

**Communication to the Aarhus Convention Compliance Committee**  
**on compliance of the Slovak Republic in the case NPP Mochovce extension**  
**with the Aarhus Convention**

**I. Information on correspondent submitting the communication**

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**II. State concerned**

Slovak Republic

**III. Facts of the communication**

**Background facts and history**

1. In 1986 four reactors for a NPP located in the Slovak town Mochovce, close to the Austrian and Hungarian boarder, were permitted. Two reactors were finalized and went into operation in 1989 (Mochovce 1 and 2), whereas the construction of reactors 3 and 4 were halted after 70 % of civil constructions and 30 % of the equipment were done.<sup>1</sup> The four permitted reactors are a VVER 440/V213, a Soviet Generation II reactor, designed in the period 1970 -1980.

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<sup>1</sup> See letters from EC, Annex 11

2. A few years ago the Slovak Republic decided to extend the existing NPP by completing Mochovce reactors 3 and 4. The operator of the NPP is the Italian/Slovak consortium ENEL/SE. SE stands for Slovenske Elektrarne. The operator is responsible for the extension.

### **Substantive project changes/Environmental Impact Assessment?**

3. The extension of reactors 3 and 4 is subject to major changes since today's environmental, safety and technological standards have changed substantially since the original permit. Furthermore European standards differ widely from outdated Soviet technologies.

In November 2008 FoEE (Friends of the Earth Europe) indicated in a fact sheet the following major issues that substantially change the project:<sup>2</sup>

*“In November 2007, the prime minister of Slovakia, Mr. Fico, informed the public that »three completely new nuclear units will be built«, whereby he probably meant Mochovce 3 and 4 and an additional unit at the Bohunice plant. Mr. Conti, CEO of Enel, stated that Mochovce, which his company intends to build in Slovakia, will be a »Generation III« reactor. However, experts agree that this is technically impossible. The Slovak Nuclear Authority UJD stated in 2004: Due to the extent of already existing building structures at Mochovce 3 and 4, it is not possible to reach a nuclear safety level of new nuclear units [UJD 2004].*

*The EU Commission is not convinced about Mochovce reaching current safety level in its press release of July 15 2008: »In this regard, even though the project shows compliance with the current national regulations of the Slovak Republic as well as international recommendations, the Commission based its assessment on the best practice available and recommended a set of additional measures. This is due to the fact that the VVER 440/V213 reactors proposed by the investor do not have 'full containment' structure which is used in the most recent construction of nuclear power plants planned or under way in Europe.”*

Furthermore FoEE pointed out:

*“The extent of structural improvements when completing Mochovce 3/4 is limited because in 1993, when construction was stopped, already 70% of civil construction was completed and 30% of the equipment had been supplied: the reactor vessel, steam generators, pressurizer, safety system tanks and major turbine parts (partially installed) have been mothballed and are stored at the plant.*

*\_ The structural limitations mainly concern the confinement structures and the possibility of physical separation of safety systems.*

*\_ Neither the reactor building nor the bubble condenser are resistant against external events (air plane crash or missile).*

*\_ The lack of segregation of high energy pipe lines: feed water and steam pipes are parallel on the 14,7 m level (connection between reactor and turbine hall). Therefore, the loss of both at the same time cannot be excluded (e.g. caused by an earthquake, pipe whip), which would make the cooling of the reactor almost impossible.*

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*Mochovce does not have a containment, only a confinement with a bubble condenser to limit the pressure from large pipe ruptures. The tests showed the functioning of the bubble condenser for design basis accidents and some severe accidents, but not all. However, most second generation PWRs have full pressure containments and Generation III reactors will have improved (double wall) containment structures and they will provide options to catch and cool the reactor core in case of reactor pressure vessel failure.*

*Seismic design has to be proven in relation to the earthquake risk at the site. Seismic design is a weak point of all VVER 440/213 units. Moreover, seismic evaluation and seismic design have evolved fundamentally in recent years. It is unclear whether Mochovce 3 and 4 can meet the latest seismic design standards of the IAEA [IAEA 2002].*

