

The Directive on Access to Environmental Information

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Official Title: Council Directive 90/313/EEC on freedom of access to information on the environment (OJ L 158, 23.6.90)

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1 Summary of the Main Aims and Provisions

The purpose of the Directive is to ensure that information relating to the environment, held by publicly accountable bodies, is made available to the public, and to set out the basic terms and conditions under which this information should be made available.

2 Principal Obligations of Member States

2.1 Planning

- Define the practical arrangements under which information relating to the environment is made available to the public (Art. 3).

2.2 Regulation

- Require public authorities to make information relating to the environment available:
 - to any person;
 - on request;
 - for a reasonable cost;
 - within a reasonable time (two months maximum); and
 - without the person having to prove an interest (Arts. 3 and 5).
- Allow requests for information to be refused only on the grounds set out in the Directive, and require the authority to give reasons for the refusal (Art. 3).
- Provide access to judicial or administrative review for any person who considers that their request for information has been unreasonably refused or ignored, or has been inadequately answered (Art. 4).
- Where information relating to the environment is held by bodies which have public responsibilities for the environment and which are under the control of public authorities, ensure that the information is made available on the same terms and conditions as those set out above, either via the competent public authority or directly by the body itself (Art. 6).

2.3 Reporting

- Provide general information to the public on the state of the environment, for example through the periodic publication of descriptive reports (Art. 7).
- Report to the Commission on:
 - experience gained in implementing the Directive (Art. 8);
 - measures taken to comply with the Directive (Art. 8); and
 - transposition, with texts of the main provisions of national law adopted in the field covered by the Directive (Art. 8).

2.4 Additional Legal Instruments

- Council Directive 85/337/EEC on Environmental Impact Assessment (as amended by Council Directive 97/11/EC);
- Council Regulation (EEC) No. 1210/90 on the European Environment Agency;

- The Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (the Aarhus Convention) 1998.

3 Implementation

3.1 Key Tasks

The key tasks involved in implementing this directive are summarised in the following checklist. The tasks are arranged under sub-headings and organised in chronological order of implementation wherever possible.

ACCESS TO ENVIRONMENTAL INFORMATION - KEY IMPLEMENTATION TASKS	
1	Planning
	Define the practical arrangements under which information relating to the environment is made available to the public.
2	Regulation
2.1	Ensure that public authorities make environmental information available to the public in accordance with the conditions laid down in the directive.
2.2	Establish procedures for dealing with appeals from the public following refusals of requests for information.
3	Guidance
3.1	Prepare and publish guidance on the duties of public authorities to provide access to environmental information.
4	Reporting
4.1	Provide environmental information to the public, including reports on the state of the environment.
4.2	Report to the Commission on: <ul style="list-style-type: none"> • the experience gained in implementing the directive; • measures taken to comply with the directive; and • transposition.

3.2 Phasing Considerations

Candidate Countries are likely to already possess a large body of environmental data in numerous public organisations. These organisations may need a substantial amount of time to put their information into a format suitable for public access and dissemination. It may be required to set up an additional specific unit responsible for public information.

The most time-demanding tasks to implement this directive are likely to be:

- organising the information services in public bodies and other organisations to provide an acceptable level of service to those wishing to access the information e.g. in terms of staffing, databases and reporting facilities, and publicising the service to be provided;
- organising the production of the State of the Environment Reports and other publications; and
- organising, and where appropriate formatting, the data and information for public access.

4 Implementation Guidance

Public authorities hold data and information on a wide range of environmental matters which have often been collected over long periods. Examples of the type of data collected are rainfall and other climatic data, water quality, information on flora and fauna, air and water pollution from dangerous substances emissions and discharge, soil contamination. These organisations collect the information in order to carry out their various legal responsibilities.

The public does not usually have the means to collect and process environmental data. However, access to environmental information will provide them with knowledge on the quality of the environment in which they live. On the basis of that information they can (i) make decisions about their way of life, (ii) contribute to informed debate about environmental protection activities, and, (iii) support measures to improve the environment.

The following sections draw upon the experience of Member States and present a number of general observations and comments relevant to the implementation of this directive.

Planning

- During the transposition phase, careful consideration has to be given to a number of legal issues, for example, principles of confidentiality, conditions under which a request for information may be refused, and procedures for appeal against refusals for environmental information. Article 3(3) states that a request for information may be refused where it would involve the supply of unfinished documents or data or internal communications. (Requests may also be refused, pursuant to Article 3(3), if they are manifestly unreasonable or formulated in too general a manner). Member States may introduce restriction to the free access to information based on the principle of confidentiality or for public security reasons as per article 3(2).

