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Free Access to environmental information

Questionnaire for the national reports

Study drawn up taking into consideration the following source materials:

- The Constitution of the Republic of Poland of 1997
- The Act of 3 October 2008 on Providing Information on the Environment and Environmental Protection, Public Participation in Environmental Protection and on Environmental Impact Assessment (**hereinafter referred to as ‘the Act on Env. Information’**);
- The Act of 6 September 2001 on Access to Public Information (**hereinafter referred to as ‘the DIP Act’**);
- The Act of 14 June 1960 Code of Administrative Proceedings (**hereinafter referred to as ‘KPA’**);
- The Act of 30 August 2002 Law on Proceedings before Administrative Courts (**hereinafter referred to as ‘PPSA’**)
- M. Bar, J. Jendrośka, Komentarz do ustawy z dnia 3 października 2008 r. o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko, LEX/el 2014 [*Commentary on the Act of 3 October 2008 on Providing Information on the Environment and Environmental Protection, Public Participation in Environmental Protection and on Environmental Impact Assessment*, LEX/el 2014];
- B. Rakoczy, Ustawa o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko [*The Act on Providing Information on the Environment and Environmental Protection, Public Participation in Environmental Protection and on Environmental Impact Assessments. Commentary*], LexisNexis, 2010;
- Raport Rzeczypospolitej Polskiej na temat doświadczeń związanych ze stosowaniem dyrektywy 2003/4 /WE Parlamentu i Rady z dnia 28 stycznia 2003 r. w sprawie publicznego dostępu do informacji o środowisku, [Report of the Republic of Poland on the Experiences Related to the Application of the Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on Public Access to Environmental Information], Warsaw 2009, available online at: <http://ec.europa.eu/environment/aarhus/pdf/reports/poland.pdf> (last accessed on 10 May 2015);
- Raport wdrożeniowy Konwencji Aarhus. Arkusz certyfikacyjny [Aarhus Convention Implementation Report. Certification Sheet], (**hereinafter referred to as the Aarhus Report**) available online at: http://www.unece.org/fileadmin/DAM/env/pp/Implementation%20reports%202008/Poland_as_submitted_2007_12_28_p.pdf (last accessed on 10 May 2015)
- Projekt raportu z wykonania Konwencji z Aarhus za lata 2011-2013 [Draft Report on the Implementation of the Aarhus Convention for 2011-2013] (**hereinafter referred to as the Draft Aarhus Report**) available online at: https://www.mos.gov.pl/arttykul/4590_informacja_publiczna_oraz_informacja_o_srodowisku_i_je_go_ochronie/20971_konsultacje_spoleczne_w_sprawie_raportu_z_wykonania_konwencji_z_aarhu_s.html (last accessed on 10 May 2015)
- Rządowy projekt ustawy o postępowaniu w sprawie ocen oddziaływania na środowisko oraz o dostępie do informacji o środowisku i jego ochronie [Governmental Draft Act on the Procedure concerning the Environmental Impact Assessment as well as on Access to Information on the Environment and Environmental Protection] (a printed matter no. 1616, filed on 22 December 1999); available online at: <http://orka.sejm.gov.pl/proc3.nsf/opisy/1616.htm> (last accessed on 10 May 2015)
- P. Chylarecki, M. Wiśniewska, J. Engel, Dostęp do informacji o środowisku i udział w decyzjach dotyczących środowiska: społeczna kontrola praktyk administracji publicznej, Fundacja

Greenmind [Access to Information on the Environment and Participation in Decisions concerning the Environment: a Social Control of the Public Administration's Practices], Greenmind Foundation, Warsaw 2014; available online at: http://greenmind.pl/wp-content/uploads/2014/09/Greenmind_RaportAarhus.pdf (last accessed on 10 May 2015) (hereinafter referred to as the Greenmind Report).

1) Constitutional frame, constitutionally guaranteed right of access to (environmental) information? Access to information as a fundamental (democratic) right?

