

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 28 November 1988

Proposal for a
COUNCIL DIRECTIVE

on the freedom of access to information on the environment

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. Introduction

- (a) The action programmes of the European Community on the environment of 1973,¹ 1977,² 1983³ and 1987⁴ have illustrated the important role that public information should play in the campaign to safeguard and improve the quality of the environment. In particular, in the fourth action programme the Commission drew attention once more to the need to render the whole process of regulation and application of existing rules in this area more transparent, especially as far as public information is concerned. It also stressed that particular attention should be paid to situations where access to information guarantees better protection of the individual or the environment, either by better application of the regulations or by other means. The Commission also declared that it should be possible to devise ways of improving public access to the information held by environmental authorities, while at the same time giving protection to information which can legitimately be regarded as confidential. The Commission announced in particular that it would study the need for, and desirability of, a Community "Freedom of Environmental Information Act" and would make appropriate proposals.

The Commission's viewpoint is shared by the other Community institutions. The Resolution of the Council of the European Communities and of the representatives of the Governments of the Member States, meeting within the Council, of 19 October 1987 on the continuation and implementation of a European Community policy and action programme on the environment (1987-1992)⁵ states that Community action should concentrate on certain priority areas, while complying with the respective responsibilities of the Community and the Member States, and calls in this context for a greater effort to improve access to information on the environment. In addition, the European Parliament asked the Commission in its opinion on the fourth action programme delivered on 14 May 1987 to implement a series of measures in the field of information designed in particular to give each individual the possibility of access to information on the environment.⁶

- (b) To ensure that the objectives set out in the fourth action programme are achieved the first need is to improve the possibilities open to individuals of gaining access to data on the environment held by the public authorities. These authorities hold complete and highly accurate information on the state of the environment and the real or potential sources of pollution on account of the fact that environmental protection measures are put into practice, by and large, at national, regional or local level.

However, free access to information on the environment must not only be imposed on the public authorities of the Member States but also on the Community institutions and the Commission in particular. The reasons for the need to broaden the possibilities of access to information held by national, regional or local administrations apply

1 OJ No C 112, 20.12.1973.

2 OJ No C 139, 13.6.1977.

3 OJ No C 46, 17.2.1983.

4 OJ No C 70, 18.3.1987.

5 OJ No C 289, 29.10.1987.

6 OJ No C 156, 15.6.1987.

equally to Community institutions, especially given the extent of the powers conferred on the European Community in environmental matters. For this reason this proposal will be followed by other initiatives designed to introduce the same transparency within the Community institutions as proposed for the national authorities in the Member States.

- (c) By the same token, the importance to be attached to active publicity must not be neglected, i.e. publication as a matter of routine by public authorities and institutions of data relating to the state of the environment as part of an overall strategy aimed at ensuring the transparency of environmental measures taken by the public authorities and at increasing public awareness.

II. Legislation and administrative practice in the Member States

Comparison of the legislation in force in the Member States has revealed that the arrangements for free access to information held by the authorities on the environment are not entirely satisfactory everywhere in the Community. The most significant arrangements in the Member States on access to information on the environment are summed up in the Annex.

In addition, active information, often in the form of publication of reports on the state of the environment, plays an important part in every Member State's environmental protection programme, though the rules vary.

III. Legal basis of the proposal

Completely free access to information held by the authorities on the environment would make citizens feel more directly responsible for protecting their environment and tighten controls on activities which could cause pollution. This would make an effective contribution towards attaining the objectives of action by the Community relating to the environment set out in Article 130r(1) of the EEC Treaty, notably by means of more effective action to prevent environmental damage, one of the principles on which this action must be based.

One other consideration provides further evidence of the advantages of greater access to information on the environment held by the authorities. The numerous disparities between the national laws on this subject create often insurmountable obstacles to access to information on transfrontier pollution. They can also create unequal conditions of competition.

Community action is the only way to end all these obstacles. Consequently, there is a clear need for the Community to take action based on the principle set out in Article 130r(4) of the EEC Treaty.

In the light of the foregoing this proposal is based on Article 130s of the EEC Treaty.

IV. Objectives, general structure and comments on certain Articles:

- (a) The objective of this proposal is to define a consistent series of principles allowing the public greater access to information held by the authorities on the environment (passive information) and paving the way for improvements in automatic dissemination of these data by the authorities (active information). Consequently, it covers the two main sides of government information policy.
- (b) Article 1 is a basic provision laying down the two complementary objectives of this proposal: to guarantee freedom of access to information on the environment and to ensure widespread dissemination of this information by the respective authorities.

Article 2 outlines the scope of the right of access to information and defines the concept of "information on the environment".

It then defines the concept of "information held by the public authorities" and defines which authorities are obliged to make the information they hold on the environment accessible to the public.

Article 3 defines the holders of the right of access to information based on the need not to limit access to information only to those with a personal or direct interest.

Articles 4, 5, 6 and 7 cover the various procedural aspects associated with the right of access to information.