## **CONCLUSIONS**

*The construction license of 1986, which is the base for the plan to finalize Mochovce 3/4, concerns a design status which includes all the deficiencies listed above. This is likely to result in a safety standard less than Mochovce 1/2. The general basis for the design corresponds to the former Soviet standards but there is a list of improvements that are implemented in Mochovce NPP 1/2 compared to the original Russian design.*

*Planned lifetime of Mochovce 3/4 is 40 years and start of operation is expected in 2011/12. A NPP that will run until 2050 must fully meet today's latest safety standards. From a precautionary perspective, a new NPP should use best available technology and not equipment and technology from the 1970's, where also improvement is limited due to finished civil structures and old equipment.*

*At Mochovce 1/2 (1998/99) several improvements were implemented [VUJE 2001]. If all these changes are included in the completion project of Mochovce 3/4, the plant design would be very different from the one licensed in 1986.*

4. Slovakia argued from the very beginning that an EIA, including Espoo and Aarhus related procedures, is not necessary, since the two new reactors have a valid and later prolonged construction permit from the year 1986.

5. The European Parliament was concerned about this view and requested the European Commission in request E3777/0 for clarification.<sup>3</sup> For that purpose the Commission sent a letter to the Slovak Republic requesting EIA and SEA documentation and information in January 2008.<sup>4</sup> The European Commission "considered it very likely" that the construction of Mochovce 3 and 4 requires a full EIA according to the EIA-directive.

6. In February 2008 the Austrian Minister of Environment raised similar concerns towards the Slovak Minister of Environment.<sup>5</sup> The Austrian minister referred to pressure, information and participation requests from the public stating he is not convinced the project requires no EIA. Furthermore the minister claimed that is not understandable why the Slovak Republic had carried out a transboundary EIA for the relatively small power extension of reactors 1 and 2

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<sup>3</sup> See reference in European Commission DG Environment letter D(2008) ENV.D.3(08)872 from 31. January 2008), Annex 1.

<sup>4</sup> Letter from the European Commission, DG Environment letter D(2008) ENV.D.3(08)872 from 31. January 2008), Annex 1.

<sup>5</sup> Letter from the Austrian MoE from 19. February 2008, UW.1.1.4/0009-V/6/08, Annex 2.

only recently, but rejects the necessity of an EIA for the large scale extension of reactors 3 and 4.

7. NGOs and local groups from different countries have been raising the same issues since the idea of an extension had become public. Greenpeace filed a complaint in administrative court against the missing EIA in 2008. Furthermore Greenpeace filed a communication to the European Commission claiming an EIA/public participation procedure.

### **Applications, procedures and decisions on project changes since 2008**

8. In May 2008 SE/ENEL submitted three applications to UJD that were approved by the regulator in August 2008:

1. *Construction permit for the modified plant*, UJD Decision 246/2008 of August 2008 (list of permitted modifications included)
2. *Permit to realize safety relevant modifications during completion* (120 items listed, where changes are to be undertaken), UJD decision 266/2008, issued August 2008
3. *Permit to implement Changes in the Preliminary Safety Analysis Report*

9. On 15 July 2008 the European Commission issued an official opinion on the completion of Mochovce regarding the Euratom Treaty containing recommendations on technology and safety standards.<sup>6</sup> The recommendations must be implemented to be in line with the objectives of the Euratom Treaty.

10. The operator SE argued regarding the Commission viewpoint (in November 2008) *“that its recommendations will be fully implemented in the design. It also said that the nuclear regulatory authority had approved the changes to the construction’s design, which was a condition for incorporating all the safety changes to the civil and technological part of the design.”*<sup>7</sup> “

11. *“Referring to the design changes, Kopřiva [SE] said that, without being too specific about technological details, the design changes comprise “approximately 100 improvements”.*”

12. On 14. August 2008 the Slovak Nuclear Safety Authority (UJD, Trnava) issued a permit containing technical changes on the “preliminary safety report” on block 3 and 4 NPP Mochovce, based on a request of the operator from May 2008.<sup>8</sup> According to this decision the new permit was necessary because the original safety report was issued in 1984 and 1986 and in the meanwhile nuclear safety legislation had changed.