Issues related to access to information are subject to a number of provisions contained in the Constitution of 1997, that is in:

- (a) art. 51, which in its sec. 3 provides everyone with the right of access to official documents and data collections and the very right is linked to the right to privacy (Art. 47 of the Constitution);
- (b) art. 54, which provides everyone with the freedom to express opinions as well as to acquire and disseminate information;
- (c) as well as articles 61 and 74 of the Constitution of the Republic of Poland, which implement the principle of transparency and openness of activities in the public sphere.

In art. 61 of the Constitution a citizens' right of access to information was formulated.

“A citizen shall have the right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Such right shall also include receipt of information on the activities of self-governing economic or professional organs and other persons or organizational units relating to the field in which they perform the duties of public authorities and manage communal assets or property of the State Treasury” (sec. 1).

In sec. 2 of the provision in question, possible forms of implementation of the very right were set forth. They include »access to documents and entry to sittings of collective organs of public authority formed by universal elections, with the opportunity to make sound and visual recordings«.

Limitations upon the right of access to information, which may be imposed solely to protect freedoms and rights of other persons and economic subjects, public order, security or important economic interests of the State, as well as the procedure for the provision of information shall be specified by statute (art. 61 sec. 3 and 4 of the Constitution).

A public and universal right to information on the environment and its protection is subject to a separate provision. The Constitution in its art. 74 sec. 3 guarantees a universal subjective right to access to information on the quality of the environment and on its protection. This right may be asserted subject to limitations specified by statute.

2) Other (national) legal acts providing access to information held by public authorities.

Relationship with laws transposing Dir 2003/98 on the re-use of public sector information

The realization of the constitutionally guaranteed right of access to information on the environment and environmental protection in practice is subject to:

- **The Act of 3 October 2008 on Providing Information on the Environment and Environmental Protection, Public Participation in Environmental Protection and on Environmental Impact Assessment (The Act on Env. Information)**, together with

executive regulations to the Act, which govern frequency of updating information which is being provided, charges (fees) levied for the provision of information, specimens of a publicly available register of data concerning documents);

- specific provisions substantiating the access to definite information on environment (e.g. contained in the Act on Genetically Modified Organisms).

The Act on Information along with the executive acts constitutes the execution of the Aarhus Convention ratified by Poland and it implements the Directive 2003/4 into the national law. The Act in question governs principles and the mode of providing public information concerning the environment and environmental protection. This mode is a special one in relation to the mode of providing public information.

Within the scope not governed by the Act on Information, making use of a right to access to information on the environment is subject to general provisions concerning access to public information and governing the proceedings before the administrative bodies and courts, that is – subject to:

- **The Act on Access to Public Information** (an act governing general matters [*lex generalis*]) (**the DIP Act**). This Act implements the Directive 2003/98/EC

*It follows from the jurisprudence that an application for the provision of information should be examined pursuant to the Act on Information even if an applicant has failed to justify the basis for their claim properly, pointing out to the Act on Access to Public Information instead of to the Act on Information. **A body should set the application's wheels in motion taking into consideration the subject matter of a request** (the Supreme Administrative Court [NSA] of 20 March 2012, reference number I OSK 2451/11, LEX number 1285013).*

- **The Code of Administrative Proceedings (KPA)**
- **The Act - Law on Proceedings before Administrative Courts (PPSA)**
- Acts which are important from the point of view of exceptions to the principle of transparency (eg. The Law on Copyright and Related Rights, The Law on the Protection of Personal Data) are also applicable.

3) National legal situation before Dir 90 /313/EC: has the EC/EU legislation had a major impact on the national law on access to information?

The process of ratifying the Aarhus Convention and the adjustment of the Polish law to the EU legislation (the Directive 90/313/EEC) constituted the impetus for legislative work upon a new act on access to information on the environment and environmental protection as well as on environmental impact assessment, which was passed in 2001.

