. The key reason why the EU started infringement proceedings against Slovakia in September 2008 related to the fact that NGOs

were dispossessed of their ‘full legal standing status’ in permit procedures related to projects subjected to an EIA as a consequence of Law amendments made by the Slovak parliament in 2007. Despite that the EU could refer this Slovak EIA Act case to the European Court of Justice, the Slovak authorities mostly ignored the EU infringement procedure in 2008. The situation changed only in 2009 when the Slovak Government realised that the Commission could discontinue co-financing large infrastructure projects from the Structural Funds and the Cohesion Funds worth almost €8 billion, should EIA procedures for these infrastructure projects be realised under the Slovak EIA Act as valid after 2007 [1]. Because the above outlined indirect amendment of the FOIA from 2010 concerned only nuclear sector related information, it can be related directly to the obligation under international and EU law to formally perform an EIA for the completion of the Mochovce NPP, which arose as a consequence of court appeals of Greenpeace against the NRA submitted in 2009 [2].

(4) The procedure, which was officially declared as an EIA procedure for the Mochovce NPP completion, started only after a combination of two legal decisions against Slovakia: i.) the above mentioned enforcement of the *EU Acquis Communautaire* with regards to the rights of NGOs to participate in EIAs and related investment project permit procedures [2], and ii.) the Slovak Supreme Court judgement which re-confirmed the UNECE Aarhus Convention Compliance Committee findings concerning non-compliance with the Aarhus Convention with regards to the permit procedures for the completion of the Mochovce NPP [1, 3, 4]. Within this procedure, the NRA disclosed to Greenpeace only almost completely blacked out documents [5].

The recent development (autumn 2019 – spring 2020)

(5) The Slovak parliament (re-)approved another ‘nuclear sector specific’ FOIA amendment – the Act 279/2019 Coll., in force from October 2019. The term ‘(re-)approved’ is used here because this Act was vetoed by the president on 17 July 2019, because she found it to be likely in breach with the relevant international legislation (mainly the Aarhus Convention), but the Parliament re-approved this Act despite this veto and its justification. This FOIA amendment made the legal situation with regards to disclosing commercial nuclear sector information even more complicated. This was dealt with in detail in the communication of Slovakia as Party to the Aarhus Convention following the ‘Decision VI/8i concerning Slovakia’ of the UNECE Aarhus Convention Meeting of Parties, which followed on the above mentioned ACCC findings against Slovakia [7]. In its compliance review report dated 3 March 2020, the ACCC considers that Slovakia has not yet fulfilled *the requirements of paragraph 2 of decision VI/8i* [7].

(6) The results of the Parliamentary elections on 29 February 2020 might provide an important step in the attempts of NGOs to bring this ‘era of a flat-rate non-transparency of commercial nuclear sector information’ to an end. The reason is that the pre-election program document of the political party ‘OLaNO’ that won these elections explicitly contains a proposal of the *abolishment of the currently existing legal possibility to classify all documents in permit procedures in the commercial nuclear sector on a "flat-rate basis", because it is in conflict with European law and the Constitution. Only those selected parts of these documents that contain confidential or very sensitive information should be classified* [8]. However, this proposal was not included into the Manifesto of the Government, approved by the Parliament on 30 April 2020. CEPTA, a member organisation of Nuclear Transparency Watch (NTW), will keep on following the developments in this regards and update the NTW members.

References:

- [1] [DOI:10.1057/kmrp.2011.22](https://doi.org/10.1057/kmrp.2011.22)
- [2] [DOI:10.1016/j.pnucene.2019.103192](https://doi.org/10.1016/j.pnucene.2019.103192)
- [3] [DOI: 10.1007/978-3-658-21441-8_8](https://doi.org/10.1007/978-3-658-21441-8_8)
- [4] <https://www.unece.org/env/pp/compliance/Compliancecommittee/41TableSlovakia.html>
- [5] <https://www.teraz.sk/najnovsie/mochovce-dostavba-greenpeace-kritika/61524-clanok.html>
- [6] <http://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/implementation-of-decisions-of-the-meeting-of-the-parties-on-compliance-by-individual-parties/sixth-meeting-of-the-parties-2017/decision-vi8i-concerning-slovakia.html>
- [7] http://www.unece.org/fileadmin/DAM/env/pp/compliance/MoP6decisions/VI.8i_Slovakia/Correspondence_with_Party/Second_progress_report/Second_progress_review_on_VI.8i_Slovakia_adopted.pdf, p. 9 (paragraph 53).
- [8] https://www.obycajniludia.sk/wp-content/uploads/2020/02/OLANO_program_2020_FINAL_online.pdf, p. 109, item 11.
- [9] <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&ZakZborID=13&CisObdobia=8&CPT=68>

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