In house translation

Ministerial Order of the minister of environment, waters and forests no. 1608/2024 regarding the approval of the Guide of public authorities for public access to environmental information

Published in the Official Gazette, Part I no. 765 of August 5, 2024

Considering the Approval report no. DGEICPSC/125.713 from 10.07.2024 of General Directorate Impact Assessment, Pollution Control and Climate Change,

Taking into consideration the provisions of article 3 point (2) of the Convention on Access to information, Public Participation in Decision Making and Access to Justice in Environmental Matters, signed in Aarhus on 25 June 1998, ratified by Law no. 86/2000,

Acting under article 57 para. (1), (4) and (5) of Government Emergency Ordinance no. 57/2019 regarding Administrative Code, as further amended and completed, article 40^{1} of Government Decision no. 878/2005 on public access to environmental, as further amended and completed, and article 13 para. (4) of Government Decision no. 43/2020 regarding the organization and functioning of Ministry of Environment, Waters and Forests, as further amended and completed,

the minister of environment, waters and forests issues the following order:

Article 1. -

The guide of public authorities for public access to environmental information, set out in the annex which is part of this order, is approved.

Article 2. -

This order is published in the Official Gazette of Romania, Part I.

Minister of environment, waters and forests,
Mircea Fechet

ANNEX

The guide of public authorities for public access to environmental information

This guide represents an instrument dedicated to public authorities for guiding public workers involved in the process of answering requests for environmental information, regarding the consistent and efficient application of the Aarhus Convention.

The UNECE Convention on Access to information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus Convention) has been opened for signature on 25th June 1998 during the Fourth Ministerial Conference "Environment for Europe". The Convention has been signed by 39 states and it has been ratified by 48 states. Romania ratified the Aarhus Convention by Law no. 86/2000 which entered into force on the 11th of July 2000.

The purpose of this Guide is to ensure that public institutions and authorities are properly informed of the rights and obligations established by the Aarhus Convention, the Guide aims to facilitate access to the basic concepts of the Aarhus Convention in the case of addressing requests for environmental information, in accordance with the provisions of art. 4 of the Aarhus Convention. It is intended to raise awareness among public authorities dealing with requests for environmental information in relation to information of public interest, access to environmental information and classified information, especially regarding information considered to be professional secrets.

The Guide includes relevant examples from practice regarding the application of the provisions of the Aarhus Convention, in particular regarding art. 2 para. (3), about the definition of "environmental information" and art. 4 paras. (3) and (4), which regulates the exceptions from providing access to information requested by a member of the public.

For the correct interpretation of the provisions of the convention, this document is elaborated based on the Aarhus Convention Implementation Guide[1] elaborated by the Aarhus Convention Secretariat, as well as on the national provisions and the provisions of the European Union, which transpose the provisions of the convention, as well as the relevant jurisprudence in this field.

[1] The guide can be consulted at the following webpage https://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf
or on the webpage http://www.mmediu.ro/app/webroot/uploads/files/6_Aarhus_Implementation_Guide_interactive_eng.pdf.

What is the scope of the Aarhus Convention?

Article 1 of the Aarhus Convention provides that every Party to the Convention must guarantee the right to access to information, public participation in decision-making and access to justice in environmental matters, in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to their health and well-being. The Aarhus Convention highlights the link between environmental rights and human rights, focusing on the fact that sustainable development can be maintained only by involving all interested factors and by strengthening the interaction between the public and public authorities at all levels.

In order to achieve these objectives, the Aarhus Convention stands on three pillars:

- ensuring the public has a greater access to environmental information held by public authorities;
- ensuring public participation in environmental decision-making;
- ensuring wider access to justice in environmental matters in cases regarding infringement of the right to access to environmental information, as well as of the right to public participation in decision-making.

Based on the fact that the pillars of the Aarhus Convention imply a wide range of public institutions and authorities, it is necessary to ensure the compatibility of legislative measures and other implementing measures of the Convention, on one hand and the conduct of public institutions and authorities involved in their implementation, on the other hand.

Why access to environmental information?

Access to environmental information is the first of the pillars of the Aarhus Convention, rightfully analysed with priority, since public participation in decision-making depends on ensuring access to information to the members of the public. However, the public can request access to environmental information for a series of reasons, and not only for participating in the decision-making process, based on the fact that this principle is consecrated not only at the international and European Union level, but also through the national provisions encompassed in a wide range of legal acts, for example, Law no. 544/2001 on free access to information of public interest, as further amended, Government Decision no. 878/2005 on public access to environmental information, as further amended, Order of the Minister of Waters and Environmental Protection no. 1182/2002 for the approval of the methodology of the management and the supplement of the information on environment held by the public authorities for the environmental protection.

Public access to information, generally speaking, is recognized as a fundamental human right encompassed in international instruments. For example, article 10 of the European Convention on Human Rights highlights the fact that freedom to hold opinions and freedom to receive information are included in the freedom of expression.

The access to information pillar has two components: passive and active. The first component (passive) refers to the public's right to request environmental information from public authorities and the obligation of the latter to provide such information in response to this request, as stated in article 4 of the Aarhus Convention. The second component (active) refers to the right of the members of the public to receive environmental information and the obligation of public authorities to disseminate information of public interest, without a specific request being addressed in this regard, as stated in article 5 of the Aarhus Convention.

At national level, according to article 1 of Law no. 544/2001, as further amended, free access of a person to any information of public interest is one of the fundamental principles of the relationship between persons and public authorities. Also, according to art. 1 para. (2) of Government Decision no. 878/2005, as further amended, progressive dissemination and offering public access to environmental information aim at achieving the widest possible and systematic accessibility and dissemination of such information.

What does public authority mean as provided by the Aarhus Convention?

