

SE Safety Improvement (2017-0881)

Complaint SG/E/2020/06

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INITIAL ASSESSMENT REPORT

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THE EIB COMPLAINTS MECHANISM

The EIB Complaints Mechanism is designed to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases in which members of the public feel that the EIB Group has done something wrong, i.e. if they consider that the EIB has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) – and one external – the European Ombudsman.

Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration, or violates human rights. Some examples, as set out by the European Ombudsman, are administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities and to project cycle-related policies and other applicable policies of the EIB.

The EIB Complaints Mechanism is designed not only to address non-compliance by the EIB with its policies and procedures but also to endeavour to solve the problem(s) raised by Complainants such as those regarding the implementation of projects.

For further and more detailed information regarding the EIB Complaints Mechanism, please visit our website: <https://www.eib.org/en/about/accountability/complaints/index.htm>

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GLOSSARY OF TERMS AND LIST OF ACRONYMS

ACCC	Aarhus Convention Compliance Committee
Borrower	Slovenské elektrárne, a.s. (borrower and promoter)
Complainant	Friends of the Earth Europe
EBO	NPP Bohunice Units 3 and 4 (V2)
EC	European Commission
ECJ	Court of Justice of the European Union
EIA	Environmental Impact Assessment
EIB	European Investment Bank
EIB-CM	EIB Group Complaints Mechanism Division
EMO	NPP Mochovce Units 1 and 2
ESDS	Environmental and Social Data Sheet
EU	European Union
LTO	Long-term operation
MoE	Slovak Ministry of Environment
MW	Megawatts
NGO	Non-governmental organisation
NPP	Nuclear power plant
Project	Programme for SE Safety Improvement
ÚJD	Slovak Nuclear Regulator

EXECUTIVE SUMMARY

In May 2020, the EIB Group Complaints Mechanism (EIB-CM) received a complaint from Friends of the Earth Europe (FoEE), an NGO, sent on behalf of its member organisations, Global 2000 (Austria) and Wiener Plattform Atomkraftfrei (Austria). The complaint concerns the project “SE Safety Improvement” which covers the investment programme for equipment and system modifications, replacements and reconstruction works on the operating units of two nuclear power plants in Slovakia (EMO and EBO). The complaint includes allegations about:

- Lack of EIA for the long-term operation (LTO) of EMO Units 1 and 2 until 2060 and EBO Units 3 and 4 (V2¹) beyond the original 30-year design lifetime until 2044. The complaint alleges that none of the units concerned went through a full EIA process at any stage but only underwent “screening”. The complainant alleges “Salami slicing” of LTO measures, and the “lack of public participation” required by EU, national and international law.
- Incorrect description of “Environmental aspects” of the project on the EIB’s project site.
- The Slovak Republic is in breach of international law regarding transparency and public participation referring to the case before the Aarhus Convention Compliance Committee in relation to the Atomic Bill (No. 541/2004 Coll.), adopted in 2019.
- The project does not comply with national and EU EIA laws, with the Aarhus and Espoo Conventions and with the Slovak Constitution. The Complainant also concludes that the project violates the EIB’s policies and standards regarding the EIA of projects with “significant impact on the environment”.

The Complainant claims that the EIB should demand that a full EIA be conducted for the measures it funds addressing any significant transboundary impacts in line with the requirements of EU law and the Espoo Convention.

Following the admissibility of the complaint, the EIB-CM carried out an Initial Assessment. The objective of the Initial Assessment is to clarify the concerns raised by the Complainant, understand the Complainant’s position as well as the validity of the concerns raised, and determine if further work by the EIB-CM is necessary and/or possible (compliance review or mediation between the parties) to address the allegation or resolve the issues raised by the Complainant.

With regard to the alleged breach of international law regarding transparency by the Slovak Republic, the EIB-CM is not in a position to deal with this allegation based on the admissibility criteria and the mandate of the EIB-CM to focus on maladministration by the EIB in the context of the activities it finances.

In light of the Initial Assessment and due to the nature of the allegations made, the EIB-CM deems it appropriate to carry out a compliance review regarding the following allegations:

- Lack of EIA performed for lifetime extensions (LTO) of EMO and EBO (four units) stemming from “Salami slicing”, including the lack of stakeholders’ engagement, and
- Incorrect description of “Environmental aspects” on the EIB’s Project Summary sheet (online).

