



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.06.2000  
COM(2000) 402 final

2000/0169 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on public access to environmental information**

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

### **1. JUSTIFICATION FOR THE PROPOSAL**

#### **1.1 General considerations**

This proposal for a Directive on access to environmental information, which upon adoption will replace Council Directive 90/313/EEC, of 7 June 1990, on the freedom of access to information on the environment<sup>1</sup> has been prepared in accordance with Article 8 of that Directive, which calls upon the Commission to submit any proposal for revision it may consider appropriate in the light of experience gained in the operation of the Directive.

The experience gained since 1<sup>st</sup> January 1993, the latest day for the transposition of Directive 90/313/EEC by Member States, shows that this Directive initiated a process of openness as regards public access to environmental information. It was a catalyst for change in the way that public authorities approach the process of openness and transparency. Individuals and organisations throughout the Community have made use of its possibilities. Improved access by the public to environmental information has contributed to an increase in public awareness of environmental matters.

The process of openness initiated by the Directive needs to be further fostered and continued.

The aim of the revision of Directive 90/313/EEC is three-fold:

- 1) To correct the shortcomings identified in the practical application of Directive 90/313/EEC;
- 2) To pave the way towards the ratification by the European Community of the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters through the alignment of the proposal to the relevant provisions of the Convention.
- 3) To adapt Directive 90/313/EEC to developments in information technologies so as to make a "second-generation" directive which will reflect the changes in the way information is created, collected, stored and transmitted.

Experience gained in the application of the Directive has made it possible to identify specific shortcomings. The present review of the Directive aims at correcting those shortcomings and clarifying and further strengthening its provisions.

The main shortcomings of Directive 90/313/EEC were already identified during the negotiating process between the members of the Economic Commission for Europe of the UN/ECE Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters signed by the Community and 14 Member States (Germany signed on 21 December 1998) in Aarhus, Denmark on 25 June 1998 at the Fourth Ministerial Conference Environment for Europe, hereafter referred to as the Aarhus Convention.

The first draft of the Convention which served as a starting point for the negotiations was largely inspired by the provisions of Directive 90/313/EEC. Negotiations provided Member States (along with the other states which are members of the Economic Commission for

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<sup>1</sup> OJ L158, 23.6.1990, p. 56.

Europe and NGOs) with a first opportunity to have discussions on public access to environmental information on the basis of the experience gained in the application of their national legislation in this area. Negotiations thus proved to be a forum in which many of the items likely to be addressed in the revision of Directive 90/313/EEC had already been discussed and agreed upon.

In accordance with its normal practice, the European Community will only be in a position to ratify the Convention once relevant EC legislation is aligned with its provisions. The proposal for a directive which will replace Directive 90/313/EEC provides a timely opportunity to align Community law with those provisions of the Convention concerning access to environmental information.

The proposal also takes account of the findings of the report on the experience gained in the application of the Directive<sup>2</sup> which the Commission adopted in accordance with Article 8 of the Directive. This report is based on the information contained in the reports that Member States had to communicate to the Commission in accordance with Article 8. Further, the report includes suggestions coming from NGOs and references to the case law of the European Court of Justice on the Directive. Finally, it also contains information on the implementation of the Directive gathered by the Commission itself within the framework of the monitoring and enforcement of the Directive under Article 211 of the EC Treaty.

The proposal takes also account of developments in information technologies such as the increasing use of electronic media to store and to disseminate information. It aims at adapting EC legislation in the area of public access to environmental information to the so-called 'electronic revolution'.

Due to the numerous amendments to Council Directive 90/313/EEC proposed, it has been considered appropriate, in the interest of increased transparency, to replace it rather than to amend it. This way of proceeding will provide interested parties, and in particular the public in general, with a single clear and coherent legislative act, instead of submitting isolated changes to the existing Directive. It should, however, be made clear from the outset that the existing *acquis* is not open for discussion. A correlation table is attached to the proposal.

## **1.2 Environmental objectives to be achieved**

Article 2 of the EC Treaty provides that the Community shall have as one of its tasks the promotion of a high level of protection and improvement of the quality of the environment. For this purpose, the Community is required to include a policy in the field of the environment (Article 3 (k) of the EC Treaty). This policy should contribute to the pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment;
- protecting human health;
- prudent and rational utilisation of natural resources;
- promoting measures at international level to deal with regional or world-wide environmental problems.

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<sup>2</sup> COM(2000..) ....

Giving public access to environmental information is essential to achieve these aims; it contributes to a raising of public awareness of and interest in environmental matters and so to a more efficient public participation in the making of environmental decisions which affect their lives. A better informed public is able to carry out a more effective control of public authorities as they carry out their duties in the environmental field, thus securing full and effective enforcement of EC environmental law.