The definition of "public authority" is very important for achieving the scope of the Aarhus Convention and it is divided in four categories, in order to ensure as broad coverage as possible:

a) government at national, regional and other level;

The term "government" includes agencies, institutions, departments, bodies etc. of political power at all geographical and administrative levels. It is important to underline the fact that these entities are not only environmental authorities, their activity and responsibilities are irrelevant in this regard. In this context, all public authorities, regardless their functions can be included under this article.

b) natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment

c) any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs a) or b);

According to disposition 2 of the Judgment of the Court of Justice of the European Union in case C-279/12, Fish Legal and Emily Shirley v. Information Commissioner and others, the companies providing public services relating to the environment are under the control of a body or person falling within article 2, point 2, letters (a) or (b) of Directive 2003/4/CE[2], and should therefore be classified as 'public authorities' by virtue of Article 2(2)(c) of that directive, if they do not determine in a genuinely autonomous manner the way in which they provide those services since a public authority covered by Article 2(2)(a) or (b) of the directive is in a position to exert decisive influence on their action in the environmental field.

[2] Directive 2003/4/CE of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Directive 90/313/CEE of the Council.

d) the institutions of any regional economic integration organization which is a Party to the Convention.

Regional economic integration organizations are defined by the Aarhus Convention as representing entities constituted by States which are members of the Economic Commission for Europe, which have transferred their competence over matters governed by the Aarhus Convention, including the competence to enter into treaties in respect to these matters. The only such organization is the European Union, which is a Party to the Aarhus Convention since its adoption on the 17th of February 2005. The institutions of the European Union, such as: the European Parliament, the Council of the European Union, the European Commission, the European Economic and Social Committee, the European Committee of the Regions, the European Investment Bank, bodies, offices and agencies of the European Union are public authorities in the light of article 2 para. (2) of the Convention.

For example, at national level, the following authorities whose activity interferes with the activity of environmental protection authorities were identified: the Ministry of Environment, Waters and Forests and its subsidiary authorities, Ministry of Development, Public Works and Administration

(including townhalls), National Administration Romanian Waters, the Ministry of Agriculture and Rural Development, the Ministry of Economy, Entrepreneurship and Tourism, the Ministry of Energy, the Ministry of Transport and Infrastructure, the Ministry of Health, the Ministry of Culture, the Ministry of Research, Innovation and Digitalization, National Authority for the regulation of Mining, Oil and Geological Storage of Carbon Dioxide, the Nuclear Agency and for Radioactive Waste, the National Commission for Nuclear Activities Control, the National Institute of Public Health, the Lower Danube River Administration, the Ministry of Internal Affairs, the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of Investments and European Projects, the Ministry of Justice.

This list does not exclude the possibility that any other public authority collects and processes environmental information.

The Court of Justice of the European Union offers clarifications regarding the exception of institutions and bodies when acting in a juridical or legislative capacity. According to Case C-515/11 Deutsche Umwelthilfe eV v. Bundesrepublik Deutschland, the option of bodies or institutions acting in a legislative capacity to not being required to allow access to environmental information which they hold, is not applied to ministries when they prepare and adopt normative regulations which are of a lower rank than a law.

What is environmental information?

The Convention recognizes the importance of the integration of environmental issues in decision-making at governmental level, as well as the necessity that public authorities hold clear, complete and updated environmental information.

The aim of the Aarhus Convention is not that of defining the term "environmental information" in an exhaustive manner, allowing a certain level of interpretation on behalf of the public authorities, but rather offers, in accordance with article 2 para. (3), a wide definition divided into three categories:

a) the state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

b) factors, such as substances, energy, noise and radiation, and activities and measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analysis and assumptions used in environmental decision-making;

c) the state of human health and safety, conditions of human life, cultural sites and built structures and the way they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph b).

Public authorities shall not narrow the level of interpretation of the notion "environmental information". Environmental information can be found in any form: written, visual, audio, electronic or any other material form.

The definition does not include bodies or institutions acting in a judicial or legislative capacity. This exception applies not only to national parliaments or courts of justice, but also to executive bodies, only for those situations when they perform legislative or judicial functions. However, authorities performing such functions can voluntarily ensure access to information which is subject to such procedures, without being considered non-compliant with the provisions of the Convention.

A situation where public authorities from Romania did not correctly interpret the requested information as representing "environmental information" had been analyzed, for example, in the Case ACCC/C/2012/69[3] of the Aarhus Convention Compliance Committee. Public authorities concerned in this case refused to provide access to the requested information on the grounds that it does not fall within the definition of "environmental information" in article 2, paragraph (3) of the Convention. More exactly, the grounds for refusal were that the archaeological discharge certificate as well as the accompanying documentation, including the archaeological study, cannot be considered as representing "environmental information" as defined by the Convention. Moreover, it had been wrongfully stated that neither the mining licences requested in this matter, nor other information regarding the mining activity represent environmental information. However, based on the Compliance Committee's analysis and interpretation, all these documents represent "environmental information".

[3] Document ECE/MP.PP/C.1/2015/10 can be found at the following link: https://unece.org/fileadmin/DAM/env/pp/compliance/CC-51/ece.mp.pp.c.1.2015.10_ advance_edited.pdf.

The Committee recalls the fact that the definition of "environmental information" in the Convention includes, inter alia, any information under any material form regarding "cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment". Therefore, the archaeological study includes information regarding cultural sites and built structures (in this case, the Roman ruins), which may be affected by activities or measures, including administrative measures. For example, the archaeological discharge certificate represents environmental information, as provided by article 2, para (3), because it is an administrative measure which affects or may affect the state of the elements of the environment (for example, soil, land, landscape and natural sites). The Committee considers that the definition of environmental information is wide enough to include the archaeological study.

