

Translation from Romanian into English according to the copy

DECISION No. 878 as of July 28th 2005
 on the public access to environmental information

Fundamental act

#B: Government Decision no. 878/2005

Amending acts

#M1: Government Emergency Ordinance no. 70/2009

The amendments and additions made by the amending act are written in italics. Before any amendment and addition, the legislative act that enforced such amendment or addition is indicated as #M1.

#B:

Pursuant to art. 108 from the Constitution of Romania, republished, and the Convention on access to information, public participation in decision-making and to justice in environmental matters adopted at Aarhus on June 25th 1998, ratified by Law no. 86/2000,

The Romanian Government adopts the decision herein.

CHAPTER I
 General provisions

ART. 1

(1) This decision ensures access to environmental information held by or on behalf of public authorities and sets forth the conditions, basic terms and means of using this right.

(2) Environmental information is progressively disseminated and made available to the public for creating the widest and systematic accessibility and dissemination of the thereof. In view of achieving the set objective, electronic technology and/or computerized telecommunications are promoted.

ART. 2

For the purposes of the decision herein, the above-mentioned terms and expressions will have the following meanings:

1. environmental information - any information in written, visual, aural, electronic or any other material form on:

a) the state of environmental elements, such as air and atmosphere, water, soil, land, landscape and natural sites, as well as wetlands, marine and coastal areas, biodiversity and its components, including genetically modified organisms, and their interaction;

b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other environmental discharge, affecting or likely to affect the environmental elements provisioned under letter a);

c) measures, including administrative measures, as policies, legislation, plans, programs, conventions concluded by and between public authorities and natural and/or legal entities regarding

environmental objects, activities affecting or likely to affect the elements and factors provisioned under letter a) and b), as well as measures or activities for protecting elements stipulated under letter a);

d) reports on implementing environmental protection legislation;

e) cost - benefit analyses or other analyses and economic forecasts used within the measures and activities provisioned under letter c);

f) the state of human health and safety, including contamination, whenever relevant, of the food chain, conditions of human life, cultural sites, historical monument and any other built structures, inasmuch as they are or may be affected by the state of environmental elements provisioned under letter a), or, through these elements, by the factors, measures or activities referred to under letters b) and c);

2. public authority:

a) The Government, other public administration authorities, including their public consultancy authorities, at national, regional or local level;

b) any natural or legal entity having public administration functions, according to the national legislation, including environmental responsibilities, activities or services;

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

This definition does not include institutions or authorities, when these do not act as judicial or legislative authorities;

3. information held by a public authority - environmental information found in its possession, as well as information issued and received by that authority;

4. information held for a public authority - environmental information held by a natural and judicial entity, on behalf of a public authority;

5. applicant - any natural or legal entity requesting environmental information, regardless of citizenship, nationality or domicile, and for legal entities, regardless of where they are registered or where they conduct their activity;

6. public - one or more natural or legal entities and, in compliance with the legislation, national practice, associations, organizations or their groups.

CHAPTER 2

Access to environmental information, upon request

SECTION 1

General provisions

ART. 3

(1) Requesting and providing environmental information shall be made in compliance with the Convention on access to information, public participation to the decision-making process and to justice in environmental matters, signed at Aarhus on June 25th 1998, ratified by Law no. 86/2000, published in the Official Gazette of Romania, Part I, no. 224 as of May 22nd 2000.

(2) Requesting environmental information and providing answers shall be the task of specialized departments for information and public relations organized within the public authorities.

(3) Public authorities shall make available for any applicant, upon request, environmental information held for and on behalf of the thereof, without justifying the purpose of the request.

ART. 4

(1) Environmental information shall be made available to the applicant, in compliance with the specified deadline, as soon as possible or no later than one month from the reception by the public authority.

(2) Should the requested information volume or complexity be so large that the one month deadline stipulated under paragraph (1) cannot be observed, the environmental information shall be made available to the applicant within two months from the application reception at the public authority. In such cases, the applicant shall be informed as soon as possible or at least before the one month deadline expiry, regarding the extension of the deadline for response and the extension reasons.

ART. 5

(1) Should the application be general, unclear or without clear identification of the requested information, the public authority will request the applicant, as soon as possible or no later than the deadline provisioned under art. 4 paragraph (1), to clearly state its request. Hence the public authority further supports the applicant by providing information on using public registries stipulated under art. 7 paragraph (2) letter c).

