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POSITION OF THE EUROPEAN PARLIAMENT

adopted at first reading on 14 March 2001 with a view to the adoption of European Parliament and Council Directive 2001/.../EC on public access to environmental information (2000/0169(COD) – PE1)

PE 301.031

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POSITION OF THE EUROPEAN PARLIAMENT

adopted at first reading on 14 March 2001

with a view to the adoption of European Parliament and Council Directive 2001/.../EC
on public access to environmental information

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 Commission¹,

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

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

Acting in accordance with the procedure laid down in Article 251 of the Treaty²,

Whereas:

- (1) ***Strengthening the right to*** public access to environmental information held by *or for* public authorities ***promotes a free exchange of views and comprehensive information and is essential to ensure good administration, trust and confidence in public authorities and the democratic participation of citizens, with a view to ensuring that Community legislation in this area is fully and effectively implemented, to increasing awareness of environmental matters and to improving environmental protection and the quality of the environment throughout the Community.***
- (2) Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment³ initiated a process of ***change in the manner in which public authorities approach the issue of openness and transparency, establishing measures for the exercise of the right of*** public access to environmental information which should be ***developed*** and continued. ***This Directive improves the existing access granted under Directive 90/313/EEC.***
- (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.

¹ OJ C 337 E, 28.11.2000, p. 156.

² Position of the European Parliament of 14 March 2001.

³ OJ L 158, 23.6.1990, p. 56.

- (4) The report under Article 8 of that Directive identifies concrete problems encountered in the practical application of the Directive and was adopted by the Commission on
- (5) On 25 June 1998 the European Community signed the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (“the Aarhus Convention”) and provisions of Community law must be aligned with that Convention with a view to its ratification by the Community.
- (6) It is appropriate in the interest of increased transparency to replace Directive 90/313/EEC rather than to amend it so as to provide interested parties with a single clear and coherent legislative text.
- (7) Disparities between the laws in force in the Member States concerning access to environmental information held by public authorities can create inequality within the Community as regards access to such information or as regards conditions of competition.
- (8) It is necessary to ensure that any natural *or* legal **person 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 ***modern information and communications technologies. The future development of these technologies should also be taken into account and additional provisions implemented accordingly.***
- (10) The definition of environmental information should be widened so as to encompass specifically information in any form ***relating directly or indirectly to*** the state of the environment, ***to*** factors, measures or activities ***affecting, likely to affect or having already affected*** the environment and ***to*** those designed to protect it, ***to*** emissions, discharges and other releases into the environment, ***to*** the cost benefit and economic analyses used within the framework of such measures or activities; and ***to*** 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 *immediately or* as soon as possible and *in any event* 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 *if it is readily reproducible in that form or format*.
- (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. *These arrangements should include publicly accessible lists of public authorities and registers or lists of environmental information held by or for public authorities.*

- (18) The *right to information means that the disclosure of information should be the general rule and that* public authorities should be *permitted* to refuse a request for environmental information *only* in specific and clearly defined *exceptional 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*. *The* reasons for a refusal must be provided to the applicant within *the* time-limit *laid down in this Directive*.
- (19) Information on emissions, discharges and other releases into the *environment should* not be withheld *on the grounds* of the protection of *commercial, industrial or other information referred to in Article 4*.
- (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) *The right to environmental information is best served by free access to the information requested, e.g. the right to consult it either in situ or by electronic data bases*. Public authorities should be able to make a charge for supplying environmental information *in copied or transcribed form* but such a charge should *be reasonable, should not exceed the actual cost and should not include the cost of staff time spent on searches*. In this connection, a schedule of charges should be *published* and made available to applicants, *together with information on the circumstances in which payment may be required or waived*. Advance payments should not be required.
- (22) Applicants should be able to seek an administrative or judicial review of the acts or omissions of a public authority in relation to a request.
- (23) In order to increase public awareness in environmental matters and so improve environmental protection, public authorities should as a matter of course disseminate general information on the environment by means of available computer telecommunication and/or electronic technology. To this end, public authorities should be required to make reasonable efforts to maintain the environmental information held by or for them in forms or formats that are readily reproducible and accessible by computer telecommunication networks.

- (24) *The public authorities should seek to improve the quality of information made available upon request, or disseminated at their own initiative, in the interest of making the information comprehensible, accurate and comparable. The method used in compiling the information should be disclosed together with the actual information requested, as this is an important factor in assessing the quality of the information supplied and determining whether it is misleading.*
- (25) This Directive should be *evaluated every four years, after submission of the relevant reports by the Member States, and be subject to a review on the basis of such evaluation. The evaluation report should be submitted to the European Parliament and the Council.*
- (26) 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

The objective of this Directive is:

- (a) to ***guarantee the*** right of access to environmental information held by or for public authorities and to set out the basic terms and conditions of, ***and the practical arrangements for,*** its ***exercise;***
- (b) ***to*** ensure that, as a matter of course, environmental information is made available and disseminated to the public, in particular, by means of ***modern information and communications technologies, taking account of future developments in such technologies; and***
- (c) ***to establish the standard for access to environmental information, which must also apply to the institutions of the European Union on the basis of either the Regulation implementing Article 255 of the Treaty or another specific Regulation.***

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, **wetlands, coastal and marine areas**, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, **including nuclear fuel and energy**, noise, radiation or waste, including radioactive waste, affecting or likely to affect the elements of the environment referred to in (a) **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, **reports on the implementation of environmental legislation**, and activities affecting or likely to affect **directly or indirectly** the elements referred to in (a), as well as measures or activities designed to protect those elements;
 - (e) cost-benefit and other **financial and** 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, **food 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, **including advisory bodies**, 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 *or natural* person *performing public administrative functions under national law, including specific duties, activities or services in relation to* the environment.

