

COMPLAINTS MECHANISM

Case Ref. SG/E/2020/06

**SE Safety Improvement
(Slovakia)**

CONCLUSIONS REPORT

18 May 2022



Case Ref. SG/E/2020/06 Conclusions Report

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The conclusions presented in this report are based on the information available to the EIB Group Complaints Mechanism up to 09 February 2022. The conclusions are addressed solely to the EIB.

EIB Group Complaints Mechanism – Conclusions Report

The EIB Group Complaints Mechanism

The EIB Group Complaints Mechanism is a tool enabling resolution of disputes in case any member of the public feels that the European Investment Bank (EIB) might have done something wrong, i.e. if it has committed an act of maladministration. The Complaints Mechanism is not a legal enforcement mechanism and will not substitute the judgement of competent judicial authorities.

Maladministration means poor or failed administration. It occurs when the EIB fails to act in accordance with a rule or principle that is binding upon it, including its own policies, standards and procedures. The concept of maladministration includes failure by the EIB to comply with human rights, with applicable law, or with the principles of good administration. Maladministration may relate to EIB's Group decisions, actions or omissions. This may include the environmental or social impacts of the EIB's projects and operations.

One of the main objectives of the EIB Group Complaints Mechanism is to ensure the right to be heard and the right to complain. For more information on the EIB Group Complaints Mechanism please visit: <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
AMP	Ageing Management Programmes
CJEU	Court of Justice of the European Union
E&S	Environmental and social
EBO	NPP Bohunice Units 3 and 4 (V2)
EC	European Commission
ECE	Economic Commission for Europe
EIB	European Investment Bank
EIB-CM	European Investment Bank - Complaints Mechanism
EIB Group	The European Investment Bank and the European Investment Fund
ELC	Energy Lending Criteria
EMO	NPP Mochovce Units 1 and 2
ENSREG	European Nuclear Safety Regulators Group
ESDS	Environmental and Social Data Sheet
ESSF	Environmental and Social Sustainability Framework
EU	European Union
EURATOM	European Atomic Energy Community
FoEE	Friends of the Earth Europe
IAEA	International Atomic Energy Agency
IAR	Initial Assessment Report
LTO	Long-term operation
MoE	Ministry of Environment of the Slovak Republic
MS	Member State
MW	Megawatts
NACp	National Action Plan of the Slovak Republic
NGO	Non-governmental organization
NPP	Nuclear power plant
Project	“SE Safety Improvement”
Promoter	Slovenské elektrárne, a.s. (also the borrower, a.s. stands for JSC)
PSR	Periodic safety review
SK	Slovak Republic
SSC	Structures, Systems and Components
TWh	Terawatt-hour
ÚJD SK	Nuclear Regulatory Authority of the Slovak Republic
UNECE	United Nations Economic Commission for Europe
VVER	Vodo-Vodyanoi Energetichesky Reaktor (also Water-Water Energetic Reactor (WWER))

EXECUTIVE SUMMARY

In May 2020, the European Investment Bank Group Complaints Mechanism (EIB-CM) received a complaint from Friends of the Earth Europe (FoEE), a Non-Governmental Organisation (NGO), sent on behalf of its member organisations: Global 2000 (Austria) and Wiener Plattform Atomkraftfrei (Austria).

The complaint concerns the project “SE Safety Improvement” (the Project). The Project covers the investment programme for equipment and system modifications, replacements and reconstruction works on the operating units of two nuclear power plants (NPPs) (Mochovce Units 1 and 2 (EMO) and Bohunice Units 3 and 4 (V2) (EBO)) in Slovakia. The EIB had appraised the Project in October 2018 and had signed a Finance Contract for an amount of EUR 60 million with Slovenské elektrárne, a.s in December 2018. The EIB never disbursed financial assistance to the Project.

In October 2020, the EIB issued an Initial Assessment report, which outlined the allegations as follows:

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

The EIB-CM carried out a compliance review of these allegations. While the EIB-CM was finalising its compliance review and preparing the present Report, the EIB decided to cancel the operation at stake due to the expiration of the disbursement deadline. Therefore, the EIB-CM considered the first allegation to be affected by the withdrawal of EIB’s financial assistance to the contested Project. As regards the second allegation, the EIB-CM found it ungrounded, given that the information published by the EIB adequately corresponded to the EIB due diligence. The EIB-CM issued suggestions for improvement concerning (i) the EIB’s due diligence of complex projects with multiple components and (ii) the information published by the EIB on the Project (see table below).

Allegation	Outcome	Suggestions for improvement
#1	Financing withdrawn by the EIB Group	<p>For future complex projects with multiple components, the EIB should clarify in the procedures implementing the Environmental and Social Sustainability Framework (ESSF):</p> <p>(i.) how it mobilises adequate environmental expertise as soon as possible during the due diligence to complement the existing system of environmental review;</p> <p>(ii.) the importance of requesting promoters to report on development consent procedures and their outcomes for each project component,</p> <p>(iii.) which tools assist the EIB services with the assessment of individual and cumulative environmental impacts of projects components.</p> <p><i>To be implemented by the end of Q1 2023.</i></p>
#2	Ungrounded	<p>Based on the EIB-CM’s findings in paragraphs 4.2.10 and 4.2.12 of this Report, the EIB-CM suggests that the information on the EIB’s project web-page is amended in order to adequately reflect the environmental aspects of the Project.</p> <p><i>- To be implemented within 3 months from the issue of the Conclusions report.</i></p>

1 BACKGROUND

1.1 Project

1.1.1 In November 2018, the EIB Board of Directors approved financing of “SE Safety Improvement” in the Slovak Republic (SK) up to EUR 60 million (the Project). The Project is being developed by Slovenské elektrárne, a.s who is the promoter and the borrower (the Promoter).

1.1.2 The Project involves two nuclear power plants (NPPs) in the SK with reactors of the type VVER 440 V-213¹. They are generating half of the country’s electricity. NPP Bohunice Units 3 and 4² (EBO) and NPP Mochovce Units 1 and 2 (EMO), both of which are operated by the Promoter³:

- EBO is located in western Slovakia near the village of Jaslovské Bohunice in the Trnava district. The commissioning started in 1984 and 1985 respectively⁴. Unit 3 reached 30 years of operation in 2014, while Unit 4 did so in 2015. The expectation is to decommission after 60 years of operation starting in 2044 for Unit 3 and in 2045 for Unit 4⁵. Based on information from the Promoter, the strategy for EBO is to demonstrate that the NPP’s structures, systems and components (SSC) will perform their intended safety functions throughout their 60 years of operation, and to replace operationally relevant SSC (which were not replaced during the modernization programme or the power upgrade project taking place between 2000 and 2008) with new, retrofitted or modified pieces.
- EMO is located in southern Slovakia between the towns of Nitra and Levice, 120 km east of Bratislava. The concerned units started regular operation in 1998 and 1999 respectively⁶ and will reach 30 years of operation in 2028 (Unit 1) and 2029 (Unit 2). The decommissioning of EMO is expected in 2058 (Unit 1) and 2059 (Unit 2) after 60 years of operation. Based on information from the Promoter, the strategy for EMO is to complete the ongoing safety measures, and to modernise main components contributing to a power upgrade.

1.1.3 The Project is expected to contribute to improvements in safety, security and reliability of low carbon electricity supply:

- The majority 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 project components are expected to increase the reliability and operational efficiency of EBO and EMO.

1.1.4 The Project follows the activities identified in the National Action Plan of the Slovak Republic (NAcP), developed in the frame of European Nuclear Safety Regulators Group (ENSREG)⁷. The NAcP identified the actions necessary to ensure national improvements in nuclear safety from the lessons learned from a series of reviews at national, European, and international level focusing on the NPPs. The vast majority (~ 90%) of the project components are therefore categorized as mandatory projects.

1.2 Complaint

1.2.1 In May 2020, the EIB Group Complaints Mechanism Division (EIB-CM) received a complaint regarding the Project.

1.2.2 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

¹ Page 3 of the Peer review country report on Slovakia: Stress tests performed on European NPPs after the Fukushima accident by ENSREG available [here](#).

² Units 3 and 4 are part of EBO V2. The upgraded gross capacity of the Units 3 and 4 is 2 x 505 Mega Watt (MW) (net capacity of 2 x 471 MW). Units 1 and 2 (EBO V1) have already been shut down. Units 5 and 6 (EBO V3) are currently under construction.

³ [Slovenské elektrárne, a.s.](#) is a private electric utility company.

⁴ International Atomic Energy Agency (IAEA) Power Reactor Information System (PRIS) on Slovakia available [here](#).

⁵ For EBO Unit 3 until 2044 and EBO Unit 4 until 2045, the new timeline is stated in the Nuclear Energy Strategy (2008, amended in 2014), available [here](#) (SK).

⁶ IAEA PRIS information on Slovakia available [here](#).

⁷ This NAcP is available on the website of ENSREG [here](#).

months/years of operation. The complainant is of the opinion that the EIB investment enables to extend the operation time of EBO and EMO until 2044 and 2060 respectively.

- 1.2.3 The complainant alleges that none of the NPP units concerned went through a proper EIA process with appropriate public consultation as required by European Union (EU), national and international law. The complainant recalls 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 “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 EIA process was terminated in 2015 because of new legislation passed in 2013, “which made all nuclear licenses ‘end-less’ – 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 Promoter 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.
- 1.2.4 The complainant alleges that an EIA for an entire NPP is also required in the case of major changes, which is likely 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 findings and recommendations of the Aarhus Convention Compliance Committee (ACCC) adopted on 4 October 2018 concerning the lifetime extension of Borssele NPP in the Netherlands⁸.
- 1.2.5 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 participation of relevant stakeholders in the process.
- 1.2.6 Based on the above allegations, the complainant concludes that the contested project violates 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”.
- 1.2.7 The complainant requests that the EIB requires the Promoter to conduct an EIA 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 potentially affected countries in the transboundary context, in line with the requirements of EU law and the Espoo Convention⁹.

⁸ The ACCC findings and recommendations on the Borssele case (ACCC/C/2014/104) available [here](#). The ACCC considered it inconceivable that the operation of a NPP could be extended from 40 years to 60 years without the potential for significant environmental effects. The ACCC dismissed the argument that there had been no update in the operating conditions of the NPP because the initial licence was valid for an indefinite period and the operating limits and conditions and the technical parameters of the NPP did not change. In this regard, the ACCC noted that “[...] at the time of the original design and construction of the Borssele NPP, it was assumed that it would have a design lifetime of 40 years [...] and that [...] it was clear from the documentation that, without the 18 March 2013 decision, the plant was not permitted to operate beyond 2014.” The ACCC considered that the permitted duration of an activity is an important operating condition for that activity and concluded that any decision permitting the NPP to operate beyond its design lifetime amounted to an update of the operating conditions.

⁹ Full description of the complaint is provided in section 1 of EIB-CM IAR of 20 October 2020.