13. Another permit on design changes of the new Mochovce units was allegedly issued by the Nuclear Regulatory Authority of Slovakia before November 2008.<sup>9</sup>

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<sup>6</sup> Annex 4: Viewpoint of the EC July 2008

<sup>7</sup> Annex 6: Press article in Spectator, 10 Nov 2008, “Nuclear project under way”, [http://www.spectator.sk/articles/view/33506/3/nuclear\\_project\\_under\\_way.ht](http://www.spectator.sk/articles/view/33506/3/nuclear_project_under_way.ht)

<sup>8</sup> Annex 5: Translation of nuclear safety permit August 2008

<sup>9</sup> Annex 6 and 8, press release 3 Nov 2008

14. The official constructions of the project started on 3. November 2008.<sup>10</sup> Site preparatory works involving approximately 300 workers were already started in September 2007 (Annex 8). Constructions for the first reactor are scheduled to be completed in February 2012 (EIA scoping document) .

### **Slovakia changes view on EIA**

15. In September 2008 the Slovak Republic changed its view regarding EIA. It concluded that an EIA will be conducted for the project. In a letter to the Slovak NGO Za Matku Zem (ZMZ) the Slovak MoE confirmed that an EIA will be carried out. By the same time it made clear that no EIA is needed for the construction of the NPP, but only before the operation permit is given (operational permit).

16. Slovakia maintains its view that the construction of the NPP can be finalized without EIA and it is sufficient to have an EIA accomplished only before the operation starts. The internal publication of the utility and future operator ENEL/SE gives a very good summary: “*SE fulfilled all obligations as defined in the statement of the Slovak Ministry of the Environment of 2008, where it stated, that the company does not need to produce an EIA report for the project completion of the units 3 and 4 NPP Mochovce. This means, that we [SE] continue the construction according to the planned schedule. However, to receive the licence for start – up and operation of the NPP, we initiated an EIA for the full – scope operation of units 3 and 4 in time to be able to put Mochovce 3 and 4 into operations in 2012 and 2013.*”<sup>11</sup>

17. In February 2009 Slovakia started the EIA scoping phase for the NPP and entered into consultations under the Espoo Convention.

18. In June 2009 Slovakia announced the signing of the contracts with the main suppliers for the completion of the two reactor blocks.

19. At this stage we want to state that it has been very difficult to obtain any information on pending or scheduled related procedures. Information requests were consequently put down for public security reasons. Most of the information provided in this communication results from press articles, official documents that were circulated or from the European Commission, after using timely formal information request procedures on EU-level.

### **Legal assessment situation**

#### **Applicability of the Convention: Article 6 and Annex I**

We firstly assess whether the project falls under the Aarhus Convention.

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<sup>10</sup> Annexes 6 to 8.

<sup>11</sup> *EIA na Mochovce*, in: Slovenská energetika, 4/2009, published by SE/Enel

20. Article 6 of the Aarhus Convention provides for public participation in decisions on specific activities.

**Article 6 par 1** reads as follows:

“1. Each Party:

(a) Shall apply the provisions of this article with respect to decisions on whether to **permit proposed activities** listed in annex I;”

**Article 6 par 10** reads as follows:

“10. Each Party shall ensure that, when a public authority **reconsiders** or **updates** the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied mutatis mutandis, and where appropriate.”

**Annex I par 1** regarding NPP (nuclear power plant) reads follows:

“- **Nuclear power stations** and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors 1/ (except research installations for the production and conversion of fissionable and fertile materials whose maximum power does not exceed 1 kW continuous thermal load);”

**Annex I par 20** reads as follows:

“Any activity not covered by paragraphs 1-19 above where public participation is provided for under an **environmental impact assessment** procedure in accordance with national legislation.”