¹ The design of Units 3 and 4 of the Bohunice V2 NPP (type VVER 440 V-213) as compared to the older design of V1 Units 1 and 2 (type VVER 440 V-230)

1. THE COMPLAINT

- 1.1. On 5 May 2020, the Complainant², Friends of the Earth Europe (FoEE), an NGO, on behalf of its member organisations, Global 2000 (Austria) and Wiener Plattform Atomkraftfrei (Austria), lodged a complaint with the EIB-CM concerning the EIB's project (2017-0881) SE Safety Improvement (hereinafter, the project) on four operating units in Bohunice NPP (EBO) and Mochovce NPP (EMO).
- 1.2. The Complainant considers that the investor would not be able to continue operations without the EIB's financial assistance. The Complainant states that, although only a very general overview of measures funded by the EIB is publicly available, it is clear that these measures would not be needed for only a few more months/years of operation³. The Complainant concludes that the EIB investment enables the operation time of the nuclear plants to be extended until 2044 and 2060 respectively.
- 1.3. The Complainant alleges that none of the nuclear power units concerned went through a proper EIA process with appropriate public consultation as required by EU, national and international law. The Complainant states that:
- As regards EBO:
 - The original operation permits were issued in accordance with national legislation before any EIA and public participation requirements were in place. The EIA process was conducted in 2005; it did not assess the entire operation but only the environmental impacts of the "increase of efficiency of Blocks V2".
 - In 2011, an EIA process was launched for "Long-term operation NPP V2" (for Units 3 and 4). However, the Complainant alleges that the EIA process was terminated in 2015 because of new legislation passed in 2013, "*which made all nuclear licences "endless" – without time limitation*".
 - As regards EMO:
 - The EIA process was conducted in 2007 only for "increase of efficiency"; its compliance with the Espoo Convention had been disputed by the Austrian government.
 - Since 2018, the investor initiated seven EIA processes, which were all terminated after screening proceedings. According to the Complainant, these proceedings should have been merged to enable the assessment of cumulative impacts.
- 1.4. The Complainant alleges that an EIA for the entire plant is also required in the case of major changes, which is likely to be the case when looking at the rough description of measures financed (seismic reinforcement measures, upgrades and component replacements in the reactor control rod systems). The Complainant refers to the findings and recommendations of the Aarhus Convention Compliance Committee (ACCC), adopted on 4 October 2018 and concerning the lifetime extension of Borssele Nuclear Power Plant in the Netherlands⁴.
- 1.5. The Complainant alleges that the Slovak Republic is in breach of international law regarding transparency and public participation in nuclear decision-making. In this regard, the Complainant refers to cases against the Slovak Republic before the ACCC and takes the view that the amendment to Atomic Bill (No. 541/2004 Coll.), adopted in 2019, shows that the Slovak Republic does not take seriously into account its commitments in the fields of transparency and public engagement in nuclear decision-making.

² The complaint was submitted via a web form. The Complainant did not request confidentiality.

³ "*It is obvious that measures taken at the Bohunice units 3 and 4 (V2), which reached the 30 years of original operation time in 2014 already, are serving lifetime extension. The units Mochovce 1 and 2 are around 20 years on the grid, so it is safe to assume, that the decision for lifetime extension is already taken and technically under preparation.*"

⁴ The Complainant highlights that the ACCC "considered it inconceivable that the operation of a nuclear plant could be [in the case of Borssele....] extended from 40 years to 60 years without the potential for significant environmental effects." ACCC/C/2014/104 <https://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-63/ece.mp.pp.c.1.2019.3.en.pdf>