Further, given the transfrontier nature of many environmental problems, it was felt particularly desirable that there should be a harmonised approach to the provision of environmental information throughout the Community. This was achieved through Directive 90/313/EEC.

The proposal aims at continuing the securing of these objectives and, at the same time, at improving the process of openness initiated by Directive 90/313/EEC in the light of the experience gained in its practical application. Further, by aligning EC law to the relevant provisions of the Aarhus Convention, the proposal is part of the process that should lead to the Community's ratification of that Convention.

## **2. CHOICE AND JUSTIFICATION OF THE LEGAL BASE**

As highlighted above, the proposal aims to further the objectives of the Community environmental policy defined in Article 174 of the EC Treaty. Therefore, the proposal is based on Article 175.1 (co-decision procedure) of the Treaty which is the specific legal base for the Community's policy in the field of the environment.

## **3. SUBSIDIARITY AND PROPORTIONALITY**

### **3.1 Objectives of the proposed action in relation to the obligations of the Community**

Under Article 2 of the EC Treaty, the Community has as one of its tasks the promotion of a high level of protection and improvement of the quality of the environment. To this end, since the mid 1970s, the Community has developed a considerable *acquis* in the field of the environment.

Both the Member States and the Commission are concerned in the question of implementation and enforcement of Community environmental law. On the one hand, the task of monitoring transposition, conformity and effective application of the Community's environmental legislation falls to the Commission, using in particular the powers under Articles 211, 226 and 228 of the EC Treaty. On the other, the enforcement of the requirements under Community environmental legislation is the responsibility of the Member States. Public access to environmental information is a key instrument to secure effective application of the *acquis*. Wider access to environmental information contributes to an increase in public awareness of environmental problems and thus improves the protection and the quality of the environment throughout the Community.

In addition to this, the Community in June 1998 signed the Aarhus Convention. By signing the Convention, the Community demonstrated its commitment to furthering the effectiveness of its environmental policy, notably through increased public awareness and involvement in decision-making. The ratification of the Aarhus Convention is a political priority for the Commission.

The proposal aims at aligning Community law to the provisions of the Aarhus Convention dealing with access to environmental information. It will enable the Community to comply

with its international obligations and pave the way towards the ratification of the Convention by the European Community.

### **3.2 What is the Community dimension of the problem?**

The Community has developed a considerable amount of legislation in the environmental field to achieve the objectives of the Community policy in the field of the environment laid down in the EC Treaty.

Directive 90/313/EEC was the starting point of the process of changes in the way that public authorities approach the process of openness and transparency. Improved access by the public to environmental information has contributed to an increase in public awareness of environmental matters. Public concern for the protection of the environment is growing. Environmental problems have very often a transfrontier dimension. Citizens, NGOs and the public in general should be able to have access to environmental information on the same basic terms and conditions throughout the Community. Community action is therefore needed in order to achieve this objective.

### **3.3 What is the most effective solution, comparing the means of Member States and the Community?**

Action at Community level is also required due to the transfrontier dimension of environmental problems. Further, Community action is needed in order to ensure that the basic terms and conditions of the right of access to environmental information are evenly applied across the Community. It is also needed in order to ensure that, as a matter of course, environmental information is made available and disseminated evenly to the public throughout the Community.

In addition to this, Community action is needed in order to comply with the international commitments the Community agreed to by signing the Aarhus Convention and to enable the Community's ratification of the Convention.

By setting improved minimum terms and conditions for the exercise of the right of access to environmental information throughout the EC, the Community will reinforce a fundamental tool which has proved to be of the utmost importance for the fulfilment of the objectives laid by the EC Treaty in the field of the environment.

The proposal leaves it to the Member States to define the practical arrangements under which environmental information should effectively be made available respecting thereby the subsidiarity principle.

### **3.4 What would be the cost of inaction by the Community?**

Inaction by the Community would mean that the Community would not be in a position to ratify the Aarhus Convention and would thus not be in a position to comply with its international obligations.

### **3.5 Which instruments does the Community have available in order to meet the objectives?**

At the time when Community work in the field of access to environmental information was started, only a minority of Member States had national legislation regulating access to environmental information and this legislation differed from one Member State to the other.

Due to the disparities and to the transfrontier dimension of many environmental problems, Community action was deemed necessary. It was considered at that time that a directive would be the most appropriate instrument to achieve the objective pursued. Directive 90/313/EEC set out the basic terms and conditions on which environmental information should be made available throughout the Community leaving the definition of the practical arrangements to the Member States.

Directive 90/313/EEC initiated a process of openness whereby traditional practices of official secrecy were gradually replaced by a climate of openness. The Directive itself foresaw the possibility of its revision in the light of the experience gained in its application. The revision of Directive 90/313/EEC should be done by means of a new directive which will define improved minimum terms and conditions for the right of access to environmental information throughout the Community. It will also define the minimum environmental information which should as a matter of course be made available and disseminated to the general public. The proposal will leave to the Member States the task of defining the practical arrangements under which the information should be effectively made available.

