

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 91 final

Brussels, 19 March 1990

Amended proposal for a

COUNCIL DIRECTIVE

on the freedom of access to information on the
environment

(Presented by the Commission, pursuant to Article 149,
paragraph 3 of the EEC Treaty)

EXPLANATORY MEMORANDUM

On 13 April 1989 Parliament discussed the proposal for a Council Directive on the freedom of access to information on the environment¹ and adopted the report on it by the Committee on the Environment, Public Health and Consumer Protection. The proposal was approved subject to a number of amendments to the Commission's original wording.

The Economic and Social Committee delivered its opinion on 31 March 1989.

After examining the amendments proposed by Parliament the Commission agreed to incorporate in an amended proposal those which sought to clarify a number of points but were nevertheless in keeping with the spirit of the proposal. These amendments add a recital, amplify the definition of "information on the environment", more carefully define how information may be requested and lay down a date for implementation of the Directive by the Member States.

The amended proposal also includes a proposal from the Economic and Social Committee which more clearly defines one instance where exercise of the right of access to information may be limited.

A number of other amendments have been made to clarify some of the ideas contained in the original proposal following its discussion in different fora.

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive on the freedom of access to
information on the environment

COM(88) 484 final

(Submitted by the Commission on 31 October 1988)

(88/C 335/04)

ORIGINAL PROPOSAL

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,

Having regard to the opinion of the
European Parliament. (7),

Having regard to the opinion of the
Economic and Social Committee. (8),

First recital

Considering the principles and objectives
defined by the action programmes of the
European Communities on the environment of
1973,¹ 1977² and 1983,³ and more
particularly the action programme of
1987,⁴ 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';

AMENDED PROPOSAL

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
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Having regard to the opinion of the
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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';

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.

7 OJ No C 120 du 16.05.1989, p. 231

8 OJ No C 139 du 5.06.1989, p. 47

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8 OJ No C 139 du 5.06.1989, p. 47

Second recital

Whereas the Council of 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 to 1992)⁵ 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;

Third recital

Whereas the European Parliament also stressed, in its opinion on the fourth action programme of the European Communities on the environment,⁶ the need to enable each individual to gain access to information on the environment by way of specific Community action;

Fourth recital

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

⁵ OJ No C 289, 29.10.1987.
⁶ OJ No C 156, 15.6.1987.

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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 to 1992)⁵ that it was important, in compliance with the respective responsibilities of the Community and the Member States, to concentration Community action on certain priority areas, including better access to information on the environment.

Third recital

Whereas the European Parliament also stressed, in its opinion on the fourth action programme of the European Communities on the environment,⁶ the need to enable each individual to gain access to information on the environment by way of specific Community action;

Recital 3a

Whereas freedom of information is an essential features of a democratic society;

Fourth recital

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

⁵ OJ No C 289, 29.10.1987.
⁶ OJ No C 156, 15.6.1987.

Fifth recital

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;

Sixth recital

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;

Seventh recital

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;

Eight recital

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

Fifth recital

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;

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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;

Eight recital

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

Ninth recital

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;

Tenth recital

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;

Eleventh recital

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;

Twelfth recital

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 of 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;

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Thirteenth recital

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;

Fourteenth recital

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;

Fifteenth recital

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,

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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.

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 - 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.

This concerns in particular data relating to emissions and discharges from authorized or declared installations, actual emissions and discharges, measurement, surveillance and monitoring results, particularly where limit values laid down have been exceeded, and data on the nature and composition of dangerous products and substances.

(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.

(b) 'Information held by the public authorities' means all available data collected or prepared by the bodies referred to in paragraph (c) which are contained:

- in registers, land registers and inventories:
- in written documents, such as reports, studies, opinion and decisions;
- in data-processing bases, and
- in acoustic and visual recordings, with the exception of unfinished and internal documents.

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 other public body or body with public service prerogatives with environmental 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.

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 documents referred to in Article 2(b) shall be, by written request, either by consultation free-of-charge on the spot or by the issue of copies or by graphical or sound reproductions.

2. The applicant may be charged the cost of such access provided it does not exceed the actual cost.

Article 5

1. Any request for information on the environment, held by the public authorities shall give an accurate indication of 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 application.

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;

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 (becomes Article 7)

1. Any refusal of requests for information shall be accompanied by a reasoned explanation which shall be notified in writing to the applicant.

2. Where details or parts of documentation are omitted, there should be an indication of where the omitted information should be inserted in the existing information.

3. Failure to give notification within a period of one month shall amount to refusal.

Article 7 (becomes Article 8)

Any decision to refuse information by the authorities in the areas covered by this Directive shall be subject to administrative and legal control by the means available to each national legal system.

Article 8 (becomes Article 6)

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.

- State security or public security;
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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.

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 31 December 1990 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

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