Table 1 - Summary of allegations

Allegation	Description of the Allegation
Allegation 1	Lack of EIA performed for lifetime extensions of EMO and EBO (four units) stemming from “Salami slicing”, including the lack of stakeholders’ engagement.
Allegation 2	Incorrect description of “Environmental aspects” on the EIB’s Project Summary sheet (web).

1.3 Work performed

- 1.3.1 The EIB-CM completed its initial assessment on 30 October 2020¹⁰. Due to the nature of the allegations and claims, the EIB-CM deemed appropriate to carry out a compliance review to assess the complainant’s allegations in the context of potential EIB’s maladministration, including whether the EIB complied with the applicable regulatory framework.
- 1.3.2 During the compliance review, the EIB-CM has requested additional information from the Promoter and the complainant. Several exchanges with EIB services, the Promoter and the complainant helped to form an opinion on the technical and legal aspects of the above allegations.
- 1.3.3 Based on the collected and analysed information, the EIB-CM prepared this conclusions report.

2 REGULATORY FRAMEWORK

2.1 The EIB Group Complaints Mechanism

- 2.1.1 The EIB Group Complaints Mechanism Policy¹¹ tasks the EIB-CM with handling complaints concerning alleged maladministration by the EIB¹². Maladministration means poor or failed administration¹³. This occurs when the EIB fails to act in accordance with the applicable legislation and/or established policies, standards and procedures¹⁴. Maladministration may also relate to the environmental or social impacts of EIB’s activities¹⁵.
- 2.1.2 The EIB-CM is not competent to investigate complaints concerning international organisations, Union institutions and bodies, as well as national, regional or local authorities¹⁶.
- 2.1.3 In the event that the allegations in the complaint concern a violation of EU legislation in projects located within the EU, the EIB-CM may recommend that the EIB Group informs the Secretary General of the European Commission about the complaint and forward the final Conclusions Report¹⁷.

2.2 Project applicable standards

- 2.2.1 The Project must comply with the project applicable standards. These include the relevant international, EU and national law as well as the EIB’s environmental and social (E&S) standards which are referred to in the following paragraphs.

¹⁰ See EIB-CM IAR of 20 October 2020

¹¹ EIB Group Complaints Mechanism Policy available [here](#).

¹² Paragraph 5.1.3 of the EIB Group Complaints Mechanism Policy.

¹³ Paragraph 3.1 of the EIB Group Complaints Mechanism Policy.

¹⁴ Paragraph 3.1 of the EIB Group Complaints Mechanism Policy.

¹⁵ Paragraph 3.3 of the EIB Group Complaints Mechanism Policy.

¹⁶ Paragraph 4.3.2 of the EIB Group Complaints Mechanism Policy.

¹⁷ Paragraph 6.2.7 of the EIB-CM policy.

Environmental Impact Assessment and development consent

- 2.2.2 The EIA Directive¹⁸ requires the Member States (MS) to adopt all measures necessary to ensure that, before development consent is given, projects¹⁹ likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment²⁰.
- 2.2.3 The EIA Directive requires a full EIA for projects listed in Annex I, including NPPs²¹. Any change or extension of an NPP (already authorised, executed or in the process of being executed) which may have significant adverse effects on the environment is at least subject to a screening determination²².
- 2.2.4 In 2019, after the signature of the project’s Finance Contract and during the EIB’s monitoring phase, the Court of Justice of the European Union (CJEU) ruled²³ that major renovation works on NPPs (leading to a significant extension of the duration of consent to produce electricity for industrial purposes), even when necessary due to the ageing of the NPPs and the obligation to bring them in line with safety standards, can be considered comparable, in terms of the risk of environmental effects, to the risk posed by those NPPs when they were first put into service. Therefore, the CJEU ruled that such works should be subject to a full EIA.
- 2.2.5 The EIA Directive stipulates that, where the EIA national competent authority decides to carry out a screening determination for a project with a potentially significant adverse effect on the environment, the developer shall provide information on the characteristics and location of the project, and the type and characteristics of the potential environmental impact²⁴. Based on a list of criteria, the EIA national competent authority determines whether the screened projects should be subject to an EIA²⁵.
- 2.2.6 In order to address the failure to request an EIA for projects with significant effects on the environment, the CJEU ruled²⁶ that MS “are required to nullify the unlawful consequences of a breach of Community law” and request a full EIA; in certain cases, MS could revoke or suspend a consent already granted. The CJEU also ruled²⁷ that, in exceptional cases and where national

¹⁸ Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment (replacing the Council Directive 85/337/EEC of 27 June 1985), as amended by Directive 2014/52/EU of the European Parliament and of the Council (the EIA Directive) available [here](#).

¹⁹ Article 1(2)(a) of the EIA Directive defines “project” as meaning “the execution of construction works or of other installations or schemes; other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources”.

²⁰ Article 2(1) of the EIA Directive.

²¹ Article 4(1), Annex I Point 2(b) and Point 24 of the EIA Directive.

²² Article 4(4) and Annex II Point 13(a) of the EIA Directive. This follows from the wording of point 13(a) of Annex II of EIA Directive which reads, in conjunction with Article 4(2), “[...] for projects listed in Annex II, that the MS shall determine whether the project shall be made subject to an assessment in accordance with Articles 5 to 10”, while point 13(a) of Annex II reads “any change or extension of projects listed in Annex I or this Annex, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I).” This interpretation is also supported by the wording of the 2nd sentence of Article 4(3) which provides that the “[MS] may set thresholds or criteria to determine when projects need not undergo either the determination under paragraph 4 and 5 or an EIA” and the 1st sentence of Article 4(4) which reads “where [MS] decide to require a determination for projects listed in Annex II”.

²³ Judgement of the Court in case C-411/17, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, ECLI:EU:C:2019:622, paragraphs 79-80. The case concerns the Units 1 and 2 of Belgium’s Doel NPP and a change in Belgian national legislation. Before the change, the period of activity of NPPs in Belgium was limited to 40 years. The legislative amendment prolonged the operating life of the two units by 10 years. Subsequently, a ‘rejuvenation’ investment plan of approximately EUR 700 million was agreed to extend the period of operation of the two Units. This included investment under the LTO plan for the replacement of facilities due to ageing and the upgrading of other facilities and the upgrading of the containment structures of the two Units, the renewal of the spent fuel pools, the building of a new pumping station and the adaptation of the base to offer better protection to the power stations against flooding. The works were not limited to improvements to existing structures, but would also involve the construction of three buildings, two to host ventilation systems and a third as a fire protection structure.

²⁴ Article 4(4) in conjunction with Annex IIA of the EIA Directive requires the developer to provide a description of (i) the physical characteristics of the whole project; (ii) the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected; (iii) the aspects of the environment likely to be significantly affected by the project; (iv) any likely significant effects of the project on the environment, to the extent the information is available, resulting from: (a) the expected residues and emissions and the production of waste, where relevant; (b) the use of natural resources, in particular soil, land, water and biodiversity.

²⁵ Article 4(3) and Annex III of the EIA Directive.

²⁶ Judgment of the Court in case C-201/02, *Wells*, ECLI:EU:C:2004:12, paragraphs 64, 65.

²⁷ Judgment of the Court in joined cases C-196/16 and C-197/16, *Comune di Corridonia*, ECLI:EU:C:2017:589, paragraphs 35-41.

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law allows, projects can be regularised in an ex-post EIA taking into account the environmental impact since the project's completion²⁸.

- 2.2.7 The EIA Directive establishes that MS need to assess the impact of the characteristics of the submitted projects in “cumulation with other existing and/or approved projects”, as well as in regard to the “transboundary nature of the impact”²⁹. The European Commission defines as “salami slicing” the “practice of splitting an initial project into a number of separate projects, which individually [...] do not have significant effects on a case by case examination and therefore do not require an impact assessment but may, taken together, have significant environmental effects”³⁰.
- 2.2.8 The CJEU ruled³¹ that the requirement of a full EIA cannot “be circumvented by the splitting of projects” and the failure of “taking account of the cumulative effect of several projects [...] when, taken together, they are likely to have significant effects on the environment”. The CJEU also ruled³² that it is necessary to consider projects jointly, in particular where they are connected, follow on from one another, or their environmental effects overlap. It is for the referring court to verify whether they must be dealt with together by virtue, in particular, of their geographical proximity, their similarities and their interactions.
- 2.2.9 Furthermore, in relation to NPPs that are already authorised, executed or in the process of being executed, the CJEU ruled³³ that several projects, which are part of major upgrading works significantly extending the NPP's lifetime, need to be considered as a single project in the sense of the EIA Directive.
- 2.2.10 The EIA Directive is transposed by the Environmental Impact Assessment Act of the SK (the EIA Act)³⁴.
- 2.2.11 The EIA Act distinguishes between two categories of projects: Category A projects are assumed to have a significant environmental impact and therefore are subject to an EIA by default; Category B projects are subject to a screening determination. NPPs are part of category A and have no threshold³⁵. A full EIA for changes to already assessed, authorized, and/or implemented NPPs is only required after a positive screening decision following the conclusion of a screening determination that the changes may have a significant adverse effect on the environment.³⁶
- 2.2.12 Under the Land-use Planning and Building Order Act of the SK (the Building Act)³⁷, constructions, their modifications and maintenance work on them can only be carried out according to a development consent (a building permit) or on the basis of a notification to the Building Authority³⁸. Modifications are changes of structures, particularly for extensions, superstructures and building modifications³⁹. The building permit sets out the binding conditions for the execution

²⁸ Ibid, paragraph 43: “EU law [...] does not preclude regularisation through the conducting of an impact assessment, after the plant concerned has been constructed and has entered into operation, on condition that national rules allowing for that regularisation do not provide the parties concerned with an opportunity to circumvent the rules of EU law or to dispense with applying them, and an assessment carried out for regularisation purposed is not conducted solely in respect of the plant's future environmental impact, but must also take into account its environmental impact from the time of its completion.”

²⁹ Point 1(b) and Point 3(c) of Annex III of the EIA Directive, in conjunction with its Article 4(3).

³⁰ Page 15 of the European Commission report “Interpretation of definitions of project categories of annex I and II of the EIA Directive” (2015) available [here](#).

³¹ Judgment of the Court in case C-392/96, *Commission v. Ireland*, ECLI:EU:C:1999:431, paragraph 76.

³² Judgment of the Court in case C-142/07, *Ecologistas en Acción v. CODA*, ECLI:EU:C:2008:445, paragraphs 44, 45.

³³ See footnote 32 above, Judgment of the Court in case C-411/17, paragraphs 63 and 71.

³⁴ Slovak Act No. 24/2006 Coll. Act on Environmental Impact Assessment and on amendments to certain laws available [here](#) in Slovak (last accessed on 4 February 2022).

³⁵ Annex 8, Part A, Point 2.4 of the EIA Act.