Article 8 takes account of the fact that the right of access to information is not unlimited. It sets out several exceptions to the right of access, all of them intended to protect public interests.

Article 9 provides for the regular publication of national reports on the state of the environment and gives a broad outline of the aspects to be covered.

PROPOSAL FOR A COUNCIL DIRECTIVE ON THE FREEDOM OF
ACCESS TO INFORMATION ON THE ENVIRONMENT

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 130s thereof,

Having regard to the proposal from the Commission,¹

Having regard to the opinion of the European Parliament,²

Having regard to the opinion of the Economic and Social Committee,³

Considering the principles and objectives defined by the action programmes of the European Communities on the environment of 1973,⁴ 1977⁵ and 1983,⁶ and more particularly the action programme of 1987,⁷ which underlines the "need to render the whole process of regulation and application of existing rules more transparent, particularly as far as public information is concerned" and calls for devising "ways of improving public access to information held by environmental authorities".

Whereas the Council of the European Communities and the representatives of the Governments of the Member States, meeting within the Council, declared in their Resolution of 19 October 1987 on the continuation and implementation of a European Community policy and action programme on the environment (1987-1992)⁸ that it was important, in compliance with the respective responsibilities of the Community and the Member States, to concentrate Community action on certain priority areas, including better access to information on the environment;

Whereas the European Parliament also stressed, in its opinion on the fourth action programme of the European Communities on the environment,⁹ the need to enable each individual to gain access to information on the environment by way of specific Community action;

Whereas the public authorities hold a large quantity of data on the environment, collected or prepared in the exercise of their legal powers;

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4 OJ No C 112, 20.12.1973.

5 OJ No C 139, 13.6.1977.

6 OJ No C 46, 17.2.1983.

7 OJ No C 70, 18.3.1987.

8 OJ No C 289, 29.10.1987.

9 OJ No C 156, 15.6.1987.

Whereas free access to data on the environment held by the public authorities would help to increase public participation in the procedures to control pollution and prevent damage to the environment; whereas, accordingly, it could make an effective contribution to achieving the objectives of Community action on the environment, in line with Article 130r(2) of the EEC Treaty;

Whereas isolated action by the Member States cannot adequately guarantee the elimination of obstacles to access to data on the environment held by the public authorities, particularly in the case of cross-frontier pollution; whereas, consequently, Community action seems necessary in accordance with Article 130r(4) of the EEC Treaty.

Whereas the numerous disparities between the laws in force in the Member States concerning access to data on the environment held by the public authorities can create unequal conditions of competition;

Whereas the obligations imposed by this Directive should place no new administrative or financial burdens on businesses;

Whereas the priority objective of Community action should be to guarantee, throughout the Community, free access to data held by the public authorities concerning the state of the environment, polluting activities or activities likely to damage the environment and protection of remedial measures taken or envisaged;

Whereas not only the data contained in written documents but also the data incorporated in data-processing bases and visual recordings held by the public authorities must be accessible to the public;

Whereas free access must be ensured even with regard to data supplied to the government by other persons where the government could legitimately demand transmission of that information or obtain it itself; whereas it must not be limited solely to persons who can prove a legitimate interest in the case;

Whereas a provision recognizing the right of access of every natural or legal person to information on the environment held by the public authorities would eliminate any discrimination on the grounds of the nationality or place of residence of natural persons or of the articles of association or place of business of legal persons and thus guarantee elimination of the obstacles to the freedom of access to information on the environment in the case of cross-frontier pollution;

Whereas decisions refusing the supply or consultation of data on the environment held by the public authorities must be justified and notified in writing; whereas the applicant must always have the possibility of appealing against such decisions;

Whereas the protection of the essential interests of the Member States, companies and private individuals requires the establishment of a number of exceptions to the right of access to information on the environment held by the public authorities;

Whereas active publicity should play an important role as part of an overall strategy to disseminate information on the environment; whereas, consequently, it seems necessary to make the publication of national reports on the state of the environment obligatory, to lay down the minimum frequency of publication of these reports and to harmonize the broad outline of their content,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Freedom of access to information on the environment held by the public authorities and its dissemination shall be ensured throughout the Community in accordance with the provisions of this Directive.

Article 2

For the purposes of this Directive:

- (a) "Information relating to the environment" means all data, of a factual or legal nature, concerning:
- the state of water, air, soil, fauna, flora and natural sites and any changes therein;
 - public or private projects and activities likely to damage the environment, or endanger human health and plant or animal species, in particular as regards emission, discharge or release of substances, living organisms or energy into water, the air or soil and the manufacture and use of dangerous products or substances;
 - measures to preserve, protect and improve the quality of water, air, soil, fauna, flora and natural sites plus measures designed to prevent damage and repair any damage caused.
- (b) "Information held by the public authorities" means all existing data collected or prepared by the bodies referred to in paragraph (c) which are contained:
- in written documents, such as reports, studies, opinions and decisions, with the exception of unfinished documents;
 - in data-processing bases, and
 - in visual recordings.

