

# ACCESS TO FACILITY-SPECIFIC ENVIRONMENTAL INFORMATION



## GERMANY

This memo describes the European framework that applies to Germany as an EU Member State and in the final section discusses and links the country specific implementation of these requirements as well as national variations.

### Environmental Information Directive

Germany is a Member of the European Union and has transposed the [Environmental Information Directive](#), [Directive 2003/4/EC](#). This is a broad-based disclosure requirement that requires transparency for information about the environment.

*“The directive defines “information relating to the environment” in a very broad manner, covering “any available information in written, visual, aural or data-base form on the state of water, air, soil, fauna, flora, land and natural sites and on activities or measures adversely affecting, or likely to affect these, and on activities or measures designed to protect these, including administrative measures and environmental management programmes.”<sup>1</sup>*

The exceptions where disclosure may be denied are actually fairly limited.<sup>2</sup> The exceptions include, however, criminal and disciplinary proceedings and proceedings by public authorities which are confidential under national law.<sup>3</sup> This particular exception

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<sup>1</sup> Resources for the Future, “Public Access to Environmental Information and Data,” 2001, p. 23.

<sup>2</sup> [Article 4](#): “2. Member States may provide for a request for environmental information to be refused if disclosure of the information would adversely affect: (a) the confidentiality of the proceedings of public authorities, where such confidentiality is provided for by law; (b) international relations, public security or national defence; (c) the course of justice, the ability of any person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature; (d) the confidentiality of commercial or industrial information where such confidentiality is provided for by national or Community law to protect a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy; (e) intellectual property rights; (f) the confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for by national or Community law; (g) the interests or protection of any person who supplied the information requested on a voluntary basis without being under, or capable of being put under, a legal obligation to do so, unless that person has consented to the release of the information concerned; (h) the protection of the environment to which such information relates, such as the location of rare species.” (emphasis added).

<sup>3</sup> There is no explicit authority to include administrative enforcement measures within this definition of exceptions. However, the European Court has ruled that proceedings with possible penalties may come

varies widely by Member State in its implementation. Preliminary investigations can also be excluded. However, the Court of Justice for the European Union has indicated that the reason for confidentiality of certain public proceedings – even where set by national law – may not apply after the proceedings are resolved. See [Flachglas Torgau GmbH v Germany](#), C-204-09, February 14, 2012. Actions related to imminent threats to public health or the environment are also mandated for disclosure. See Article 7(4). The Aarhus Convention<sup>4</sup> requires that the interest of disclosure of public proceedings must be balanced against the need for confidentiality in each case, so that a blanket exemption is not the intent of the EU Directive implementing the Convention.<sup>5</sup> All restrictions on disclosure are discretionary with each Member State and national authorities are not necessarily compelled to have the same exemptions in their individual country's laws. See "National Law" section below.

## European-Pollutant Release & Transfer Registry

In line with the Aarhus Convention and the EU EID, all emissions data must be publicly available. The EU also maintains the online European Pollutant Release and Transfer Registry or E-PRTR which requires by regulation ([Regulation EC No. 166/2006](#)) the reporting of releases – both accidental and deliberate – to the air, water or soil. E-PRTR searches can be done [online](#). The data base is about two years out of date, but it can be useful to identify past problems at facilities. Reports of discharges or releases from facilities are themselves not confidential under EU law and can also be readily obtained from each Member State.

## National Law

The German transposition of the EU Directive is [Umweltinformationsgesetz \(UIG\)](#) or Environmental Information Act. It closely follows the EU Directive and Aarhus Convention language and exemptions. Section 8(3) of the UIG excludes cases where:

*“announcing of the information would adversely affect ...the implementation of ongoing legal proceedings, a person's right to a fair trial or the conduct of a criminal, administrative offense legal or disciplinary Investigations.”*

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within the exemption as to “secret” information involving internal preparation of a proceeding or decision. See [Mecklenburg v. Pinneberg](#),, C-321-96, 1998 ECRI 3809, 3835. After the matter is resolved by officials, the reason for the exemption is arguably no longer valid. See [Flachglas Torgau](#), supra.

<sup>4</sup> The [Aarhus Convention](#) on access to justice in environmental matters also has relevant disclosure requirements. The objective is the right to participate in environmental decision-making and the information covered includes administrative measures by public authorities affecting the environment. See Article 2 (definitions). Most of this convention has been incorporated into the Environmental Information Directive at this point.

<sup>5</sup> See Dirk Bunker, DEFICITS IN US AND EU MANDATORY ENVIRONMENTAL DISCLOSURE, (Springer 2011), p. 141.

But request for information on emissions from a facility must be granted: Sec 8(4) rejection of “*access to environmental information on emissions cannot rely on matters referred to in paragraphs 2 and 4...*” Data on environmental releases from a facility will never be confidential under the law.

A full law review on the UIG is available online: Matthias Niedzwicki: [Environmental Information Directive and the Environmental Information Act](#). He suggests that the “judicial” exemption will be narrowly construed in order to make in comply with the Directive. The German case before the ECJ (above) also indicates that final judicial matters are not confidential. The existence of a judicial or administrative casse for non-compliance is itself also not confidential, even if the underlying files are still protected under its resolution.

A site with useful links, including court cases interpreting the law, is [here](#). Regional information portals are also [available online](#).

## **CONTACT INFORMATION:**

Randy Mott JD, Director for Europe, the Middle East and Africa, CHWMEG, +48-607-339012, [Europe@chwmeg.org](mailto:Europe@chwmeg.org).

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