³⁶ Article 18 (2) letter c) in conjunction with Annex No. 8, Part A of the EIA Act. The result of the screening determination is the screening decision, which has to be made based on a list of criteria (Annex 10 of the EIA Act), including the criterion to take into account cumulation of impact affecting other existing or approved activities (Part III Point 7). In case of a negative screening decision, the developer can apply for a building permit directly (Article 29 (12) of the EIA Act). However, the negative screening decision can subject the developer to conditions eliminating or mitigating the environmental impact when stated in the decision and if proposed by the developer, such as features of the project and/or measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment (Article 29 (13) of the EIA Act). In case of positive screening decision, the proposed project or its change shall be subject to a full EIA, which is concluded with a final opinion (Article 18(1)(e) and (f) of the EIA Act).

³⁷ Act on Land-use Planning and Building Order No. 50/1976 Coll. as amended and came into force on 1 January 2015 (Building Act) available [here](#) in Slovak.

³⁸ Article 54 of the Building Act.

³⁹ Article 55, and Article 139b (5) of the Building Act.

and use of the building, which shall exclude or limit the negative effects of the building and its use on the environment⁴⁰.

- 2.2.13 The Peaceful use of nuclear energy Act of the SK (the Atomic Act)⁴¹ requires authorisations for a variety of activities related to the use of nuclear energy; among them is the authorisation of the construction of an NPP via a building permit⁴², as well as the commissioning and the operation of an NPP⁴³. The authorization for the operation of NPPs must be continuously held⁴⁴. The Building Act, in conjunction with the Atomic Act, defines the Nuclear Regulatory Authority of the SK (ÚJD SK) as the responsible authority (Building Authority) for the construction of nuclear installations and nuclear-related construction sites located within the boundaries of an NPP (unless stipulated otherwise)⁴⁵.
- 2.2.14 The Atomic Act defines changes of NPPs as changes of selected safety installations, of installations affecting the limits and conditions of safe operation or safe decommissioning, of documentation assessed or approved by the ÚJD SK, and of all other changes affecting nuclear safety⁴⁶. Changes may only be implemented after approval by the ÚJD SK and, in specific cases, after the opinion of the European Commission. The application for the authorisation of an amendment, revocation or termination of a permit or a licence⁴⁷ needs to be requested following certain criteria⁴⁸. Among these criteria is the possible need for an EIA procedure⁴⁹.
- 2.2.15 The EIA Act requires the developer to notify the EIA national competent authority about changes of NPPs before initiating the building permit and operating licence procedure with the ÚJD SK⁵⁰. This notification to the EIA Authority needs to include links to other planned and realised projects in the territory concerned and possible risks of accidents with regard to the substances and technologies used, impacts on environment and health of population including cumulative and synergic effects, as well as information on whether the project to be changed has already been assessed according to the EIA Act⁵¹. Following this submission, the EIA national competent authority needs to assess whether a screening determination for the proposed project (or its change) is required⁵². However, the Atomic Act states that a change in the authorisation of an NPP to the extent that it is not a change which forms the subject of a screening procedure or the full EIA does not require a decision under the EIA Act⁵³.
- 2.2.16 Projects and changes falling under the EIA Act may not be authorised by the Building Authority without a final opinion (in case of positive screening decision) or a negative screening decision issued by the EIA national competent authority⁵⁴. Should the latter issued a negative screening

⁴⁰ Article 66 (1) of the Building Act.

⁴¹ Slovak Act No. 541/2004 Coll. on the Peaceful use of nuclear energy and on amendment and alterations of certain acts as amended (Atomic Act) available [here](#) in Slovak.

⁴² Article 2 (f) of the Atomic Act defines NPPs as a set of building objects and technological equipment involving one or more nuclear reactor(s), or for the production or processing of nuclear materials or the storage of nuclear materials, or for the treatment, conditioning or storage of radioactive waste, or for the disposal of radioactive waste from NPPs.

⁴³ Article 5 (3) a) of the Atomic Act.

⁴⁴ Article 3 (7) of the Atomic Act.

⁴⁵ Article 121 (2) letter e) of the Building Act in conjunction with Article 4 (1) letter j) of the Atomic Act.

⁴⁶ Article 2 (w) in conjunction with g), and v) of the Atomic Act.

⁴⁷ In Slovak law, the terms “license” and “permit” are used interchangeably. Also the IAEA considers “licence”, “authorisation” and “permit” synonymously stating that “authorization may take different forms, such as certification, granting of a permit, agreement, consent, regulatory approval or granting of another similar regulatory instrument, depending on the governmental and regulatory framework of the particular State (paragraph 2.2 of the Specific Safety Guide No.SSG-12 (2010) available [here](#)). As it seems to be useful to differentiate between the terms “license” and “permit” for the purpose of this report, they are defined with the words of the English version of the report compiled in terms of Article 9.1 of the Council Directive 2009/71/EURATOM (SK EURATOM Report, July 2020) issued by the ÚJD SK and available [here](#) (last accessed on 10 January 2022). The report states that a “licensing process” consists of several “permits” such as the building or environment permit which are issued by various national authorities. Based on a written application, the ÚJD SK issues an “operating license” which may be supplemented with conditions, or order a reduction in output or shutdown of an NPP once all legal requirements have been met. The operating licence is not limited in time, but subject to the proof by the licence holder of the readiness of the facility for operation by a periodic nuclear safety assessment every ten years. In the case of the environment, a “permit” may be a statement, a decision or a final position from the process of assessing impacts on the environment and human health of the given activity issued by the EIA Authority.

⁴⁸ Article 9 in conjunction with Articles 6 to 8 of the Atomic Act.

⁴⁹ Article 6 (2) j) of the Atomic Act referring to Article 66 of the Building act which mentions under (2) the need to include the decision of the EIA Authority when a full EIA or screening determination has taken place.

⁵⁰ Article 29 (1) b) of the EIA Act. See also Article 140c (2) of the Building Act.

⁵¹ Annex 8a of the EIA Act.

⁵² Article 29 (2) of the EIA Act.

⁵³ Article 5 (6) of the Atomic Act, introduced by an amendment to the EIA Act on 1 January 2015.

⁵⁴ Article 38 (3) of the EIA Act and Article 140c (12) of the Building Act.

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decision or a final opinion, this information needs to be included in the decision on the building permit issued by the Building Authority⁵⁵.

- 2.2.17 The Building Authority is obliged to examine whether the documentation of all requests for authorisation meets the requirements relating to public interests, in particular the protection of the environment, health and human life⁵⁶. Where the Building Authority reasonably believes that the developer failed to request an assessment of the project or change under the EIA Act, it shall send a proposal for the commencement of this assessment to the EIA national competent authority⁵⁷.
- 2.2.18 The EIA national competent authority, which is a concerned authority under the Building Act⁵⁸, has the right to inspect files, to make binding opinions, to participate in oral hearings and local inspections, and to carry out joint acts with the Building Authority⁵⁹. If the EIA national competent authority finds that the proposal does not comply with the provisions under the EIA Act, it shall draw up a binding opinion in this regard⁶⁰. A binding opinion can confirm, supplement, amend or replace a previous binding opinion stating the legal basis for this change⁶¹.

Public information, consultations and stakeholder engagement

- 2.2.19 The EIA Directive is one of the EU legislative instruments implementing the Aarhus Convention⁶². The requirements of the Aarhus Convention have been integrated into EU law and transposed into national law⁶³.
- 2.2.20 According to the EIA Directive, the public concerned⁶⁴ shall be given early and effective opportunities to participate in environmental decision-making procedures and shall, for that purpose, be entitled to express comments and opinions when all options are open to the EIA national competent authority or authorities before the decision on the request for the development consent is taken⁶⁵. This requires *inter alia* that the public is informed at different stages in the environmental decision-making procedures (and, at the latest, as soon as information can reasonably be provided)⁶⁶. The decision and/or final opinion should be made available to the public⁶⁷.
- 2.2.21 According to the Nuclear Safety Directive⁶⁸, MS shall ensure that necessary information in relation to the nuclear safety of NPPs and its regulation is made available to the general public, with specific consideration of local authorities, population and stakeholders in the vicinity of the NPP⁶⁹. This includes information on normal operating conditions of nuclear installations and on incidents and accidents. MS shall also ensure that the general public is given opportunities to

⁵⁵ Article 38 (6) of the EIA Act. Article 66 (2) of the Building Act

⁵⁶ Article 62 (2) of the Building Act.

⁵⁷ Article 140c (6) of the Building Act following Article 38 (9) of the EIA Act.

⁵⁸ Article 38 (4) and (5) of the EIA Act; Article 65 in conjunction with 140 (1) a) and 126 (1) of the Building Act.

⁵⁹ Article 140 (3) of the Building Act.

⁶⁰ Article 140b (1) of the Building Act.

⁶¹ Article 140b (3) of the Building Act.

⁶² The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters; adopted on 25 June 1998; entered into force on 30 October 2001 (available [here](#)). The SK acceded to the Aarhus Convention in 2005 (see [here](#)).

⁶³ Article 6 (10) of the Aarhus Convention states that if the components of a project listed in Annex I, individually or as a whole, amount to a reconsideration or an update of the operating conditions (compared to previous operating conditions), the provisions on public consultation according to Article 6(2) to 6(9) of the Convention should be applied. Annex I point 22 of the Aarhus Convention states that if the components do not amount to a reconsideration or an update of the operating conditions of the project listed in Annex I, but their impacts, individually or as a whole, are comparable to the impact or risks brought about by the project itself, they should still be made subject to public consultation according to Article 6(2) to 6(9) of the Aarhus Convention. This should also apply to proposed activities not listed in Annex I, which may have a significant effect on the environment. To this end, the MS shall determine whether such a proposed project is subject to these provisions “mutatis mutandis, and where appropriate”.

⁶⁴ Article 1 (2) d) and e) of the EIA Directive. See also article 3 (r) and (s) of the EIA Act defining “the public concerned” as one or more, legal or natural person(s), their organisations or groups (“the public”) which are affected or likely to be affected by, or having an interest in, the environmental decision making procedures for an EIA; an NGO promoting environmental protection and meeting the requirements laid down in the EIA Act is deemed to have an interest in such a procedure.

⁶⁵ Article 6 (4) of the EIA Directive.

⁶⁶ Article 6 (6) of the EIA Directive.

⁶⁷ Article 4 (5) of the EIA Directive.

⁶⁸ Council Directive 2009/71/EURATOM of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations (Nuclear Safety Directive) available [here](#).

⁶⁹ Article 8 (1) of the Nuclear Safety Directive.

participate effectively in the decision-making process relating to licensing of NPPs⁷⁰. To this end, information shall be made available to the public in accordance with relevant legislation and international instruments, provided that this does not jeopardise other overriding interests, such as security, which are recognised in relevant legislation or international instruments⁷¹.