The jurisprudence of the Court of Justice of the European Union brings clarifications regarding what information may be considered environmental information within the scope of the Aarhus Convention. For example, the judgement of the Court of Justice of the European Union in Case C-321/96 Wilhelm Mecklenburg v. Kreis Pinneberg - Der Landrat, para. 19-21, shows that the term "environmental information" has a wide meaning. The term "administrative measures" is given as an example and it represents only an illustration of the "activities" and "measures" included in the definition for "environmental information". In order to be considered "environmental information" it is sufficient for the statement of views put forward by an authority to be an act which may affect or protect the state of one of the elements of the environment.

Also, the judgement of the Court of Justice of the European Union in Case C-233/00 European Commission v. France, the court shows that the wording of the definition for 'environmental information', in particular, the use of the words 'any... information', determines that the scope of

application is wide. It thus covers all information which relates either to the state of the environment or to activities or measures which could affect it, or to activities or measures intended to protect the environment, without the list in that provision including any indication such as to restrict its scope. Moreover, at para. 47 the court shows that "environmental information must be understood to include documents which are not related to carrying out a public service".

In regard to information presented in a national permitting procedure, these are included in the category of environmental information, according to para. 60, 1) of the Judgement of the Court of Justice of the European Union in Case C-266/09 Stichting Natuur en Milieu and others v. College voor de toelating van gewasbeschermingsmiddelen en biociden.

Who can request environmental information?

Environmental information can be requested by any natural or legal person, and, according to the national legal provisions and with the practice in this field, by any organization, association or their groups, including entities without legal personality, without an interest having to be stated or proved. Access to environmental information must be ensured to the categories of persons previously mentioned, regardless of citizenship, nationality, domicile or residence.

What is a request for environmental information?

A request for environmental information can represent any communication from a member of the public to a national authority for such information.

The Convention does not provide for a specific form of such a request, meaning that any request, written or oral, will be considered valid. However, a clearer content of the request helps in avoiding delays from public authorities in providing an answer, especially when the relevance for the environment of the requested information cannot be easily established.

The Convention does not establish criteria regarding requests of environmental information, but provides that the refusal for providing is justified when the request is manifestly unreasonable or formulated in too general a manner.

Is justifying an interest necessary when requesting environmental information?

Public authorities must provide access to environmental information, by also ensuring compliance with the national legal provisions and to also provide the public with copies of the documentation containing or comprising such information, without an interest having to be stated.

Public authorities shall not impose any condition regarding the existence of an interest on behalf of the member of the public who requested the information, and, therefore, the refusal to provide such information by a public authority based on the lack of such interest or because it was not provided with a reason for such a request is not allowed under the provisions of the Convention.

What form shall the environmental information disclosed by a public authority have?

As a rule, public authorities shall provide the environmental information in the form requested by the members of the public (on paper, electronic form, video material, recording etc.).

However, the Convention provides certain exceptions to the requirement that information should be provided in the form requested by a member of the public:

(i) it is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form.

In the light of this exception, several benefits can be highlighted for the public authority having the requested environmental information in a different form than the one specified by the member of the public. For example, if the public authority has the information in electronic form, and a member of the public requests for the written form, on paper, providing it by the public authority could be done much faster in the electronic form, with lower costs or no costs at all.

(ii) The information is already publicly available in another form – from this perspective, we need to underline the fact that the public authority shall provide the information already publicly available in another form, when it is not easily accessible to the member of the public who requested it. Therefore, it is necessary that the information is already accessible, and its form is the functional equivalent of the form requested (for example, it cannot be a summary).

When shall the environmental information be disclosed by a public authority?

As a rule, environmental information which had been requested by a member of the public shall be made available by the public authority as soon as possible and at the latest within one month after the request has been submitted.

"As soon as possible" – practice has shown than this term can differ depending on the organizational aspects of each public authority, but, in more general terms, it shall be understood as representing a few days from the date of the submission of the request for environmental information to that public authority.

By exception, if the volume and the complexity of the information justify an extension of this period, the environmental information can be made available at the latest within two months after the request. In this case, the member of the public needs to be informed by the public authority about the extension of this timeframe, but also about the reasons which led to such an extension. In this regard, criteria could be established regarding qualifying the requested information as presenting a certain level of complexity or implying a volume which justifies the extension of the term up to two months. The national legislation completes the provisions of the Aarhus Convention regarding the extension of the term for providing a response up to two months, establishing deadlines for public authorities to comply with for justifying the timeframe for providing a reply. In this regard, according to article 4, para. (2) of Government Decision no. 878/2005, as further amended, the requester is informed, as soon as possible and at the latest within one month, about the extension of the deadline for providing a response and the reasons which justify such an extension.

The Aarhus Convention does not clearly establish the moment these terms begin, referring only to the moment of the submission of the request of environmental information by a member of the public. The provisions of the Convention are completed by provisions encompassed in the national

legislation in force. For example, Government Decision no. 878/2005, as further amended, provides, in article 4, para. (2), that the term starts from the date of receiving the request by the public authority, more exactly, from the date of its registration.

When can a request for environmental information be refused by a public authority?

The Aarhus Convention provides situations when the public authority can refuse providing environmental information to a member of the public. Therefore, such a refusal is permitted in the following cases:

1. the public authority to which the request is addressed does not hold the environmental information requested;

The information held by a public authority shall not be limited to information that was generated by or falls within the competence of the public authority, but also includes the environmental information relevant for its functions[4]. However, in the situation the public authority does not hold the requested environmental information, it has two possibilities:

4 In accordance with the provisions of article 5 point 1 letter a) of Aarhus Convention.

- it shall inform the applicant, as soon as possible, regarding the public authority which may hold the environmental information; or

- it can transfer the request, as soon as possible, directly to the correct public authority and notify the applicant that it has done so[5].

