Dear Ms. Marshall,

please find attached the translation of the requested provisions below:

*Art. 1*

*6.*

*§ 8 (11) The Office is obliged to take measures to ensure that sensitive information, classified information, trade secrets, intellectual property are not made available when serving a decision or other documents or when inspecting the file. The Office is obliged to take measures to ensure that any duty not to disclose provided or recognised by law, is not breached.*

*7.*

*§ 8 (12) The Office is obliged to inform the applicant to mark what information or documents the applicant considers as constituting sensitive information, classified information, trade secrets, or intellectual property.*

*§ 8 (13) The Office may require the applicant to provide a written justification for marking information or documents as sensitive information, classified information, trade secrets, or intellectual property. If, despite a justification, the Office concludes that the information and documents submitted do not satisfy the requirements of sensitive information, classified information, trade secrets, or intellectual property, the Office shall notify the applicant in writing of the same.*

In addition to that, we would like to reiterate that the amendment to the Atomic Act submitted to the National Council by members of the parliament on 28th of May 2021 intends *inter alia* to implement the recommendations of the Committee articulated in the 2nd Progress Review, *i. e.* to remove the references to "postal and telecommunications secrets" from the text of the Atomic Act.[1] Moreover, we would like to note that the proposed amendment goes even further than the Committee's recommendations, considering that apart from the references to "postal and telecommunications secrets" it also proposes to remove the references to "bank secret" and "tax secret", *i. e*. it reflects the remaining reservations articulated in the Decision of the President of the Slovak Republic of 17 July 2019 as well.[2]

While the amendment proposes - in comparison to the present text - a new reference to "intellectual property", we fail to see how this reference could lead to a violation of the Aarhus Convention, as implied by the observer in its statement from June 2, 2021.[3]

As the Committee itself noted in its 2nd Progress Review,

"the grounds for refusal set out in article 4(3) and (4) of the Convention are exhaustive. There are no other grounds for refusal permitted under the Convention. Accordingly, Parties may not introduce into their legal frameworks any other grounds through which requests for access to environmental information under article 4 of the Convention may be denied than those set out in article 4(3) and (4) of the Convention."[4]

[1] 2nd Progress Review, para. 49-51, para. 55 (b).
[2] The Committee refers to the pertinent decision in para. 46-47 of its 2nd Progress Review.
[3] Update on observer statements (Mr. Daniska) from June 2, 2021.
[4] 2nd Progress Review, para. 49.

We would like to note that the Aarhus Convention in its Art. 4, para. 4 e) lists "intellectual property" as one of the valid grounds for refusal to disclose information. It explicitly notes that "public authorities may choose not to disclose information that would adversely affect an intellectual property right."[5] In this regard, we would like to note that - while not entirely overlapping - the Aarhus Convention Implementation Guide lists trade secrets as one of "[t]he primary forms of intellectual property.[6] Neither the President of the Slovak Republic in its Decision of 17 July 2019, nor the Committee in its 2nd Progress Review voiced any reservations against the reference to "trade secret" in the above-mentioned provisions of the Atomic Act.[7] For these reasons, we fail to see how an analogical reference to "intellectual property" could possibly lead to a violation of the Aarhus Convention.

To conclude, we would like to note that the Aarhus Convention is an international treaty, which has precedence over statutory laws according to the Art. 7 (5) of the Constitution of the Slovak Republic.[8] For this reason, any relevant provisions of statutory laws shall be interpreted in the light of the relevant provisions of the Aarhus Convention.
The same applies to Art. 4 (6) of the Aarhus Convention, which states that

"if information exempted from disclosure under paragraphs 3 (c) and 4 above can be separated out without prejudice to the confidentiality of the information exempted, public authorities make available the remainder of the environmental information that has been requested. "

This provision of the Aarhus Convention is also relevant to the types of information mentioned in the above-mentioned provisions of the Atomic Act. It is clear that these grounds for refusal need to be interpreted restrictively, taking into account public interest in disclosure and whether information relates to emissions into the environment.
In addition to that, this approach has been expressly articulated in the amended version of the Directive on Sensitive Information[9], as requested by the Committee in its 2nd Progress Review.[10]

[5] The Aarhus Convention: An Implementation Guide (2nd ed., 2014), p. 88.
[6] *Id.*
[7] 2nd Progress Review, para. 46-47 and para. 49-50.
[8] Constitution of the Slovak Republic, https://www.prezident.sk/upload-files/46422.pdf.
[9] Directive on Sensitive Information, https://www.ujd.gov.sk/ujd/WebStore.nsf/viewKey/Directive/$FILE/Directive_on%20_Identification_2020.pdf.
[10] 2nd Progress Review, para. 35-41.