Member States may provide that, in applying the provisions of this Directive concerning access to justice, the definition of ‘public authority’ does not include bodies when and to the extent that they act in a judicial or legislative capacity.

3. *‘Information held by a public authority’ shall mean environmental information which has been received or produced by a public authority.*
4. ‘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.
5. ‘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 *two weeks* after the receipt by the public authority concerned of the applicant’s request; or
- (b) within *six weeks* after the receipt of the request by the public authority, if the volume and the complexity of the information is such that the *two-week* 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 *two-week* period, of any such extension and of the reasons for it.

Where the request for information is formulated in too general a manner the public authority may seek clarification, but it must do so as soon as reasonably practicable after receipt of the request.

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 *if it is readily reproducible 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. *In doing so, the future development of modern information and communications technologies shall be taken into account.*

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 *for ensuring that the right of access to* environmental information *can* be effectively *exercised*. These practical arrangements *shall* include *at least the following*:

- (a) the designation of information officers;
- (b) the establishment and maintenance of facilities for the examination of the information requested; *Member States shall create* publicly accessible lists of public authorities and registers or lists of the environmental information held by *or for* such *authorities*;
- (c) *publicly accessible lists with transparent and clear indications of what information is available and where it can be found; these lists shall also be put on the Internet and made public.*

Member States shall ensure that public authorities inform the public adequately of the rights they enjoy as a result of this directive *and to an appropriate extent provide information, guidance, advice and other such assistance for individuals on matters concerning the authority's sphere of activity.*

Article 4

Exceptions

1. Member States may provide for a request for environmental information to be refused **by a public authority** 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, ***provided that the authority's staff have made a reasonable effort to remedy these shortcomings. In so doing, the authority must to a reasonable extent have given the applicant instructions on how an application should be formulated and on what research he should conduct to be successful with his request;***
 - (c) the request concerns material in the course of ***completion. In*** each such case, the public interest served by the disclosure shall be ***weighed against the interest served by the refusal. Access to the requested information shall only be refused if the public interest does not outweigh the latter interest.***
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, ***where such confidentiality is required by law;***
 - (b) ***public*** security and national defence ***and vital interests in international relations;***
 - (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;***
 - (e) ***the confidentiality of personal data or files on natural persons where the persons in question have not given their consent to the release of the information concerned and where the law requires such confidentiality;***

- (f) the interests *or protection* of any person who supplied the information *without being under, or capable of being put under, a legal obligation to do so, where* that person has *expressly refused his or her consent* to the release of the information concerned;
- (g) the environment to which such information relates.

The abovementioned grounds for refusal to disclose information shall be interpreted in a restrictive manner. 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 ***refused only*** if the public interest ***does not*** outweigh the latter interest. Within this framework, and for the purposes of the application of (e), Member States shall ensure that the requirements of *European Parliament and Council Directive 95/46/EC 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*¹ are respected.

Member States may not, by virtue of this paragraph, provide for a request to be refused where the request relates to information on emissions, discharges or other releases into the environment.

3. Where a Member State provides for exceptions, it shall draw up a list of criteria on the basis of which the authority concerned may decide how to handle requests. This list shall be submitted to the Commission for approval.

4. 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.

5. 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.

Failure to provide:

(a) the requested information within the relevant time limits in Article 3(2), or

(b) a reasoned refusal in accordance with this paragraph,

shall be deemed to be a positive response indicating that the information can be supplied.

¹ OJ L 281, 23.11.1995, p. 31.

Where a request is refused on the basis of paragraph 1(c), the statement of refusal must state the name of the person or authority preparing the material and the estimated time needed for completion.

6. Public authorities shall disclose information in such a way as to respect the anonymity, if requested, of a person voluntarily providing information.

Article 5

Charges

1. *Access to any public registers or lists established and maintained as mentioned in Article 3(5) shall be free of charge. Examination in situ of the information requested shall also be free of charge.*

2. *Public authorities may make a charge for supplying any environmental information but such a charge shall be reasonable, shall not exceed the actual cost of reproducing the material requested, and shall not include the costs of staff time spent on searches. The supply of any information shall not be made subject to the advance payment of a charge.*

3. *Where charges are made, public authorities shall publish 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. Charges shall not be made for requests for information for educational purposes. Public authorities may charge for reproducing information but not for searching for or compiling information.*

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 ***independent and impartial*** 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 *as* referred to in paragraph 1, 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 ***independent and impartial*** body established by law. Any such procedure shall be expeditious and either free of charge or inexpensive.