5 An example in this regard in the jurisprudence of the courts of justice in Romania is analyzed in Civil Decision no. 2104/2012 of Court of Appeal Constanța (http://www.rolii.ro/hotarari/589a1a1ae490098c0a000411).

At national level, Government Decision no. 878/2005, as further amended, sets a timeframe of maximum 15 days after the date of the request in order to proceed according to the abovementioned provisions.

However, it is important to note that the public authority to which the request is addressed and which does not hold the requested environmental information, does not have the obligation to guarantee it, acting under the Aarhus Convention, even though it would be a good practice considering its objectives.

2. the request is manifestly unreasonable or formulated in too general a manner;

The Aarhus Convention does not establish criteria for considering a request "manifestly unreasonable", but this situation cannot refer to the volume and complexity of the information, because such cases may only justify an extension of the timeframe the public authority shall provide the requested environmental information to two months, as mentioned before.

Public authorities can, as well, refuse a request for environmental information if it is formulated in too general a manner. The Convention does not define this criterion, but an example in this regard could be the request by a member of the public for all documents regarding a specific animal breed. Such a request can be considered too general, therefore, the public authority, taking into account the national legal provisions (which are more restrictive in this case) shall request further

information in order to identify it and only in the situation where the applicant has not transmitted this information in time, the public authority has the right to refuse the request. The Convention highlights the obligation of the Parties that, through their officialities and public authorities, to assist and to guide the public with the aim of facilitating access to information.[6] By doing so, situations when a request is manifestly unreasonable or formulated in too general a manner could be avoided.

6 Aarhus Convention, article 3, point 3.

According to article 5 of Government Decision no. 878/2005, as further amended, in case the request is too general, unclear or it does not allow for the identification of the requested information, the public authority asks the applicant for explanations, as soon as possible and at the latest within one month after the request has been submitted. Also, the public authority helps the applicant through providing information related to the use of public registers containing environmental information held by it. If no answer on additional indications is received within 2 months from the applicant, then the public authority can refuse the request on the basis that the request is formulated in too general a manner.

3. 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.

The Aarhus Convention does not define "documents in course of completion". However, it relates to the process of preparation of the information or the documents containing such information, and not to any decision-making process for the purpose of which the given information or document has been prepared. More exactly, a request for raw environmental information (for example, data collected from an air quality monitoring station) cannot be refused on the grounds that it is material in course of completion for its publication after validation and processing. Moreover, the existence of documents containing draft environmental information (not yet finalized or the decision referring to such information has not been issued) does not justify the refusal on the basis of this exception, and therefore they shall be made available. For the correct interpretation of the words "in course of completion", the provisions of the Convention are intended to clarify this aspect, for example regarding public participation in decision-making where certain draft documents must be accessible for public review: draft of documents such as permits, environmental impact assessments, policies, programmes, plans and executive regulations that are open for comment under the Convention cannot be considered "materials in the course of completion" under this exception.

Also, according to article 11, para. (2) of Government Decision no. 878/2005, as further amended, in case a request for environmental information is refused for the reason that it is a material in course of completion, the public authority shall inform the applicant about the name of the public authority which makes the material and the approximate date of its finalization. For example, in the findings and recommendations of the Aarhus Convention Compliance Committee, ACCC/C/2010/51[7] regarding Romania, the Committee stated that "material in the course of completion" relates to the process of preparation of information or a document and not the entire decision-making process for the purpose of which given information or documentation has been prepared.

[7] Document ECE/MP.PP/C.1/2014/12 can be consulted at the following link: https://mmediu.ro/app/webroot/uploads/files/7_ece_mp.pp_c.1_2014_12_e.pdf

Regarding "internal communications", the opinions and declarations expressed by public authorities in their capacity of consultative entities in the process of decision-making are not subject to this exception. Moreover, once a particular information has been disclosed by the public authority to a third party, whoever the third party is, it cannot be claimed to be an "internal communication".

The Court of Justice of the European Union brings clarifications regarding the term "internal communications" in Case C-619/19 Land Baden Württemberg vs. D.R., at para. 72. This term "covers all information which circulates within a public authority and which, on the date of the request for access, has not left that authority's internal sphere – as the case may be, after being received by that authority, provided that it was not or should not have been made available to the public before it was so received."

The applicability of the exception to the right of access to environmental information provided for by it in respect of internal communications of a public authority is not limited in time. However, that exception can apply only for the period during which protection of the information sought is justified.

What are the reasons for a refusal of a request of environmental information taking into account the effect the disclosure could have?

A request for environmental information can be refused in certain situations, if the disclosure would have negative effects on other information, rights, interests or aspects. It is important to mention that in any case, the public interest served by disclosure shall be compared with the interest satisfied by keeping the confidentiality.

1. The confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law

The Aarhus Convention does not define "proceedings of public authorities", but it can be interpreted as relating to proceedings concerning the internal operation of a public authority and not to deliberations made in its field of competence. In this regard, public authorities do not have a right to unilaterally decide whether a proceeding is confidential or not for refusing access to environmental information, but it is necessary that national legislation defines and establishes some criteria for determining the confidentiality.

2. International relations, national defence or public security

When providing environmental information would adversely affect international relations, national defence or public security, public authorities shall analyze whether, by disclosing environmental information, one of these elements, which are not defined by the Convention, is affected.

3. 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

"The course of justice" refers to ongoing proceedings in front of a court, proceedings which are susceptible to be affected by the disclosure of the requested information.

The right of a person to receive a fair trial is a fundamental right, consecrated at international level (for example, the European Convention on Human Rights[8]), as well as at the European Union level (for example, The Charter of Fundamental Rights of the European Union[9]) and at the national level (through constitutional provisions[10] and through other legal provisions). In case the disclosure of the requested environmental information would adversely affect exercising this right, the public authority can refuse to disclose it. This provision must be interpreted in the light of the provisions regarding the rights of the accused person.

