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PUBLIC ACCESS TO ENVIRONMENTAL INFORMATION, A CHALLENGE FOR POLAND

Introduction

Public access to environmental information supports good environmental decision-making. But in order to be able to contribute meaningfully to environmental decision-making, environmental information must be both accessible and of useful quality. This article offers an overview of the principal instruments for providing the public with access to environmental information.

It might be useful to specify more clearly what is meant by environmental information. In this article, environmental information is, in the first place, the information generated by environmental legislation and measures at all levels of government and which is held by public authorities.

A distinction is often made between "active" and "passive" rights to environmental information. "Active" information means the information which the authorities must provide to the public at their own initiative. Examples include requirements to supply information concerning the possible environmental impacts of proposed projects. "Passive" information refers to the right of the public to obtain information upon request. The focus of this article is on this latter type of information.

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A great deal of environmental information is generated and collected as a result of environmental law and regulations, or in connection with applications for governmental licenses. Some environmental information is generated for purposes of monitoring and control.

1. Background

The right and principles of access to environmental information can be established by a variety of legal instruments: constitutional provisions, national law or international agreements. The following discussion considers a number of the most important elements for an effective mechanism to providing access to environmental information.

1.1. International agreements

The Declaration adopted at the UN Conference on Environment and Development (UNCED), in Rio de Janeiro in 1992, includes an important statement on the right to information on the environment. Principle 10 of the Rio Declaration states: "At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in the decision-making process."

Principle 10 of the Rio Declaration has been reflected in the European Community's Fifth Environmental Action Programme, which states that it is essential that citizens are enabled to participate in the process of setting conditions for operating licenses and integrated pollution control, and are facilitated in judging the actual performance of public and private enterprises through access to inventories of emissions, discharges and wastes and to environmental audits.

The most comprehensive international legal instrument on access to information and public participation in decision-making and access to justice in environmental matters is The Aarhus Convention concluded in June 1998. The Convention is based on three pillars:

1. individuals and corporations should be able to demand information,
2. the public should be involved early in making decisions which could have an impact on the environment,
3. persons who have been denied environmental information should be given the right of appeal.

Article 5 of the Convention regulates the duties of public authorities concerning collection and dissemination of environmental information. One part of article 5 states that parties shall ensure that environmental

information becomes progressively available in electronic databases which are easily accessible to the public through public telecommunications networks.

1.2. Constitutional provisions

Constitutional provisions most often state a right of access to information in general terms or express a general principle in favour of access. In some member states of the European Union, there are constitutional provisions concerning the right of access to information. Examples can be found in the Greek and Portuguese constitutions. Portugal has constitutional provisions on the right of access to administrative documents that also includes matters concerning environment, in as much as they are part of administrative procedures.

Constitutional provisions also generally require implementing legislation to become effective. Moreover, access to information requires a more developed structure than constitutional provisions alone can give. Such a structure works out matters such as the authorities covered, the exceptions, costs, provisions, etc. This is a task for which legislation is more suited.

1.3. European Union Directives

The most significant law in European Union concerned with public access to environmental information is EC Directive 90/313/EEC on Freedom of Access to Environmental Information. The directive, which has been in effect since 1993, has created the right of access to environmental information in every member state of the European Union. This directive establishes the general right of any person to environmental information held by public authorities subject to specified exceptions. The structure of the directive is a broad one. It contains a broad definition of environmental information and definition of what a public authority is. For the purposes of the Directive "*information relating to the environment*" means any available information in written, visual, aural or data-base form on the state of water, air, soil, fauna, flora, land and natural sites, and on activities (including those which give rise to nuisances such as noise) or measures adversely affecting, or likely so to affect these states, and on activities or measures designed to protect these states, including administrative measures and environmental management programmes".

The most important part of the directive is a broad, general rule of access for any person without the need to show an interest in the information requested. The directive also includes exceptions to the general rule. A refusal to release information must be based on one of the exceptions

set by the Directive, for example, national defence, public security, commercial and industrial confidentiality. The directive contains provisions on time limits for a response, costs and appeals.

It is important to remember that the requirements of the Directive set up a minimum level of access to environmental information. Member states are free to maintain or adopt measures providing for a greater degree of access than the minimum required by the directive.