### **3.6 Proportionality**

At the time of the adoption of Directive 90/313/EEC, Community action in this area in the form of a Directive was considered proportionate to the objective pursued. The Directive set out the minimum terms and conditions on which environmental information should be made available leaving to the Member States to define the practical arrangements under which such information is effectively made available. The aim of the proposal is to replace Directive 90/313/EEC. From a legal point of view, the recasting of Directive 90/313/EEC should be done by means of another directive. The proposal for replacing Directive 90/313/EEC follows the same principles. It sets the general framework of the right of access to environmental information and of the environmental information which should be made available to the public as a matter of course leaving it to the Member States to define the practical arrangements to comply with these objectives.

## **4. COSTS OF IMPLEMENTING THE PROPOSAL FOR MEMBER STATES**

In accordance with Article 9 of Directive 90/313/EEC, Member States had to bring into force, the laws, regulations and administrative provisions necessary to comply with it by 31<sup>st</sup> December 1992 at the latest.

It is not apparent from the national reports that the operation of Directive 90/313/EEC has given rise to any great financial problems.

It can therefore be assumed that no great increase in costs will result as a consequence of the adoption of this proposal. It should also be noted again that the proposal aims at aligning EC law with the obligations arising from the Aarhus Convention to which all the Member States agreed by signing the Convention. Some Member States have already indicated that they would ratify the Convention in the year 2000. Others will do so in 2001/2002.

Despite the above it should be said that, in order to take into account developments in the "information society", the proposal will oblige Member States to have greater recourse to modern computer technology for making information available to the public. Although this may involve some extra capital expenditure at the outset, and possibly an increase in human resources to set up and maintain the systems, any disadvantages should be outweighed by the subsequent reduction of direct requests for information addressed to the public authorities

themselves and of the human manpower which would otherwise be needed to deal with them in accordance with the terms of the proposal.

An active policy of making information available to the public through modern computer technology should enable many information searches to be carried out directly by applicants. This should result in a reduction of the administrative costs incurred in the handling of individual written requests for access to environmental information. It will also improve public understanding of the functioning of public authorities improving thereby public confidence.

Despite the above, it has also been suggested that a more proactive approach to information dissemination generates more requests for information; that these requests are increasingly sophisticated and that they are all but impossible to deal with by an active supply of the data. Some public authorities have become more proactive in publicising the availability of environmental information through publicity campaigns and through the use of modern information technologies. As a result, public interest in environmental information has risen and more follow up questions are generated. This proves on the one hand that, indeed, improved access to environmental information contributes to increase public awareness in environmental matters which is one of the main objectives of the legislation. On the other hand, it should also be acknowledged that this approach has resulted in an increase of the cost of the regime. This cost is already being borne by the Member States as it appears that the majority of them are making increased use of modern computer technologies to publicise and disseminate environmental information. The proposal aims at reflecting this trend and at adapting EC legislation to the so-called "electronic revolution". It will define the minimum environmental information which should as a matter of course be made available and disseminated to the general public throughout the Community using modern computer technologies. In this sense, it can be assumed that that no greater increase in costs than the one already incurred in the Member States as a result of their adaptation to the new technologies to store and to publicise environmental information will result as a consequence of the adoption of this proposal.

The scope of the Proposal extends to certain bodies not in the public sector carrying out services of general economic interest which affect the environment. In some cases, these bodies used to be in the public sector and were subject to the obligations under Directive 90/313/EEC. In other cases, the bodies are the successors to authorities or bodies which were subject to those duties. Against that background, provision ensuring that bodies which provide services of general interest capable of affecting the environment continue to be required to give access to environmental information should not generally lead to a great increase in costs. Such increase as there may be should be outweighed by the benefit of increased transparency of information. The comments made above in relation to technological developments and the "information society" are equally applicable whether a body is in the public or the private sector.

## **5. RESULTS OF CONSULTATIONS WITH INTERESTED PARTIES**

On 26 January 1998, the EU Network for the Implementation and Enforcement of Environmental Law (IMPEL) organised a workshop on the implementation and application of the Directive. It was attended by representatives of IMPEL, of the Commission and of public authorities and NGOs concerned with the environment in the Member States and in states seeking admission to the Community. It thus provided an opportunity for an open exchange of views in the light of experience gained by the participants in the application of the Directive.

A report was issued after the workshop drawing on the discussions there but also on work done over a five-year period in conjunction with experts in the Member States. It made a number of recommendations for the revision of the Directive.

On 17 December 1999, the Environment Directorate General released a working paper which set out the principles on which the revision of Directive 90/313/EEC could be based. In order to ensure as wide a public consultation as possible, the working paper was distributed to Member States, IMPEL co-ordinators, non-governmental organisations and industry associations. Informal meetings with those stakeholders were organised at the beginning of the year 2000 with a view to finalising a draft proposal for the revision of Directive 90/313/EEC.

