

**Proposal for a Directive of the European Parliament and of the Council on public access to environmental information**

(2000/C 337 E/24)

(Text with EEA relevance)

COM(2000) 402 final — 2000/0169(COD)

*(Submitted by the Commission on 29 June 2000)*

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

- (1) Public access to environmental information held by public authorities contributes to an increased awareness of environmental matters and thus improves environmental protection.
- (2) Council Directive 90/313/EEC <sup>(1)</sup> of 7 June 1990, on the freedom of access to information on the environment initiated a process of openness in relation to public access to environmental information which should be fostered and continued.
- (3) Article 8 of that Directive requires Member States to report to the Commission on the experience gained in the light of which the Commission is required to make a report to the European Parliament and the Council together with any proposal for revision of the Directive which it may consider appropriate.
- (4) The report under Article 8 of that Directive identifies concrete problems encountered in the practical application of the Directive and was adopted by the Commission on ...
- (5) On 25 June 1998 the European Community signed the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ('the Aarhus Convention') and provisions of Community law must be aligned with that Convention with a view to its ratification by the Community.
- (6) It is appropriate in the interest of increased transparency to replace Directive 90/313/EEC rather than to amend it so as to provide interested parties with a single clear and coherent legislative text.
- (7) Disparities between the laws in force in the Member States concerning access to environmental information held by public authorities can create inequality within the Community as regards access to such information or as regards conditions of competition.
- (8) It is necessary to ensure that any natural and legal person in the Community has the right of access to environmental information held by or for public authorities without his having to state an interest.
- (9) It is also necessary to ensure that public authorities make available and disseminate environmental information to the general public as a matter of course by means in particular of available computer telecommunication and/or electronic technology.
- (10) The definition of environmental information should be widened so as to encompass specifically information in any form on the state of the environment; on factors, measures or activities affecting or likely to affect the environment and on those designed to protect it, on emissions, discharges and other releases into the environment, on the cost benefit and economic analyses used within the framework of such measures or activities; and on the state of human health and safety, conditions of human life, cultural sites and built structures in as much as they are affected or likely to be affected by any of those matters.
- (11) To take account of the principle in Article 6 of the Treaty that environmental protection requirements should be integrated into the definition and implementation of Community policies and activities, the definition of public authorities should be expanded so as to encompass specifically government or other public administration at national, regional or local level whether having specific responsibilities for the environment or not, and other persons or bodies exercising functions or providing services relating directly or indirectly to the environment under the control of government or a public administration.

<sup>(1)</sup> OJ L 158, 23.6.1990, p. 56.