This also includes information supplied by other people when the body receiving the information had the right to obtain it itself or to demand transmission of that information in exercising its legal powers.

- (c) "Public authorities" means State administrations and any public body or State-supervised body with powers at national, regional or local level.

Bodies exercising judicial powers or legislative bodies are not included in the definition in the preceding paragraph.

Article 3

The right of access to information on the environment held by the public authorities shall be guaranteed to any natural or legal person without their having to display an interest.

Article 4

1. Access to information contained in the written documents referred to at the first indent of Article 2(b) shall be, by written request and at the option of the applicant, either by consultation free-of-charge on the spot or by the issue of copies, in which case the applicant shall be charged the actual cost of reproduction.
2. The information contained in data-processing bases and visual recordings in the possession of the authorities shall also be obtainable in written form under the conditions set out in the preceding paragraph.

Article 5

1. Any request for information on the environment held by the public authorities shall indicate as accurately as possible the purpose of the request.
2. The authorities shall take any measures needed to identify and make available to the applicant the documents containing the information in question.

Article 6

1. Any refusal to supply information on the environment held by the public authorities shall be explained in a reasoned decision which shall be notified in writing to the applicant.
2. Failure to give notification within a period of one month shall amount to refusal.

Article 7

Within the scope of this Directive the justification of an express or tacit decision to refuse information by the authorities shall be subject to administrative and legal control by the means available to each national legal system.

Article 8

1. The right of access to information guaranteed by this Directive may be restricted where it would affect:
 - the secrecy of government proceedings;
 - the secrecy of international negotiations;
 - the secrecy of national defence;
 - State security or public security;
 - the secrecy of procedures brought before the courts;
 - trade and industrial secrecy;
 - privacy and, in particular, compliance with national provisions to protect the confidentiality of personal data held in administrative archives and files.
2. The documents held by public authorities shall be supplied in part where it is possible to eliminate from the copy to be supplied to the applicant items which, if disseminated, would affect the interests referred to in the preceding paragraph.
3. Reasons involving privacy or trade and industrial secrecy relating to facts which are personal to the applicant may not be held against him.
4. The public authorities may refuse any manifestly unreasonable request.

Article 9

1. At least every three years from 1 January 1992 onwards Member States shall publish and disseminate a report on the state of the environment containing a general analysis of the national situation, the state of water, air, soil, flora, fauna and natural sites and a description of the principal measures taken or planned to preserve, protect and improve the quality of the environment and to repair any damage caused.
2. The national reports on the state of the environment shall be transmitted to the Commission as soon as they are published.

Article 10

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... at the latest. They shall forthwith inform the Commission thereof.
2. Member States shall communicate to the Commission the main provisions of national law which they adopt in the field governed by this Directive.

Article 11

This Directive is addressed to the Member States.

Annex

Legislation in force in the Member States

BELGIUM

No general legislation on access to information.
Access to information in the course of certain licensing procedures.

FEDERAL REPUBLIC OF GERMANY

No general legislation.

The Law of 25 May 1976 on administrative procedures entitles all parties to a procedure to consult the relevant documents.
Specific licensing procedures.

Other specific legislation has set up emission and discharge registers which are open to members of the public with an interest in the case.

SPAIN

Article 105 of the Constitution (not yet fully implemented).

The 1958 Law on administrative procedures allows only persons directly concerned to consult official files.

Access to information in the course of certain licensing procedures.

IRELAND

No general legislation.

Specific legislation such as the 1976 Water Pollution Control Act provides for the establishment of certain public registers.

DENMARK

Law of 19 December 1985 on the right of access to government documents.

GREECE

Article 10(3) of the Constitution.

Law 1599/1986 on relations between the State and citizens guarantees free public access to government documents.

FRANCE

Law 78/753 of 17 July 1987 allows all members of the public access to information held by the authorities.

This Law has set up a commission on access to official documents to safeguard freedom of access.

ITALY

No general legislation.

Law 349/1986 of 8 July 1986 stipulates that all citizens are entitled to access to information on the state of the environment.

LUXEMBOURG

A direct personal interest in the case is required before access is allowed to information held by the authorities (Regulation of 8 June 1977 on government procedure).

Public enquiries are included in various licensing procedures.

PORTUGAL

Article 268(1) of the Constitution restricts access solely to persons whose interests are affected.

In addition to the channels of access open in the course of licensing procedures, public participation is one of the principles enshrined in the basic Law of 7 April 1987 on the environment.

NETHERLANDS

Law of 9 November 1978 on administrative transparency, as amended by the Law of 16 December 1981.

UNITED KINGDOM

No general legislation.

Alongside public enquiries in the course of licensing procedures, the 1974 Control of Pollution Act and other specific legislation provides for the establishment of public registers.

In addition to the above-mentioned general Laws on access to information, other provisions in Denmark, France, Italy, Greece and the Netherlands provide for public participation and information, particularly in the course of licensing procedures.