- 2.2.22 The Radioactive Waste Management Directive⁷² ensures the provision of necessary public information and participation in relation to spent fuel and radioactive waste management while having due regard to security and proprietary information issues⁷³. According to said Directive, MS shall establish and maintain a national legislative, regulatory and organisational framework for spent fuel and radioactive waste management that allocates responsibility and provides for coordination between relevant competent bodies⁷⁴. The national framework shall also provide for national requirements for public information and participation⁷⁵, particularly in regard to the management of spent fuel and radioactive waste management⁷⁶.
- 2.2.23 As regards the national legislation, the requirements on public information and consultations of the EIA Directive were transposed into the EIA Act⁷⁷ and the Building Act⁷⁸.
- 2.2.24 Natural or legal persons can become part of the public concerned and consequently party to the procedures under the EIA Act as well as other related acts such as the building authorisation procedure regulated under the Building and Atomic Act⁷⁹. This gives them the right that their comments are assessed and considered in the final opinion of the EIA national competent authority as well as the decision of the ÚJD SK when timely submitted⁸⁰, and that they are informed about the initiation and outcome of authorisation procedures⁸¹. They become part of the public concerned by showing interest in the EIA procedure, a decision, or a final opinion of the EIA national competent authority by submitting a reasoned written opinion or an appeal⁸². The Atomic Act defines sensitive information, which must be removed before publication of certain documents, to protect public safety and prevent environmental or economic damage⁸³.
- 2.2.25 When the EIA national competent authority finds that a screening determination is required, it shall immediately publish a notice on its website and inform concerned public authorities and municipalities⁸⁴. The public shall also be informed about the time, place and manner in which the relevant information is made publicly available as well as details of ensuring public participation in the screening procedure, including information on the authorising authority to which comments or questions may be sent, and the time limit for submitting comments or questions⁸⁵. Concerned parties and the public may submit a written opinion to the EIA national competent authority within

⁷⁰ Article 8 (4) of the Nuclear Safety Directive.

⁷¹ Article 8 (2) of the Nuclear Safety Directive.

⁷² Council Directive 2011/70/EURATOM of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste (Radioactive Waste Management Directive) available [here](#).

⁷³ Article 1 (3) of the Radioactive Waste Directive.

⁷⁴ Article 5 (1) of the Radioactive Waste Directive.

⁷⁵ Article 5 (1) g) of the Radioactive Waste Directive.

⁷⁶ Article 10 (2) of the Radioactive Waste Directive.

⁷⁷ Provisions of Article 6 of the EIA Directive were transposed into the following provisions of the EIA Act: Article 24 (1), (2) (a) to (h), (3) (a) to (d), (5) (a) to (c), (6), (7), (8), (9), (10) and (11), Article 29 (8) and (9), Article 30 (6), Article 34 (1), and Article 38 (2) (a) to (f).

⁷⁸ Provisions of Article 6 of the EIA Directive were transposed into the following provisions of the Building Act: Article 35 (2), (3), and Article 58a (3).

⁷⁹ Article 24 (2) in conjunction with Article 3 (r), (s) and (t) of the EIA Act; Article 59 (1) (c) of the Building Act; Article 8(3) of the Atomic Act.

⁸⁰ Article 8(3) of the Atomic Act.

⁸¹ Article 48 (1) and (2) of the EIA Act; Article 8 (10) of the Atomic Act.

⁸² Article 24 (3) and (4) of the EIA Act; the public can submit reasoned written opinions about the publicised intention of a developer to implement a project, the scope of the evaluation of the EIA Authority, the project evaluation report, and the notification of the change.

⁸³ Article 3 (16) and (17) of the Atomic Act.

⁸⁴ Article 29 (6) of the EIA Act. Article 24 (1) of the EIA Act states the following information elements to be listed on the EIA Authority's website accessible [here](#): (i) the information that the EIA Authority has the power to influence the decision on the proposed project or its amendment by the authorising authority, (ii) that additional information can be obtained by sending comments or questions to the EIA Authority and the authorising authority within a set time limit, (iii) the authorisations necessary for the implementation of the proposed project or its amendment, (iv) the time, place and manner in which the expert opinion, the intention, the scope of the evaluation pursuant and the activity evaluation report is made available to the public, including information on the hearing procedure, (v) practical information on access to administrative proceedings and legal proceedings under the EIA Act, particularly on public access to legal remedies before an administrative authority and before a court, and determination of the stage of proceedings at which decisions, acts or inaction may be challenged, (iv) information on the launch of a complaint procedure or transboundary EIA, if relevant.

⁸⁵ Article 20(a) with regard to Annex 10 of the EIA Act.

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10 working days from the publication of the notice⁸⁶. Said authority shall forward the final decision of the screening determination to the Building authority (see paragraph 2.2.16) and publish it on its website⁸⁷ including reasons for its decision and/or final opinion⁸⁸. The municipality concerned shall also immediately inform the public on its website⁸⁹. In the case of projects subject to the EIA Act, authorising authorities (such as the ÚJD SK in the present case) are required to publish certain information on the authorisation procedure on their websites⁹⁰ without undue delay⁹¹.

2.2.26 The Building Authority shall notify the authorities concerned one by one and all known other parties⁹² of the commencement of a building permit procedure⁹³. This notice shall include the announcement of an oral hearing and the information that this is the latest time raised objections can be taken into account. The notice shall be published at least 7 days before the oral hearing (15 days in the case of the construction of an NPP or objects of particular importance)⁹⁴. An oral hearing is not necessary when the conditions of the site are well known to the Building Authority and the application provides sufficient basis for the assessment of the proposed construction; in this case, a deadline for the submission of objections has to be communicated⁹⁵. Concerned authorities are obliged to provide their opinions⁹⁶.

2.2.27 The Slovak law provides further legal instruments for the effective exercise of public rights and judicial review of administrative decision, i.e., the right to file an administrative action for the review of lawfulness of an adopted decision or a final opinion. The decision on action for review of lawfulness of an administrative decision can be further subject to judicial review by the Supreme Court of the SK on the basis of a cassation complaint. As long as a final administrative act has not been cancelled or amended by a court decision or an administrative decision, its correctness is presumed⁹⁷.

Transboundary impact of projects

2.2.28 The SK has ratified the Espoo Convention, which makes it an integral part of the national legal order⁹⁸. The requirements of the Espoo Convention have been integrated into EU law and transposed into national law. The Convention provides the possibility of engagement by any Party in order to establish, if a proposed activity could cause a significant adverse transboundary impact and lists criteria to determine what constitutes a significant adverse transboundary impact⁹⁹.

⁸⁶ Article 29 (9) of the EIA Act.

⁸⁷ Article 29 (15) of the EIA Act.

⁸⁸ Article 24(4) of the EIA Act.

⁸⁹ Article 19 (16) of the EIA Act.

⁹⁰ The ÚJD SK publishes its public notices about ongoing administrative procedures, published but not yet final and enforceable decisions, and final decisions on its website accessible [here](#). With very few exceptions, no decision dating from before 2021 is currently available (last accessed on 10 January 2022).

⁹¹ Article 38 (2) of the EIA Act; the information to be published is a) petition for the commencement of the authorisation procedure, b) the place where the decision issued in the authorisation procedure is available for public viewing, c) the conditions for the execution of the proposed activity, which are stated in the authorisation, d) the main measures to prevent, reduce, and if possible, to compensate significant adverse impacts of the proposed activity or change thereof if authorisation has been granted, e) information about participation of the public in the authorisation procedure, and f) the date when the authorisation entered into full force and effect. See also article 58a (3) of the Building Act which stipulates that a copy of the application for a building permit in respect of which a full EIA or a screening determination has been carried out shall be published without annexes by the Building Authority without delay on its website. A copy of the application for a building permit must be published for the duration of the proceedings until their completion. If issued, the published building permit shall include details of the negative screening decision or final opinion.

⁹² Article 59 (1) of the Building Act defines the parties as (i) the developer, (ii) persons, who have ownership or other rights to the lands and the buildings on them, including neighbouring lands and buildings if their ownership or other rights to these lands and buildings may be directly affected by building permission, (iii) the concerned public under the EIA Act and other acts, (iv) the building supervision or qualified persons, and (v) the project engineer of the part that relates to the project of the building.

⁹³ Article 61 (1) and (6) of the Building Act.

⁹⁴ Article 61 (3) to (5) of the Building Act.

⁹⁵ Article 61 (2) to (5) of the Building Act.

⁹⁶ Article 61 (6) of the Building Act.

⁹⁷ Ruling of the Constitutional Court of the SK in proceeding No. III.ÚS 589/2014-10 of 1 October 2014 in conjunction with the Administrative Procedure Code.

⁹⁸ The UNECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) was adopted on 25 February 1991 and entered into force on 10 September 1997 available [here](#). The SK ratified the Espoo Convention in 1999 (see [here](#)).

⁹⁹ Appendix III of the Espoo Convention lists the size of the proposed project, its location and/or the significance of impacts as criteria to assess whether a project might pose a significant adverse transboundary impact. Even the low likelihood of an impact should trigger the obligation to notify affected Parties and that notification is necessary unless a significant adverse transboundary impact can be excluded (according to ECE/MP.EIA/20.Add.1, paragraph 7, available [here](#)). According to Article 2 (5) of the Espoo

- 2.2.29 The EIA Directive establishes that, when a project is likely to have significant transboundary effects on the environment of another MS (the party concerned), the MS in whose territory the project is intended to be carried out (the host MS)¹⁰⁰ shall provide the party concerned with available information on the project and the nature of the decision as soon as possible and no later than when informing its own public¹⁰¹.
- 2.2.30 The CJEU¹⁰² ruled that a significant extension of the operating life of an NPP close to a national border due to significant investments is likely to have significant effects on the environment in another MS. Therefore, it should undergo an assessment procedure of its transboundary effects.
- 2.2.31 According to the EIA Act, the project or change proposed within the territory of one MS, which may have a serious transboundary environmental impact on the environment of another MS¹⁰³, is to be made subject of a transboundary impacts assessment¹⁰⁴. The host MS shall inform the party concerned without undue delay after the developer’s notification of such a proposed project or change¹⁰⁵. Furthermore, it has to be ensured that the authorities and the public concerned or the party concerned are given an opportunity, before the building permit for the project is granted, to forward their opinion within a reasonable time to the EIA national competent authority of the host MS¹⁰⁶.