Prior to its adoption, in principle there had been no norms which would regulate principles and mode of providing information on the environment, and in any case, they had a very fragmentary nature. At that time, the following were in effect: (a) the provisions of the 1997 Constitution ensuring a general right to public information (as above, art. 61) and the right of access to information on the environment (as above, art. 74, sec. 3); (b) the provisions of the Code of Administrative Proceedings regulating the parties' entitlements in connection with a given administrative procedure which is underway (c) as well as a fragmentary regulation contained in the then Act on Environmental Protection and Management of 1980 concerning the safe-keeping of specific data on the environment in the public registers¹.

¹ Cf. the justification to a draft Act on the Proceedings concerning Environmental Impact Assessment as well as on Access to Information on the Environment and Environmental Protection; [http://orka.sejm.gov.pl/RejestrD.nsf/wgdruku/1616/\\$file/1616.pdf](http://orka.sejm.gov.pl/RejestrD.nsf/wgdruku/1616/$file/1616.pdf) (last accessed on 10 May 2015).

Therefore, both the Aarhus Convention and the EU law have significantly influenced the Polish legal regulations in this regard.

4) Statistical information about the use of the access-right including types of users if known (eg. NGOs, competitive industry, general public, environmental consultants, etc). Difficulties of the administration handling the number and/or the scope of applications.

In the "Draft Aarhus Report" a growing tendency of using the right of access to information on the basis of figures of applications submitted to the chosen official bodies in 2011-2012 is being emphasised. The data contained in the "Draft Aarhus Report" show that (see p. 11):

- a) the number of applications examined by the Chief Inspector of Environmental Protection amounted to: in 2011 - 6 345; in 2012 - 6 765;
- b) the number of applications examined by the Environmental Information Centre on behalf of the Minister of the Environment amounted to: in 2011 - 84; in 2012 - 108;
- c) the number of applications examined by the General Director for Environmental Protection amounted to: in 2011 - 82, in 2012 - 109;
- d) the number of applications examined by the regional directorates for environmental protection amounted to: - in 2011 - 3321; in 2012 - 3917;
- e) the number of applications examined by the National Water Management Authority in 2011-2013 - 34;
- f) the number of applications examined by the regional water management authorities amounted to: in 2011. - 566; in 2012 - 715.

5) Significant national law and jurisprudence on the definition of "environmental information" (Art. 1 para 1 Dir 2003/4/EC)

In art. 9 sec. 1 of the Act on Information, the legislator enumerates (in a descriptive manner) the information, which is subject to being provided. Its scope corresponds with a definition of "environmental information" adopted in the Directive 2003/4.

Art. 21 sec. 1 of the Act on Information facilitates the determination of a subject of the right of access to information on the environment, since it contains a comprehensive catalogue of the documents, the data on which are to be included in the so-called Publicly Available Registers of Data concerning Documents (including, e.g. concerning reports on the environmental impact or on environmental permits). However, in no circumstances may such a catalogue be interpreted as narrowing the subject of a right to the information on the environment in relation to the catalogue described in the aforementioned art. 9 sec. 1 of the Act on Information.

Relevant case law:

The Voivodship Administrative Court [WSA] in Gdańsk in its judgment of 30 November 2011 (reference number II SA/Gd 720/11) confirmed that the information on the environment was the information concerning reports on the execution of an obligation of recovery and recycling, stemming from the Act on Entrepreneurs' Obligations Within the Scope of the Management of Certain Waste.

6) Significant national law and jurisprudence on determining the access right holder ("without having to state an interest", Art. 3 para 1 Dir 2003/4 / EC)

A public subjective right of access to information on the environment has a universal character. Both the Constitution (Art. 73, section 4) and the Act on Env. Information (Art. 4, 8, 13) guarantee **everyone the right to information on the environment and on environmental protection**. At the same time the Act Env. Information confirms in explicit terms that “an entity requesting information on the environment and on environmental protection **shall not be required to demonstrate a legal or an actual interest**”.