Examples of legal provisions to implement the directive

In one Member State (S), the implementation of this directive did not require changes in national legislation. According to the Freedom of the Press Act, which is part of the national constitution, everyone has the right of access to documents kept by public authorities. This right is limited only in specified cases according to the Secrecy Act. Anybody who is refused access to a document can appeal against the refusal.

In another Member State (P) the Directive on Access to Environmental Information was transposed using a law on access to administrative information. The national law contained a general reference on access to environmental information and stated that the directive should be applied. This raised the issue that simply legislating that the directive applies without specifying any further regulation was not considered to be sufficient for its transposition.

Another problem was that access to personal information was only allowed under the national legal system when the natural or legal person proves his or her interest. However the Directive on Access to Environmental Information does not contain such restrictions. Also, the lack of response by the public authorities within a given time period was regarded as a refusal under national law, when under Article 3(4) of the directive, an answer should be given to the applicant and, in case of a refusal to provide the information, the grounds for the decision must be given.

- The competent authority for implementing this directive is usually the ministry with responsibility for the environment.
- Environmental information may be held by a large number of public bodies within a country. At the level of central government, these may include government ministries with responsibility for agriculture, the environment, planning, transportation etc. Other types of national bodies that may hold relevant information include environmental protection agencies, meteorological offices, central statistics offices, research institutions etc. At the regional and local level, environmental information may be held by local government offices, local planning authorities and municipalities etc.
- Countries need to define the practical arrangements under which environmental information is made available to the public. In practical terms, given the potentially large number of public bodies involved, different organisations are likely to make their own arrangements to comply with the directive, but guidance from central government will be required to ensure that the Directive is implemented consistently.
- In the case of a national public body, with a number of regional offices, the organisation will need to decide whether to supply information centrally through a Publications Office or through its network of regional offices. In the latter case, the organisation needs to consider which offices can conveniently provide a service to the public based on a network for handling enquiries and meeting the requests for information.
- In some circumstances a single organisation will have responsibility for data collection and assessment e.g. a meteorological office, a research institute or a statistical office. This type of institute may be directly under the responsibility of a government ministry or have a quasi independent status. The institute may either (a) arrange to make the data available through the relevant ministry, or (b) provide its own service.
- Some research institutes hold databases on environmental quality, for example, on records of observations of flora and fauna, which is available to the public on request.
- Where various agencies are collecting data in a particular environmental sector, it may be necessary to establish a framework to co-ordinate data collection and management. Such a framework may be provided by a single Environment Agency. In other cases, a single organisation may need to be appointed as the appropriate authority for collecting data in a particular area.

- Public bodies should periodically review the staffing arrangements for the service responsible for providing information to ensure that staff can deal with requests for information and that the response times in dealing with enquiries are acceptable. The organisation may wish to publicise performance criteria for dealing with requests, i.e. response times for providing information.
- Public bodies may need to consider how the data collection, storage and reporting can be harmonised to facilitate data collection from different sources. They may also need to set up standardised data collection and reporting formats although in many countries, those are absent.
- Quality control is vital to ensure the reliability and accuracy of data. This is particularly important where data are to be used in environmental analysis, for assessing compliance with environmental quality standards, and are to be made available to the public. Quality control procedures need to be developed for all stages of data collection, database preparation, analysis and reporting.
- Where the information service is to be supported by a database facility, it may be necessary to decide whether the existing system needs to be updated or modified to enable the service to be as efficient as possible. Particular consideration should be given to the cost effectiveness and flexibility for future modification. Consideration could also be given to providing data to the public electronically, for example on the Internet.
- Certain directives require information to be made available for public inspection, for example the outcome of applications for development consent under the EIA Directive, IPPC applications, or data concerning the application of sewage sludge to agricultural land (Sewage Sludge Directive, 86/278/EEC). The relevant competent authorities need to consider how this information is to be made available to the public, for example in registers to be held by the competent authorities themselves, or by local government offices.
- Under the directive public bodies are required to supply information to any person, on request, for a reasonable cost and within a reasonable time. Therefore, arrangements for supplying information should be practical, efficient and, as far as possible, should not present a significant on-going financial burden to the organisation concerned.
- Charges to the public for information should not exceed the reasonable costs for supplying the information. However, public authorities need to avoid any suggestion that they are imposing a barrier to the availability of the information through pricing. Charges should be consistent within organisations and be publicised. They should be levied when actually supplying information, and not when advising on the availability of information, on grounds for withholding information or when handling requests to reconsider decisions to refuse to supply information.

