

ACCESS TO FACILITY-SPECIFIC ENVIRONMENTAL INFORMATION



POLAND

This memo describes the European framework that applies to Poland 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

Poland 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.”¹

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

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

² [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).

³ 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 Convention⁴ 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.⁵ 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

In Poland, [the right to information on the environment and its protection](#) is guaranteed to every citizen by Article 74, paragraph 3 of the Constitution of the Republic of Polish. Access to information on the environment and its protection is considered to be a democratic standard adopted in the provisions of international law and European Community law. Poland transposed the EU Directive in the [Environmental Information Act of October 3, 2008](#). Earlier legislation was amended to incorporate deficiencies in

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.

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.

the initial transposition. The definitions broadly define emissions to include pollution likely to affect the environment. Article 9.1(2). The discretionary exceptions include *“matters covered by pending court proceedings, disciplinary matters or an area where the access to information could disrupt to the proceedings...”* Article 16.1(2)(emphasis added). This exemption only runs to the information that would be disruptive of the proceedings, such as the internal prosecution files, etc. Items that involve emissions or pollution *per se* must be disclosed and there is no argument that material given to the defending party is disruptive. “Trade secrets” as a term is not used; instead the Polish law refers to “information of commercial value.” Article 16.1(7). This may give rise to withholding of commercial information not normally protected in other countries. But it should not affect the compliance history disclosure.

Requests on enforcement would normally go to the regional office or voivodeship.⁶

An environmental consulting company has a [website](#) with the summary of the law, the procedures, the fees, etc. The Polish Government’s brochure on environmental information access is [available online](#). An [NGO site](#) also provides more information.

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⁶ Some regional and local offices are unaware of the law in the experience of the author. This is also admitted by the Polish Government: *“According to the analysis of the Supreme Chamber of Control, Polish law concerning the access to environmental information is difficult to interpret, which contributes to the lack of performance of statutory duties by some offices.”* [Response to EC Survey on Aarhus Implementation, December 12, 2013](#).