3. *The exceptions listed in Article 4 shall not confer a right to refuse information to the court of law or other body referred to in paragraphs 1 and 2, if that court or other body wishes to inspect information to which the pending review relates.*

4. 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.

5. *Member States shall consider whether to introduce or apply provisions for the recovery of legal costs by a person whose request for environmental information was wrongfully refused. Member States shall also consider whether to introduce or apply provisions for sanctions on public authorities or their officials for clearly wrongful refusal of a request for environmental information.*

Article 7

Dissemination of environmental information

1. Member States shall take the necessary measures to ensure that public *authorities disseminate* to the public environmental information held by or for them by means in particular of available computer telecommunication *and electronic* technology, *taking account of future developments in information and communication technologies.*

To that end Member States shall require the authorities:

- (a) to create publicly accessible data bases on data networks or elsewhere,*
- (b) to place the registers referred to in Article 3(5) on these data bases,*
- (c) to make reasonable efforts to place on these data bases the environmental documents which they hold, and*
- (d) to provide the data bases with search aids and other forms of help software in order to assist the public to locate the information.*

Member States shall, as far as possible, require the authorities to cooperate with each other in the creation of these data bases.

The information to *be disseminated* by public authorities shall include *at least:*

- (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;
- (f) *authorisations with an impact on the environment and applications for such authorisations, together with environmental agreements;*
- (g) *environmental impact studies and risk assessments likely to have a bearing on the environmental elements referred to in Article 2(1)(a).*

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 (g), in forms or formats that are readily reproducible and accessible by computer telecommunications or by other electronic means. ***Wherever possible documents shall be made directly accessible on the Internet 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. *Article 4(1) to (3) may* apply in relation to the duties imposed by this Article.

Where exceptions apply to the documents mentioned in paragraph 1, the public authorities shall include a reference to the document and to the exception that applies.

Article 8

Quality of environmental information

1. *Public authorities shall, so far as is within their power, ensure that any information made available upon request or disseminated, or reports published, in accordance with this Directive are:*

(a) *up-to-date;*

(b) *clear and comprehensible;*

(c) *scientifically sound in terms of accuracy and comparability.*

2. *Public authorities shall reply to requests for information pursuant to Article 2(1) (b) and (c), stating the measurement procedures, including methods of analysis, sampling, and pre-treatment of samples, used in compiling the information.*

3. *The Commission shall, where appropriate, submit a draft of measures to be taken on the harmonisation of emission measurement procedures (including sampling and pre-treatment of samples) for an opinion by the committee referred to in Article 19 of Council Directive 96/61/EC of 24 September 1996 on integrated pollution prevention and control¹. On the basis of the committee's opinion, the Commission shall prepare draft standardisation mandates and submit them to the procedure set out in European Parliament and Council Directive 98/34/EC of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations².*

Article 9

Review procedure

1. Not later than **31 December 2005**, Member States shall report on the experience gained in the application of the Directive.

They shall communicate the reports to the Commission not later **than 30 June 2006**.

No later than one year following the adoption of this Directive, the Commission shall forward to the Member States a guidance document setting out clearly the manner in which it wishes the Member States to prepare their reports.

¹ OJ L 257, 10.10.1996, p. 26.

² OJ L 204, 21.7.1998, p. 37 (Directive as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18).

2. ***On the basis of the Member States' reports, and within twelve months of the date for the submission of reports by the Member States under paragraph 1, in the light of experience gained from both this Directive and the Regulation implementing Article 255 of the Treaty, and in order to achieve high standards in relation to access to environmental information held by the Member States or the institutions and bodies of the European Union, the Commission shall submit an evaluation report to the European Parliament and the Council and make any proposals for revision which it may consider appropriate.***

Article 10

Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive ***no later than twelve months following its publication in the Official Journal of the European Communities***. 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 11

Repeal

Directive 90/313/EEC is hereby repealed with effect from [insert the date referred to in Article 10].

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 12

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 13

Addressees

This Directive is addressed to the Member States.

Done at

For the European Parliament
The President

For the Council
The President

ANNEX
CORRELATION TABLE

Directive 90/313/EEC	This Directive
Article 1	Article 1 (a) Article 1 (b)
Article 2 (a) Article 2 (b)	Article 2(1) Article 2(2) Article 2(3) Article 2(4) <i>Article 2(5)</i>
Article 3(1) Article 3(2) Article 3(3) Article 3(4)	Article 3(1) + Article 3(5) Article 4(2) + Article 4(3) Article 4(1) Article 3(2) + Article 4(4) Article 3(3) Article 3(4)
Article 4	Article 6(1) + Article 6(2) Article 6(3)
Article 5	Article 5(1) Article 5(2) Article 5(3)
Article 6	Article 2(2)
Article 7	Article 7 Article 7(1) Article 7(2) Article 7(3) Article 7(4) Article 7(5)
	<i>Article 8</i>
Article 8	Article 9
Article 9	Article 10
Article 10	Article 13
	Article 11
	Article 12