Example of arrangements for charging the public for information provided

In one Member State (UK), charges for information vary between organisations and depending on the nature of information requested. Data and other information are often charged at a nominal fee reflecting the administrative time and photocopying costs involved in putting the information together. Documents can be purchased through the state publications office.

In another Member State (S) public authorities may charge an amount equivalent to the actual cost of providing a copy. Charges for documents are regulated in the Service Charge Ordinance.

In a third Member State (P) access to information is free of charge, but the costs of supplying the information, namely photocopies, diskettes, videotapes etc. are chargeable at a reasonable rate, which is specifically regulated by the Finance Ministry (Decision 280/97).

- Information should always be made available except under the conditions set out in the directive.
- The national legislation should set up an appeals procedure (if not already established) to deal with cases in which requests for information are refused.

Guidance

- Governments may prepare guidance notes for public authorities to explain their duties under the legislation. Such guidance notes could cover:
 - an introduction to the issues raised;
 - a list of the types of organisations affected (these are public authorities such as Government Departments, all statutory bodies, or any body with public responsibilities for the environment which are under the control of public authorities, such as an Environmental Protection Agency);
 - the scope of the environmental information available to the public e.g. the state of water, air, soil, flora, fauna, land and natural sites, and activities or measures which have an environmental impact, as well as environmental protection activities or measures;
 - the practical arrangements to publicise the type of information held;
 - release of reports;
 - availability of registers of relevant information;
 - dealing with personal requests;
 - response times;
 - charges;
 - monitoring;
 - refusals of requests, judicial or administrative reviews, and appeals;
 - handling confidential information (e.g. national defence, public security, commercial sensitivity and data on individuals).
- Candidate Countries should also consider how to inform the public about their rights to access to environmental information. This could be done through information packs prepared by local government offices or the relevant competent authorities. NGOs also play an important role in obtaining, checking, and analysing information held by public bodies. NGOs disseminate their interpretation of the data in a wide variety of ways, such as through newsletters to members, publications, articles in the press, and via the Internet.

Reporting

- Candidate Countries are required to publish general information on the state of the environment, for example through the periodic publication of descriptive reports. The Directive does not give guidance on the frequency, scope or depth of information to be contained within these reports.
- Many countries do routinely publish reports on the state of the environment within their country.
- The state of environment reports may be published by the ministry with responsibility for the environment or another national organisation such as a Statistical Office or Environment Agency. Governments will often wish to have overall responsibility for the production of the State of Environment report. However an organisation like an Environment Agency often has easiest access to the type of information required for a state of environment report. This type of organisation may also be identified as the National Focal Point under the European Environment Agency Regulation (No. 1210/90) and receive environmental information from the EIONET within the country for forwarding to the European Environment Agency. Such an organisation is likely to have at its disposal a complement of trained staff collecting, analysing and assessing environmental data on a regular basis, together with other staff involved with planning programmes to improve the environment who require up-to-date information to assist them. Consequently an environmental protection agency is often best placed to prepare State of Environment reports, albeit under the auspices of the ministry with responsibility for the environment.

5 Costs

Implementation of this directive will involve additional costs to public organisations to provide an information service and reporting requirements. The main cost areas are listed in the checklist below.

Checklist of the Types of Cost Incurred To Implement the Directive

Initial set-up costs:

- Improvements to procedures for data collection, storage and retrieval;
- Provision of, or improvements to databases, including computer systems and PCs;
- Improvements to, or new, office facilities.

On-going costs:

- Provision of the information service (staffing, consumables, etc);
- Reporting to the public and the Commission.

The charges levied for supplying the information may not cover all the costs involved in obtaining the information, particularly if charges are based on photocopying rates, and exclude the costs of improved data collection and handling.

The authority with responsibility for producing the state of the environment reports will incur additional costs, unless they already prepare such reports that meet the reporting requirements. A charge is normally made for the reports. However it is a matter for Government policy to decide whether the charge should be set at a rate to recover the costs involved. There is a strong case for limiting the cost so that as many members of the public as possible can have access to the reports.