**Annex I par 22** reads as follows:

“Any **change to or extension of activities**, where such a change or extension in itself meets the criteria/thresholds set out in this annex, shall be subject to article 6, paragraph 1 (a) of this Convention. Any other change or extension of activities shall be subject to article 6, paragraph 1 (b) of this Convention.”

21. A NPP is an activity listed in the Annex of the Convention (Annex I par 1). The Convention is applicable when permitting procedures relating to a NPP are carried out. This does not only count for new NPP, but also reconsiderations and updates of respective permits (Article 6 par 10) as well as in cases when changes or extensions meet the thresholds set in the Annex in itself (Annex I No 22). Furthermore the Convention shall be applied in case an EIA is foreseen under national law (Annex 1 par 20).

### **Applicability of Article 6 par 10**

22. Slovakia claims that the construction permit of the year 1986 is still valid and there is no need for new or updated permits. There are however many facts proving the opposite view. Since the 1986 permit is based on Soviet technology from the 1970's, it is apparent that

today's NPP has to follow very different technology and safety standards.<sup>12</sup> As mentioned above under paragraph 3 it is technically not possible to follow the 1986 permit and by the same time comply with updated nuclear safety and technology standards. Furthermore the operator is obliged to comply with recommendations from the European Commission based on the Euratom Treaty that differ widely from what was permitted in 1986.

23. This estimation is confirmed by the fact that we could identify at least three applications and respective decisions that permitted or updated the existing permits for Mochovce reactors 3 and 4 in the year 2008: a) Construction permit for the modified plant, UJD Decision 246/2008 of August 2008 (list of permitted modifications included), b) Permit to realize safety relevant modifications during completion (120 items listed, where changes are to be undertaken), UJD decision 266/2008, issued August 2008), c) Permit to implement Changes in the Preliminary Safety Analysis Report.

24. We thus conclude that Article 6 is applicable by the fact that – at least - updates and review of permits were necessary and the conditions set in Article 6 par 10 are fulfilled.

### **Applicability of Article 6 par 1 and Annex par 22**

25. According to par 22 of Annex I the Convention is applicable when changes or extensions meet by itself the criteria set in Annex 1. Article 6 par 1 in connection with Annex 1 par 1 provides that any decisions relating to permits of “nuclear power stations and other nuclear reactors” fall under the Convention.

26. Currently only reactors one and two operate in Mochovce. The extension by the completion of reactors three and four would more than double the capacity of the existing plant. Considering the base line of two permitted and operating reactors in Mochovce, the extension of two additional reactors that more than doubles the capacity of the existing plans meets by itself the criteria set in Annex 1

27. From the facts described above we derive that the changes necessary to comply with updated safety and technological standards since 1986 go so far that they have to be considered as a new project in the sense of Annex par 1 in connection with Annex 1 par 22. As it was pointed by FoEE (see above par 3) the plant design – in order to fulfil updated safety and technological requirements - has to be changed to such an extent that the plant design would be very different from the one licensed in 1986. The Slovak Nuclear Authority UJD took a similar view in 2004 stating that it is not possible to reach nuclear safety level for new nuclear units.<sup>13</sup>

28. The Convention is thus applicable also from this perspective.

### **Applicability of Article 6 par 1 and Annex 1 par 20**

29. Paragraph 20 of Annex I provides that Article 6 shall be applied even in cases when an activity is not listed in other paragraphs of the Convention's Annex I in cases where national

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<sup>12</sup> See for example the FoEE fact sheet, Annex 3

<sup>13</sup> See Annex 3 for references.

law provides for an EIA procedure including public participation. Since Slovakia has been claiming an EIA (and public participation) is no obligation provided by law we want to assess the applicability of this point.