Nuclear safety requirements

- 2.2.32 The EU Nuclear Safety Directive¹⁰⁷ defines nuclear safety as achievement of proper operating conditions, prevention of accidents and mitigation of accident consequences, resulting in protection of workers and the general public from dangers arising from ionizing radiations from nuclear installations¹⁰⁸. According to the Directive, MS shall ensure that their national framework requires the licence holders to regularly assess, verify and continuously improve, as far as reasonably practicable, the nuclear safety of their nuclear installations in a systematic and verifiable manner¹⁰⁹.
- 2.2.33 MS shall also ensure that the national framework requires the operating license holder to reassess systematically and regularly, under the control of the competent regulatory authority, at least every ten years, the safety of the nuclear installation. The safety reassessment should aim at ensuring compliance with current design basis and identify further safety improvements by taking into account ageing issues, operational experience, most recent research results and developments in the international standards¹¹⁰.
- 2.2.34 The Atomic Act establishes conditions for the peaceful use of nuclear energy, the responsibilities of the ÚJD SK including nuclear safety and emergency planning, ensuring a high level of nuclear

Convention, a Party which is concerned that a project not listed in Appendix I is or is likely to cause a significant adverse transboundary impact can initiate a dialogue that it should be treated as if it was listed in Appendix I. The concept of a change to a project in Appendix I applies to operation and maintenance works, the modernisation of NPPs and replacements of components, as well as a lifetime extension (according to ECE/MP.EIA/IC/2011/8, para. 43); this applies even in absence of any works (according to ECE/MP.EIA/IC/2013/2, para. 21; see also ECE/MP.EIA/IC/2011/8, para. 43, ECE/MP.EIA/IC/2014/2, annex, para. 59). The Guidance on the applicability of the Convention to the lifetime extension of NPPs describes possible changes related to a lifetime extension of an NPP, which may, depending on their nature or scale, be classified as a major change to an existing project according to the Espoo Convention (UNECE, 2021, available [here](#)).

¹⁰⁰ Article 3 (v) of the EIA Act defines party concerned in a transboundary context as the state, which may be affected by a significant adverse impact of a proposed project or its changes.

¹⁰¹ Article 7 of the EIA Directive takes account of the requirements of the Espoo Convention, as indicated by recital 15 of the EIA Directive.

¹⁰² See footnote 32 above, Judgment in case C-411/17, paragraph 161.

¹⁰³ Annex 8 and Annex 13 Point 2 of the EIA Act classify NPPs as projects to be subject to transboundary environment impact assessments.

¹⁰⁴ Article 40 (1) letter b) of the EIA Act.

¹⁰⁵ Article 44 (1) and 46 (1) of the EIA Act. According to Article 44 (2), the provided information shall contain, in particular, a) basic information about the proposed project including available information about the anticipated transboundary impact on the environment, b) information about the type of authorization required for the proposed project under special regulations, c) the period for the delivery of the reply of the party concerned (whether the party concerned intends to participate in the assessment or not), which is adequate to the proposed project.

¹⁰⁶ Article 44, Article 41 (1), Article 46 of the EIA Act.

¹⁰⁷ Council Directive 2014/87/EURATOM of 8 July 2014 amending Directive 2009/71/EURATOM establishing a Community framework for the nuclear safety of nuclear installations available [here](#).

¹⁰⁸ Article 3(1) (a) and (2) of the Nuclear Safety Directive.

¹⁰⁹ Article 6(c) of the Nuclear Safety Directive.

¹¹⁰ Article 8(c) in conjunction with Article 6(c) of the Nuclear Safety Directive.

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safety and its continuous improvement¹¹¹. In 2013, an amendment of the Atomic Act removed time limits of operating licenses of NPPs¹¹². Since then, all operating license holders must carry out Periodic Safety Reviews (PSR) every ten years to keep their operating licenses¹¹³. In addition, PSRs include the preparation of ageing management programmes (AMPs) that enable the monitoring and assessment of operational impacts and the degradation of mechanisms of selected SSC of the NPP, the monitoring of trends of change in their conditions, and the timely acceptance of corrective actions to remove or mitigate the ageing causes¹¹⁴. The AMPs are subject to evaluation during PSRs¹¹⁵. The result of the procedure is a PSR review report of the ÚJD SK and an eventual update of the reviewed PSR documents by the developer based on comments from the ÚJD SK in order to legally operate the NPP¹¹⁶.

2.2.35 The 2012 Nuclear Safety Decree¹¹⁷ defined the concept of a “project-intended lifetime”¹¹⁸ (or design lifetime) and of a long-term operation (LTO)¹¹⁹. In 2019, an amendment of the Decree removed the definition of “project-intended lifetime” and amended the definition of LTO as “operation carried out on the basis of safety assessment with a consideration given to the limiting processes and characteristics of [SSC]”¹²⁰.

*EIB E&S Standards*¹²¹

2.2.36 The EIB’s Statement of E&S Principles and Standards (ESPS) states that, where the business risks derived from E&S matters might seriously impair project performance, the Bank will only support the proposed project if appropriate mitigation and other arrangements for suitable risk management are developed by and agreed with the respective promoter and according to the relevant public consultation requirements of the Bank.¹²²

2.2.37 A formal EIA should identify and address any significant transboundary impacts associated with the project early in the project cycle, conforming to the requirements of EU law and those of the Espoo Convention.¹²³

¹¹¹ Article 1 (1) of the Atomic Act.

¹¹² Article 37bc of the Atomic Act titled “Transitional provision for modifications in force since 1 August 2013” specifies that a permit to operate a nuclear installation with a time limit issued under the current law and the time limit of which would have expired after 1 August 2013 under the current law shall be considered as a permit to operate the nuclear installation without a time limit.

¹¹³ Article 23 (2) (f) and (g) of the Atomic Act defines the PSR as the requirement during the operation and decommissioning of NPPs (i) to periodically evaluate, verify and, where appropriate, to increase continuously, systematically and in a verifiable manner the level of nuclear safety of NPPs, (ii) to conduct periodic, comprehensive and systematic nuclear safety assessments of NPPs at least every ten years, (iii) to take measures to eliminate the deficiencies found and their recurrence in the future, and (iv) to verify that measures for the prevention and mitigation of accidents have been adequately put in place.

¹¹⁴ Chapter 5 and 6 of the Guidelines on the Management of Ageing of NPPs of the ÚJD SK from 2014 available [here](#) describe the process of aging management as the (i) selection criteria for SSC, the (ii) requirements for the organisation of ageing management, (iii) documentation requirements, the (iv) evaluation of the implementation and the review of the ageing management programme, as well as the responsibilities for the operation, the expert organisation, as well as the ÚJD SK.

¹¹⁵ The SK EURATOM report from July 2020 on page 58 describes the present PSR in the SK as containing 15 areas of assessment (safety factors) to be reviewed controlled by the ÚJD SK. The results of PSRs are used to demonstrate the safety of an NPP for a period until the next PSR. Another result from the PSR is an integrated plan of corrective actions to remedy the identified deficiencies.” Figure 8 on page 61 of the same report illustrates the historical process of safety improvements at EBO and EMO.

¹¹⁶ Article 20 (1) of the Nuclear Safety Decree in conjunction with Annex 1 Section C of the Atomic Act.

¹¹⁷ Decree of the ÚJD SK No. 33/2012 Coll. on the regular, comprehensive and systematic assessment of the nuclear safety of nuclear installations (the Nuclear Safety Decree) from 1 March 2012 available [here](#).

¹¹⁸ Article 18 (2) of the Nuclear Safety Decree defines “project-intended lifetime” as “the time data chosen when designing a nuclear installation for the purpose of carrying out design analyses of certain specific selected installations with a view to changing their material properties during operation.” As limitation, it was included that “this time figure does not represent the realistic limit value of the technical lifetime of a nuclear installation.” Art. 18 (1) of the Nuclear Safety Decree mentions the implementation of a comprehensive programme for LTO as the precondition for the continuous operation of the NPP “after achieving the project-considered lifetime”.

¹¹⁹ Article 18 (1) of the Nuclear Safety Decree amended by Decree No. 106/2016 Coll. on 1 March 2016 available [here](#) defines “LTO” as “operation beyond the time limit originally set forth in the permit for operation of the nuclear installation or in the design project, which has been chosen on the basis of safety assessment with a consideration given to limiting processes and characteristics of the systems, structures and components.” The same article makes the demonstration of a safe operation in the periodic assessment of an NPP the precondition for the long-term operation of the NPP after the end of its considered lifetime.

¹²⁰ Art. 18(1) of the Nuclear Safety Decree amended by Decree No. 106/2016 Coll. and Decree No. 71/2019 of 15 March 2019 available [here](#).

¹²¹ EIB Statement of E&S Principles and Standards (ESPS, 2009) available [here](#). The EIB E&S Standards (2018) available [here](#). Last accessed 7 January 2022.

¹²² Paragraph 4, ESPS (2009).

¹²³ Paragraph 21, ESPS (2009). See also Paragraph 8 of the EIB’s E&S Standards (2018) stressing that the EIB requires that all projects in the EU likely to have a significant effect on the environment, be subject to an EIA, according to the definitions and requirements of the EIA Directive.

EIB Standard 1: Assessment and Management of E&S Impacts and Risks¹²⁴

- 2.2.38 Standard 1 outlines the promoter’s responsibilities in the process of assessing, managing and monitoring E&S impacts and risks associated with the EIB-financed operation. It applies to all operations likely to have significant and material E&S impacts and risks. These impacts and risks need to be taken into account at the earliest possible stage in all the technical planning and decision-making processes.
- 2.2.39 Standard 1 requires that all projects comply with national legislation and regulations as well as obligations and standards in the relevant international treaties, conventions and multilateral agreements in order to assess the E&S impacts and risk, including their significance and materiality, as well as the development of adequate management plans and programmes. In addition, all operations located in the EU, which are likely to have significant effects on the environment, human health and well-being and may interfere with human rights, will be subject to an assessment according to the EIA Directive.
- 2.2.40 With regard to the promoter’s responsibilities for the assessment of E&S impacts and risks associated with the operations, Standard 1 outlines the following¹²⁵:
- Identifying, describing and assessing both adverse and positive, direct, indirect and induced E&S impacts, cumulative and in-combination impact/effects associated with the operation, its ancillary/associated facilities and the project area of influence;
 - Applying the mitigation hierarchy by identifying measures to be taken to avoid, reduce and, if required, compensate/remedy significant adverse residual effects on affected stakeholders and the environment, so as to contribute to the avoidance of any deterioration in the quality of human life, the environment and any net loss of biodiversity and ecosystems.
- 2.2.41 As regards the promoter’s responsibilities to engage with stakeholders, Standard 1 outlines the following:
- Identifying people and/or communities that are or could be affected by the project, as well as other interested parties;
 - Ensuring that such stakeholders are appropriately engaged with on E&S issues that could potentially affect them through a sustained public participation process comprising both information disclosure and meaningful consultation;
 - Maintaining a constructive relationship with stakeholders on an ongoing basis through meaningful engagement throughout the planning, implementation, monitoring and decommissioning of the project.

EIB Standard 10: Stakeholder Engagement¹²⁶:

- 2.2.42 According to Standard 10, the EIB expects that promoters uphold an open, transparent and accountable dialogue with all relevant stakeholders at the local level targeted by its EIB operations. A meaningful engagement process allows for the efficient implementation of a financed operation and, in particular, the early and effective identification, assessment, and management of any E&S risks, impacts, and opportunities¹²⁷.

2.3 Responsibilities of the EIB

- 2.3.1 In line with the EIB E&S Principles and Standards (ESPS), the responsibility for compliance with the project applicable standards lies with the promoters and local authorities¹²⁸. However, the EIB will not finance projects that do not meet project applicable standards. The ESPS must be applied by the EIB in all its operations¹²⁹. Whether the projects meet the project applicable standards is

¹²⁴ Standard 1, the E&S Standards (2018).