### **5.1 Member States**

On 31 January 2000 an informal meeting with Member States representatives and IMPEL co-ordinators was organised to discuss the principles on which the revision of Directive 90/313/EEC could be based. Participants to the meeting were invited to present written comments within a deadline of two weeks. At the moment of drafting the proposal only Spain, the Netherlands, Sweden and the United Kingdom had presented written observations on the ideas laid down in the working paper.

### **5.2 Non governmental organisations**

Following the workshop on the implementation of the application of Directive 90/313/EEC organised by IMPEL in January 1998, *Stichting Natuur en Milieu*, the Netherlands Society for Nature and Environment prepared a document entitled "Recommendations for the review and the revision of Directive 90/313/EEC on the freedom of access to information on the environment" which is referred to in the Commission's report to the European Parliament and to the Council on the experience gained in the application of Directive 90/313/EEC.

On 15 January 2000 an informal meeting with non-governmental organisations was held with a view to discussing the ideas for the revision of Directive 90/313/EEC set out in the working paper referred to above.

NGOs were invited to submit written comments within a deadline of three weeks. They presented a single document commenting on the proposals referred to in the working paper.

### **5.3 Industry**

On 15 January 2000, an informal meeting with several industry associations was held with a view to gathering their comments on the principles for the revision of Directive 90/313/EEC.

Industry associations were invited to submit written comments on the ideas set out in the working document. At the moment of drafting the proposal, no written contribution had been received.

The proposal takes account, as appropriate, of the oral and written comments made by the stakeholders consulted.

## **6. DETAILED EXPLANATION OF THE PROPOSAL**

### Objective (Article 1)

The objective of the proposal is two-fold. On the one hand, it aims at ensuring a right of access to environmental information held by or held for public authorities and to set out the basic terms and conditions of its exercise. On the other, it also aims at ensuring that, as a matter of course, environmental information is made available and disseminated to the general public in particular by means of available computer telecommunication and/or electronic technology.

In contrast with Directive 90/313/EEC which only ensured freedom of access to environmental information, it was felt more appropriate to establish a right of access to environmental information. The establishment of such a right will enable Community legislation to be aligned with the Aarhus Convention.

Finally, the proposal aims also at ensuring that as a matter of course environmental information is made available and disseminated to the general public. With a view to ensuring that the proposal properly reflects the changes occurring or which have occurred in the area of information technologies, it is stressed that to this end, available computer telecommunication and/or electronic technology should be used.

### Definitions (Article 2)

#### Environmental information

Even though Directive 90/313/EEC already contained a broad definition of environmental information, experience suggests that the definition needs to be made more comprehensive and explicit so as to encompass certain categories of environmentally-relevant information which have been excluded from the scope of the Directive due to a restrictive interpretation. In particular, it should be made clear that the definition includes information on emissions, discharges and other releases into the environment as well as genetically modified organisms. Further, the definition has been clarified so as to make specific reference to human health and safety insofar as the latter are or may be affected by the state of the environment. Article 174 of the EC Treaty states that protecting human health is one of the objectives of Community policy on the environment and so it appears appropriate to take the opportunity of the review to include in the definition of “environmental information” this important element of that policy.

The definition contains a specific mention of cost-benefit and other economic analysis used within the framework of activities and measures affecting or likely to affect the environment. This will remove uncertainties identified during the review process as to how far the current definition applies to economic and financial information.

The amendments referred to above will enable EC legislation to be aligned with the definition of environmental information laid down in the Aarhus Convention.

#### Public authorities

Directive 90/313/EEC applies to public authorities with responsibilities and possessing information relating to the environment. Article 6 of that Directive lays down that the Directive shall also apply to bodies with public responsibilities for the environment and under the control of public authorities. The underlying principle behind this provision is that public

access to environmental information should not be affected by a delegation of responsibility by a public authority to other bodies.

Experience shows that the precise meaning of the expression 'with responsibilities for the environment' has given rise to frequent disputes. Narrow interpretations of this wording have led to the exclusion of certain bodies from the scope of the directive on the basis that they did not have responsibilities for the environment but rather for other matters such as transport or energy. Consequently, it has been argued that the information held by them is not covered by the Directive. In order to solve the problems which have arisen from such situations, it has been felt appropriate, in the case of government and the public administration, to remove from the proposed new directive the expression 'having responsibilities relating to the environment'. In the case of bodies or persons having responsibilities or functions or providing services under the control of government or the public administration, it is considered appropriate to include cases of responsibilities, functions or services which relate indirectly to the environment as well as those directly relating to it.