30. In its decision regarding Denmark (Case 18 ECE/MP.PP/2008/5/Add.4, par 27) the Compliance Committee confirmed that European environmental law can be considered as national law in EU member states in the sense of the Convention:

31. “27. *The communicant argues that the act of culling the rooks contravenes European Community legislation rather than Danish legislation, whereas article 9, paragraph 3, refers to “provisions of its national law relating to the environment”. Therefore, the Committee must first consider whether in a case concerning compliance by Denmark, i.e. an EU member state, European Community legislation is covered by article 9, paragraph 3, of the Convention. The Committee notes that, in different ways, European Community legislation does constitute a part of national law of the EU member states. It also notes that article 9, paragraph 3, applies to the European Community as a Party, and that the reference to “national law” therefore should be understood as the domestic law of the Party concerned. While the impact of European Community law in the national laws of the EU member states depends on the form and scope of the legislation in question, in some cases national courts and authorities are obliged to consider EC directives relating to the environment even when they have not been fully transposed by a member state. For these reasons, in the context of article 9, paragraph 3, applicable European Community law relating to the environment should also be considered to be part of the domestic, national law of a member state.”*

32. The construction and extension of Nuclear Power Plants is an activity listed in Annex 1 par 2 of the European EIA-directive (Directive 85/337/EC) that requires an EIA, including public participation procedures, to be carried out. Annex 1 par 2 second indent EIA directive reads as follows: “- *nuclear reactors including the dismantling or decommissioning of such power stations or reactors\* (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).*” Furthermore Annex I par 22 EIA directive provides for an EIA in the following cases: “*Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex*”.

33. ‘Even though para 22 of Annex I EIA-directive refers to changes to meet in itself “thresholds”, if any, and no threshold is set in the Annex for NPP it can be concluded by argumentum a maiore ad minus that this provisions applies also for cases where no threshold is set because there is no reason to provide for an EIA only for extension projects with thresholds, whereas projects that are potentially so harmful to the Environment that no threshold is set and any such activity requires an EIA should be treated less stringently.

34. This view is confirmed by the additional requirement set by the EC in its Euratom article 41-43 point of view, the mentioned amendment permits, the pressure of DG Environment, the European parliament, Austria and finally by the decision of Slovakia to carry out an EIA for the project (see above par 3 to **Error! Reference source not found.**). We thus conclude that the Convention is applicable based on Annex I par 20.

#### **Early and effective participation (Art 6 par 4) in permitting procedures**

## Participation in EIA procedure during construction

35. When Article 6 is applicable the public shall, among others, have the right to participate in an early and effective manner, when all options are still open (Art 6 par 4).

36. Slovakia shares the view that the only relevant environment related “permitting procedure” is the EIA procedure and provides for public participation only in this procedure. On the other hand it is obvious that there were at least three procedures (see above point 8) changing existing permits or granting new permits with regard to different environmental and safety standards and possibly others will follow, without public participation.

37. The approach of having the EIA after the permitting procedure is not usual in Slovakia. The Slovak EIA procedure is not a permitting procedure by itself. However, the results of the EIA have to be considered in the following permitting procedures, among others to comply with international and European law. The regular EIA-approach in Slovakia is therefore to firstly carry out the EIA and only as second step to permit the activity in order to safeguard that the results of EIA and public participation procedures are legally reflected in the permits.

38. At this stage we want to stress that the Aarhus Convention does provide for public participation in permitting, but not in EIA procedures that are not permitting procedures. Even though EIA and permitting procedures overlap in many countries the actual aim of the Convention is to provide for participation in **permitting** procedures (relating to projects that normally require an EIA)

39. However, in the framework of consecutive decisions to permit projects it appears appropriate for different legal and practical reasons that the EIA is carried out before environmental permitting procedures are conducted, in particular before permits are issued. The assumption that the EIA procedure, including public participation, is expected to be carried out before construction starts is shared by the Compliance Committee in its decisions regarding the *European Community* (ECE/MP.PP/2008/5/Add.10, Case 17, para 53):

*“First, it appears to the Committee that for all activities involving construction, the EIA Directive requires public participation to be carried out before the actual construction starts. This requirement can be interpreted from the definitions of “project” and “development consent” in article 1, paragraph 2, of the EIA Directive taken in conjunction with the obligation set out in article 2, paragraph 1, to require development consent.”*

40. We thus conclude with regard to the NPP Mochovce extension where the EIA procedure is the only possibility for public participation and where the EIA is carried out only while construction is proceeding is not compatible with the objectives of the Aarhus Convention (in particular Art 6 par 4, but also Art 6 in general) because public participation is neither early nor effective and major options are not open any longer. Furthermore the Slovak EIA procedure is not a permitting procedure and participation only in this procedure is by its nature not sufficient to comply with the Convention’s requirement to enable public participation in permitting procedures.