- (12) Services of general interest traditionally performed by public authorities or public utilities are increasingly being carried out by bodies which no longer form part of the public sector; those bodies hold environmental information to which the public should continue to have a right of access; unless specific provision is made, the public in some Member States will no longer have rights of access to environmental information held by such bodies; in terms of environmental protection, it is undesirable for such inconsistencies to arise between, and even within, Member States as a consequence only of reorganisations affecting the carrying out of such services; accordingly, the scope of this Directive should extend to legal persons entrusted by law, or under arrangements with other public authorities, with the operation of services of general economic interest which affect or are likely to affect the environment.
- (13) Taking account of ways in which environmental information is physically stored, information which is held on behalf of public authorities by other bodies under arrangements made between them should also fall within the scope of this directive.
- (14) Environmental information should be made available to applicants as soon as possible and within a reasonable time. In specific circumstances where an applicant voluntarily states that he is requesting information for a specific purpose, public authorities should make reasonable efforts to enable the applicant to fulfil that purpose.
- (15) Public authorities should make environmental information available in the form or format requested by an applicant except in certain specified cases where such a request may be refused.
- (16) To this end, public authorities should be required to make reasonable efforts to maintain the environmental information held by or for them in forms or formats that are readily reproducible and accessible by computer telecommunication networks.
- (17) Member States should determine the practical arrangements under which such information is effectively made available.
- (18) Public authorities should be able to refuse a request for environmental information in specific and clearly defined cases. In some of those cases, the public interest served by disclosure should be weighed against the interest served by the refusal to disclose and access to the information requested should be granted if the public interest served by disclosure outweighs the specific interest protected by the non-disclosure. Within this framework, Member States should ensure that the requirements of Directive 95/46/EC<sup>(1)</sup> of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data are respected. The reasons for a refusal must be provided to the applicant within an appropriate time-limit.
- (19) Information on emissions, discharges and other releases into the environment subject to the provisions of Community legislation should not be withheld by virtue of the protection of commercial or industrial information.
- (20) Public authorities should make environmental information available in part where it is possible to separate out any information falling within the scope of the exceptions from the rest of the information requested.
- (21) Public authorities should be able to make a charge for supplying environmental information but such a charge should not exceed a reasonable amount. In this connection, a schedule of charges should be publicised and made available to applicants. Advance payments should not be required.
- (22) Applicants should be able to seek an administrative or judicial review of the acts or omissions of a public authority in relation to a request.
- (23) In order to increase public awareness in environmental matters and so improve environmental protection, public authorities should as a matter of course disseminate general information on the environment by means of available computer telecommunication and/or electronic technology. To this end, public authorities should be required to make reasonable efforts to maintain the environmental information held by or for them in forms or formats that are readily reproducible and accessible by computer telecommunication networks.
- (24) This Directive should be subject to a review in the light of experience.
- (25) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community. This Directive limits itself to the minimum required for the attainment of those objectives and does not go beyond what is necessary for that purpose,

<sup>(1)</sup> OJ L 281, 23.11.1995, p. 31.

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Objective**

The objective of this Directive is:

- (a) to grant a right of access to environmental information held by or for public authorities and to set out the basic terms and conditions of its exercise; and
- (b) to ensure that, as a matter of course, environmental information is made available and disseminated to the public, in particular, by means of available computer telecommunication and/or electronic technology.

*Article 2*

**Definitions**

For the purposes of this Directive:

- 1. 'environmental information' shall mean any information in written, visual, aural, electronic or any other accessible form on:
  - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
  - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, affecting or likely to affect the elements of the environment referred to in (a) and/or human health and safety;
  - (c) emissions, discharges and other releases into the environment;
  - (d) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements referred to in (a), as well as measures or activities designed to protect those elements;
  - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (d);
  - (f) the state of human health and safety, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) to (d).

2. 'Public authority' shall mean:

- (a) government or other public administration at national, regional or local level;
- (b) any legal or natural person having public responsibilities or functions, or providing public services, relating directly or indirectly to the environment under the control of a body or person falling within (a);
- (c) any legal person entrusted by law, or under arrangements with a body or person falling within (a) or (b), with the operation of services of general economic interest which affect or are likely to affect the state of elements of the environment.

This definition does not include bodies when and to the extent that they act in a judicial or legislative capacity.

- 3. 'Information held for a public authority' shall mean environmental information which is held by a legal or natural person on behalf of a public authority under arrangements made between that authority and that person.
- 4. 'Applicant' shall mean any natural or legal person requesting environmental information.

*Article 3*

**Access to environmental information upon request**

- 1. Member States shall ensure that public authorities are required, in accordance with the provisions of this Directive, to make available environmental information held by or for them to any applicant at his request and without his having to state an interest.
- 2. Subject to paragraph 3 and Article 4, environmental information shall be made available to an applicant:
  - (a) as soon as possible or, at the latest, within one month after the receipt by the public authority concerned of the applicant's request; or
  - (b) within two months after the receipt of the request by the public authority, if the volume and the complexity of the information is such that the one-month period referred to in (a) cannot be complied with. In such cases, the applicant shall be informed as soon as possible, and in any case before the end of that one-month period, of any such extension and of the reasons for it.
- 3. If the applicant states that he is requesting information for a specific purpose, the public authority concerned shall make reasonable efforts to make available such information within such time-period as is necessary to enable the applicant to fulfil that purpose.