- 1.6 The Complainant alleges that the description of “Environmental aspects”, as outlined on the EIB website, is incorrect, because insufficient consideration was given to the assessment of environmental impacts and the participation of relevant stakeholders in the process since the beginning of this nuclear operation.
- 1.7 Finally, based on the above allegations, the Complainant concludes that the contested project does not comply with national and EU EIA laws, with the Aarhus and Espoo Conventions and with the Slovak Constitution⁵. The Complainant also concludes that the project violates the EIB’s policies and standards regarding the EIA of projects with “significant impact on the environment”. In this regard, the Complainant refers to the *“entire project and its sphere of influence, not just to the part that is being financed by the Bank”*.
- 1.8 The Complainant claims that the EIB should demand that an EIA be conducted for the measures it funds and that a full EIA procedure should (i) identify and address any significant transboundary impacts associated with the project; and (ii) engage governments of potential affected countries in the transboundary context, in line with the requirements of EU law and the Espoo Convention.
- 1.9 On 29 and 30 June 2020, the Complainant sent further correspondence informing the EIB-CM of the following:
- In 2019, the Complainant filed Statements of the Public Concerned and unsuccessfully appealed the final decision of the Slovak Ministry of Environment (MoE) concerning one of the EIA proceedings for EMO⁶. As a result of its activity, the Complainant received a letter from the Slovak Nuclear Regulator (ÚJD) claiming that if the statements in the Complainant’s letters to Slovak MPs were not justified, they could be considered as libellous.
 - While acknowledging that the improvements funded by the EIB are necessary on the basis of periodic safety reviews, the post-Fukushima stress tests and growing technical and organisational understanding of nuclear risk, the safety upgrades are also part and parcel of a lifetime extension beyond the initial design lifetime of 30 years of operation. In this regard, the Complainant noted that, for EBO, 30 years of operation were reached by Unit 3 on 20 August 2014 and by Unit 4 on 9 August 2015, while for EMO, Unit 1 and Unit 2 will reach that milestone on 4 July 2028 and on 20 December 2029 respectively.
 - The extension of the lifetime of a nuclear power station beyond the initial design lifetime was found to be a reconsideration or update of the operating conditions for this activity under Art. 6(10) of the Aarhus Convention in the findings of the Aarhus Convention Compliance Committee concerning the lifetime extension of the Borssele nuclear power plant in the Netherlands. The Complainant argued that under the same provision of the Aarhus Convention, the decision to let EBO Units 3 and 4 operate longer than the initial design lifetime should therefore have been preceded by public participation. At the time of the EIB’s financing decision, Slovakia had de facto decided to prolong the operation of these units beyond their initial design lifetime without an EIA and hence in non-compliance with the Aarhus Convention. The Complainant considers that the EIB should have demanded the fulfilment of these obligations before its financing decision.
 - In its findings on the extension of the lifetime of two nuclear power stations in Belgium⁷, the Court of Justice of the European Union (ECJ) found the lifetime extension decision to be a change to a project listed in Annex I to the EIA Directive, and hence carrying an obligation for an EIA. The ECJ found that it did not matter that the decision to perform physical works to the reactors and the lifetime extension decision had not been taken at the same time, because these works and the

⁵ The Complainant takes the view that the Slovak Constitution (a) explicitly guarantees access to environmental information; and (b) sets compliance with international conventions guaranteeing protection of human rights (e.g. Aarhus Convention) above compliance with domestic law.

⁶ The appeal was declined on 3 February 2020, information in the complaint.

⁷ <http://curia.europa.eu/juris/liste.jsf?num=C-411/17>

lifetime extension were linked since one could not have happened without the other. The Complainant concluded that this is the same situation for EBO Units 3 and 4.

2. BACKGROUND INFORMATION

Project Description

- 2.1 The project concerns an investment programme, which includes equipment and system modifications, replacements and reconstruction works on four operating units in EBO and EMO.
- 2.2 The Slovenské Elektrárne, a.s. (the borrower) and the EIB signed the finance contract in 2018.
- 2.3 The project is expected to contribute to improvements in safety, security and reliability of low-carbon electricity supply:
 - The majority (approximately 80%) of the planned investments are intended to improve nuclear and industrial safety, including improvements in the areas of fire protection, occupational health and safety, radiation protection and environmental protection.
 - Other project components are eligible under the defence and security category enhancing the physical protection and overall security of the power plants. The remaining components will increase the reliability and operational efficiency of the four nuclear units in operation.
- 2.4 The vast majority (approximately 90%) of the programme components are categorised as mandatory projects, the implementation of which is obligatory under the related different regulations or by different authorities. From the information gathered as part of the appraisal of the operation, it emerges that the investments in this programme are considered necessary by the regulator for the current ongoing continuous operation independently from any long-term operation considerations.
- 2.5 To date, the EIB has not disbursed its financial assistance to the project in question.

Description of EBO

- 2.6 EBO⁸ is a complex of nuclear reactors situated in western Slovakia, 2.5 km from the village of Jaslovské Bohunice in the Trnava district.
- 2.7 EBO comprises two operating units (Unit 3 and Unit 4). The units commenced operations in 1984 and 1985 respectively. The power reactors are pressurised water reactors of the Soviet VVER-440 design.
- 2.8 Gross capacity of each unit is 505 MW. The gradual upgrade took place between 2008 and 2010.
- 2.9 Unit 3 and Unit 4 reached 30 years of operation respectively on 20 August 2014 and on 9 August 2015⁹.

Description of EMO

- 2.10 EMO is located in southern Slovakia, 120 km east of the capital, Bratislava, in the Levice district. The location permit for the project was issued in 1979, and the construction permit for the four reactors (type VVER 440/V213) was initially issued on 12 November 1986, under the condition that construction be completed in 115 months.
- 2.11 Units 1 and 2 started operating in 1998 and 1999 respectively¹⁰, before Slovakia joined the EU in 2004 and therefore before its law had been aligned with the EU environmental acquis.