(2) The public authority can reject the information request, based on provisions of art. 11 paragraph (1) letter c), if the applicant has not clearly stated its request, in compliance with provisions of paragraph (1), within two months since the public authority sent specific instructions.

ART. 6

(1) In case the applicant requests the public authority to provide environmental information under a certain form or in a certain format, including as copies, the public authority shall make available the information under the requested form or format, unless:

- a) it is already available to the public, pursuant to art. 20 - 25, under a different form or in an easily accessible format;
- b) it is convenient for the public authority to make it publicly available under a different form or in a different format, which motivates providing information under the available form or format.

(2) For this purpose public authorities are required to maintain environmental information held by them or on their behalf, under forms or formats that are easily reproducible and accessible by using computerized telecommunications or other electronic means.

(3) Refusal to provide environmental information, in whole or in part, under the form or format requested shall be justified and communicated to the applicant within the deadline provisioned under art. 4 paragraph (1).

ART. 7

(1) In order to facilitate access to environmental information of any person, public authorities are obliged to ensure:

- a) public guidance, through their representatives from information and public relations specialized departments, for using access rights to environmental information;
- b) public access to public authorities lists.

(2) In view of fully using access rights to environmental information, public authorities ensure:

- a) appointing persons in charge with providing information, within information and public relations specialized departments;
- b) establishment and maintenance of premises and other facilities for examining the requested information;

c) making registries or lists, that contain environmental information held, available to the public or establishing information desks where precise instructions on the location of environmental information held by public authorities can be obtained.

ART. 8

(1) Public authorities are obliged to inform the public on the rights deriving from the provisions of this decision, therefore they provide required information, help and guide the public.

(2) In view of carrying out the provisions of paragraph (1), public authorities have the following obligations:

- a) displaying public rights on their webpage, pursuant to the decision herein and in compliance with provisions of art. 38;
- b) editing and making public leaflets containing public rights pursuant to the decision herein and in compliance with provisions of art. 39;
- c) using other adequate means of information.

SECTION 2

Implementing measures

ART. 9

(1) Applications for environmental information, the solving manner and the deadline shall be recorded in a register for information applications within each public authority.

(2) Public authorities report each month the records of applications provisioned under paragraph (1) by the 10th day of the following month, within the premises of the central public authority subordinated, coordinated and found under its authority, as well as the local authority for environmental protection having jurisdiction.

(3) The local public authority for environmental protection centralizes the reports provisioned under paragraph (2) and forwards to the regional authority for environmental protection the centralized situation of reports, by the 15th day of the following month. The regional authorities for environmental protection shall draw up the centralized situation by regions and forward it to the National Agency for Environmental Protection within 5 days from receiving the reports.

(4) The National Agency for Environmental Protection draws up the centralized situation of reports at national level, provisioned under paragraph (2), which shall be monthly updated and displayed on its own webpage, by the end of the following month.

(5) The central public authorities control the providing of environmental information held by subordinated units, which are authorized or coordinated by the thereof, in observance with the deadlines and conditions stipulated in the decision herein.

ART. 10

(1) In view of carrying out the provisions of art. 7 paragraph (2) letter b), public authorities shall equip the premises for examining requested information with the following facilities: a computer, furniture necessary for consulting on the spot requested environmental information, as well as the registries or lists containing environmental information held for or on behalf of the public authority.

(2) The consultation on the spot of environmental information shall be recorded in the registry held by the information and public relations specialized department.

CHAPTER 3
 Exceptions

ART. 11

(1) Public authorities may refuse an application on environmental information, provided that:

- a) the requested information is not held by or on behalf of the public authority where the application was submitted. In this case, if the public authority is aware that the information is held by or on behalf of another public authority, such authority shall forward the request as soon as possible, but no later than 15 days after request receipt, and it shall inform the applicant about the thereof or about the possible public authority where the application might have been submitted;

- b) the application is clearly unsolvable;
- c) the application is not specific, taking into account the provisions of art. 5;
- d) the application concerns materials in progress or documents, as well as unfinished data;
- e) the application concerns the internal communication system, taking into account satisfying public interest by providing information.

(2) If an application for environmental information is refused on the grounds that it concerns a material in progress, the public authority must notify the denomination of the authority developing the material and its estimated date of completion.