4. Where an applicant requests a public authority to make environmental information available in a specific form or format (including in the form of copies), the public authority shall make it so available unless:

- (a) it is already publicly available in another form or format which is easily accessible by the applicant;
- (b) it is reasonable for the public authority to make it available in another form or format, in which case reasons shall be given for making it available in that form or format.

For the purposes of this paragraph, public authorities shall make reasonable efforts to maintain environmental information held by or for them in forms or formats that are readily reproducible and accessible by computer telecommunications or by other electronic means.

The reasons for a refusal to make information available, in full or in part, in the form or format requested shall be provided to the applicant within the time-limit referred to in paragraph 2(a).

5. For the purposes of this Article, Member States shall define the practical arrangements under which environmental information shall be effectively made available. These practical arrangements may include:

- (a) the designation of information officers;
- (b) the establishment and maintenance of facilities for the examination of the information requested; publicly accessible lists of public authorities and registers or lists of the environmental information held by such authorities and information points.

Member States shall ensure that public authorities inform the public adequately of the rights they enjoy as a result of this directive.

#### Article 4

#### Exceptions

1. Member States may provide for a request for environmental information to be refused if:

- (a) the information requested is not held by or for the public authority to which the request is addressed. In such a case, where that public authority believes that the information may be held by or for another public authority, it shall, as soon as possible, transfer the request to that other authority and inform the applicant accordingly;

(b) the request is manifestly unreasonable or formulated in too general a manner;

(c) the request concerns material in the course of completion or internal communications. In each such case, the public interest served by the disclosure shall be taken into account.

2. Member States may provide for a request for environmental information to be refused if disclosure of the information would adversely affect:

- (a) the confidentiality of the proceedings of public authorities;
- (b) international relations, public security and national defence;
- (c) the course of justice, the ability of any person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;
- (d) the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest. Member States may not, by virtue of this sub-paragraph, provide for a request to be refused where the request relates to information on emissions, discharges or other releases into the environment which are subject to provisions of Community legislation;
- (e) intellectual property rights;
- (f) the protection of individuals with regard to the processing of personal data in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (g) the interests of any person who supplied the information requested on a voluntary basis unless that person has consented to the release of the information concerned;
- (h) the environment to which such information relates.

In each case, the public interest served by the disclosure shall be weighed against the interest served by the refusal. Access to the requested information shall be granted if the public interest outweighs the latter interest. Within this framework, and for the purposes of the application of (f), Member States shall ensure that the requirements of Directive 95/46/EC are respected.

3. Environmental information held by or for public authorities which has been requested by an applicant shall be made available in part where it is possible to separate out any information falling within the scope of paragraphs 1(c) or 2 from the rest of the information requested.

4. A refusal to make available all or part of the information requested shall be notified to the applicant in writing within the time limits referred to in Article 3(2) (a) or, as the case may be, (b). The notification shall state the reasons for the refusal and include information on the review procedure provided for in accordance with Article 6.

#### Article 5

##### Charges

1. Public authorities may make a charge for supplying any environmental information but such a charge may not exceed a reasonable amount. The supply of any information shall not be made subject to the advance payment of a charge.

2. Where charges are made, public authorities shall publicise and make available to applicants a schedule of such charges as well as information on the circumstances in which a charge may be levied or waived.

3. Access to any public registers or lists established and maintained as mentioned in Article 3(4) shall be free of charge. Examination *in situ* of the information requested shall also be free of charge.

#### Article 6

##### Access to justice

1. Member States shall ensure that any applicant who considers that his request for information has been ignored, wrongfully refused (whether in full or in part), inadequately answered or otherwise not dealt with in accordance with the provisions of Articles 3, 4 or 5, has access to a procedure before a court of law or other body established by law in which the acts or omissions of the public authority concerned can be reviewed.