⁸ Information from [Wikipedia](#) (last accessed on 7 August 2020)

⁹ Information based on <https://pris.iaea.org/PRIS/CountryStatistics/CountryDetails.aspx?current=SK>

¹⁰ Information based on <https://pris.iaea.org/PRIS/CountryStatistics/CountryDetails.aspx?current=SK>

- 2.12 Since late 2008, the two operating units have upgraded gross electrical power output to 470 MW per unit.
- 2.13 Units 1 and 2 will reach 30 years of operation respectively by 4 July 2028 and by 20 December 2029¹¹.

National Authorisation for the Project

- 2.14 According to the ESDS¹², the project was not subject to the EIA procedure (neither a screening determination nor a full EIA), as “based on technical characteristics the project does not fall under projects listed in Annex I and II of the EIA Directive 2011/92/EU as amended by 2014/52/EU”.

EBO

- 2.15 According to information on enviroportal.sk, since 2018 EBO was subject to EIA screening determination procedures¹³ as follows:
- Application for “Modification of the discharge of contaminated water from the Interim Spent Fuel Storage Facility – EBO” (2018)¹⁴. Transboundary consultations with Austria under the Espoo Convention/Article 7 of the EIA Directive.
 - Application for “Optimization of processing capacities of technologies for processing and treatment of radioactive waste of EBO” of 7 March 2018¹⁵. Transboundary consultations have been launched with Czechia, Austria, Hungary, Ukraine and Poland under the Espoo Convention/Article 7 of the EIA Directive. Public consultations were announced in Nižná on 26 August 2019 and in Veľké Kostoľany on 16 December 2019.

EMO

- 2.16 According to information on enviroportal.sk, since 2018 EMO was subject to EIA screening determination procedures as follows¹⁶:
- Application for screening determination submitted for “Addition, modifications to the facility that will enable the processing of existing RAW in order to achieve lower limits for the release of radioactive substances into the environment compared to the currently valid release limits” (2018)¹⁷.
 - Application for screening determination on 17 September 2018 for “Increasing the seismic resistance of the supporting structure of certain buildings”. A negative screening determination was issued on 15 November 2018.
 - Application for screening determination on 17 September 2018 for “Seismic strengthening of a set of buildings of EMO to a new value of seismic load.” A negative screening determination was issued on 20 November 2018.
 - Application for screening determination was submitted for “Increasing efficiency of the secondary circuit, which will lead to a gradual increase in electrical power of EMO” (2019)¹⁸.
 - On 1 March 2019, application for screening determination was submitted for “Changes to the proposed activity: IPR EMO 204 00 seismic ground, at the Mochovce NPP, for the new seismic load, SO 806/1-01,02 Transverse shelf, units 1 and 2”. From the information provided by the Complainant, the MoE issued an EIA screening determination on 22 July 2019¹⁹. On 5 August 2019, the Complainant appealed the decision asking the MoE to annul the decision and requesting a full EIA procedure also referring to the ECJ decision of 21 September 1999 on the

¹¹ Information based on <https://pris.iaea.org/PRIS/CountryStatistics/CountryDetails.aspx?current=SK>

¹² The ESDS can be found here: <https://www.eib.org/attachments/registers/86357596.pdf>

¹³ Official Slovak website containing information on EIA and SEA procedures enviroportal.sk

¹⁴ Information based on the enviroportal.sk. The last modification of the portal information indicated as of 10 May 2018.

¹⁵ Information based on the enviroportal.sk. The last change indicated on 11 September 2019.

¹⁶ Information based on the enviroportal.sk. The dates of application for EIA decision-making and decisions could not be verified.

¹⁷ Information based on the enviroportal.sk. The last modification of the portal information indicated on 21 March 2018.

¹⁸ Information based on the enviroportal.sk. The last modification of the portal information indicated on 9 January 2019.

¹⁹ Information based on the enviroportal.sk.

case C-392/96²⁰. The appeal was rejected²¹.

- Application for screening determination on 27 September 2019 for “seismic strengthening of the set of buildings of EMO to a new value of seismic load (Auxiliary operations building)”. A negative screening determination was issued on 19 December 2019.
- Application for screening determination on 14 February 2019 for “Proposed technical measures to increase the seismic resistance of the supporting structure of the building”. A negative screening determination was issued on 28 January 2020.