41. The assessment that public participation is not effective and early is underlined when we legally assess the fact that Slovakia carried out different project/activity related permitting

procedures during the last year. Whereas construction has started in November 2008 and 2007 respectively, different permitting procedures were and will be conducted without any chance for early and effective participation. Fundamental technological, safety and other environment related decisions were taken already at the time the construction proceeded and contracts with suppliers were signed. It is absolutely unclear how the public's view would be taken into account in the decision making process when changes are not feasible any more at the time of the EIA procedure and its end respectively.

42. This estimation is confirmed by recent decisions of the Compliance Committee such as concerning *Lithuania* (Case 16, ECE/MP.PP/2008/5/Add.6) and the *European Community* (Case 17, ECE/MP.PP/2008/5/Add.10). With regard to *Lithuania* the Committee assesses the situation as follows (para 71):

*“The requirement for “early public participation when all options are open” should be seen first of all within a concept of tiered decision-making, whereby at each stage of decision-making certain options are discussed and selected with the participation of the public and each consecutive stage of decision-making addresses only the issues within the option already selected at the preceding stage. Thus, taking into account the particular needs of a given country and the subject matter of the decision-making, each Party has a certain discretion as to which range of options is to be discussed at each stage of the decision-making. Such stages may involve various consecutive strategic decisions under article 7 of the Convention (policies, plans and programmes) and various individual decisions under article 6 of the Convention authorizing the basic parameters and location of a specific activity, its technical design, and finally its technological details related to specific environmental standards. Within each and every such procedure where public participation is required, it should be provided early in the procedure, when all options are open and effective public participation can take place.”*

#### **Early and effective public participation (Art 6 par 4) in different permitting stages**

43. Slovakia appears to apply such a concept of tiered decision making when having different permits for different purposes for the same project, including an EIA procedure. However, the only stage of participation with regard to NPP Mochovce is the (non permitting) EIA procedure that comes at the very latest stage, when both fundamental and detailed decisions were taken already (see above). That such an approach does not comply with the Convention is confirmed by the Committees assessment of projects that are permitted under the EIA and IPPC directive of the EU (Case 17) in paragraphs 41 et seq.

#### **“Application of article 6 of the Convention in relation to multiple permits**

*41. The first issue to be examined with regard to article 6 of the Convention refers to multiple permitting decisions for landfills. The Committee does not consider that article 6 necessarily requires that the full range of public participation requirements set out in paragraphs 2 to 10 of the article be applied for each and every decision on whether to permit an activity of a type covered by paragraph 1. First, the very title of the Convention (ending with the words “in environmental matters”) implies that even though it is not spelled out in article 6, the permitting decisions should at the very least be environment-related. Second, even within the environment related permitting decisions that might be required before a given activity may proceed, there may be large variations in their significance and/or environmental relevance.*

*Some such decisions might be of minor or peripheral importance, or be of limited environmental relevance, therefore not meriting a full-scale public participation procedure.*

42. *On the other hand, nor does the Committee consider that where several permitting decisions are required in order for an activity covered by article 6, paragraph 1, to proceed, it is necessarily sufficient for the purposes of meeting the requirements of article 6 to apply the public participation procedure set out in it to **just one of those permitting decisions**. **Where one permitting decision embraces all significant environmental implications of the activity in question, it might be sufficient**. However, where significant environmental aspects are dispersed between different permitting decisions, **it would clearly not be sufficient to provide for full-fledged public participation only in one of those decisions**. Whether a system of several permitting decisions, where public participation is provided with respect to only some of those decisions, amounts to non-compliance with the Convention will have to be decided on a contextual basis, taking the legal effects of each decision into account. It is of crucial importance in this regard to examine to what extent such a decision indeed “permits” the activity in question.”*