2. In addition to the review procedure before a court of law or other body which is referred to in paragraph 1 above, Member States shall ensure that an applicant has access to a procedure in which the acts or omissions of the public authority concerned can be reconsidered by that public authority or reviewed administratively by another body established by law; any such procedure shall be expeditious and either free of charge or inexpensive.

3. Member States shall ensure that the public authority to which the request for environmental information is made takes the necessary measures to comply with the decisions arising from the procedures referred to in paragraphs 1 and 2.

#### Article 7

##### Dissemination of environmental information

1. Member States shall take the necessary measures to ensure that public authorities make available and disseminate to the public environmental information held by or for them

by means in particular of available computer telecommunication and/or electronic technology.

The information to be made available and disseminated by public authorities shall include:

- (a) texts of international treaties, conventions or agreements, and of Community, national, regional or local legislation, on the environment or relating to it;
- (b) policies, plans and programmes relating to the environment;
- (c) progress reports on the implementation of the items referred to in (a) and (b);
- (d) the reports on the state of the environment referred to in paragraph 2;
- (e) data derived from the monitoring of activities affecting or likely to affect the environment.

For the purposes of this paragraph, public authorities shall make reasonable efforts to maintain environmental information, and in particular, the kinds of information specifically listed in (a) to (e), in forms or formats that are readily reproducible and accessible by computer telecommunications or by other electronic means.

2. Without prejudice to any specific reporting obligations laid down by Community legislation, Member States shall take the necessary measures to ensure that national, regional or local reports (as appropriate) on the state of the environment are published at regular intervals not exceeding four years; such reports shall include information on the quality of, and pressures on, the environment.

3. Without prejudice to any specific obligation laid down by Community legislation, Member States shall take the necessary measures to ensure that, in the event of an imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information held by public authorities which could enable the public likely to be affected to take measures to prevent or mitigate harm arising from the threat is disseminated, immediately and without delay.

4. Member States shall, so far as is practicable, ensure that any information made available or disseminated, or reports published, in accordance with this Article are clear and comprehensible.

5. The exceptions in Article 4(1) and (2) shall apply in relation to the duties imposed by this Article.

*Article 8***Review procedure**

1. Not later than (insert the date which is five years after the date referred to in Article 9), Member States shall report on the experience gained in the application of the Directive.

They shall communicate the reports to the Commission not later (insert the date which is six months after the date just referred to).

2. In the light of experience, the Commission shall make a report to the European Parliament and the Council together with any proposal for revision which it may consider appropriate.

*Article 9***Implementation**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by (insert specified date) at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such a

reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

*Article 10***Repeal**

Directive 90/313/EEC is hereby repealed with effect from (insert the date referred to in Article 9).

References to the repealed Directive shall be construed as referring to this Directive and shall be read in accordance with the correlation table in the Annex.

*Article 11***Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

*Article 12***Addressees**

This Directive is addressed to the Member States.

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## ANNEX

## CORRELATION TABLE

Directive 90/313/EEC	This Directive
Article 1	Article 1(a) Article 1(b)
Article 2(a) Article 2(b)	Article 2(1) Article 2(2) Article 2(3) Article 2(4)
Article 3(1) Article 3(2) Article 3(3) Article 3(4)	Article 3(1) + Article 3(5) Article 4(2) + Article 4(3) Article 4(1) Article 3(2) + Article 4(4) Article 3(3) Article 3(4)
Article 4	Article 6(1) + Article 6(2) Article 6(3)
Article 5	Article 5(1) Article 5(2) Article 5(3)
Article 6	Article 2(2)
Article 7	Article 7 Article 7(1) Article 7(2) Article 7(3) Article 7(4) Article 7(5)
Article 8	Article 8
Article 9	Article 9
Article 10	Article 12
	Article 10
	Article 11