3. **WORK PERFORMED**

- 3.1 Following the admissibility of the complaint, the EIB-CM carried out an Initial Assessment on the concerns raised by the Complainant. The objective of the Initial Assessment is to clarify the concerns raised by the Complainant, understand the Complainant’s position as well as the validity of the concerns raised, and determine if further work by the EIB-CM is necessary and/or possible (compliance review or mediation between the parties) to address the allegation or resolve the issues raised by the Complainant.

Applicable Regulatory Framework

- 3.2 Based on the Initial Assessment, the applicable regulatory framework includes:
- environmental law such as relevant international treaties (e.g. Aarhus and Espoo Conventions), EU law (e.g. EIA Directive) and Slovak law;
 - the EIB Statement of Environmental and Social Principles and Standards (ESPS); and
 - the Environmental and Social Practices Handbook²², in particular:
 - Standard 1: Assessment and management of environmental and social impacts and risks
 - Standard 2: Pollution prevention and abatement
 - Standard 10: Stakeholder engagement.
- 3.3 There is a case currently pending against Slovakia at the ACCC regarding non-compliance with the ACCC Decision VI/8i²³ regarding Article 4, paragraph 4, and also Article 6, paragraph 6, in conjunction with Article 4, paragraph 4 of the Aarhus Convention. Slovakia is asked by the ACCC to: “...take 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, paragraph 3 of the Convention, any grounds for refusal under Article 4, paragraph 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...”.
- 3.4 Finally Art. 4.3.2 of the EIB Group Complaints Mechanism Policy stipulates that “Complaints against [...] national, regional or local authorities (e.g. government departments, state agencies and local councils) are not handled by the EIB-CM”.

Project documentation reviewed and work performed

- 3.5 The EIB-CM reviewed project documentation including the Environmental and Social Data Sheet (ESDS²⁴) summarising the EIB’s environmental and social appraisal and project information on the EIB website²⁵.

²⁰ Judgement of the ECJ of 21 September on the case C-392/96 available [here](#)

²¹ Information based on enviroportal.sk to be accessed [here](#)

²² E.g. EIB’s 2013 Environmental and Social Practices Handbook

²³ Sixth meeting of the parties (2017), Decision VI/8i can be accessed [here](#)

²⁴ The ESDS can be accessed [here](#)

²⁵ EIB Project Summary sheet (online), which can be accessed [here](#)

- 3.6 The EIB-CM was informed of previous Bank communication related to this project with some of the NGOs filing the complaint. The Bank provided its views concerning the issues raised in the complaint highlighting that projects to be financed by the EIB are not part of the LTO programmes of the two nuclear power plants: these are mandatory investments for the current and future safe operation of the power plants but they shall be implemented irrespective of any LTO considerations. According to the applicable regulations, an EIA and the corresponding public consultations are not required for these investments.
- 3.7 The EIB-CM reviewed the complaint as well as the further correspondence sent by the complainant. On 9 June 2020, the EIB-CM liaised with the Complainant with a view to presenting the mandate and procedure of the EIB-CM as well as to clarifying information and issues raised in the complaint.

4. WAY FORWARD

4.1 As a result of its Initial Assessment, the EIB-CM identified the following allegations:

1. Lack of EIA performed for lifetime extensions (LTO) of EMO and EBO (four units) stemming from “Salami slicing”, including the lack of stakeholders’ engagement.
2. Incorrect description of “Environmental aspects” on the EIB’s Project Summary sheet (online).
3. Breach of international law regarding transparency by the Slovak Republic.

- 4.2 With regard to the alleged breach of international law regarding transparency by the Slovak Republic, the EIB-CM is not in a position to deal with this allegation based on the admissibility criterion (see Section 3.4 above) and the mandate of the EIB-CM to focus on maladministration by the EIB in the context of the activities it finances.
- 4.3 In light of the Initial Assessment and due to the nature of the allegations and claims, the EIB-CM deems it appropriate to carry out a compliance review regarding allegations 1 and 2 identified under Section 4.1 of this report (above).
- 4.4 The compliance review will assess the Complainant’s allegations in the context of potential Bank maladministration, including whether the Bank complied with the applicable regulatory framework. With the support of specialised expertise, the review will assess the project documentation and the due diligence carried out by the Bank in the areas related to the Complainant’s concerns as identified in this Initial Assessment Report. The compliance review will consider whether the EIB’s due diligence of the project is in accordance with applicable EIB policies, procedures and standards.
- 4.5 The outcome of the compliance review will be communicated to the Complainant through the EIB-CM’s Conclusions Report.