ART 12

(1) Public authorities may refuse an application on environmental information, provided that disclosure affects:

- a) public authorities proceedings confidentiality, if required by the law;
- b) international affairs, public security or national defence;
- c) the course of justice, the right to submitting any person to a fair trial or the possibility of a public authority to conduct a criminal or disciplinary investigation;
- d) the confidentiality of commercial or industrial information where it is required by national or Community legislation in force regarding the protection of a legitimate economic interest, including public interest in maintaining statistic confidentiality and tax secrecy;
- e) intellectual property rights;
- f) personal data and/or natural entity files confidentiality, if such a person has not consented to public disclosure of information, when such confidentiality is provisioned by the national or community legislation in force;
- g) the interests or protection of any person who volunteered the information requested, without that party to have a legal obligation or likely to be legally obliged to provide information, unless that person has consented to the disclosure of such information;
- h) environmental protection refers to such information such as locating rare species.

(2) The grounds for refusal set out in paragraph (1) and in art. 11 paragraph (1) shall be interpreted in a restrictive manner, taking into account, for each case, satisfying public interest by information disclosure.

(3) For each case, public interest satisfied by disclosure is analyzed in comparison to the interest served by observing confidentiality

(4) Public authorities cannot refuse a request for information related environmental emissions, mentioning the reasons set out in paragraph (1) letter a), d), f), g) and h).

ART. 13

In view of enforcing the provisions of art. 11 paragraph (1) and art. 12 paragraph (1), public authorities can issue a list of criteria, available to the public, on which the authority concerned may decide how to manage environmental information applications.

ART. 14

In view of enforcing the provisions of art. 12 paragraph (1) letter f), public authorities shall take into account provisions of Law no. 677/2001 on the protection of individuals, regarding; the processing of personal data and free movement of such data, published in the Official Gazette of Romania, Part I, no. 790 as of December 12th 2001, as further amended and supplemented.

ART. 15

(1) The environmental information requested held by or for the public authorities, is supplied partially, when its separation of the information which is included in the application domain of art. 11 paragraph (1) letter d) and e) or art. 12 paragraph (1) provisions is possible.

(2) The partial or total rejection of the environmental information supply application is sent to the applicant in written or electronic format, in the case in which the application has been formulated in written or the applicant has requested it, within the term provided at art. 4 paragraph (1) or, if appropriate, at art. 4 paragraph (2).

(3) The rejection of the environmental information supply application contains the motives of the rejection and also the information concerning the revision procedure provisioned at art. 16 - 19.

CHAPTER 4

Access to justice

ART. 16

(1) Any applicant which considers that the environmental information supply application has been rejected in an unjustified manner, partially or totally, has been ignored or settled with an inadequate answer, from any public authority or the provisions of art. 3 - 8, art. 11 - 15 and of art. 29 - 31 have not been observed, can submit to the respective public authority head a prior complaint, requesting the reconsideration of the documents or omissions.

(2) The prior complaint provisioned at paragraph (1) is settled according to the dispositions of art. 7 from the Contentious Administrative Law no. 554/2004, published in the Official Gazette of Romania, Part I, no. 1.154 from December 7th 2004.

(3) The prior administrative procedure provided at paragraph (1) is free of charges.

ART. 17

(1) The applicant which, following the application of the art. 16 paragraph (1) provisions, considers that one of his rights included in the decision herein has been broken or if he hasn't received an answer at his prior complaint submitted within the legal term provided, can submit an application at the competent Contentious Administrative Court, were the documents and omissions of the respective public authorities are analysed.

(2) The application settlement is made according to the dispositions of the Law no. 554/2004.

ART. 18

According to Law no. 554/2004, a third party with his rights or a legitimate interest violated, following the environmental information supply, can address to the competent Contentious Administrative Court.

ART. 19

(1) The definitive and irrevocable Court decisions, through which appeals were allowed according to the dispositions of Law no. 554/2004 constitutes enforceable titles against the public authority which holds the environmental information.

(2) The Court decisions are drawn up in written and are motivated in fact and in law.

CHAPTER 5

Dissemination of the information concerning the environment

ART. 20

(1) The public authorities are obliged to organise the environmental information, relevant to their activity and which is held by or for them, for the public active and systematic dissemination of the environmental information, especially through the use of computerised telecommunication and/or electronic technology.

(2) The public authorities have the obligation to ensure the progressive organizing of the environmental information from the electronic data bases in order to be easy accessible to the public through the public telecommunication networks, taking into consideration the provisions of art. 34.

(3) The public authorities have the obligation to issue monthly press releases which include the synthesis of the events and actions which took place the previous month, related to environmental information provisioned at art. 22.