The member states had a period of thirty months, in which to adopt provisions needed to introduce the directive's requirements into national law. As a result of the directive, all EU member states now have legislation on access to environmental information in place. Those member states (Denmark, France and Netherlands) with legislation on general access to information in effect prior to the adoption of the directive were able to implement the directive with the fewest changes to their national legislation. Only minor modifications to national law have been necessary and the directive has not had any large impact on legislation or practice in these countries. Finland and, in particular, Sweden both have strong law on access to information, not limited to environmental information. The practice in Finland and Sweden is distinguished by a climate of openness, swift response to request, and narrowly drawn exceptions. For the majority of member states new legislation was needed. In some member states, the division of competencies among governmental structure complicated implementation. For example, in Belgium, legislative changes took place at both the national and regional level. Thus, four separate regimes have now been established for access to environmental information depending on location and administrative competencies. Portugal is an example of a member state, which added an innovative touch to its legislation by establishing a special body to consider disputes arising from refusals to provide access to environmental legislation.

2. Polish context

A condition for Poland and other states, which wish to become members of the European Union, is the adoption of the "acquis communautaire". In Poland and other states, steps have already been taken to bring national laws into conformity with the European Community legislation.

The Polish Constitutional Act states in Article 74 that, "Everyone shall have the right to be informed of the quality of the environment and its protection" and in Article 61, that "A citizen shall have the right to obtain information on the activities of organs of public authority (...)".

Poland has already implemented provisions of the directive into national law. The Parliament passed "The Act on Access to Information on

the Environment and Its Protection and on Environmental Impact Assessments" on 9th of November 2000. The Act came into force 1st of January 2001. This Act lays down the principles of:

1. the provision of information on the environment and its protection,
2. public participation in procedures relating to environmental protection,
3. the environmental impact assessment procedure.

The purpose of the part of the act on the access to environmental information is to give to the public access to information on the environment held by public authorities and to set out the basic terms on which information is to be made available. This part of the Act also contains a general rule of access for any person, without the need to show an interest in the information requested.

The Act divided environmental information into a few groups of documents:

- applications for granting of decisions,
- permits and authorisations within the scope of laws relating to the protection and management of the environment,
- other information like (e.g. policies, strategies, plans or programmes, environmental impact reports, the results of environmental research and studies),
- the state of the natural elements of the environment and their interactions,
- data on pollutants released into the environment, and activities and measures which are likely to have or may have adverse effects on the environment,
- safety reports and emergency response plans referred to in the laws concerning the protection and management of the environment.

Public authorities are obliged to maintain a publicly available register containing information on these documents.

The act also includes a number of exceptions to the general rule of access. A refusal to release information must be based on one of the exceptions set out by the act. These exceptions are meant to protect interests in, for example, national defence, commercial confidentiality or personal privacy. Organisations providing information are obliged to justify the need to make some information inaccessible. The act contains provisions on the time limits for response, appeals and costs.

In Poland, in contrast to the previously mentioned Scandinavian countries, there is no long tradition of openness in this respect. Officials from Polish public authorities often fear that access to information will result in a vast increase in the workload and administrative burden on public authorities. And they are anxious about a flood of requests for information.

The reasons for evident resistance may be divided in three groups: mental, cost related, technical. The first one is mostly related to lack of relevant traditions in Poland and also personal fears of additional workload. This issue is a separate problem. This gap caused by lack of tradition may be filled by active educational and public awareness raising activities. This may take one or two generations before the overall situation is changed to the desired level. As we would like to focus on the technical approach and short-term approaches to environmental information access, we will not further elaborate on this. However this should not mean, that this aspect should or could be disregarded and treated as insignificant factor of the effectiveness of the Polish system of making environmental information available to the public.

The remaining reasons are related to each other. A good technical solution, however costly, allows avoiding too much additional workload. Practical arrangements are an essential component of effective access to information. The easiest but the most expensive idea can be the designation of an information officer at each public authority office. Other practical arrangements can include such matters as establishing reasonable hours and reasonable places for inspection of documents or mechanisms, which allow the public to identify which public authority possesses what information. Introduction of such arrangements will also benefit public authorities, as it will help make access to information easier to administer.

