

ACCESS TO FACILITY-SPECIFIC ENVIRONMENTAL INFORMATION



NORWAY

This memo describes the legal foundation for access to environmental information in Norway. Though not a Member of the European Union, Norway is a signator to the [Aarhus Convention](#) which provides a comprehensive basis for information access. Generally, most EU laws have parallels in Norwegian law as well.

Aarhus Convention¹

One of the key “pillars” of the international agreement is public access to environmental information from public authorities, which is broadly defined. A key provision provides that the interest of the requesting party is immaterial and need not be specified. Article 4(1). The exceptions to access² are to be construed narrowly. The key provision on obtaining environmental enforcement and compliance documents exempts some documents related to “*the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature.*” Article 4(3)(c). In all of the relevant precedent which has arisen in the European Union courts interpreting this provision (now codified into the EU Environmental Information Directive) the

¹ Formally entitled “Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.”

² Article 4(3): “A request for environmental information may be refused if: (a) The public authority to which the request is addressed does not hold the environmental information requested; (b) The request is manifestly unreasonable or formulated in too general a manner; or (c) The request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure. 4. A request for environmental information may be refused if the disclosure would adversely affect: (a) The confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law; (b) International relations, national defence or public security; (c) The course of justice, the ability of a 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 and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed; (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 in national law; (g) The interests of a third party which has supplied the information requested without that party being under or capable of being put under a legal obligation to do so, and where that party does not consent to the release of the material; or (h) The environment to which the information relates, such as the breeding sites of rare species.”

exemption does not apply once the proceeding is resolved. . See [Flachglas Torgau GmbH v Germany](#) , C-204-09, February 14, 2012. The exclusion does not apply to “emission data,”³ which are required to be available. [The Aarhus Convention](#)⁴ 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 Convention.⁵ All restrictions on disclosure are discretionary with each signator 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, 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. Switzerland participates in this program and its data is available through the E-PRTR platform. 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

Norway adopted the Aarhus Convention and implemented it by the Environmental Information Act of 2003 ([Act of May 9, 2003, No.31](#)). The law has a broad mandatory disclosure section which may cover almost everything of interest in facility reviews:

§ 12. Environmental information that shall always be disclosed

Notwithstanding the provisions of section 11, the public shall always have access to information on (a) pollution that is harmful to health or that may cause serious environmental damage, (b) measures to prevent or reduce damage such as is

³ Although not defined in the treaty, this phrase has invariably been given an expansive meaning.

⁴ 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.

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

mentioned in part (a) herein, and (c)unlawful intervention in or damage to the environment.

The above language seems to clearly cover enforcement actions as mandatory public information.

Exceptions are engrained in the [Law on right of access to documents in the Public Administration](#); however, the only provision applicable to environmental compliance and enforcement - § 24. *Exceptions for control and regulation measures, document about breaches of the law and information that may facilitate the implementation of breaches of the law, etc.* - is solely focused on unrelated issues (confidentiality of informants, etc.). Read with the Environmental Information Act, the general law does not to create more restrictions on disclosures to the type of information relevant here.

Moreover, the [Norwegian Government replied](#) to the European Commission Aarhus implementation survey, observing:

“The Act has a wider scope than the Convention since it not only regulates the duty of the public authorities to make information available, but also entitles the public to have access to environmental information from private undertakings.”

Norway has a [website with detailed environmental information on individual facilities](#), including emissions, waste, permits, and more (“Norske utslipp”). A [general FAQ site](#) is also available.

CONTACT INFORMATION:

Randy Mott JD, Director for Europe, the Middle East and Africa, CHWMEG, +48-607-339012, Europe@chwmeq.org.

To report dead links in the above, provide feedback, or to notify CHWMEG that updates to this information are necessary, click the link below to send an email to Randy Mott (type a brief note with your feedback before sending your email):

<mailto:europe@chwmeq.org?subject=-- NORWAY -- Feedback/Dead Link/Update Required for Accessing Facility Regulatory Info>

REV 0: Apr 2015