The changes mentioned in the last paragraph also respect the principle of integration laid down in Article 6 of the EC Treaty. This Article establishes that environmental protection requirements must be integrated into the definition and implementation of Community policies and activities, in particular with a view to promoting sustainable development. The furtherance of the principle of integration of environmental protection requirements implies that public authorities will increasingly hold more environmental information whether or not they have a strict or direct responsibility for the environment.

Increasingly, through privatisation and new methods of service delivery, services of general interest in relation to the environment traditionally performed by public authorities are being carried out by bodies which do not form part of the public sector. These services include those such as gas, electricity, water or transport. The result is that in some Member States such services are still performed by public administrations or utilities while in others they are performed by bodies now in the private sector. Those bodies would not come within the definition of "public authority" in the existing Directive 90/313/EEC or in Article 2(2) of the Aarhus Convention.

Nonetheless the services performed are essentially the same as are the kinds of environmental information which the service providers, public or private, hold. Unless provision going beyond that required for ratification of the Aarhus Convention is made, the public in some Member States will have a right of access to that information while the public in other Member States will be denied such a right. Moreover, even within a single Member State, a service of general interest could be carried out by a public authority in one part of the territory of the State and by a private body in another part. It is undesirable, in terms of environmental protection, for such inconsistencies to arise between, or within, Member States as a consequence only of reorganisations in the carrying out of such services. Provision to ensure that bodies now in the private sector grant access to environmental information on the same basis as public authorities carrying out similar services is justified. Accordingly, the proposal includes in the definition of public authorities 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.

In many cases, experience shows that environmental information which public authorities are entitled to hold on their own account is kept physically on their behalf by other entities. Access to such information may be requested by the public. Public authorities should not be entitled to refuse access to this information simply on grounds that it is not physically in their

possession. The proposal ensures that, if such information exists and is kept for the public authority concerned under arrangements with another person or body, it should be made available by the public authority in the normal way.

The definition of public authorities in the proposal does not include bodies when and to the extent that they act in a judicial or legislative capacity.

A definition of “applicant” has been included in the proposal.

#### Access to environmental information upon request (Article 3)

Under Directive 90/313/EEC, public authorities are required to make available information relating to the environment to any natural or legal person at his request and without his having to “prove” an interest. The underlying idea behind this provision is that the applicant does not have to explain to the public authority why he/she is interested in the information requested. The word ‘prove’ used in Directive 90/313/EEC has given rise to some difficulties. In order to remove them, it appears to be more appropriate to use the word ‘state’ instead. This amendment serves better the underlying idea of the Directive and will at the same time enable alignment with the obligations arising from the Aarhus Convention.

As far as time-limits are concerned, Directive 90/313/EEC laid down a maximum period of two months in which the public authority had to ‘respond’ to an applicant. The word ‘respond’ used in Directive 90/313/EEC has given rise to some concerns. Some Member States have claimed that the Directive enables them to simply react within two months to a request by indicating that the information will be made available without further indicating when the information will be effectively made available. The Commission considers that the better interpretation is to the effect that the requested information should be made available or refused within the time period laid down by the Directive.

Directive 90/313/EEC aims at ensuring access to environmental information. The time element is obviously a very important element of the system for ensuring the effectiveness of the obligations laid on public authorities. If the Directive was to be understood in the sense that the authority is only obliged to adhere to the time-limit for giving an answer by promising the information, the system would be incomplete. The applicant would not have any legal certainty as to when he/she would physically obtain the information requested.

In the light of the above, it has been considered appropriate to remove the lack of clarity in this provision. Therefore, the proposal replaces the word ‘respond’ by the expression ‘make available’ which serves better the underlying idea of the Directive. This amendment is in line with the Aarhus Convention.

Access to the environmental information requested within reasonable deadlines is one of the key elements on which the success of the system set out in the proposal will depend. Under the terms of the proposal, public authorities will be required to supply the information requested as soon as possible and at the latest, within one month, instead of the two months laid down by Directive 90/313/EEC. It should be nevertheless acknowledged that in some cases, the revolutionary changes that have taken place in the way in which information is stored and transmitted will enable public authorities to reply within shorter deadlines - even, in some cases, immediately on receipt of a request. Within this framework it should also be recognised that sometimes the volume and the complexity of the information requested may be such that public authorities may not be in a position to make such information available to the applicant within the one month deadline. For those cases, the possibility of extending the

one month deadline by up to one further month is foreseen by the proposal. The applicant should be informed as soon as possible of any such extension and of the reasons for it.

In some cases, an applicant may voluntarily state that he is requesting information for a specific purpose. In such cases, public authorities should make reasonable efforts to enable the applicant to fulfil that purpose.