ART. 21

The information concerning the environment available for the public through the computerised telecommunication and/or electronic technology can not include the information concerning the environment collected before February 14th 2003, with the exception of the case in which the information concerning the environment already exists in electronic format.

ART. 22

The environmental information available for the public and actively disseminated must be permanently updated and must include at least:

- a) the texts of the treaties, conventions and international agreements to which Romania is a part of, also the local, regional, national or communitarian legislation concerning the environment or related to the environment;
- b) the policies, plans and programs related to the environment;
- c) the progress rapports concerning the implementation of the documents and instruments provisioned at letter a) and b), when they are elaborated or held in electronic format by the public authorities;
- d) the rapports concerning the environmental state, provisioned at art. 23;
- e) the data or data summary resulted from the activity monitoring which affect or can affect the environment;
- f) the notifications, agreements and authorisations for the activities with environmental significant impact and also the conventions concluded between the public authorities and the natural persons and/or legal persons concerning the environmental objectives or must indicate the place where such an information can be requested or found, in the conditions of art. 3 - 8 provisions;

g) the environmental impact studies and the risk evaluations concerning the environmental elements provisioned at art. 2 point 1 letter a) or which indicate the place where such information can be requested or found, in the conditions of art. 3 - 8 provisions.

ART. 23

(1) Without affecting any obligation specific to the rapport, provisioned by the communitarian law, the public authorities for environmental protection are obliged to publish annually on their own web pages national regional or local rapports, if appropriate, concerning the environment state.

(2) The rapports provisioned at paragraph (1) including information concerning environmental quality and also the pressure over the environment must be published until October 15th in the year following the rapport is drawn up.

ART. 24

In the case of an imminent threat over the human health or over the environment, due to human activities or natural causes, the public authorities are obliged to ensure in a free manner the immediate and without delay dissemination of all the environmental information held by or for the authorities, which would allow the public which is in danger to be affected to take the preventing or amelioration measures of the damages resulted from that threat.

ART. 25

(1) The obligations provisioned at art. 20 - 22 can make the object of the exceptions provisioned at art. 11, 12 and 14.

(2) The public authorities can fulfil the provisions of art. 20 - 24 by creating links to the web page which would lead to the respective environmental information.

ART. 26

(1) For the environmental information active dissemination provisioned at art. 22 letter e), the economic operators which develop their activity on the basis of an authorisation/environmental integrated authorisation, have the obligation to inform the public every quarter, by displaying on their own web page or through any other communication means, about the consequences of the activities and/or of their products over the environment.

(2) It is considered an offence the failure to comply with the obligation provisioned at paragraph (1) and it is sanctioned with a fine from 1,000 lei (RON) to 2,500 lei (RON).

(3) The ascertainment of the contravention and fee applying is made by the authorised personnel within the territorial an central public authorities for environmental protection, according the provisions of Government Decision no. 440/2005 for the reorganisation and functioning of the National Environmental Guard, published in the Official Gazette of Romania, Part I, no. 448 from May 26th 2005.

(4) The provisions of the Government Ordinance no. 2/2001 concerning the legal regime of contraventions are applied to the contraventions provisioned at paragraph (2), approved through the Law no. 180/2002 with the modifications and completions, as further amended and supplemented.

ART. 27

For the applications of art. 23 paragraph (1) dispositions, the public authorities for environmental protection are obliged to ensure their necessary financial resources.

CAP. 6

The quality of the environmental information

ART. 28

(1) The public authorities ensure that, according to the possibilities, any environmental information compiled by them or in their name shall be updated, correct and comparable.

(2) At request, the public authorities are obliged to give a response to the applicant for any environmental information request, provisioned at art. 2 point. 1 letter b), about the place where the information concerning the determination procedure can be found, including the methods of analysis, sampling and processing the proofs used in the information compilation or about the standard procedure used, if the information is available.

CAP. 7
 Tariffs

ART. 29

The access is granted for the public to any lists and public elaborated registries made available, according to the provisions of art. 7 paragraph (1) letter b) and paragraph (2) lit. c), and also the analysis of the requested information is made for free.

#M1

*ART. 30 *** Repealed*

*ART. 31 *** Repealed*

#B

CAP. 8
 Transitional and final provisions

ART. 32

(1) Until February 14th 2009, the National Agency for Environmental Protection elaborates a rapport concerning the experience accumulated in applying the provisions of the decision herein.

