

ACCESS TO FACILITY-SPECIFIC ENVIRONMENTAL INFORMATION



SWITZERLAND

This memo describes the legal foundation for access to environmental information in Switzerland. Though not a Member of the European Union, Switzerland is a signator to the [Aarhus Convention](#) which provides a comprehensive basis for information access.

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 exemption does not apply once the proceeding is resolved. . See [Flachglas Torgau GmbH v](#)

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.”

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

Switzerland did not ratify the Aarhus Convention until [2013](#). Its adoption did require some changes in Swiss law, principally at the [canton level](#). The adoption of the treaty was done by adding [Article 10\(g\) to the Environmental Protection Act](#). However, the substantive provisions were simply incorporated by reference from the [Swiss Freedom of Information Act](#). Article 3(1) of that law exempts civil and criminal proceedings, so that the implementation of the Aarhus Convention seems problematic in Switzerland. The only exemption recognized by European courts reviewing proceedings has been for preliminary investigations and pending cases, not final decisions. This is further confused by Article 7(1)(a) which states that “*access to official documents is limited*,

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.

deferred or denied if its provision...[where] freedom of opinion and will formation of this Act assumed authority of another legislative or administrative organ or a judicial body can be significantly affected.” This assumes that if there is no adverse effect that might bias the decision by disclosure, the documents could be obtained, even in a judicial matter. While this is the majority rule in Europe, it is inconsistent with Article 3’s exclusions.

Given that treaty law supersedes national law as a general proposition, there is a good argument that unless there is evidence of adversely affecting a fair adjudication, the documents otherwise within the scope of the Convention should be disclosed. The law is too new to have been challenged or interpreted on this point.

Other environmental information – including emission data - is freely available in Switzerland.

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