It may be worth illustrating the situation referred to in the previous paragraph with a practical example. An applicant may seek access to environmental information for the purpose of using it within the framework of a public consultation procedure, e.g. the one laid down by Council Directive 85/337/EEC<sup>3</sup>, of 27 June 1985, on the assessment of the effects of certain public and private projects on the environment as amended by Council Directive 97/11/EC<sup>4</sup> of 3 March 1997 or by Council Directive 96/61/EC<sup>5</sup>, of 24 September 1996, concerning integrated pollution prevention and control. In accordance with the subsidiarity principle, it is up to the Member States to lay down the deadlines within which the public has to present its comments.

It should be first of all noted that, in order to ensure an effective and meaningful participation of the public, those directives lay down a list of minimum information on the project or on activity subject to the consultation process which has to be made available to the public. The public may however seek additional environmental information related to the project or the activity on the basis of the provisions of Directive 90/313/EEC. The one month period within which public authorities are required to supply the environmental information requested may mean that the information may no longer be of use when it is actually received by the applicant within the public consultation procedure.

The proposal aims at addressing this situation by, on the one hand, enabling the applicant, if he so wishes, to state the purpose of his request for environmental information and, on the other, by requiring public authorities to make reasonable efforts to supply such information within such time period as is necessary to enable the applicant to fulfil the stated purpose.

Directive 90/313/EEC did not contain any provision concerning the form or format in which the information requested should be made available. Experience shows that applicants have sometimes had difficulty in obtaining information in the most convenient form or format. The proposal therefore lays an obligation upon public authorities to make the information available in the form or format requested, including in the form of copies. This obligation arises unless the information is already publicly available in another form or format which is easily accessible by applicants or if it is reasonable for the public authority to make it available in another form or format. In such cases, the reasons for making it available in that other form or format shall be given to the applicant.

For the purposes of this obligation, public authorities will be required to make reasonable efforts to maintain environmental information held by them in forms or formats that are readily reproducible and accessible by computer telecommunication or by other electronic means.

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<sup>3</sup> OJ L 175, 5.7.1985, p. 40.

<sup>4</sup> OJ L 73, 14.3.1997, p. 5.

<sup>5</sup> OJ L 257, 10.10.1996, p. 26.

Member States are required to define the practical arrangements under which environmental information shall be effectively made available. An indicative list of practical arrangements is included in the proposal leaving it up to the Member States, in accordance with the subsidiarity principle, to determine them. Member States will have to ensure that the public is adequately informed about the rights they enjoy under the proposed new Directive.

#### Exceptions (Article 4)

Directive 90/313/EEC lays down a general principle of public access to environmental information. However, in order to protect certain legitimate interests, there have to be provisions for exempting information from disclosure. These exceptions must be very tightly drawn in order not to weaken the general principle of access and to enable the Directive to actually meet its objective in practice.

The proposal includes a provision which entitles public authorities to refuse access to information not held by or for them. The proposal contains also a provision which requires the public authority to which the request is addressed to transfer it as soon as possible to another authority which is believed to hold the information and to inform the applicant accordingly.

Public authorities should also be entitled to refuse access to environmental information when requests are manifestly unreasonable or formulated in too general a manner. Manifestly unreasonable requests would include those, variously described in national legal systems as vexatious or amounting to an *abus de droit*. Moreover, compliance with certain requests could involve the public authority in disproportionate cost or effort or would obstruct or significantly interfere with the normal course of its activities. Authorities should be able to refuse access in such cases in order to ensure their proper functioning.

It should also be acknowledged that public authorities should have the necessary space to think in private. To this end, public authorities will be entitled to refuse access if the request concerns material in the course of completion or internal communications. In each such case, the public interest served by the disclosure of such information should be taken into account.

Directive 90/313/EEC contained an exhaustive list of grounds that public authorities could invoke in order to withhold information. Even though Member States were not obliged to incorporate all the grounds of refusal when transposing the Directive into national law, almost all of them did so. The exceptions in Directive 90/313/EEC were drafted in wide terms and experience has shown that this has led to problems.

Under the terms of Directive 90/313/EEC, public authorities are entitled to refuse access to information relating to the environment if disclosure simply *affects* one of the legitimate interests listed in Article 3. With a view to improving the provisions on exceptions, the proposal states that environmental information shall only be withheld if disclosure would *adversely* affect one of the legitimate interests for which provision is made. It goes without saying that, in accordance with a well established principle of Community law, exceptions will have to be interpreted in a restrictive way in order not to defeat the principle of the right of access to environmental information.

Finally, the proposal has also introduced the obligation to weigh the public interest served by disclosure against the particular interest served by non-disclosure in each case. Access to the information requested should be granted if, as result of striking the balance between the interests at stake, the general public interest outweighs the interest protected by the non-disclosure. However, the proposal specifically states that within this framework, Member

States shall ensure that the provisions of Directive 95/46/EC<sup>6</sup> of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and of the free movement of such data are respected.

