

**Fourth meeting of the Task Force on Access  
to Information under the Aarhus Convention**

**Geneva, 8-10 December 2015**

**Item 3 (e) of the provisional agenda**

**Ensuring the Legitimate Application of the Restrictions on Access to  
Environmental Information in Bulgaria in accordance with the Aarhus  
Convention's Provisions**

Bulgarian legislation fully transposes the requirements of article 4, paragraph 4 of the Aarhus Convention. In accordance with article 20, paragraph 1 of the Environmental Protection Act (EPA), access to information relating to the environment may be denied where the request is for:

1. classified information constituting a state secret or an official secret;
2. information constituting an industrial or commercial secret, designated as such by law;
3. intellectual property;
4. information constituting personal data, where the natural person concerned has not consented to the disclosure of the said information, and according to the requirements provided for in the Personal Data Protection Act;
5. information which would adversely affect the interests of a third party which has supplied the information requested without that party being under or capable of being under a legal obligation to do so, and where that party does not consent to the release of the material;
6. information that will adversely affect the components of the environment.

In the cases of restricted access, the available information relating to the environment shall be provided in the part therein as can possibly be separated out from the information covered under article 20, paragraph 1.

The persons who or which report information relating to the environment to the competent authorities shall be obliged to mark the information subject to any of the restrictions on provision covered under article 20, paragraph 1.

Upon making a decision to refuse provision of any information covered under article 20, paragraph 1, the competent authority shall take into account the public interest served by disclosure of any such information.

The restriction of the right of access to information shall not apply to any information relating to emissions of harmful substances into the environment expressed as limit values established by legislative acts.

Within the meaning of the EPA "Information relating to the environment" shall mean any information in written, visual, aural, electronic or other physical form regarding:

1. the state of the components of the environment and the interaction therebetween;
2. the factors that pollute and damage the environment, as well as the activities and/or measures, including administrative measures, international agreements, policies, legislation, including reports on application of environmental legislation, plans and programmes affecting or capable of affecting the components of the environment;

3. the state of human health and safety, inasmuch as they are or may be affected by the state of the components of the environment or, through the said components, by the factors, activities or measures referred to in point 2;
4. cultural and historical heritage sites, buildings and installations, inasmuch as they are or may be affected by the state of the components of the environment or, through the said components, by the factors, activities or measures referred to in point 2;
5. costs-benefit analysis and other economic analyses and assumptions used within the framework of the measures and activities referred to in point 2;
6. emissions, discharges and other harmful impacts on the environment.

The presented above provisions of EPA, concerning the restrictions to the access to environmental information, are supplemented by the rules of Access to Public Information Act (APIA), which is a common legal instrument that regulates the access to information for all public sectors.

Article 37, paragraph 1 of APIA states that access to public information may be refused on any of the following grounds:

1. the information requested is classified information or another protected secret in the cases provided for by law, as well as in the cases covered under article 13, paragraph 2 herein;
2. the access affects the interests of a third party, and the said party has not granted explicit written consent to disclosure of the public information requested, except in the cases of an overriding public interest;
3. the public information requested has been disclosed to the applicant during the last preceding six months.

The first point refers to article 13, paragraph 2, in accordance with, access to administrative information may be restricted where the said information:

1. is related to the internal preparation of the acts of the public authorities and has no relevance of its own (opinions and recommendations developed by or for the public authority, observations and advice);
2. contains opinions and positions adopted in connection with present or future negotiations conducted by the public authority or on behalf thereof, as well as data pertaining to such opinions and positions, and has been prepared by the administrations of the relevant public authorities.

The provision of article 13, paragraph 4 of APIA envisages that access to administrative public information may not be restricted if there is an overriding public interest. Within the meaning of APIA, "Overriding public interest" shall be in place where disclosure of corruption and of abuse of power, enhancement of the transparency and accountability of the entities is sought through the information requested. Any facts, information, decisions and data related to economic activity, whose non-disclosure is in the interest of the holders but there is an overriding public interest in the disclosure thereof, may not constitute an "industrial or trade secret". Until proven otherwise, there shall be an overriding public interest in disclosure where any such information:

- (a) enables citizens to form an opinion and to participate in current discussions;
- (b) facilitates the transparency and accountability of the entities regarding the decisions made thereby;
- (c) guarantees the legally conforming and expedient fulfilment of the legal obligations of the entities;
- (d) discloses corruption and abuse of power, mismanagement of state or municipal property or other legally non-conforming or inexpedient acts or omissions by administrative authorities and officials in the respective administration, whereby state or public interests, rights or legitimate interests of other persons are affected;

(e) disproves disseminated untrue information affecting significant public interests;  
(f) is related to the parties, the subcontractors, the subject matter, the price, the rights and obligations, the terms and conditions, the time limits and the sanctions specified in any contracts whereto an entity is one of the parties.

It must be clarified that under APIA "Administrative information" shall be any information which is collected, created and stored in connection with any official information, as well as in connection with the operation of the public authorities and of the administrations thereof. Also, "Official information" shall be any information which is contained in the acts of the state bodies and of the bodies of local self- government [issued] in the course of exercise of the powers thereof.

In all cases or restrictions partial access shall be granted solely to such part of the information to which access is not restricted.

Furthermore, APIA provides that any decision to refuse access to public information shall state the grounds of fact and law for refusal under this Act, the date of making the decision, and the procedure for appeal against the said decision. Moreover, any decision to refuse access to public information shall be delivered to the applicant upon signed acknowledgement, or shall be dispatched by mail with advice of delivery.

In practical terms, the order and the conditions for the receiving, registration, distribution and processing of written applications and oral requests for access to public information, the preparation of decisions to grant or to refuse the provision of information in the Ministry of Environment and Water, the modes of providing, the costs and the manners of payment, are laid down in the Internal Rules on Terms and Conditions for Access to Public Information in the Ministry of Environment and Water, published on the website of the authority.

It has to be noted, that the refusal of access to environmental information is not a frequent practice in Bulgaria – it happens in exceptional cases. Only limited number of refusals is contested. Evidence for this is the statistics for the decisions to grant access to public information and the refusals, issued by the Ministry of Environment and Water and its structures, and the appeals. In 2014, for example, the applications for access to environmental information are 918, the decisions for granting (full/partial access) – 713, the statements (in cases where the information is not available or other authority is responsible) – 175, and the decisions for refusal – only 30. Only 6 decisions for refusal were challenged.

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