M. Bar, J. Jendroška (2014) rightly assert that the Act Env. Information does not provide for *"any restrictions on the exercise of the right of access to information on the environment and on environmental protection either due to one's citizenship, place of residence, or due to age, capacity for legal acts or to any other factors whatsoever"*. However, they note that the capacity for legal acts is required in a situation in which an official body would have grounds for refusal to provide the information and where it would issue a decision on the refusal to provide the information. However, this is not being treated in terms of a limitation of the right in question, but as a requirement to correctly determine an addressee of a decision on the refusal (e.g. a guardian or a trustee of a person who does not possess the capacity for legal acts).

7) Significant national law and jurisprudence on the realm and obligations of private persons as defined by Art. 2 No. 2 b and c 4/EC. (See ECJ 279/11 (Fish Legal))

An obligation to provide information on the environment is borne by the administrative bodies which were defined in art. 3 sec. 1, point 9 letter a) and b) of the Act on Env. Information and which include:

- bodies **in institutional sense** (meaning *ministers, central bodies of governmental administration, provincial governors [voivodes], other territorial bodies of governmental administration, acting on their behalf or in their own name, bodies of units of local self-government*) (art. 3 sec. 1, point 9, letter a.)
- as well as bodies **in functional sense** – *“other entities when they have been established by virtue of law or pursuant to agreements to perform public tasks concerning the environment and environmental protection”* (art. 3 sec. 1, point 9, letter b).

The concerns which are raised regarding a manner in which to determine the scope of entities obliged to provide information on the environment (quoted after: M. Bar, J. Jendroška 2014) concern:

- failure to include all administrative bodies (e.g. the Prime Minister) within the scope of Art. 3, sec. 1, point 9, letter a);
- failure to include entities, which by virtue of law or pursuant to agreements have been called upon to perform public tasks (other than tasks concerning the environment and environmental protection) in Art. 3 sec. 1, point 9, letter b.

The Authors demonstrate the right argumentation which justifies that the other authorities (and not just administrative bodies), including courts be included within the scope of the obligation to provide information. In doing so, they evoke art. 4 of the DIP Act, according to which: *“public authorities as well as other entities performing public tasks are obliged to make the public information available”*.

8) National law and jurisprudence on the public authorities to be addressed ("information held by or for them") (Art. 3 para 1 Dir 2003/4/EC)

“The scope of the obligation to provide information was defined in art. 8 in connection with art. 9 of that Act on Env. Information – by a general clause which reads: “information on the environment which are held by a body or which are intended for it”².

By the information intended for a body one understands “*the information held by third parties on behalf of the administrative body, including also the information which that body is entitled to demand from third parties*” (art. 3, sec. 1 point 2 of the Act on Information).

By the information held by an administrative body one understands “*the information in possession of the administrative body, produced by that body or received by the body from a third party*” (art. 3, sec. 1, point 3 of the Act on Information). Possession of information should be understood as “holding the information by an administrative body” (B. Rakoczy, 2010).

9) Significant national law and jurisprudence on practices on access conditions (terms, "practical arrangements" (see Art.3 paras 3 - 5 Dir 2003/4/EC)

9.1. The time limit for providing the information (Art. 14 of the Act on Information)

The Act introduces:

- **A general time limit** for providing the information of the environment, that is without undue delay, not later than one month from the date of receipt of an application, which may be renewed for up to two months due to the extent of complexity of the case. The time limit applies also in the case of a refusal to provide information.
- **A special time limit** for making certain documents available – **on a date of submitting an application**. Within such a time limit documents the data on which shall be placed in the so-called Publicly Available Registers of Data concerning Documents (Document's Register), should be made available.

The reports point out to infringements of the bodies, consisting in the untimely examination of applications (Draft Aarhus Report, p. 10, Greenmind Report, pp. 25-28; Aarhus Report, pp. 7-8).

9.2. The manner and form of access to information (art. 15 of the Act on Information)

Forms in which information is being provided: oral, written, visual, audio, electronic or other form (art. 9, sec. 2 of the Act on Information).

The manner of providing information: sending information by mail, by electronic mail or transmitting it at the body's registered office.

As a rule, the information on the environment is being provided in the manner and in the form postulated (that is specified in an application), unless the technical means at the administrative body's disposal do not allow for the provision of information in the requested manner and form.