Within this framework, if the public authority to which a request has been addressed considers that the public interest served by the disclosure outweighs the confidentiality of personal data, it **must** inform the competent national data protection supervisory authority, established by article 28 of Directive 95/46/EC, of the request received and of its intention of disclosing personal data to third parties. This referral to the national data protection authorities would of course only take place in cases where the public authority involved decided that there are grounds for granting access to environmental information including personal data. In other words, no referral would be necessary in cases where the public authority decided that the exception clearly applied, or where personal data can be separated out, and access to the remainder of the information can be given. In comparison with Directive 90/313/EEC, the proposal rewords the legitimate interests to be protected so as to clarify their scope along the lines of the exception provisions in the Aarhus Convention.

So far as concerns the exception protecting the confidentiality of commercial or industrial information, the proposal lays down that Member States may not, by virtue of it, 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.

So far as concerns the exception in relation to intellectual property law, it should be noted that, if access to environmental information covered by such a right is granted, the applicant will have to observe the relevant intellectual property right governing the use intended by him. This generally means that he would not be able to reproduce or exploit it for any other economic purposes without the prior authorisation of the rightholder.

The proposal requires public authorities to 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.

Where the response to a request for provision of information is a refusal, article 3(4) of the Directive requires that the reasons are given to the person making the request. The national reports revealed that several Member States, in their transposing legislation, had provided that a failure to respond within the time-limits should be deemed to constitute a decision of refusal. The justification given was usually the need, in the national legal order, to have a “decision”, even if fictitious, to enable the person making a request to have recourse to the review procedure after the expiry of the deadline. In the Commission’s view, such a legal fiction should not relieve public authorities and other bodies from the duty to give reasons for a refusal within the time-limit specified in the Directive. To clarify the position, the proposal requires public authorities to give the applicant, within the time-limits referred to above, a written notification of a refusal to make all or part of the information requested available. The notification should state the reasons for the refusal and include information on the review procedure provided for in those cases.

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<sup>6</sup> OJ L 281, 23.11.1995, p. 31.

### Charges (Article 5)

Directive 90/313/EEC allows public authorities to charge for the supply of information but requires at the same time that the charge shall not exceed a reasonable cost. Experience shows that, as a general rule charges requested by public authorities have been reasonable. There have however been cases where unreasonable charges have been made.

The proposal for a replacement directive contains a similar provision. However, in order to remove uncertainties about the amount to be charged, the proposal places an obligation on public authorities to publicise and make available to applicants a schedule of charges to be made. Further, it requires them to publicise and make available information on the circumstances in which a charge may be levied or waived, leaving to them, in accordance with the subsidiarity principle, the establishment of the detailed practical arrangement to implement this provision. Within this framework, it should be noted that, in accordance with the jurisprudence of the Court of Justice, public authorities are not entitled to charge applicants in cases where the requested information is refused.

It should be noted, finally, that the proposal states that access to any public registers or lists of information, as well as examination of information *in situ*, should be free of charge. Authorities should not require an advance payment before making information available.

### Access to justice (Article 6)

The right of access to environmental information laid down in the proposal would be ineffective if applicants did not have the means to challenge the acts or omissions of public authorities in connection with the request.

Directive 90/313/EEC granted a person who considered that his request for information had been unreasonably refused or ignored, or had been inadequately answered by a public authority, the right to seek a judicial or administrative review of the decision in accordance with the relevant legal system.

The proposal contains a similar provision which has however been amended in order to align it with the international obligations agreed to through the signature of the Aarhus Convention.

Firstly, the proposed Article 6 makes explicit reference to the fact that any applicant who considers that his request for information has been ignored, wrongfully refused, inadequately answered or otherwise not dealt with in accordance with the relevant provisions of the directive 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.

In addition to the review procedure referred to above, Member States are required by the proposal to ensure that an applicant has access to another procedure where the acts or omissions of the public authority concerned can be reconsidered by that authority or reviewed administratively by another body established by law. It is provided that such a procedure should be expeditious and either inexpensive or free of charge. The reason behind providing this alternative is that judicial appeal procedures often involve high costs or long delays.

In all these ways, the right to seek a review of an act or an omission of a public authority in relation to a request is reinforced thus better serving the objective of the proposal which is to ensure an effective right of access to environmental information.

## Dissemination of environmental information (Article 7)

Directive 90/313/EEC was primarily concerned with what is called the “passive supply of information”, that is, the disclosure of information by a public authority upon request. It contained one single and brief provision on the “active supply of information”, that is the information that public authorities should make publicly available in the normal course of their activities. Under the terms of this provision, Member States were required to provide to the public general information on the state of the environment by such means as the periodic publication of descriptive reports.

As has already been stated, greater public access to environmental information contributes to an increase in public awareness of environmental matters. This should result in an improvement in the protection of the environment. Accordingly, further impetus should be given to the active dissemination of environmental information held by or for them. To this end available computer telecommunication and/or electronic technology should be used.