The Ministry of Environment will issue a regulation on fees that authorities are allowed to charge interested parties for access to environmental information. In theory they should reflect the actual costs of providing such information. In the current financial situation of self government authorities, it is very doubtful that having these fees in mind they will invest in technical means making access to information easy for the public and not causing too much workload for environmental officers. A closer look at the draft regulation reveals that mostly simple copying and mailing on request has been taken into consideration in the adopted so far versions. There is no word about access to environmental information via the Internet. The reason for this situation can be that similarly to the law on access to information of some EU member states, many of the provisions of the Directive is transposed into the Act virtually verbatim. However it should not be forgotten, that since the adoption of the Directive in 1990, the world has changed rapidly. Not only have there been advances in the distribution and use of computerisation but electronic communication has become part of everyday life.

The establishment and maintenance of an electronic register can be very useful and can help a person seeking information to quickly get the

idea of what information a public authority holds and have easy access to information. The more attention is given to practical arrangements, the easier it is to manage the requests that are made. The establishment of information points, a public register, and other measures identified above, shall contribute to incorporating access to information into the routine business of a public authority.

Experience from EU member states shows that public authorities are well able to manage the volume of request. Indeed, the development of practical mechanisms and structures to respond to public request for information often helps the authorities to better manage their data collection, storage and retrieval system.

3. Example of practical arrangement

Providing good technical solution for Poland requires analysis of existing arrangements in European Union countries. Below we present one of them, the one, which due to the most commonly used foreign language is the easiest to get familiar with: the United Kingdom.

Before the implementation of the directive into national law, the United Kingdom was a country with a distinguished system of bureaucracy, where official secrecy was a firm rule. As a result of the implementation of the directive now there is easy access to environmental information.

One of the fields of information, which is made available to the public at the web-site, is information about the pollution from industrial sites. Details about pollution from local industrial sites are now available on the Environment Agency's Pollution Inventory at its web site. The Pollution Inventory currently includes information on the total amount of pollutants from individual industrial sites regulated by the Agency (i.e. those authorised by the Environment Agency under Integrated Pollution Control – IPC) and their contribution to national pollution levels. The Inventory includes information on the total amount of pollutants released annually to air, water and land. Further information is also provided on the environmental improvements that have been made to industrial sites that produce large amounts of pollution.

Over 150 pollutants released from 2 000 industrial sites in England and Wales are listed in the inventory. It is the intention of the system designers, that the inventory will help the:

- public to find out about pollution from industry in their local area,
- Environment Agency to regulate industry effectively and protect the environment,

– Agency and Government to meet national and international environmental reporting.

The Pollution Inventory is a part of the agency's new "your environment" section on their web site. This section provides an interface to the Pollution Inventory and other databases. To access the databases and information on the Pollution Inventory six options are available to the users: "Maps", "Find Your Environment", "Ask a Question", "Register", "Download" and "Tell Me More".

Information on an industrial site can be retrieved by clicking on the map (Fig. 1). On the map user can find also information on bathing waters, river quality, ground water protection areas, zones discharges to sea and Environment Agency Offices. (Fig. 2).

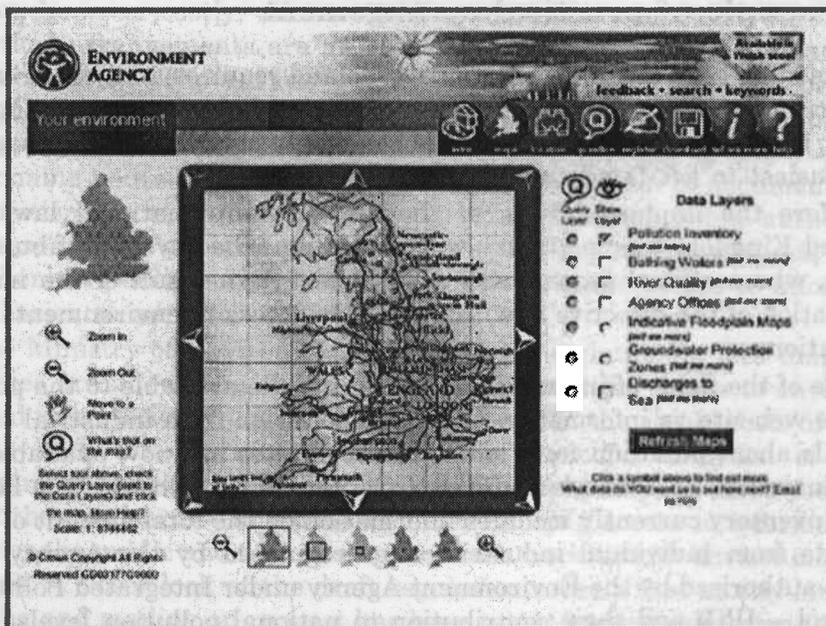


Fig. 1

Data can also be retrieved by querying the database using a set of frequently asked questions (Fig. 3).