44. With regard to the relationship of certain permitting procedures that are carried out only before the operational permit is issued the Committee stated as follows:

*“54. Second, the Committee notes that the IPPC Directive obliges the Member States to ensure early and effective opportunities for public participation in procedures for issuing a permit for new installations covered by the IPPC Directive. A system whereby the IPPC permitting process starts **after the construction is finalised** need not of itself be in conflict with the requirements of Convention, though in certain circumstances it might be. **Once an installation has been constructed, political and commercial pressures may effectively foreclose certain technical options that might in theory be argued to be open but which are in fact not compatible with the installed infrastructure**. A key issue is whether the **public has had the opportunity to participate in the decision-making on those technological choices at one or other stage in the overall process, and before the “events on the ground” have effectively eliminated alternative options**. If a legal framework of a Party to the Convention is such that the only opportunity for the public to provide input to decision-making on technological choices which is subject to the public participation requirements of article 6 of the Convention is **at a stage when there is no realistic possibility for certain technological choices to be accepted, then such a legal framework would not be compatible with the Convention.**”*

<http://www.foei.org/en/blog/foei-statement-on-honduras>

The findings can be summarized as follows:

45. The Convention provides for public participation in certain environment related permitting procedures in an early and effective manner, when all options are still open.

- In the case an activity needs different permits with regard to the environment, public participation has to be provided in any of the procedures if the same subject matter will not be dealt with any more in another permitting procedure for the same project where the public has early and effective participation rights.
- It is of particular importance that the public has early and effective public participation rights with regard to the fundamental technical choices for any project activity.
- If certain permits are only granted after the construction works for a project were finished this is only in line with the Convention if substantial project changes are possible not only

in theory, but also in practice and this is only case if political and commercial pressure would not foreclose certain technological options and if the public had possibilities to participate in earlier stages where fundamental decisions were taken.

- Finally the Committee expects that the EIA-procedure according to the European EIA directive has to be carried out before construction for a project is started.

With regard to the Mochovce NPP extension this means the following.

46. Firstly, Slovakia breaches Art 6 par 4 of the Aarhus Convention by providing public participation only at a stage when most technological options are foreclosed. The EIA procedure, the only procedure where public participation in the sense of the Convention would be provided in this case is not a permitting procedure as Article 6 par 1 of the Convention provides for. Furthermore the EIA scoping has started only recently, but at the same time construction work have been initiated in November 2008 and different environment related permits on nuclear safety, technical specifications etc. were issued during the last year, without public participation possibilities. Public participation is thus not early and effective, but late and ineffective.

47. Secondly, the Slovak Republic failed to provide for public participation in the aforementioned permitting procedures that changed and updated the project design, the construction permit and nuclear safety. Major issues the permits dealt with can not be changed any more once constructions are final or far progressed.

48. Thirdly, conducting an EIA including the public participation procedure after or during the construction process contravenes not only the EIA-directive of the EU but makes most of the provisions of Article 6 of the Convention useless or less valuable. Article 6 is based on the assumption that an EIA is carried out (e.g Art 6 par 2 (e)) and assumes that the EIA is conducted before or during permitting procedures are carried out. Article 6 foresees different information stages on the project and documentation that needs to be made available to the public in order to enable effective participation. Most of the information listed in Article 6 par 6 refers to documentation relating to the EIA. Furthermore the public authority has to take due account of the public participation's outcome in its permitting decision (Art 6 par 8). It is thus very unlikely the aim of Article 6 in general, but also the objectives of most paragraphs of Article 6 can be reached when the EIA including public participation is carried out at such a late stage.

#### **IV. Nature of alleged non-compliance**

The communication concerns a specific case.

The main focus of non-compliance is application of the Convention.