At that time, the administrative body has an obligation to notify the applicant in writing “about the reasons for the impossibility to provide the information pursuant to the application” and to indicate a manner and a form in which the information may be provided. If within the specified time limit the applicant fails to submit an application in the manner or in the form indicated in the notification, the administrative body issues a decision on the refusal to provide information.

² The order of the Supreme Administrative Court [NSA] in Warsaw of 30 November 2010, reference number II OW 60/10 LEX no. 743496.

The Act on Information – as opposed to the Directive 2003/4 – does not provide for grounds for a refusal to provide information in a requested form or format if “the information has already been publicly available in another form or format” (: M. Bar, J. Jendrońska rightly conclude that it is a sign that national measures have more stringent nature, M. Bar, J. Jendrońska 2014).

Relevant case law - *form of provision of information*

The Act on Information clearly determines a form of a refusal of information, which assumes a form of an administrative decision. However, it does not determine the form in which information is to be provided. According to the settled case-law it is an activity of a material and technical nature (an actual, real activity, carried out by the administrative bodies), which constitutes one of the possible forms of public administration’s activities.

“The Act of 2008 on Providing Information on the Environment (...) provides a basis to derive *a form of provision of information - it is a material and technical activity whose external form is governed by art. 15 of that Act, and a refusal to provide the information shall take place in the form of a decision*” (...) (the order of the Supreme Administrative Court [NSA] of 30 November 2010, reference number II OW 60/10, LEX no. 743496 – point 2; the judgement of the Voivodship Administrative Court [WSA] in Warsaw on 10 January 2013 IV SA/Wa 2006/12).

10) Law and practices / jurisprudence on charges for access (copying? administrative time?)

Pursuant to the Act on Env. Information (art. 26) **charges are not levied:**

- for searching and browsing documents detailed in *the Publicly Available Register of Data concerning Documents* ((Document’s Register) at a registered office of an administrative body;
- if an application was filed by an administrative body.

However, charges are levied for the activities set forth in art. 26, sec. 2 of the Act on Information, that is for the following:

- searching for information;
- transforming information into a form specified in an application;
- making copies of documents or of data and for sending them over to applicants.

Charges are levied at a rate **corresponding with the reasonable costs related therewith**. Charges should not constitute an obstacle in acceding the information.

The upper individual rates of charges determined in the Act as well as as specific rates of charges, factors differentiating the amount of the charges, the manner in which they are calculated as well as time limits and a method of paying the charges determined in the regulation³, constitute a guarantee in this regard.

It is rightly emphasized that a manner of determining a subject matter of charges for providing information on the environment **does not give rise to the taking into consideration a factor of time needed to develop information while calculating the charge** (cf.: M. Bar, J. Jendrońska 2014).

Practical problems (quoted after: The Draft Aarhus Report and the Aarhus Report)

³ The Regulation of the Minister of the Environment concerning Charges for Providing Information on the Environment of 2010.

- » In the Act on the Provision of Information on the Environment there is no unequivocal statement whether the provision of information is conditional on a prior payment of a charge, or independent of it, therefore there sometimes appears a practice of authorities, consisting in making information available only after a charge has been entered in the books” (The Draft Aarhus Report, p.10);
- problems with interpretation of provisions concerning charges for searching for information (The Draft Aarhus Report, p.10);
- charges may constitute a barrier in the exercise of the right to information in the case of putting forward applications to many offices and in the case of multiple search for information (e.g. in the case of monitoring research) (the Aarhus Report, p. 8).

11) Do any public authorities claim copyright in the material supplied, and impose conditions relating to use of information under copyright law (such as due acknowledgement and user fees in case of re-publication)?

12) National law and jurisprudence on the role of affected third parties in access procedures esp. concerning trade secrets and personal data (designation of trade secrets, consultation prior to release of information, etc.)

The affected third party does not participate in the procedures.

13) Significant national law and jurisprudence on exceptions (Art. 4 Dir 2003/4/EC)

The Act on Env. Information, following the Directive, specifies a catalogue of reasons justifying a refusal to provide information, encompassed in two groups, as in the Directive 2003/4.