8 European Convention on Human Rights- article 6.

9 The Charter of Fundamental Rights of the European Union - article 47.

10 Constitution of Romania - article 21.

Public authorities may refuse disclosing environmental information when such a request has been submitted to it, if this would adversely affect the conduct of an enquiry of a criminal or disciplinary nature. It is important to state that neither the provisions of the convention, nor the national provisions include all types of enquiries; for example, civil and administrative enquiries are not covered by this exception.

4. 4. The confidentiality of commercial and industrial information, where such confidentiality is provided 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

This exception from disclosing environmental information aims to protect certain legit economic interest of private entities, as well as of public entities or of the State itself.

For this exception to be applicable, allowing public authorities to refuse a request for information, national legislation shall clearly provide the significance and the type of commercial and industrial secrets. Moreover, the confidentiality shall lead to the protection of a legitimate economic interest. For example, a State-run enterprise operating in a monopolistic manner could hardly prevail of the confidentiality of commercial information, since there are no companies which could benefit from the disclosure of such information.

Also, according to article 12, para. (1), letter c) from Law no. 544/2001, as further amended, the refusal of a request for information regarding commercial or financial activities is legitim when the disclosure of information would affect the right to intellectual or industrial property, or the principle of loyal competition, according to law.

Law no. 182/2002 on the protection of classified information, as further amended, article 15, defines series of important terms for determining the confidential nature of certain information, as follows:

• classified information – any information, data, documents of interest for the national security, which must be protected because of their degree of importance and the consequences that might arise due to their unauthorized disclosure or dissemination;

• state secret information – any information related to the national security whose disclosure could be detrimental to the national security and state defence. Information from this category is given the following levels of secrecy:

- top secret with high importance – information whose unauthorized disclosure may produce damages of an exceptional gravity to the national security;

- top secret – information whose unauthorized disclosure may bring about serious damage to the national security;

- secret – information whose unauthorized disclosure may bring about damage to the national security.

• secret of service – any information whose disclosure could harm a legal person under public or private law.

Any information related to emissions significant for the protection of the environment will be disclosed, regardless the quantity of such emissions. In this regard, public authorities do not have the right to refuse a request for information related to emissions into the environment, by invoking one of the exemptions provided by the Aarhus Convention. This matter is also reflected in Government Decision no. 878/2005, as further amended, at article 12, para (4).

According to Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control), "emission" means "the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in the installation into the air, water or land." Similarly, the Emergency Ordinance no. 195/2005 on environmental protection, approved with amendments by Law no. 265/2006, as further amended, defines the term "emission" as meaning "the direct or indirect release, from punctual and diffuse sources, of substances, vibrations, electromagnetic and ionizing radiations, heat or noise into the air, water or land."

The Court of Justice of the European Union offers clarifications on the term "information on emissions into the environment" in Case C-442/14 Bayer CropScience and Stiching de Bijenstichting v. College voor de toelating van gewasbeschermingsmiddelen en biociden. According to para. 71, the concept of "emissions into the environment" should not be restricted to emissions emanating from certain industrial installations. Also, according to para. 72, the restriction to emissions from industrial installations would be contrary to the express wording of point (d) of the first subparagraph of Article 4(4) of that Aarhus Convention, which states that information on emissions which is relevant for the protection of the environment must be disclosed. Therefore, information concerning emissions emanating from sources other than industrial installations, such as those resulting from the application of plant protection products or biocides, are just as relevant to environmental protection as information relating to emissions of industrial origin. Also, according to para. 75 from judgement in Case C-442/14, it is not necessary to make a distinction between the concept of "emissions into the environment" and those of "discharges" and "releases" or to confine that concept to the emissions covered by Directive 2010/75 of the European Parliament and of the Council on industrial emissions, excluding the release of products or substances into the environment emanating from sources other than industrial installations. Moreover, according to para. 79, "emissions into the environment" covers emissions which are actually released into the environment at the time of the application of the product or substance in question and foreseeable emissions from that product or that substance

into the environment under normal or realistic conditions of use of that product or substance corresponding to those under which the authorization to place the product in question on the market is granted and which prevail in the area where that product is intended for use. Within the same judgement, at para. 103, the court shows that the concept of 'information on emissions into the environment' includes information concerning the nature, composition, quantity, date and place of the 'emissions into the environment', and data concerning the medium to long-term consequences of those emissions on the environment, whether the data come from studies performed entirely or in part in the field, or from laboratory or translocation studies.

In Court of Justice of the European Union in case C-71/10 Office of Communications v. Information Commissioner, the court shows that a public authority that holds environmental information or such information is held on its behalf, when weighing the public interests served by disclosure against the interests served by refusal to disclose, in order to assess a request for that information to be made available to a natural or legal person, may take into account cumulatively a number of the grounds for refusal set out in this provision.

5. Intellectual property rights

The concept of intellectual property rights includes copyright (regarding art, literature, music etc.), patents (ideas and inventions), trademarks (symbols, names), commercial secrets, databases, drawings and industrial designs.

Public authorities have the right to refuse disclosing environmental information on the basis of protecting the intellectual property rights, when this refusal is founded and justified.

For example, in the case of the Aarhus Convention Compliance Committee, ACCC/C/2005/15[11], regarding Romania, the Committee examined the legality of qualifying by a public authority of an environmental impact assessment documentation as representing the property of the person that undertook the documentation. The Committee concluded that environmental impact assessment studies are prepared for the purposes of the public file in administrative procedure and, based on it, the environmental agreement is issued, which is an administrative act representing environmental information, because it is an administrative measure[12]. Therefore, the author or developer should not be entitled to keep the information from public disclosure on the grounds of intellectual property law.

