

Abstract

This factsheet provides, in a chronological order, a brief summary of:

- the historical and factual context, in which a flat-rate non-transparency was introduced in Slovakia since May 2010 (parts 1 - 4),
- the amendment of the relevant Slovak laws in 2019 (part 5),
- the relevant political events in 2020 (parts 6 – 7 and 10),
- the relevant activities of active Slovak citizens towards the Slovak authorities (parts 9 and 11) and the Aarhus Convention Compliance Committee (ACCC) (part 12).

It is an update of the factsheet [15] published by the Nuclear Transparency Watch (NTW) in May 2020 [16].

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].

(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].

The development in 2020

(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.

(7) In July 2020, the Ministry of Justice (MoJ) of Slovakia officially informed that it started to prepare the FOIA amendment. The stated reason behind a need of amendment FOIA was to transpose the *Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information* [10]. The (preliminary) information, in which the MoJ published this reason, did not mention the part of the program document of the political party ‘OLaNO’ about an abolishment of existing clauses in the FOIA (referring to the clauses of the Atomic Act), referred above in the section (6) of this text.

(8) In response to the above outlined situation, using the existing Slovak legal framework to influence preparation of draft laws, the Slovak members of the EURAD Civil Society Larger Group (Peter Mihók and Michal Daniška) submitted an official impetus to the MoJ on 3 August 2020. In their four pages long text (in the Slovak language), Mr. Mihók and Mr. Daniška reminded the MoJ about the part of the program document of the political party ‘OLaNO’ referred in the section (6) of this document. In a justification of a relevancy of their impetus, they referred also to the Second ACCC progress review of the implementation of decision VI/8i on compliance by Slovakia with its obligations under the Convention [7]. MoJ confirmed the receipt of the impetus submitted by Mr. Mihók and Mr. Daniška, but has not provided any feedback to it by 30 September.

(9) On 22 September 2020, Ms. Dana Mareková (as a citizen of Slovakia, affiliated with the Austrian NGOs Global 2000 a Wiener Plattform Atomkraftfrei) sent a letter to the State secretary of the Ministry of Environment (MoE) Mr. Juraj Smatana (CC: 1. Minister of Justice Ms. Mária Kolíková, 2. State secretary of the Ministry of Economy Mr. Karol Galek). In this seven pages long letter (in the Slovak language), she summarised her point of view (consulted with Mr. Peter Wilfling from the Slovak NGO Via Iuris) about an up-to-date application of the Aarhus Convention in Slovakia in relation to the commercial nuclear sector. Also this letter contained references to both the above mentioned ‘OLaNO’ party election program [8] and the most recent ACCC findings [7]. This letter also contained a request for the State secretary of the MoE to remove legislative and application barriers in the application of the Aarhus Convention in a nuclear sector in Slovakia. This letter was also signed by the Slovak NGOs CEPTA and Via Iuris, the Slovak office of Greenpeace CEE, the Slovak Civic Initiative *Chceme zdravú krajinu (We want a healthy country)*, and also by Mr. Peter Mihók (as a member of the Nuclear Transparency Watch network, the EURAD Civil Society Larger Group, the Slovak NGO CEPTA, and an informal Slovak association of environmentalists [14]).

(10) On 22 September 2020, the Minister of Environment of the Slovak Republic, Mr. Ján Budaj, held a press conference on the issues dealt with in this factsheet. According to the media, he stressed that Slovakia was breaching the Aarhus convention [11,12]. Even though the Minister claimed that the MoE would initiate the FOIA amendment in order to make it respect the international legislation [12], he did not specify when such an amendment would be planned/made [13].

(11) On 1 October 2020, the Slovak members of the EURAD Civil Society Larger Group (Peter Mihók and Michal Daniška) submitted an official proposal to the MoJ (within the Slovak existing legal framework to influence preparation of laws/law amendments). In this proposal, they requested the MoJ to amend the FOIA (already within an ongoing amendment process, referred in the section 7 of this text), in a way which would revoke the above referred FOIA amendments from 2010 – 2019. In the justification of their proposal, they again referred (also) to the relevant part of the program document of the political party ‘OLaNO’ [8] and the most recent ACCC findings [7]. This proposal was supported (also signed) by the 32 members of the informal Slovak association of environmentalists [14].

(12) On 1 October 2020, Mr. Mihók and Mr. Daniška informed the ACCC about submissions of the impetus to the MoJ (referred in the part 8), the letter to the MoE (part 9) and the proposal sent to the MoJ (part 11). The email sent to the ACCC contained a brief summary of the content of these three different citizen submissions in English, together with copies of the Slovak language originals of these three submissions.

(13) Due to lacking capacities (related to their full-time jobs situation, personal situation, ‘the CoViD related development’, etc.), the only Slovak NTW member, Mr. Mihók, has been unable to actively influence the above referred procedures since early November 2020. From this reason, this factsheet has been finalised and disclosed publicly, i.e. in order for any subject interested in this topic (or potentially in any follow-up activities) to have a complete chronology and a complete set of relevant documents available at one place.

*Written by Peter Mihók, member of the Nuclear Transparency Watch network. Last updated: 16 November 2020.
Email: peter.mihok@cepta.sk (please CC peter.mihok@tutanota.com and hcemezdravukrajinu@gmail.com).*

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