The first one (art. 16, sec. 1 of the Act) – **obliging to** refuse to provide the information - concerns data covered by confidentiality (such as protection of personal data, confidentiality of commercial or industrial information).

What raises objections is the wording of a provision according to which an official body does not provide information on the environment and on environmental protection, “**if the information concerns**” enumerated information deemed to be confidential and not - as it is in the Directive – “if the disclosure of the information would adversely affect those protected interests”. The adoption of a literal interpretation could denote that a mere fact that the information concerns, for example, the state’s security, determines the obligation to refuse, regardless of whether its disclosure would adversely affect a protected interest. Hence, the so-called “pro-Union (law)” interpretation is necessary in this regard.

The second group of exceptions refers to a manner in which an application has been worded (e.g. an application which is too general, documents which are in the course of preparation). Their occurrence **enables** a refusal to provide the information.

The Act on Information **does not contain a provision obliging to a restrictive interpretation of the grounds for refusal and to weighing public interest** in disclosing the information and the interest guided by a refusal to provide it in each case (*Weighing of interests in every particular case*). Nevertheless, it is rightly noted that the obligation in question is guaranteed by a general interpretation principle of restrictive interpretation of exceptions, as well as by basic principles of the public administration’s functioning in Poland, set forth in the KPA. The latter requires that the administration bodies take public interest into consideration in the course of all ongoing proceedings as well as that they act having regard of the public interest and the legitimate interest of citizens, as well as of deepening citizens’ trust in state’s bodies. (See, *inter alia*, the Draft Aarhus Report, p. 9).

The Act on Information also lacks an obligation (to be expressed in explicit terms) to provide the information that is partly subject to an application, which in the light of the case law of the CJEU constitutes a manifestation of an incorrect transposition of the Directive into national law. In the Draft Aarhus Report (p.9) it is pointed out that the obligation in question is performed through administrative practice consisting in providing such a part of information, which is not subject to exclusion of open access (for example by blackening personal information whose disclosure would infringe upon the provisions of the Law on Protection of Personal Data).

More specifically:

a. Confidentiality of commercial or industrial information

The judgment of the Voivodship Administrative Court of 11 March 2014, reference number IV SA/Wa 2136/13 (LEX no. 1468264).

The Minister of the Environment by way of a decision had refused to provide information on the environment in the form of a photocopy of a map of a project to develop a natural gas deposit, which was a part of a project of the deposit's development and constituted an attachment to a application for granting or changing a license. The Minister acknowledged that the exclusion of the information from disclosure was legitimate, given a premise set forth in Art. 16, sec. 1, point 7 of the Act on Information: "*information shall refer to information of a commercial value, including technological data, supplied by third parties and covered by a business secret, if providing the information could worsen a competitive position of those persons and if they filed a reasoned application for exclusion of the information from being made available*".

The proposed map, according to the body, contained the information of a commercial value, whose disclosure could worsen the competitive position of the subject, that drew it up. The map contained technicological details and information on how to develop the deposit. Among others, it showed the contour of the deposit, the boundaries of the mining area, geological cross-sections.

Such information, if disclosed, may be used in preparing similar maps by other investors in other areas or in the same area, in the case of a change of an investor. At the same time, the entrepreneur filed a reasoned application for excluding the information from making it available. The body acceded to the entrepreneur's position, indicating that the map contained information of a technological nature and one might not consider it possible to mark information off it in such a manner that only data which were not of technological nature would be disclosed.

The Court shared the position of the body.

b. Confidentiality of the proceedings of public authorities / internal communications

The judgment of the Voivodship Administrative Court [WSA] in Warsaw of 28 October 2011, reference number IV SA/Wa 1326/11.

An environmental organization put forward an application to the General Director for Environmental Protection for the provision of the information on the environment, by way of:

1) handing over the document "The Guidelines of the General Director for Environmental Protection within the scope of introducing changes to the course of border lines and to Natura 2000 Sites Standard Data Forms" and for the provision of information on its status.