11 Document ECE/MP.PP/2008/5/Add.7 can be consulted at the following link: https://unece.org/fileadmin/DAM/env/documents/2008/pp/mop3/ece_mp_pp_2008_5_add_7_e.pdf

12 Article 2, point 3 letter b) of Aarhus Convention.

Moreover, in the case of the Aarhus Convention Compliance Committee, ACCC/C/2012/69[13], regarding Romania, the Committee pointed out the fact that access to an archaeological study shall not be refused on the ground that the study is the intellectual property of the archaeologist who carried out the study, especially when this study is the basis for issuing the archaeological discharge certificate. In this regard, an archaeological study should be treated similarly to environmental impact assessment studies.

13 Ibid, p. 1.

6. 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

Public authorities shall ensure that by disclosing environmental information, the provisions regarding the protection of personal data are complied with and, therefore, the rights protected by these provisions are not infringed. This exception does not refer to legal persons, such as companies or organizations, but it aims to protect documents such as employee records, salary history, health records.

Public authorities from Romania shall comply not only with national legislation regarding the protection of personal data, but also with the provisions encompassed in European Union legal acts.

Therefore, according to article 14 of Government Decision no. 878/2005, as further amended, public authorities take into consideration the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

Also, the Panel on Reviews in the interest of law of the High Court of Cassation and Justice, by Decision no. 37/2015 shows that public access to information of public interest must be allowed, after the anonymization of information related to personal data, encompassed in the same document, regardless of its form and the way this information is expressed.

The decisions of the High Court of Cassation and Justice, pronounced by the Panel for the delegation of legal matters, represent a source of law in the national legal system and, therefore, are binding. For example, according to article 521 para. (3) of Law no. 134/2010 regarding the Code of Civil Procedure, as further amended, the release given to the legal issues is mandatory for the court that requested the release from the date of the decision, and for the other courts, from the date of publication in the Official Gazette of Romania, Part I.

7. 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

This exception is meant to encourage the voluntary flow of information from private persons to public authorities. It applies only in situations where the third party has voluntarily supplied such information to public authorities and for which that party had not consented to the release of the material. For example, if the third party had been legally obliged to provide such information, the requirements provided by this exception are not met.

8. The environment to which the information relates, such as the breeding sites of rare species

Public authorities may refuse disclosing environmental information to the public, if such disclosure would adversely affect the environment. The aim of this exception is to allow the state, through its authorities, the possibility to protect, for example, certain sites, such as the breeding sited of rare species.

How shall public authorities proceed in the situation of a request for confidential information?

Regarding the confidentiality of the information requested by the public, the Aarhus Convention provides the obligation of a public authority to separate confidential information from non-confidential information when dealing with information requests, without prejudice to its possible confidentiality exempted. More exactly, public authorities shall, whenever possible, disclose that part of the environmental information which can be made available and which does not have a confidential nature.

In practice, public authorities shall mark out the confidential information which cannot be disclosed to the public. Limiting public access to confidential environmental information cannot be interpreted as denying access to environmental information.

For example, in the case of the Aarhus Convention Compliance Committee, ACCC/C/2012/69[14], regarding Romania, the Committee found Romania to be in non-compliance with the provisions of the Aarhus Convention because of denying access to information regarding mining on the ground that their disclosure would adversely affect the confidentiality of commercial and industrial information, based on two reasons:

14 Ibid, p. 1.

- confidential information had not been separated from non-confidential information;

- the grounds for refusal of a request for information had not been brought to the applicant's attention – the public authority had not provided any response.

Regarding the disclosure of information which are subject to a procedure for failure of a Member State to fulfil an obligation under the European Union Law (the infringement procedure), The Court of Justice of the European Union presents explanations in the Judgement for Case C-514/11P and C-605/11P Liga para a Protecção da Natureza (LPN) and Republic of Finland v the European Commission and others. According to para. 63, the disclosure of the documents concerning an infringement procedure during its pre-litigation stage would be likely to change the nature and progress of that procedure, given that it could prove even more difficult to begin a process of negotiation and to reach an agreement between the Commission and the Member State concerned putting an end to the infringement alleged, in order to enable European Union law to be respected and to avoid legal proceedings. Also, according to para. 65, it can be presumed that the disclosure of the documents concerning an infringement procedure during its pre-litigation stage risks altering the nature of that procedure and changing the way it proceeds and, accordingly, that disclosure would in principle undermine the protection of the purpose of investigations. Moreover, according to para. 66, that general presumption does not exclude the possibility of demonstrating that a given document disclosure of which has been requested is not covered by that presumption, or that there is an overriding public interest justifying the disclosure of the document concerned.

How shall public authorities interpret these exceptions?

The grounds for refusal covered by the Aarhus Convention shall be interpreted restrictively, taking into account the satisfaction of the public interest in the disclosure of the information, on one hand, and the possibility that the information requested is related to emissions into the environment, on

the other hand. The fact that the requested environmental information falls under one of the categories of exceptions mentioned above is not sufficient to justify invoking the exception.

The European Court of Human Rights is one of the international courts that has considered on several occasions the balancing exercise of satisfying the public interest by disclosing information and the refusal to disclose such information on the grounds that it falls within one of the exceptions provided for in the Aarhus Convention. For example, in Case McGinley and Egan v. The United Kingdom of Great Britain and Northern Ireland, the Court has analyzed the relevance of article 8 of the European Convention on Human Rights in justifying the disclosure of information, article which refers to respecting private and family life. In this regard, in the case, the fact that exposure to high radiation levels has been hidden, while having a serious and long-lasting effect on human health, is justified to create a state of restlessness over the population. The Court considers that, since documents containing information could be essential for applicants to determine the level of radiation at which they might had been exposed and could contribute to providing the population with that information, they have an interest under Article 8 of the European Convention on Human Rights to gain access to this information. The Court has ruled that in situations where a national government carries out hazardous activities such as those involving radiation and which could have adverse health consequences for those involved in those activities, respect for privacy under Article 8 of the European Convention on Human Rights requires the establishment of an efficient and accessible procedure to enable these people to search for all relevant information.