¹²⁵ Paragraph 27, Standard 1, the E&S Standards (2018).

¹²⁶ Standard 10, the E&S Standards (2018).

¹²⁷ Paragraph 1, Standard 10, the E&S Standards (2018).

¹²⁸ Paragraphs 2 of the ESPS (2009).

¹²⁹ Paragraphs 6 of the ESPS (2009).

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- established as part of the EIB's due diligence carried out during the project appraisal and monitoring.
- 2.3.2 Within the EU, the EIB assumes that EU E&S law has been correctly transposed into national law and that national law is being enforced by the responsible authorities. The EIB's due diligence focuses particularly on countries and/or specific laws where there is evidence to suggest these assumptions may be false¹³⁰.
- 2.3.3 The EIB E&S Practices and Procedures Handbook, Volume II (the Handbook)¹³¹ explains how the EIB conducts their work on E&S matters throughout the project cycle and specifies documentation/information required from the promoters for the purpose of the EIB's due diligence.
- 2.3.4 The appraisal aims at, inter alia, assessing the project's impact and whether the project complies with the project applicable standards. During appraisal, the EIB identifies the main environmental legal and regulatory framework relating to the project and any legal issues¹³². The EIB needs to take into account residual impacts, i.e. those adverse environmental impacts caused by the operation that will remain after mitigation and impact management measures have been applied¹³³.
- 2.3.5 Effective identification and management of the E&S risks, impacts and opportunities are key prerequisites to assisting promoters with the progress of their projects in a timely and efficient manner. Early screening of E&S issues and early involvement of environmental/social expertise, where needed, seeks to ensure the prevention of problems later in the due diligence process, which may cause significant delays for the project¹³⁴.
- 2.3.6 The Handbook provides guidance on screening, including consideration of cumulative impacts of the project with other existing or planned projects, indirect effects, the magnitude of impacts, such as transboundary nature and complexity of impacts¹³⁵.
- 2.3.7 The information processed as part of the appraisal is taken into account when judging the overall acceptability of the project¹³⁶. At the appraisal stage, the Bank determines and recommends contractual conditions to ensure the E&S acceptability of the project during implementation and operation. These include, among others: (i) conditions for disbursement, and (ii) particular undertakings.¹³⁷
- 2.3.8 Once the operation is approved by the EIB governing bodies and the borrower and the EIB sign the finance contract, the EIB monitors the project¹³⁸. The monitoring aims at ensuring compliance of the project with the EIB's approval conditions¹³⁹. The EIB monitors projects on the basis of reports provided by the promoters, as well as EIB site visits, information provided by the local community, etc.¹⁴⁰.

*EIB Energy Lending Criteria (ELC) (2013)*¹⁴¹

- 2.3.9 The EIB criteria for the appraisal of nuclear power projects includes a full economic, financial and technical appraisal of the project¹⁴². This is complemented by additional nuclear appraisal guidelines to address specific issues related to nuclear energy projects covering the following key

¹³⁰ Paragraph 20, Background, ESPS (2009).

¹³¹ The Handbook (2013) available [here](#). Last accessed 01 February 2022.

¹³² Paragraph 90, indent 2 of the Handbook (2013).

¹³³ Paragraphs 221 and 222 of the Handbook (2013).

¹³⁴ B.1.1, Paragraph 31 of the Handbook (2013).

¹³⁵ B.1.3, Paragraphs 40 and 41 of the Handbook (2013).

¹³⁶ Paragraphs 223 and 232 of the Handbook (2013).

¹³⁷ B.2.11, page 146, Paragraphs 262 and 263, 256, indent 2 of the Handbook (2013). It is worth noting that E&S conditions may be addressed to the promoter, borrower, environmental authority or ministry. In some cases, the E&S conditions will need to be in separate legal agreements in order to be applicable to the third party, which will fulfil the E&S condition.

¹³⁸ Paragraph 8 of the Statement section of the ESPS and Paragraph 270 of the Handbook (2013).

¹³⁹ Paragraph 270 of the Handbook (2013).

¹⁴⁰ Paragraph 8 of the ESPS (2009).

¹⁴¹ EIB Energy Lending Criteria (ELC) (2013) available [here](#).

¹⁴² Paragraph 142 of the ELC (2013), referring to the document on the Economic Appraisal of Investment Projects at the EIB available [here](#).

areas: the legal, regulatory and institutional framework, technology and capability, economic analysis, and environmental impact¹⁴³. On the legal, regulatory and institutional framework, the EIB shall verify that the legal frameworks in place for the nuclear industry adequately implement the relevant international conventions and treaties and provide an appropriate framework for the nuclear sector in particular in relation to nuclear safety, security, safeguards, licensing, liability for nuclear damage and sector regulation. On the environmental impact, it is noted that nuclear projects are likely to present particularly complex E&S issues in particular because of the wide range of potential impacts and the large number of involved authorities; therefore, the EIB shall carefully assess such projects to ensure that they fully comply with relevant international, EU and national legislation and regulations¹⁴⁴.

3 EIB PROJECT CYCLE

3.1 Project appraisal

- 3.1.1 In October 2018, the EIB completed its appraisal of the Project. At the time of the appraisal, the programme considered 165 subprojects (project components) divided into two main categories: i) Safety and resilience to catastrophic events, radioactive waste management and other environmental concerns; and ii) increases in efficiency and availability of the plants. The first category contained the majority of project components (162 project components representing 90% of the total investment volume) which were seen as mandatory for the continued safe operation of the NPPs or improvements in line with recommendations resulting from operating experience and the post-Fukushima EU stress tests; investments needed to comply with radioactive and environmental management obligations were also included. The second category only contained 3 project components (10% of the total investment volume) serving to increase availability and efficiency of operation, resulting in a power generation increase from both NPPs from 13.9 TWh to 14.4 TWh.
- 3.1.2 The EIB appraisal found that the modifications to EBO and EMO proposed to be implemented within the investment programme were justified based on operating experience, safety research, progress in science and technology as well as developments in regulations. They were seen to improve (i) the nuclear and industrial safety including improvements to the fire protection, occupational health and safety, radiation protection and environmental protection, (ii) the physical protection and overall security of the NPPs, and (iii) the reliability and operational efficiency of low carbon electricity supply. The Project was seen to be in line with the internationally accepted best practice, EU and national nuclear legislation, following the continuous safety assessment and enhancement approach.
- 3.1.3 On the general eligibility of nuclear energy projects, the EIB found that investments in safety upgrades of NPPs are eligible for EIB financing and that the Project complies with the EIB's screening and assessment criteria for nuclear energy projects. More generally, the decision to provide financial assistance was justified by the necessity to implement the corrective measures of the European Stress Test for NPPs following the Fukushima accident under the coordination of the ENSREG and the EC. The resulting NAcP outlining the risk and safety assessment of the NPPs in the SK includes some of the components of this project.
- 3.1.4 On the lifetime of NPPs, the EIB found that NPPs in SK have an indefinite right to operate, with a current expectation of decommissioning after 60 years of operation in the period 2044-2060. However, the license to operate shall be subject to PSRs at 10-year intervals by the ÚJD SK¹⁴⁵. The EIB noted that the implementation of safety improvements, several power upgrades and plant modernizations had been a continuing process at EBO and EMO since the beginning of their operation. Between 2014 and 2018, the average annual investment for the four units was around €56m; the EIB noted that the Promoter had managed to implement keeping a very good operational and safety performance track record. It was also noted that it is not always easy to distinguish which upgrades or modernisation measures are linked to the normal operation and to the PSR of an NPP, and to LTO programmes.

¹⁴³ Paragraphs 35 and 142 of the ELC (2013).

¹⁴⁴ Paragraphs 142 (1) of the ELC (2013).

¹⁴⁵ The EIB found that, at EMO, the last such review, prescribing 116 corrective actions, took place in 2011 and, at EBO, the last such review, prescribing 88 corrective actions, took place in 2008. At the time of appraisal, another such review for EBO was under way.

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- 3.1.5 The EIB found that the Promoter works on an LTO of its operating units up to 60 years¹⁴⁶. With regard to EBO, the Promoter had carried out an assessment of the operation of EBO reaching the “designed end of life”. The Promoter had issued an Action Plan of corrective actions for its LTO programme aiming to demonstrate that the facilities concerned, mainly SSC, would perform their intended safety functions throughout their 60 years of operation (Unit 3 until 2044; Unit 4 until 2045)¹⁴⁷. In relation to EMO, the EIB noted the need for the preparation of LTO documentation and the licensing process. The EIB stressed that EBO and EMO were, at the time of the appraisal, expected to be decommissioned after 60 years of operation in the period 2044-2060. On LTO programmes in general, the EIB found that they could include the replacement of large components of the nuclear island (e.g. steam generators or the head of the reactor pressure vessel) as well as major refurbishments or replacements on the conventional islands (such as the turbo generator, the condenser or the transformers), and that LTO decisions are sometimes linked to achieving power uprates.
- 3.1.6 In regard to sustainability, the EIB noted that the Project is acceptable for financing in E&S terms with the appropriate conditions in place.
- 3.1.7 As part of the appraisal, the EIB did not deem necessary to impose any specific condition for disbursement pertaining to the E&S impact of the Project. The EIB required the Promoter to deliver to the EIB annual Project Progress Reports and a Project Completion Report including details on changes to the initial scope and progress of each Programme scheme, E&S aspects, and the regulatory framework. On E&S aspects, the Promoter was required to send updates of the status of the permitting processes and the fulfilment of the mitigation measures outlined in the permits for all Programme schemes, a description of any major social and/or environmental issues and legal action in relation to E&S aspects during the implementation of the Programme schemes.
- 3.1.8 As project specific undertakings, the Promoter was required to report annually on:
- (i) Actual PSR processes including the progress in the implementation of measures defined during previous PSRs, the preparation of upcoming PSR reports, and the outcome of the regulatory review of ongoing PSR processes, as well as
 - (ii) Actual activities necessary to guarantee LTO of the NPPs including progress (i) in the implementation of measures defined in the Action plan for the LTO programme for EBO, and (ii) in the preparation of the LTO documentation and licensing process for EMO.

3.2 Project approval and Environmental & Social Data Sheet

- 3.2.1 In November 2018, the EIB’s Board of Directors approved the financing of the Project. The E&S Data Sheet (ESDS) was published shortly after.
- 3.2.2 The ESDS stresses that all the project components are to be implemented within the existing NPPs which have valid operating licenses. While acknowledging that NPPs are listed in Annex I of the EIA Directive which automatically makes them subject to a full EIA when originally built, the ESDS states that the Project includes only minor changes which do not pose significant adverse effects on the environment at the already authorised EBO and EMO sites. Based on technical characteristics and the information provided by the Promoter, the ESDS concludes that the Project is not subject to a mandatory full EIA assessment and adds that it should be exempted from undergoing screening determinations without further detailing this reasoning. The 165 proposed project components are presented as basic elements of the post-Fukushima EU Nuclear Stress Test stemming from the NAcP. The Project is understood as providing environmental benefits through reduction of waste production, improvement of the quality of the

¹⁴⁶ LTO was defined as the operation of NPPs beyond the lifetime originally foreseen at the design phase. On LTO, it was further noted that the NPPs’ safety margins have to be confirmed through safety assessment by taking into account the processes and properties of SSC limiting their lifecycle. Furthermore, safe LTO of NPPs should be based on experience and practice of different countries in such areas as the requirements in the licensing processes for operation, procedures and activities in permitting LTO, and implementation of the PSR. In terms of LTO, there are dominating and related activities, such as aging management and modernization of operations. All activities of the NPP linked to the approval of LTO, have to be in compliance with the applicable legislation concerning regular, comprehensive and systematic assessment of nuclear safety of NPPs.