In order to ensure that the general public is evenly informed throughout the Community, the proposal contains a non-exhaustive list of the kind of environmental information which should as a minimum and as a matter of course be made available and disseminated to the public throughout the Community.

In order to reflect developments which have occurred in the so-called “information society”, the proposal requires public authorities to make reasonable efforts to maintain environmental information, especially of the kinds listed, in forms or formats that are readily reproducible and accessible by computer telecommunication networks such as the Internet. The detailed practical arrangements under which information is effectively made available and disseminated such as the posting of information on websites accessible through the Internet, is left up to the Member States in accordance with the subsidiarity principle.

If public authorities make increased use of new means of communication, like the Internet, and make environmental information accessible through those means, there should be a decrease in requests directly addressed to the authorities because the public will be able to have immediate access to the information they are seeking. On the other hand, and as already highlighted, it should also be borne in mind that such a proactive approach contributes to raise public awareness in environmental matters. Public authorities may in some cases be confronted with increasingly complex follow-up requests for environmental information which may give rise to practical difficulties in handling them.

Without prejudice to any specific reporting obligations established by Community legislation, the proposal also requires the publication, at regular intervals not exceeding four years, of national, regional or local reports, as appropriate, on the state of the environment. Such reports will be required to include information on the quality of, and pressures on, the environment.

The proposal also makes provision requiring public authorities to disseminate, immediately and without any delay, all information held by them which could enable the public likely to be affected by an imminent threat to human health or to the environment to take measures to prevent or mitigate harm arising from the threat. This provision applies without prejudice to any specific obligation in this area established by Community legislation.

The proposal requires Member States to ensure, so far as is practicable, that anything made available, disseminated or published in accordance with the new article 7 is clear and comprehensible. This is important so that the public can understand what is disseminated but recognises that some information may be highly technical in nature.

The duties proposed to be imposed by this Article are, however, subject to the same exceptions as apply to requests for information under Article 3.

#### Review procedure (Article 8)

Directive 90/313/EEC sensibly provided for an evaluation and a review procedure in the light of the experience gained in its practical implementation four years after the latest day for transposition. To this end, the Directive laid upon Member States an obligation to report to the Commission on the application of the Directive.

The proposal contains a similar provision which will enable a further review after five years from the latest date for transposition of the proposed directive.

#### Supplementary provisions (Articles 9 to 12)

The proposal requires member states to take all necessary measures to comply with the directive no later than [date to be specified] It also contains a provision which repeals Directive 90/313/EEC on that date. Finally it also contains a provision indicating that all references made to Directive 90/313/EEC shall be construed as references to the new directive.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on public access to environmental information**

**[Text of relevance for the EEA]**

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<sup>1</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>4</sup>,

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>5</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<sup>6</sup> under Article 8 of that Directive identifies concrete problems encountered in the practical application of the Directive and was adopted by the Commission on .....

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<sup>1</sup> OJ C ...

<sup>2</sup> OJ C ...

<sup>3</sup> OJ C ...

<sup>4</sup> OJ C ...

<sup>5</sup> OJ L 158, 23.6.1990, p. 56.

<sup>6</sup> COM(2000) ...

- (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.
- (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>7</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

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<sup>7</sup> OJ L 281, 23.11.1995, p. 31.

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.

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

*Objective*

- (1) 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.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

ANNEX

**CORRELATION TABLE**

<b>Directive 90/313/EEC</b>	<b>This Directive</b>
<b>Article 1</b>	<b>Article 1 (a)</b> <b>Article 1 (b)</b>
<b>Article 2 (a)</b> <b>Article 2 (b)</b>	<b>Article 2(1)</b> <b>Article 2(2)</b> <b>Article 2(3)</b> <b>Article 2(4)</b>
<b>Article 3(1)</b> <b>Article 3(2)</b> <b>Article 3(3)</b> <b>Article 3(4)</b>	<b>Article 3(1) + Article 3(5)</b> <b>Article 4(2) + Article 4(3)</b> <b>Article 4(1)</b> <b>Article 3(2) + Article 4(4)</b> <b>Article 3(3)</b> <b>Article 3(4)</b>
<b>Article 4</b>	<b>Article 6(1) + Article 6(2)</b> <b>Article 6(3)</b>
<b>Article 5</b>	<b>Article 5(1)</b> <b>Article 5(2)</b> <b>Article 5(3)</b>
<b>Article 6</b>	<b>Article 2(2)</b>
<b>Article 7</b>	<b>Article 7</b> <b>Article 7(1)</b> <b>Article 7(2)</b> <b>Article 7(3)</b> <b>Article 7(4)</b>

	<b>Article 7(5)</b>
<b>Article 8</b>	<b>Article 8</b>
<b>Article 9</b>	<b>Article 9</b>
<b>Article 10</b>	<b>Article 12</b>
	<b>Article 10</b>
	<b>Article 11</b>