The body refused to provide the GUIDELINES, citing a premise of a “document in the course of development”. On the date of issuing the decision, the General Director for Environmental Protection [GDOS] held a draft of that document; he also indicated an expected date of completion of the work upon the document. A complaint against the decision of the GDOS was dismissed by the WSA.

2) providing information on what is “the new approach of the European Commission to the implementation of the Natura 2000 network in the European Union”.

The body provided the information.

3) providing a presentation from an internal meeting of the General Director for Environmental Protection and regional directors for environmental protection illustrating the most important problems associated with the orders of the regional directorates for environmental protection in the field of environmental impact assessments.

The body had refused to provide the PRESENTATION, as it had considered that it was a document designed for internal communication.

The Court shared that position and decided that the body was correct to hold that the presentation prepared for purposes of internal meetings of the General Director for Environmental Protection and regional directors for environmental protection was a document designed for internal communication within the meaning of art. 19 sec. 2 of the Act and therefore that it should have not been allotted for wider dissemination. In the Court’s assessment, “the Guidelines” could be regarded as a kind of “an instruction” on how to proceed when making impact assessments on Natura 2000 sites prepared for the purposes of the bodies responsible for environmental protection and in that sense it was a document designed for “internal communication”.

c. Approach to the disclosure of:

- “raw data” (Aarhus Compliance Committee case ACC/53/ Uk – see AC Implementation Guide 2014 p 85)*
- “material in the course of completion” vs “unfinished documents” see AC Implementation Guide 2014 p 85*

d. “Information on emissions into the environment” (Art. 4 para 2 subpara 2 Dir 2003/4/EC, see T-545/11

e. International relations, public security, national defence (see T-301/10 Sophie t’ Veldt)

f. Weighing of interests in every particular case (Art. 4 para 2 subpara 2 Dir 2003/4/EC

14) Judicial control of access-decisions

g. Have specialised administrative appeal bodies (information officer etc) been set up? How to they work? Are their opinions respected ?,

h. Court review: "in-camera"-control? Standing of parties affected by decisions denying or granting access?

Legal protection of the right of access to information on the environment results from the provisions of the Act of Env. Information, the provisions of the Code of Administrative Proceedings and the Act - Law on Proceedings before Administrative Courts.

A refusal to provide information on the environment and on its protection occurs by way of a decision, which must contain a justification and instruction concerning means of appeal.

In the case of a decision to refuse to provide the information, the remedies include a right of every person who has been denied access to information:

- to file an appeal with a body of a higher grade or an application for a **judicial** review of the case
- then to file a complaint⁴ with a voivodship administrative court [WSA]⁵ as well as to file a cassation appeal [a last resort appeal] with the Supreme Administrative Court [NSA] against the judgment of the WSA.

Legal protection in the event of inaction of the body includes an applicant's entitlement to file:

- a complaint with a body of a higher grade, and if there is no such a body – a call to remedy the infringement of law⁶
- a complaint with the administrative court and subsequently a cassation appeal to the Supreme Administrative Court.

The judgment of the Voivodship Administrative Court [WSA] in Gorzow Wielkopolski dated 16 October 2013, reference number II SAB/Go 38/13 (LEX no. 1387652)

“(...) inaction on the part of a body within the scope of providing the information on the environment and environmental protection occurs when the body fails to undertake any action with regard to an application, including a failure to issue a decision on the refusal to provide appropriate information (...).

When examining a complaint concerning the failure to act with regard to providing the information on the environment, an administrative court therefore examines solely whether a body which is obliged to provide information on the environment complied with that obligation, or if it is in delay in settling an application of a subject seeking the provision of such information”.

15) How do states fulfill the duty to make information actively available?

The Act on Env. Information introduces guarantees of an active provision of information in the form of:

1. An obligation to appoint administrators who deal with making the information available in the offices of administration bodies (art. 10);
2. An obligation of administrative bodies to keep Publicly Available Registers of Data concerning Documents (“Document’s Register” referred to in Art. 21 sec. 1 of the Act on Env. Information. The Registers may also be kept for other documents. Publicly accessible registers are kept in the electronic form. An administrative body that is obliged to keep the register, shall make it available in the Public Information Bulletin (art. 21-22).