¹⁴⁷ The LTO project, according to the approved time schedule, was foreseen to continue until 2024, and the LTO programme was to be subject to further review during the periodic safety review in 2018. Apart from the programme on LTO, there was also a comprehensive programme for replacement of other, operationally relevant components aiming at replacing SSC, which were not replaced during the modernization programme between 2000 and 2008 or the power uprate project at EBO with new or retrofitted or modified pieces.

discharged wastewater and safe removal and disposal of building materials containing asbestos. Furthermore, the ESDS refers to equipment replacement, installation of new pipelines, cables, equipment and instrumentation inside existing facilities, rehabilitation and reinforcement works on civil structures. The ESDS states that these works do not represent environmental risk, if appropriate working practices are applied.

- 3.2.3 In regard to public consultation and stakeholder engagement and the potential concerns about the safety, operation and environmental impact of the NPPs, the ESDS considers residents living in the immediate vicinity of the NPPs. These are represented through regional associations of towns and municipalities and their citizen information commissions via which they have direct access to communication with the management of the NPPs (meetings are held at least three times a year). The ESDS notes that residents and town authorities within a 20km radius around both NPPs receive a free bimonthly magazine *Energia pre krajinu* [Energy for the Country]. As most effective tool to inform the public about nuclear power, the ESDS mentions a visit by interested members of the public to the NPPs and to the information centre “*Energoland Mochovce*” at EMO.

3.3 The Finance Contract

- 3.3.1 The finance contract was signed in December 2018 for an amount of EUR 60 million. In addition to the undertakings described in paragraphs 3.1.7 and 3.1.8 of this report, the finance contract subjects the Promoter to the additional continuing undertakings of (i) implementing and operating the Project in compliance with the applicable environmental law; (ii) obtaining and maintaining requisite environmental approvals for the Project; and (iii) complying with any such environmental approvals.
- 3.3.2 In April 2022, the EIB decided to cancel the loan due to the expiration of the disbursement deadline. It is to be noted that the EIB never disbursed any funds out of the signed exposure in support of the Project.

4 FINDINGS AND CONCLUSIONS

4.1 Preliminary considerations

Lifetime extension and the link to the project

- 4.1.1 The design lifetime of an NPP can be understood as the duration of the functioning of the original facility. The change of the lifetime (e.g. extension of the design lifetime), as illustrated by the case law, can be considered comparable, in terms of the risk of environmental effects, to the risk posed by those NPPs when they were first put into service (see paragraph 2.2.4). Also, project changes contributing to extending the lifetime beyond the original (design) lifetime should be considered taking into account cumulative impacts with other projects and project components and salami-slicing (see paragraphs 2.2.7). In the documents related to the nuclear sector¹⁴⁸, there are different terms used to refer to design lifetime.
- 4.1.2 The NPPs in question are of the Soviet VVER 440 V-213 type, which had an original design lifetime of 30 years, as noted by the ACCC¹⁴⁹ (see paragraph 1.1.2). The EIB services acknowledged that design lifetime of both NPPs was 30 years. The appraisal then specified that EBO had already received a lifetime extension and that the Promoter plans to decommission both plants after 60 years of operation (see paragraphs 3.1.4-3.1.5 and Appendix 1, table 1-1).
- 4.1.3 The latest full EIA procedures for EBO and EMO were concluded in 2005 and 2007 respectively (see Appendix 1, table 1-1). However, they are not relevant to the complaint in question, as those EIAs did not cover any of the project components nor did they establish a new lifetime for the NPPs in question.

¹⁴⁸ E.g. the Atomic Act, the Nuclear Safety Decree and the Nuclear Energy Strategy.

¹⁴⁹ The ACCC findings and recommendations on the Dukovany case ([ACCC/C/2016/143](#)); Part B Article 32 shows that the reactors of the Dukovany NPP in the Czech Republic are of the same type as EBO and EMO, and Article 35 refers to their design lifetime of 30 years. It is also to note that Czechia and Slovakia were one country at the time of the start of EBO operation.

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- 4.1.4 In 2008, following an SEA with transboundary consultations, the Government of the SK adopted a Nuclear Energy Strategy¹⁵⁰, referring to a 40-year-lifetime of EBO and EMO (see Appendix 1, table 1-1). In 2014, following a negative screening determination, the Strategy was amended. The new Strategy refers to the strategic decision of the owner/operator of NPPs under construction / operation to extend their service life from 40 to 60 years.
- 4.1.5 In 2014, the SK approved the Energy Policy. This states that NPPs in the SK are expected to be decommissioned after 60 years of operation (see Appendix 1, table 1-1). The Energy Policy was subject to an SEA procedure.
- 4.1.6 Other than the above-mentioned Strategy and Energy Policy, the EIB-CM was not able to locate decisions on the prolongation of the design lifetime of NPPs of the type VVER 440 V-213 up to 60 years (see table 1-1 in Appendix 1), which were subject to public information / participation and / or could be appealed.
- 4.1.7 Had the change in law referred to in paragraph 2.2.24 of this Report not taken place, the extension of the lifetime of EBO would have been due in 2014/2015. Instead, the PSR to be undertaken every 10 years was made the decisive factor for continuous operation of NPPs in SK (see table 1-1 in appendix 1 of this Report for previous PSRs of EBO¹⁵¹ and EMO). The last PSRs were accompanied by a significant investment programme to meet the required safety standards (see paragraph 3.1.4 of this Report). In the EIB-CM's view, the CJEU jurisprudence referred to in paragraph 2.2.4 of this Report would suggest that after 2019 such a prolongation may require an EIA.
- 4.1.8 The Project represents a part of the investment programme contributing to the upcoming PSRs of EBO and EMO. Although there is no link of direct causality between the Project and the prolongation of the lifetime of the two NPPs, the Project does contribute to the passing of the upcoming PSRs.

Licensing of nuclear operations and PSR

- 4.1.9 The Atomic Act, in conjunction with the Nuclear Safety Decree, governs the procedures and responsibilities of different stakeholders in terms of ensuring nuclear safety. An amendment of the Atomic Act in 2013 cancelled time limits of permits to operate NPPs (the operating licenses or consents) for its holder (see paragraphs 2.2.34). Since 2019, the Nuclear Safety Decree also does not refer to “project-intended lifetime” anymore (see paragraphs 2.2.35). The operating license holder is required to carry out a PSR and to ensure a continuous maintenance of the operating license adhering to national and international Nuclear Safety laws. The PSRs must be accompanied by the AMP (see paragraphs 2.2.34 and Appendix 1, Table 1-2).
- 4.1.10 The operating license without time limit does not cancel the applicability of the EIA Act and building permit (development consent) procedures are required in the case of changes to the already constructed and operating NPPs, if the changes fall under the remit of the relevant acts. The Atomic Act states that changes to NPPs falling within the remit of the EIA Act require an appropriate procedure (see paragraph 2.2.14).
- 4.1.11 The availability and validity of an operating license is an important factor in the Project's compliance with law; however, it does not replace the appropriate procedure to evidence the compliance with the EIA Directive and the EIA Act, namely a full EIA or an EIA screening determination, in accordance with the EIA Act (see paragraphs 2.2.11 and 2.2.15).
- 4.1.12 Based on the documentary evidence provided to the EIB-CM, the decision making for AMPs and PSRs (see paragraph 2.2.34) has not been subject to public participation and as such it is not clear whether it complies with the public consultation requirements set in EU law transposing the Aarhus Convention (see paragraphs 4.1.2-4.1.7).

¹⁵⁰ The full title of the Strategy in Slovak is *Stratégia záverečnej časti mierového využívania jadrovej energie v sr*, which translates as “*the National Strategy for the Final Stage of the Peaceful Use of Nuclear Energy*”.

¹⁵¹ In case of EBO, the end of original design lifetime falls in between two PSR dates, therefore, in addition to the previous PSR, a regulatory procedure was carried out in accordance with the relevant PSR requirements. That does not, however, provide evidence of compliance with the environmental regulatory framework.

4.2 Alleged lack of EIA assessment

- 4.2.1 The allegations concern a lack of EIA performed for lifetime extensions of EMO and EBO (four units) stemming from “Salami slicing”, including the lack of stakeholders’ engagement.

EIA and development consents

- 4.2.2 The project components have to be permitted in accordance with Slovak law and such permitting process envisages also an assessment as to whether the project components have significant impact on the environment and/or whether it has to be assessed in accordance with the applicable EIA legislation.
- 4.2.3 Some project components have received development consents, following a negative screening or were not deemed to be subject to the EIA requirements. Other project components have not yet received development consents. This is also because the list of project components is subject to changes. From the research carried out by the EIB-CM between April and September 2021, it appears that the ÚJD SK had authorized 12 project components for EBO and 9 project components for EMO. All of them were subject to screening determinations by the EIA national competent authority (a binding EIA screening decision) or were not deemed to be subject to the EIA requirements by the competent environmental authority. All of the screening determinations were concluded with negative screening decisions (see below under *National and international public information and participation*). Consequently, no full EIA process has been implemented for any of the already authorised project components.
- 4.2.4 The EIA Act does not impose an obligation to automatically perform a full EIA procedure in relation to the changes of proposed activities with respect to which no thresholds are set forth (such as for NPPs)¹⁵². A full EIA procedure is only required in case of a positive screening decision by the EIA national competent authority. Such a decision can be issued, either on the basis of the Promoter’s or the ÚJD SK’s request, or upon the EIA national competent authority’s initiative, as a concerned authority in the development consent procedure (see paragraphs 2.2.15, and 2.2.17-2.2.18). According to SK law, the EIA national competent authority can issue decisions on individual project components, but has to take into account information on significant cumulative impacts (see footnote 45 and paragraph 2.2.15).
- 4.2.5 The limited information provided by the Promoter to the EIB does not enable to establish nor dismiss the need for a full EIA, which can only be established through a screening procedure by the national competent authority. A requirement for a full EIA may be due to cumulation of the project components, previously implemented projects and all changes to the NPPs since their last EIAs cannot be automatically assumed (see paragraphs 2.2.7 and 4.1.3). However, relevant case law suggests that changes of already approved projects, which clearly contribute to a prolongation of the lifetime of or entail a major investment in NPPs, should be assessed for their significant negative environmental impacts (see paragraphs 2.2.4 and 2.2.30).

