

## ROMANIA

### MINISTRY OF ENVIRONMENT, WATERS AND FORESTS

#### Response to the letter of the Aarhus Convention Secretariat of June, 15<sup>th</sup> 2021

1. Information on the implementation of the „Strategy for the implementation of the Decision VI/8h regarding the compliance of Romania with the requirements of the Aarhus Convention” and the final version of the Strategy

Romania has informed the ACCC, in its first, second and third progress reports about the new developments in this field brought about by Decision VI/8h and by the Recommendations of the ACCC.

Unfortunately the year 2020 under COVID 19 effects brought also negative consequences in terms of human health among the public servants with responsibilities of putting into practice the commitments undertaken within the strategy.

Clarifications of certain steps undertaken until now are provided below:

- a) The final version of the strategy in English is attached to this answer.  
The final version of the strategy in Romanian is provided at link:  
<http://www.mmediu.ro/categorie/accesul-la-informatia-de-mediu/242>
- b) Informative documents for the public authorities and the general public, in order to raise awareness about their rights and obligations under the Aarhus Convention (paragraph 2 (a) of Decision VI/8h)

b1) The Guide to public authorities for public access to environmental information was aimed to ensure that public institutions and authorities are properly informed of the rights and obligations established by the Aarhus Convention, focusing on providing guidance to civil servants involved in the process of addressing requests for environmental information, in accordance with the provisions of art. 4 of the Aarhus Convention. The Guide is elaborated in the format of a FAQ brochure, intended to facilitate access to the basic concepts of the Aarhus Convention, providing, at the same time, guidance and steps to be followed by civil servants responsible in this regard.

The Guide contains jurisprudential examples at all levels, such as cases of national courts of justice, as well as jurisprudence of the Court of Justice of the European Union and The European Court of Human Rights, with the aim to analyse and to provide a relevant interpretation of the Aarhus Convention and of other provisions related to access to environmental information at European Union level or at national level. It aims to tackle not only the procedure of addressing environmental requests of the public by authorities, but also the right to access to justice of any member of the public who requested environmental information and who considers that his or her request has been wrongfully refused, whether in part or in full, ignored or inadequately answered by a public authority. In this regard, we analysed provisions from national legislation, as well as cases of the European Court of Justice, indicating the procedure to be

followed, as well as the applicable legal framework and the court of justice which is competent in such cases.

**We would like to pay attention to page 17 of this Guide**, where, in connection with art 14 of the GD 878/2005 as amended by *Law no. 677/2001 for the protection of individuals with regard to the processing of personal data and on the free movement of such data*, there is mentioned the decision of the **High Court of Cassation and Justice - Decision No 37/2015 - Full Court for the resolution of questions of law, its wording being:**

"Where information of public interest and information on personal data are present in the same document, regardless of the medium or the form or manner of expression of the information, access to information of public interest is achieved by anonymising information on personal data; **refusal of access to information of public interest, where information on personal data is anonymised, is unjustified.**"(Translated with [www.DeepL.com](http://www.DeepL.com)).

The decisions of the High Court of Cassation and Justice, delivered by the *Full Court for the resolution of questions of law*, are a source of law in the national legal system and **therefore they are binding**. We find it a good example of putting into practice the questions of confidentiality as provided by the Aarhus Convention.

We take this opportunity to inform you that the findings of the ACCC on cases ACCC/C/2005/15 and ACCC/C/2012/69 are also included in this Guide as „**not to be done**” examples because the reason of intellectual property right can not be invoked when speaking about studies on which administrative decisions are based.

The final version of the *Guide to public authorities for public access to environmental information* was posted in June 2021, on the Ministry of Environment, Waters and Forests website - <http://www.mmediu.ro/categorie/accesul-la-informatia-de-mediul/242>.

b2) An *informative brochure for the general public regarding public access to environmental information* was developed, as well, in the form of a FAQ flyer. The flyer was intended to inform the members of the public about their rights in accessing environmental information held by public authorities, as well as about the basic procedures in obtaining such information, explaining, at the same time, the meaning of the notion “*environmental information*”.

The Flyer is written in a colloquial language in order to facilitate a better understanding of the provisions of the Aarhus Convention by the members of the public regarding both access to environmental information, as well as access to justice in matters related to access to environmental information.

The Flyer is posted on the Ministry of Environment website - <http://www.mmediu.ro/categorie/accesul-la-informatia-de-mediul/242> .

- c) Organization of training sessions for magistrates with experience in the field of administrative contentious and for the public authorities, in collaboration with the National Institute of Magistracy ( paragraph 3 of Decision VI/8h)

On the issue of training all information submitted in the updated 2021 Strategy is valid and must be implemented as soon as the COVID 19 restrictions are relaxed and human and funding resources are found.

In this respect the training sessions within the updated 2021 Strategy have been rescheduled for 2022 and 2023 for the public authorities and for 2022, 2023 and 2024 for magistrates.

## **2. Update of implementation proposals for legislative amendments included as Objective I in Chapter II of the Strategy.**

For the implementation of the recommendations in paragraphs 2 (a) –(b), 4, and 7 (a) –(d) of decision VI/8h the Ministry of Environment, Waters and Forests envisage the following steps:

Para 2 (a) and (b) and para 7 (a) ii), iii) and iv) imply modifications of article 12 and article 15 of the *GD no. 878/2005 on public access to environmental information*.

The modifications foreseen are highlighted in red below.

### **Article 12**

(1) Public authorities may refuse a request for environmental information if disclosure of the information would affect:

(a) the confidentiality of the proceedings of public authorities, where this is provided for by the legislation in force;

(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 a criminal or disciplinary investigation;

(d) the confidentiality of commercial or industrial information, where this is provided for in existing national or Community legislation protecting a legitimate economic interest, including the public interest in maintaining statistical confidentiality and the secrecy of taxes;

(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 applicable national or Community law;

(g) the interests or protection of any person who has volunteered the information requested, without that party being under a legal obligation or likely to be under a legal obligation to provide the information, unless that person has consented to the disclosure of that information;

h) the protection of the environment to which such information relates such as the location of rare species.