Moreover, in Case Taşkin and others v. Turkey no. 46117/99, para. 113, it has been pointed out that article 8 of the European Convention on Human Rights applies to severe environmental pollution which may affect individuals' well-being and their private and family life adversely, without, however, seriously endangering their health. The same is true where the dangerous effects of an activity to which the individuals concerned are likely to be exposed have been determined as part of an environmental impact assessment procedure in such a way as to establish a sufficiently close link with private and family life for the purposes of Article 8 of the European Convention on Human Rights.

The jurisprudence of the European Union has also analyzed on multiple occasions the way the overriding public interest and the nondisclosure of certain information could be balanced. An example in this regard is para. 92 of the judgement in Case T-306/12 Darius Nicolai Spirlea and Mihaela Spirlea v. the European Commission, where the Court stated that a statement of purely general considerations is not sufficient to establish that an overriding public interest outweighs the reasons justifying a refusal to disclose the documents.

The public interest should be analyzed on a case-by-case examination when determining which one of the exceptions is applicable. This was highlighted also in para. 59 of the judgement of the Court of Justice of the European Union in Case C-266/09 Stichting Natuur en Milieu and Othersv College voor de toelating van gewasbeschermingsmiddelen en biociden, which shows that the balancing exercise between the public interest served by the disclosure of environmental information and the specific interest served by a refusal to disclose must be carried out in each individual case submitted to the competent authorities, even if the national legislature were by a general provision to determine criteria to facilitate that comparative assessment of the interests involved.

Public authorities shall explicitly specify how the public interested served by the disclosure of environmental information has been taken into account. In this regard, a relevant indicator in

balancing these two elements is represented by human health. When the activities undertaken have adverse impact on human health, the overriding public interest should be presumed as a matter of good practice. For example, in the case of installations for intensive rearing of poultry or pigs, the smell can represent an important environmental issue which is likely to adversely affect the health of the population living in the proximity of these farms.

For example, Regulation (EC) No. 1367/2006 of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters to Community institutions and bodies presumes that an overriding public interest in disclosure shall be deemed to exist where the information requested relates emissions into the environment.

Also, para. 39 of the judgement in Case T-264/04 WWF European Policy programme v. the Council of the European Union of the Court of First Instance, in order for those exceptions to be applicable, the risk of the public interest being undermined must therefore be reasonably foreseeable and not purely hypothetical.

How shall the public authority respond to the applicant in case of a refusal?

The refusal of a request shall be addressed in writing, if the request was made in writing or the applicant so requests. In any case, a refusal shall state the reasons for it and give information on access to the review procedure provided for in accordance with the provisions of the Aarhus Convention.

As well as the disclosure of environmental information to a member of the public, the refusal shall also be made as soon as possible and at the latest within one month, unless the complexity of the information justifies an extension of this period up to two months after the request has been submitted.

Moreover, the applicant shall be informed of any extension and of the reasons justifying it. This obligation is applicable to oral refusals, as well as to written refusal. A complete justification of the reasons for the refusal may offer the applicant the possibility to rephrase and to resubmit the request. The reasons for refusal could include: determining the fact that the requested information is subject to one of the exceptions, but only after balancing the overriding public interest served by the disclosure of environmental information and the specific interest served by a refusal to disclose such information; the fact that the request had been formulated in too general a manner or that the public authority to which the request is addressed does not hold the environmental information requested and it does not have knowledge of other public authority holding the information.

Are there any charges for providing environmental information by the public authority?

In 2009, considering the article VI, letter c) of the Government Emergency Ordinance no. 70/2009 for the amendment and completion of some normative acts regarding non-fiscal taxes and tariffs, approved by Law no. 8/2010, the provisions of Government Decision no. 878/2005, as further amended, which referred to tariffs application by public authorities for copying documents requested by the public, were repealed. More precisely, articles 30 and 31 of Government Decision no. 878/2005, as further amended, were repealed. Considering the abrogation of these provisions regarding copying tariffs, Annex G to the Methodology for management and provision of

environmental information held by environmental public authorities, approved by Order of the minister of water and environmental protection no. 1182/2002, called "Tariffs for the processing/copying of environmental information provided on request by public authorities for environmental protection" is no longer applicable.

How can the public appeal a response of a public authority regarding a request for environmental information?

Any member of the public who requested an environmental information and who considers that his or her request has been wrongfully refused, whether in part or in full, ignored or inadequately answered, can file a preliminary complaint to the head of the public authority, with the aim of reviewing the acts and omissions. Moreover, the Convention provides for access to a review procedure before a court of law or another independent and impartial body established by law. In any case, the scope of such review procedures cannot be limited only to either substantive or procedural aspects, as both aspects shall be analyzed.

The Convention does not condition the applicant's access to a judicial review procedure to the initial exhaustion of administrative remedies, but it does not oppose to a provision in this regard in case such a requirement exists under national law. In Romania, the two remedies are separated and they not interdependent. For example, in Decision no. 118/2010 of the Court of Appeal of Timișoara, the court stated that the national provisions transposing those of the Aarhus Convention[15] provide "the possibility, and not the obligation of a preliminary administrative review procedure". As a consequence, a judicial review procedure before the court for administrative appeal, for example, can be triggered independently of the exhaustion of the preliminary administrative procedure.

15 For example, art. 22 para. (1) of Law no. 544/2001 on free access to information of public interest, or art. 16 para. (1) of Government Decision no. 878/2005, as further amended.