(2) The rapport is communicated to the European Commission by the National Agency for Environmental Protection until the latest August 14th 2009.

(3) For fulfilling the obligation provisioned at paragraph (1), the central public authority for environmental protection, through the National Agency for Environmental Protection, sends to the other public authorities the guide concerning the rapport modality, until the date of June 14th 2008.

(4) The public authorities have the obligation to send to the National Agency for Environmental Protection the data requested according to the provisions of paragraph (3), until the November 14th 2008.

ART. 33

The central public authority for environmental protection informs the European Commission about the national normative documents which ensure the compliance with the provisions of the European Parliament Directive and of the Council 2003/4/EC from January 28th 2003, concerning the public access to the environmental information and the repeal of the Council Directive 90/313/EEC, within a month from the entering into force of every legislative act.

ART. 34

(1) The public authorities are obliged to elaborate data base for the environmental information. These data bases include:

- a) the data base with the environmental information held by or for the public authority;

b) the data base with the environmental information disseminated actively, of which content is provisioned by art. 22.

(2) the data bases provisioned at paragraph (1) are made within maximum 8 months from the date of entering into force of the decision herein.

(3) the public authorities are obliged to ensure the accessibility of the data base provisioned at paragraph (1) letter b) through the public telecommunication network and including it on their own web page, within maximum 8 months from the date of entering into force of the decision herein.

(4) The public authorities are obliged to permanently update the data base provisioned at paragraph (1).

(5) The establishment and management of the data bases provisioned at paragraph (1) is made by the authorised personnel within the public relations department, employed in this purpose.

ART. 35

The public authorities are obliged to establish at their registered offices the spaces provided at art. 7 paragraph (2) letter b) for the environmental information analysis and to equip them according to the provisions of art. 10 paragraph (1), within maximum 6 months from the date of entering into force of the decision herein.

ART. 36

The public authorities are obliged to make the registries or lists provisioned at art. 7 paragraph (1) letter b), art. 9 paragraph (1) and to art. 10, within maximum 3 months from the date of entering into force of the herein decision and to update them monthly.

ART. 37

(1) Within a month from the date of expiry of the term provisioned at art. 36, the central public authorities have the obligation to send to the National Agency for Environmental Protection the following documents:

a) the main lists with the public authorities subordinated or coordinated by them, which held information concerning the environment, specifying the contact data for each public authority, respectively name, registered office, telephone, fax, e-mail address and web page, contact person name and surname;

b) the main lists with the environmental information held by or for the public authorities subordinated or coordinated by them.

(2) The National Agency for Environmental Protection elaborates and displays on their web page:

a) the list at a national level with the public authorities that hold environmental information, with the contact data for each public authority;

b) the list at a national level with the environmental information held by or for the public authorities.

(3) The lists provisioned in paragraph (1) are updated annually and are sent to the National Agency for Environmental Protection within a month from their update, but not later than March 31st 2005.

(4) Within a month from their receiving, the National Agency for Environmental Protection updates and displays on their web page the national level list provisioned at paragraph (2).

ART. 38

The public authorities are obliged to display on their web page the rights of the public according to the provisions of the decision herein, within a month from the entering into force of it.

ART. 39

(1) The public authorities are obliged to elaborate the annually prospectus provided at art. 8 paragraph (2) letter b) until March 31st of the following year, for the one for which the prospectus are done and to make them available for the public in the spaces assigned for the environmental information analysis.

(2) The first edition of the prospectus must be drawn up and made available for the public within 6 months from the entering into force of the herein decision.

ART. 40

Within 3 months from the entering into force of the herein decision, through the order of the environmental protection central public authority head, the methodology of collection, management and making available for the public of the environmental information for the public authorities that are subordinated, coordinated or under its authority must be approved.

ART. 41

The herein decision enters into force in 3 months from the date of publishing in the Official Gazette of Romania, Part I.

ART. 42

At the date of entering into force of the herein decision, the Government Decision no. 1.115/2002 concerning the free access to the environmental information, published in the Official Gazette of Romania, Part I, no. 781 from October 28th 2002 should be repealed.

The decision herein transposes the provisions of the European Parliament Directive and of the Council no. 2003/4/EC from January 28th 2003 concerning the public access to the environmental information and repealing of the Council Directive no. 90/313/EEC, published in the Official Gazette of the European Union (J.O.U.E.) no. L 41 from February 14th 2003.