National and international public information and participation

- 4.2.6 Public information and public participation in EIA proceedings are established by SK law. Project components that do not alter physical aspects of an NPP and/or have no significant impact on the environment are not subject to the approval procedure under the EIA Act; however, they are subject to public information under the Building Act and the EIA national competent authority has to make negative screening decisions available to the public (see paragraphs 2.2.24-2.2.26). Nothing suggests that public information requirements were not met in the present case.
- 4.2.7 As none of the project components, for which development consents had been requested, required a full EIA, the public participation requirements were limited to what is required under the Building Act (see paragraph 2.2.26). Nothing suggests that such requirements were not met.
- 4.2.8 No transboundary consultations were initiated and none of the concerned parties to Espoo Convention contested those decisions or initiated a dialogue with the SK.

¹⁵² See the conclusions of the Supreme Court of the Slovak Republic in its decision adopted on 25 August 2020 in proceeding No. 10Sžk/13/2019

The EIB's project due diligence in establishing compliance with environmental law

- 4.2.9 During the appraisal, the Project was found to be in line with EU and national nuclear legislation, following the continuous safety assessment and enhancement approach (see paragraph 3.1.2). The EIB appraisal stated that the operating license of NPPs in the SK does not have any time limit under the Atomic Act. However, the operating license is not equivalent to the development consent required under the EIA Directive or relevant national law (see paragraph 2.2.2 and 4.1.10).
- 4.2.10 According to the EIB's appraisal, none of the project components was deemed to require an assessment in accordance with the EIA Directive (see paragraph 3.2.2). However, the EIA Directive requires a screening determination for changes to NPPs which may have significant adverse effects on the environment (see paragraph 2.2.3). The EIB cannot exclude the possibility that some of the proposed project components may pose a risk of adverse environmental impacts without the involvement of adequate environmental expertise. The fact that the NPPs have valid operational licences and the changes to them are mostly but not exclusively related to the replacement or refurbishment of existing equipment is not sufficient to preclude the applicability of EIA law. It is, therefore, for the national authorities to establish whether any project component, by itself and in cumulation with other project components, is likely to have a significant environmental impact. As a matter of fact, some of the project components were considered to fall under Annex II of the EIA Directive and were therefore subject to screening determination.
- 4.2.11 During the Project's appraisal, the EIB did not involve dedicated environmental experts, as enabled by the EIB Handbook (see paragraph 2.3.5). Such expertise may have helped in distinguishing between the operating license with its extension procedure defined under the Atomic Act and the development consent procedure under the EIA Act, which are under separate legal provisions (see paragraphs 4.1.8-4.1.11).
- 4.2.12 According to Standard 1 of the Handbook, the EIB's assessment of the Project's compliance with E&S Standards requires that environmental impacts of various components included in the Project is considered not only in terms of their individual (component by component) significant negative environmental impacts, but also in terms of their cumulative impacts, time elapsed from the last EIA performed and the latest EU and national environmental law. From the information reviewed as part of its inquiry, the EIB-CM did not detect an EIB's assessment of the cumulative impacts of the Project (see paragraphs 2.2.7-2.2.9 and section 3.1).
- 4.2.13 While dismissing the applicability of the requirements of EIA law, the EIB included standard finance contract undertakings aimed at implementing and operating the project in compliance with applicable environmental law, obtaining and maintenance of requisite environmental approvals for the Project; and compliance with any such environmental approvals (see paragraph 3.3.2).
- 4.2.14 The EIB did not require the Promoter to report on the cumulative impacts of project components when applying for building permits (see paragraphs 2.2.40, 2.3.4 and 2.3.6). In fact, it appears that the EIB did not request the Promoter to provide development consents until the inquiry of the EIB-CM.
- 4.2.15 During the monitoring of the operation, the EIB did not take into consideration the CJEU case law referred to in paragraphs 2.2.4 and 2.3.2. Furthermore, as part of its monitoring of the project's compliance with environmental law (see paragraph 4.2.13), the EIB did not consider the findings and recommendations of the ACCC referred to in paragraph 1.2.4/footnote 17, which would help in defining concepts such as the "design lifetime" and clarify when a change or extension of the lifetime of an NPP can be considered a change of its "operating condition" requiring a full EIA.

Alleged inaccuracies in the EIB’s Project Summary Sheet

- 4.2.16 The complainants alleged that the description of “Environmental aspects”, as outlined on the EIB website, is incorrect.
- 4.2.17 The information concerned by this allegation is contained in the EIB’s Project Summary Sheet published on the EIB website and stems from and is consistent with the EIB appraisal and the ESDS. It does correspond to the EIB’s due diligence of the environmental impact of the Project. Furthermore, the EIB-CM issued a suggestion for improvement to enhance the accuracy of the information published on this operation.

5 OUTCOMES AND SUGGESTIONS FOR IMPROVEMENT

5.1 Outcomes

- 5.1.1 On the basis of its inquiry, the EIB-CM issues its suggestions for improvement, as provided in Table 2. The table also contains implementation timeline of outcomes for monitoring.

Table 2: Table of outcomes and suggestions for improvements with implementation timeline

Allegation	Outcome	Suggestions for improvement
1. Lack of EIA performed for lifetime extension of EMO and EBO (four units) stemming from “Salami slicing”, including the lack of stakeholders’ engagement	Financing withdrawn by the EIB Group	<p>For future complex projects with multiple components, the EIB should clarify in the procedures implementing the ESSF:</p> <p>(i.) how it mobilises adequate environmental expertise as soon as possible during the due diligence to complement the existing system of environmental review;</p> <p>(ii.) the importance of requesting promoters to report on development consent procedures and their outcomes for each project component,</p> <p>(iii.) which tools assist the EIB services with the assessment of individual and cumulative environmental impacts of projects components.</p> <p><i>To be implemented by the end of Q1 2023.</i></p>
2. Incorrect description of “Environmental aspects” on the EIB’s Project Summary sheet (online).	Ungrounded	<p>Based on the EIB-CM’s findings in paragraphs 4.2.10 and 4.2.12 of this Report, the EIB-CM suggests that the information on the EIB’s project web-page is amended in order to adequately reflect the environmental aspects of the Project.</p> <p><i>- To be implemented within 3 months from the issue of the Conclusions report.</i></p>

Complaints Mechanism

Available remedy:

Complainants that are not satisfied with the conclusions report may file a complaint of maladministration against the EIB Group with the European Ombudsman¹⁵³.

¹⁵³ Available at: <https://www.ombudsman.europa.eu/en/home>.

APPENDIX 1: AUTHORISATIONS OF NPPS

Table 1-1: Development consent and full procedures carried out in accordance with the EIA Act

Action	Development consent/ EIA			
	EBO #3	EBO #4	EMO #1	EMO #2
End of construction / start of operation	1984	1985	1998	2000
Design lifetime	30 ¹⁵⁴		30	
A full EIA procedure for "Increase in performance" with <i>transboundary consultations</i>	Decision No 2038/2004-1.6/hp issued on 02 May 2005		Decision No. 6231/2007-3.4/hp issued on 21 December 2007	
<i>Nuclear Energy Strategy adopted on 21 May 2008¹⁵⁵ with SEA and transboundary consultations</i>	<i>Anticipates the shutdown of the plant in 2024-2025 (40 years lifetime)</i>		<i>Anticipates the shutdown of the plant in 2038-2039 (40 years lifetime)</i>	
<i>Amended Nuclear Energy Strategy adopted on 15 January 2014 with a negative SEA screening decision¹⁵⁶</i>	<i>Service lifetimes mentioned: 40 and 60 years¹⁵⁷</i>		<i>Service lifetimes mentioned: 40 and 60 years¹⁵⁸</i>	
<i>Energy Policy of the SK¹⁵⁹</i>	<i>Decommissioning after 60 years of operation</i>			
30-years due ¹⁶⁰	2014	2015	2028	2029
40-years due ¹⁶¹	2024	2025	2038	2039

Table 1-2: Operating licenses issued in accordance with the Atomic Act¹⁶²

Action	Safety requirements / Licensing of LTO	
	EBO (V2) 3&4	EMO 1&2
PSR	2006	2008 (2009)
Operating license issued by ÚJD SK	Decision No 275/2008 of 30 October 2008	Decision No 195/2008 of 29 May 2008
Modification of operating license by ÚJD SK	Decision No 331/2009 of 24 December 2009 (original 10-year validity)	Decision No 100/2011 of 04 March 2011 (original 10-year validity)
In 2013, the Atomic Law was amended making the operating license timeless. As per Atomic Act ¹⁶³ , all plants are subject to Periodic Safety Reviews (PSR) every ten years.		
PSRs (II) ¹⁶⁴	August 2016	March 2017

¹⁵⁴ Planned lifetime for NPPs at the time of initial authorisation, see Page 51 of the National Strategy for the Final Stage of the Peaceful Use of Nuclear Energy available [here](#) (SK).

¹⁵⁵ National Strategy for the Final Stage of the Peaceful Use of Nuclear Energy (Nuclear Energy Strategy) (2008) approved by the Government of the Slovak Republic by Resolution No 328 at its meeting on 21 May 2008 available [here](#). The 40 years lifetime are mentioned in the timetable on p. 39. An Opinion on the strategy was issued by the Ministry of Environment of SK (MoE) on 15 May 2008 available [here](#) in Slovak. Austrian public authorities could not meaningfully participate in the consultation due to very short deadlines.

¹⁵⁶ Amendment of the National Strategy for the Final Stage of the Peaceful Use of Nuclear Energy from 2008 (amended Nuclear Energy Strategy) (2014) available [here](#) in Slovak. Prior to the adoption of the amended Nuclear Energy Strategy, the MoE issued an opinion on SEA No. 2909/2013-3.4./hp on 30 April 2013 (negative screening) and in 2014 the Ministry of Economy and the MoE issued a Joint Decision (Ref. 2727/2013-4100). These documents speak about 40 and 60 years of lifetime for all NPPs in the SK.

¹⁵⁷ Pages 7 and 11 of the amended Nuclear Energy Strategy.

¹⁵⁸ Page 70, of the amended Nuclear Energy Strategy.

¹⁵⁹ Energy Policy of the SK approved by the Government Resolution No.548 of 5 November 2014 available [here](#).

¹⁶⁰ Information from IAEA PRIS website available [here](#).

¹⁶¹ Based on the Amendment to the National Strategy for the Final Stage of the Peaceful Use of Nuclear Energy.

¹⁶² Opinion of the MoE of 10 October 2013 regarding organisational changes for EMO and EBO available [here](#) (in Slovak) and annual reports of the SK to the Convention of Nuclear Safety available [here](#).

¹⁶³ See Footnote 122 for details on Article 23 (2) (g) and (f) of the Atomic Act defining the PSR.

¹⁶⁴ National Report compiled in terms of Article 9.1 of Council Directive 2009/71/EURATOM (2020) available [here](#).