(2) The grounds for refusal referred to in paragraph 1 and Article 11 (1) shall be interpreted in a restrictive way, taking into account, in each individual case, the satisfaction of the public interest by disclosure of

the environmental information and by the inclusion in the grounds for refusal of the manner in which the public interest has been taken into account;

(3) In each individual case, the satisfaction of the public interest by disclosure of the environmental information requested shall take precedence and shall be weighed against the interest satisfied by maintaining confidentiality;

(4) Public authorities may not refuse a request for information relating to emissions into the environment on the grounds referred to in paragraph (1) (a), (d), (f), (g) and (h).

## Article 15

(1) Environmental information held by or for public authorities, which has been requested, shall be provided in part/partially, by separating it from information falling within the scope of Article 11 (1) lit.(d) and (e) or Article 12(1).

(2) The provisions of paragraph 1 on the separation of information shall relate to the anonymization of information falling within the scope of Article 12(1), letter (f) and (g) and to redact the document containing the environmental information required in order to delete/non disclose the confidential information referred to in Article 11 (1) letter (d) and (e) and Article 12 (1).

(3) The partial or total refusal of the request for environmental information shall be transmitted to the applicant in writing or electronically, if the request was made in writing or the applicant has so requested, within the time limit laid down in Article 4 (1) or, as the case may be, in Article 4 (2).

(4) The refusal to provide environmental information shall contain the reasons for the refusal, whether and how the public interest served by disclosure has been taken into account and information on the review procedure provided for in Articles 16 to 19.

While the modifications in art.12 are evident, to clarify the modifications foreseen for art 15 we provide the following explanation:

In paragraph (1) we deleted „when it is possible” from the text.

Paragraph (2) is new, it aims to clarify what para (1) means by „separating” the information: anonymization of personal data and impossibility to view certain confidential (commercial, industrial, etc) information.

After the new para (2), old paragraphs were renumbered.

In paragraph (3) we have no modification.

In paragraph (4), which is the old paragraph (3) we provided that the motivation of the refusal must include reference to the public interest served by disclosure.

The text provided above has not been put through the legislative process.

Only for clarification we provide also the text of Article 11 because in Article 12 there are references to Article 11. Art.11 is not proposed to be amended.

## Article 11

(1) Public authorities may refuse a request for environmental information if:

(a) the information requested is not held by or for the public authority to which the request was made. In this case, if the public authority is aware that the information is held by or for another public authority, it shall forward the request to that authority as soon as possible, but no later than 15 days from the date of receipt of the request, and inform the applicant of this or inform the applicant of the public authority to which it considers that the request for information is likely to be submitted;

(b) the request is manifestly impracticable;

(c) the request is formulated in too general a manner, taking into account the provisions of Article 5;

(d) the request relates to material in the course of completion or to documents or data which have not been completed;

(e) the request concerns the internal communications system, taking into account the satisfaction of the public interest in providing information.

(2) If a request for environmental information is refused on the grounds that it concerns material in the course of completion, the public authority shall be obliged to inform the applicant of the name of the authority completing the material and the estimated date of completion.

(Translated with [www.DeepL.com/Translator](http://www.DeepL.com/Translator))

### 3. Text of the legislative amendments adopted to date

In 2018 Romania has adopted *Law no.292/2018 on environmental impact assessment for public and private projects*. In art 29 of this law there are special provisions on solving a request for environmental information; these provisions are meant to highlight the obligation of the public authorities to give precedence to the public interest when they are solving a request of environmental information.

We hereby furnish you Art.29 of the Law no.292/2018:

„Art.29

- (1) In the application of this Law, the competent authorities shall respect the restrictions imposed by legislation on commercial and industrial secrecy, including intellectual property, taking into account the need to protect the public interest.
- (2) In dealing with a request for environmental information subject to the restrictions laid down in paragraph 1, the competent authorities shall be obliged to interpret the grounds for refusal restrictively, giving priority to the public interest in disclosing and providing information that can be separated from that which is restricted.
- (3) In dealing with a request for environmental information as referred to in paragraph 2, the competent authorities shall explain how they have taken the public interest into account.
- (4) In case of application of Article 17, the transmission of information to other States and its receipt by the Romanian State shall be subject to the restrictions provided for by the national legislation in force in the State where the project is to be carried out.”

Under point 2 above we provided a text for the modification of two articles in the *GD no.878/2005 on public access to environmental information* still in force in Romania, the proposal aims to address para 2 (a) –(b) and para 7 (a) ii), iii) and iv).

Other requested legislative amendments as provided in the Strategy are not yet drafted.

We attach also the in house translation of the text of the *Law no.292/2018 on environmental impact assessment for public and private projects*.

**4. Implementation of the training activities in accordance with the specific objective 2 of Chapter II, pages 13-17 of the Strategy**

The specific objective 2 is: Training activities for central and local public administration civil servants, instructional workshops for magistrates and development of a FAQ brochure for public authorities responding to environmental information requests

Within this specific objective there are 3 issues that need to be addressed: two of them refer to training and the third refers to the FAQ brochure/Flyer for the public authorities.

The Flyer was done as explained above and is posted on the web page of the Ministry of Environment, Waters and Forests.

Due to the lack of human and financial resources and within the Ministry of Environment, Waters and Forests, and due to the unpropitious atmosphere created by the COVID 19 period in which health problems of the public servants obliged them to work at home, the training activities were postponed for 2022, 2023, 2024.