Users can find their way around the Pollution Inventory by entering postcodes of place names (Fig. 4). In Pollution Inventory there are information on total amount of pollutants from industrial sites. (Fig. 5).

For those who do not have access to the Internet, Agency Customer Service Centres can provide pollution inventory data over the phone.



Fig. 2

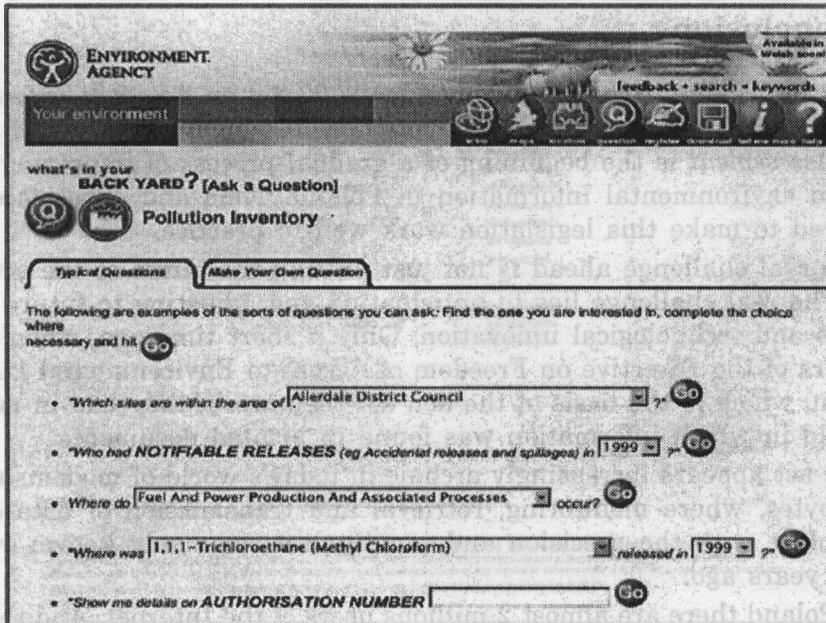


Fig. 3

ENVIRONMENT AGENCY

Available in Welsh see!

feedback • search • keywords

Your environment

what's in your **BACK YARD?** [Find Your Environment]

Find Your Environment

To find an area you are interested in:

- Decide how you'd like to search for an area, such as the **whole country**, by **place name**, by a **postcode** or a **grid reference**.
- Enter the details where applicable.
- If there are several matches, you'll be given a selection to choose from.
- Remember, if you're not sure on the spelling of a place, use an asterisk (*) as a wildcard.

whole country This will show the whole of England and Wales. You can zoom to an area of interest by clicking on the map. **Go**

place name Enter a name of the city or village that you wish to be taken to. If you are unsure of the spelling you can use a "*" as a wild card. **Go**

postcode Enter your full postcode above, remembering to include the space between the two parts, such as "AB12 3CD". If you do not know the full postcode then use a "*" as a wild card, like "AB12*". **Go**

grid reference E m, N m
Enter the 6 figure easting and then northing of the location of interest in the above boxes, for example "123456" and "789123". **Go**

Fig. 4

4. Conclusions

The implementation of the *November 2000 Act on Access to Information on the Environment and Its Protection and on Environmental Impact Assessment* is the beginning of a gradual process of improving access to environmental information in Poland. Time and experience is required to make this legislation work well in practice.

The real challenge ahead is not just putting the terms of the act to use. The real challenge lies in anticipating and adjusting to future demands and technological innovation. Only a short time ago, when the drafters of the Directive on Freedom of Access to Environmental Information, which is the basis of the act, set their work, they had in mind a world in which information was found in printed documents.

The act appears increasingly archaic in today's world of modems and megabytes, where monitoring, retrieval and transmission of data can take place with the precision and rapidity not commonly known even a few years ago.

In Poland there are almost 2 millions users of the Internet. And these are the ones, whom we could expect to explore the mechanisms resulting from having access to the information for their own benefit and that of