By exception, Law no. 292/2018 on the impact assessment of the effects of certain public and private projects on the environment provides the obligation for the public, as it is defined by law, to preliminarily address the issuing public authority of the screening stage or the higher public authority along the chain of command, requesting it to revoke, in whole or in part, the decision. The request must be registered within 30 days from the date the respective decision has been brought to the public knowledge, and the public authority has the obligation to provide a response to the preliminary complaint within 30 days from the date of its registration by that public authority. The procedure for resolving the preliminary complaint shall be timely, equitable and fair and it shall not involve costs for the interested person.

The Aarhus Convention analyzes the pillar of access to justice in environmental matters from two perspectives: regarding public access to environmental information and regarding public participation in environmental decision-making. Taking into consideration the second perspective, the convention provides that members of the public shall be guaranteed access to a review procedure before a court of law and/or another independent and impartial body established by law, with the aim to challenge the legitimacy of any decision, act or omission subject to the provisions on public participation in environmental decision-making. Unlike access to justice regarding access to information, in this case the member of the public shall prove having a sufficient interest or, alternatively, maintaining impairment of a right.

As an example, Law no. 292/2018 regulates access to justice for any person who is a member of the public concerned or who considers himself/herself to be harmed in his or her right or interest. They may challenge before the Administrative Litigations Court the acts, decisions and omissions of competent public authorities relating to decision-making in environmental matters. The Administrative Litigations Court shall rule on substantial matters, as well as on procedural matters of public participation in environmental decision-making.

As regards public participation during the preparation of plans, programmes and policies relating to the environment, each Party shall make all appropriate practical measures and/or other provisions for the public to participate during the preparation of the plans, programmes and policies relating to the environment. Public participation shall be ensured within a transparent and fair framework, having provided the necessary information to the public. The potential public shall be identified by the public authority, taking into account the objectives of the Aarhus Convention and the national legislation in force which transposes its provisions. The public authority shall endeavor to provide opportunities for public participation in the preparation of policies relating to the environment.

Non-governmental organizations which fall within the specific definition of the public provided by the Aarhus Convention shall be deemed to have a sufficient interest or to have rights capable of being impaired, thus fulfilling the requirements regarding standing. Explanations on this matter are offered in para. 38, 39, 46 and 47 of the judgement of the Court of Justice of the European Union in Case C-115/09 Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV versus Bezirksregierung Arnsberg[16].

16 Regarding the access to remedies used by the environmental non-governmental organizations, the judgement of the Court of Justice of the European Union in Case C-115/09 Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV versus Bezirksregierung Arnsberg, states the following:

Para. 38. With regard to the conditions of the admissibility of the review procedures, two possibilities are provided: the admissibility of an action may be conditional to "a sufficient interest in bringing the action" or on the applicant alleging "the impairment of a right", depending on which of those conditions is adopted in the national legislation.

Para. 39. With regard to actions brought by environmental protection organizations [...] such organizations must be regarded as having either a sufficient interest or rights which may be impaired, depending of which of those conditions of admissibility is adopted in the national legislation.

Para. 46. If those organizations must be able to rely on the same rights as individuals, it would be contrary to the objective of giving the public concerned wide access to justice and at odds with the principle of effectiveness is such organizations were not also allowed to rely on the impairment of rules of EU environment law solely on the ground that those rules protect the public interest. […] That very largely deprives those organizations of the possibility of verifying compliance with the rules of that branch of law, which, for the most part, address the public interest and not merely the protection of the interests of individuals as such.

Para. 47. It follows that the concept of "impairment of a right" cannot depend on conditions which only other physical or legal persons can fulfil, such as the condition of being a more or less close

neighbour of an installation or of suffering in one way or another the effects of the installation's operation

The system of administrative procedures is not intended to infringe the applicant's right to appeal to a court of justice, but in practice it has been demonstrated that this preliminary procedure has been able to resolve the complaint in a timely manner, thus avoiding judicial proceedings. Through the preliminary administrative procedure, decisions on access to information can be considered by the public authority in question or through an administrative procedure, such means being much faster and more accessible in terms of costs.

The Aarhus Convention emphasizes the need that such mechanisms (administrative or judicial) are not burdensome in terms of cost and, where possible, free of charge or inexpensive. A court appeal can be time-consuming and expensive and access to information is often needed quickly.

When the applicant has not received any reply to his/her preliminary complaint within the legal timeframe, he/she can take legal action before the jurisdictional Administrative Litigations Court for the examination of the acts and omissions by public authorities in question. Moreover, a third party considering himself/herself aggrieved with respect to a right or a legitimate interest, he/she may take a legal action before the competent Administrative Litigations Court with regard to the disclosure of environmental information.

The preliminary complaint addressed to the head of the public authority in question is settled in Romania in accordance with the provisions of Law no. 544/2004 on Administrative Litigations and it is free of charge. According to article 7, para. (1) the request to revoke, all or part of an administrative decision is filed within 30 days of notice of such decision. According to article 8, para. (1), a person dissatisfied with the response received to his/her preliminary complaint or who has not received any reply within 30 days of submission date, may take legal action before the jurisdictional Administrative Litigations Court, requesting the revocation of all or part of the administrative decision in contention, reparations for the loss sustained and retributory damages.

Also, the party that feels aggrieved with respect to a legitimate right through the failure of the administration to provide resolution of his/her case within the legal deadline or through the unjustified refusal to have his/her petition resolved, as well as through the refusal to perform a certain administrative operation needed for the exercise or protection of a right or legitimate interest, can also address the Administrative Litigations Court.

The final decision taken in accordance with the provisions on access to justice in matters relating to public access to environmental information is an enforceable title and is binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused.

This guide is designed for the guidance and training of all civil servants involved in the procedure of responding to requests from the public for environmental information.