Publicly Available Registers of Data concerning Documents (“Document’s Register) contain data about the documents and not the full content of a document. They are to facilitate access to information on the environment not only by way of their electronic form in which they are kept, but also by way of a special mode in which the documents the data on which are published in the Document’s Register, are provided. These documents are provided on the

⁴ »If the statute does not provide for means of challenge in a case which is subject to a complaint, the complaint (...) may be lodged following a prior written call upon a relevant body (...) to remedy the infringement of law« (art. 52 para. 3 of the PPSA).

⁵ Pursuant to art. 20 sec. 2 of the Act on Information »The provisions of the Act of 30 August 2002 – Law on Proceedings before Administrative Courts (...) shall be used to complaints examined in proceedings for providing information on the environment and environmental protection, with the stipulation that:

1) transmission of records of the case and of a reply to the complaint shall take place within 15 days from the date of the complaints' receipt;
2) the complaint shall be examined within 30 days from the date of receiving the records of the case together with the reply to the complaint.

⁶ A body, if it finds a complaint to justified, shall determine an additional time limit to settle the case and it shall order the explanation of reasons and determination of persons guilty of failing to settle the case on time, and if necessary, the undertaking of measures to prevent infringements of time limits for settling cases in the future. The body shall at the same time assert whether the failure to settle the case on time took place in flagrant infringement of law (art. 37 para. 2 of the KPA).

date of submission of the application, and searching for them and browsing them at the registered office of a body is free of charge.

However, the effectiveness of this instrument depends on the keeping of the Publicly Available Registers of Data concerning Documents containing information on the environment and environmental protection as well as on supplementing them on a regular basis.

In the Draft Aarhus Report (p. 16) irregularities in this area are described: e.g. lack of a publicly available register, failure to introduce data from some of documents into the register, introducing data with several months of delay and an inappropriate form of the register. Difficulties in the use of the Document's Register also result from a heterogeneous form of keeping the publicly available registers of data.

3. A system of making information publicly available through information and communications technology (ICT) systems, in particular using electronic databases (art. 24 of the Act of Env. Information).
4. An active provision of information in the Public Information Bulletin. The Bulletin consists of www sites at which public information is provided, including the information concerning the environment required by law.

On the basis of the “Draft Aarhus Report” one may indicate further possible measures aimed at actively providing information on the environment, arising from provisions of law or from administrative practice. These include *inter alia*:

1. An institution of a State Monitoring of the Environment – using a system of measurements, assessments and forecasts concerning the quality of the environment and the collection, processing and dissemination of information on the environment (p. 12).
2. Reports on the quality of the environment in Poland, drawn up by the Chief Inspector of Environmental Protection, taking especially into consideration the data acquired from the State Monitoring of the Environment. “The reports are widely available in the printed and the electronic form, including availability through websites of bodies of environmental protection inspectorates. (p.14)
3. Dissemination of the binding law at the website of the Sejm of the Republic of Poland [a lower chamber of the Polish parliament] (regardless of its publication in the Journal of Laws as well as in official journals). Databases with binding legal acts, as well as with copies of draft legal acts along with justifications are also available at the authorities' websites pursuant the scope of their competence (p.15).
4. Conducting the broadly defined ecological education, including education carried out in cooperation with social organizations (e.g. social campaigns, promotional activities, trainings, an obligation to take into consideration issues of environmental protection and sustainable development in core curricula of general education for all types of schools (art. 77 of the Environmental Protection Law Act [EPL Act]); mass media's obligation to shape a positive attitude of society towards environmental protection and to popularize the principles of the said protection in publications and broadcasts (art. 78 of the EPL Act) (pp.2-3).
5. “Ekoportal” website kept by the Ministry of Environment, demonstrating databases of public documents containing information on the environment and performing e-learning functions (p. 13).