

# ACCESS TO FACILITY-SPECIFIC ENVIRONMENTAL INFORMATION



## UKRAINE

This memo describes the legal foundation for access to environmental information in the Ukraine. Though not a Member of the European Union, the Ukraine 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 Convention<sup>1</sup>

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 access<sup>2</sup> 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

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

<sup>2</sup> 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,”<sup>3</sup> which are required to be available. [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 Convention.<sup>5</sup> 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**

The Ukraine passed its Aarhus legislation in the [Law of November 28, 2002 on environmental information](#). These provisions were then integrated into the [Ukrainian Environmental Protection Law](#). The provisions generally closely track the Aarhus Convention language. The law does specifically include environmental monitoring as “environmental information” and requires that it be made available to the public. See Articles 24 and 25. Exemptions are, however, vague. The only apparent language is in Article 25(d) referring to “state secrets” (which may practically be referring only to military installation information). See Aleksev, cited below. While this ambiguity might be

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

<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.

problematic in some cases, it seems irrelevant to disclosure of environmental compliance and notifications to facilities in light of the other definitions in the law. The [General Law on Information of 1992](#) also excludes environmental information from what can be viewed as “classified.” See Article 22.

The issues are discussed in some detail in a paper edited by *Elizabeth Alekseev*, [“Access to Public Information in the Context of the Environment.”](#) (Center for Political Studies and Analyses, 2012) supported by the Council of Europe (arguing that information about violations of environmental and health rules are not trade secrets under Ukrainian law)(Figure 8).

More information of a general nature is on the [Ministry of Justice website](#), along with some information on the procedures. A potentially useful NGO also has a [website](#) on the subject.

#### **CONTACT INFORMATION:**

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

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