#### **V. Provisions of the Convention relevant for the communication**

Art 6, in particular 6 par1 and 6 par 4, 6 par 10; Annex I par 1, par 20, par 22

## **VI. Use of domestic remedies or other international procedures**

It was not possible to appeal against the lack of public participation rights.

With regard to the lack of an EIA (including public participation) a complaint was lodged to the administrative court by Greenpeace and a Slovak NGOs last year.

A complaint was submitted to the European Commission last year.

## **VII. Confidentiality**

Not requested.

## **VIII. Supporting documentation (copies, not originals)**

Annex 1: Letter from the European Commission, DG Environment letter D(2008) ENV.D.3(08)872 from 31. January 2008),

Annex 2 .Letter from the Austrian MoE from 19. February 2008, UW.1.1.4/0009-V/6/08,

Annex 3 FoEE briefing mochovce\_engl oct2008

Annex 4: Viewpoint of the EC July 2008

Annex 4a: EC press release on EC viewpoint IP/08/1143, 15. July 2008

Annex 5: Translation of nuclear safety permit August 2008

Annex 6: Press article in Spectator, 10 Nov 2008, "Nuclear project under way",  
[http://www.spectator.sk/articles/view/33506/3/nuclear\\_project\\_under\\_way.ht](http://www.spectator.sk/articles/view/33506/3/nuclear_project_under_way.ht)

Annex 7: Press release TASR June 11, 2009

Annex 8: Press release SE, 3 Nov 2008; <http://www.seas.sk/public-relations/press-releases/19553.html>

Annex 9: Letter SK MoE to ZMZ

Annex 10: Letter Greenpeace to EC on EIA timing

Annex 11: Letters towards European Commission viewpoint on Mochovce 3,4 under Euratom 41 – 43

## **XI. Summary**

In November 2008 Slovakia started construction work for a nuclear power plant extension located in Mochovce, close to the Austrian, Czech and Hungarian borders. Two new reactors blocks are under construction. The multi billion EUR project is one of the largest in the Slovak Republic. The existing NPP has two reactors. They were permitted in the year 1986 based on Soviet technology from the 1970s. The 1986 permit was valid for four reactor blocks, but only two reactors were completed and went into operation. For the other reactors construction started, but was halted and not completed.

NGOs from different countries claimed at different occasions that the construction of two additional reactors would require permitting, public participation and assessments procedures under the EIA-directive, the Aarhus and Espoo Conventions because legal and factual requirements for the NPP changed dramatically since 1986 (1971) and the NPP extension is a “new project” in a legal sense. The Republic of Austria and the European Commission have had similar concerns.

Slovakia rejected to carry out an EIA (and public participation) by referring to the existing construction permit from 1986. After serious national and international pressure by civil society and other institutions Slovakia agreed to carry out an EIA in September 2008, but with the restriction that the EIA procedure is aimed to be concluded only during/after the NPP construction will be finalized. At the same time different permitting procedures updating existing permits without public participation were carried out in 2008.

We conclude that the current situation is in breach of the Aarhus Convention since the NPP extension is already under construction, but an EIA procedure that is at the same time the only public participation procedure has started only now and is scheduled to be finalized just before the NPP starts to operate. The fact that at least three environment related permitting procedures had been carried out without public participation in 2008 is a further prove that the Convention has been breached. Participation only at the – in this case - late EIA stage is too late to ensure “early and public participation, when all options are open and effective public participation can take place” as Art 6 par 4 of the directive provides for. Furthermore the Slovak EIA procedure is not a permitting procedure in the sense of the Convention.

**X. Signature**



Vienna, 1<sup>st</sup> of July  
Dr. Klaus Kastenhofer  
Director GLOBAL 2000/Friends of the Earth Austria



Vienna, 1<sup>st</sup> of July  
Dr. Heinz Högelsberger  
Board GLOBAL 2000/Friends of the Earth Austria

## **XI. Address**

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Clearly indicate: “Communication to the Aarhus Convention’s Compliance Committee”