



## Manual of European Environmental Policy

The following pages are a section from the Manual of European Environmental Policy written by the Institute for European Environmental Policy.

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This section is the text of the Manual as published in 2012. It is therefore important to note the following:

- The contents have not been updated since 2012 and no guarantee is given of the accuracy of the contents given potential subsequent developments.
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# Access to information

<b>Formal references</b>	
<a href="#">2003/4/EC</a> (OJ L 41 14.2.2003)	Directive on public access to environmental information and repealing Council Directive <a href="#">90/313/EEC</a>
Proposed 29.6.2000 – <a href="#">COM(2000)402</a> and 6.6.2001 - <a href="#">COM(2001)303</a>	
<b>Legal base</b>	Article 192 TFEU (originally Article 175 TEC)
<b>Binding dates</b>	
Formal compliance	14 February 2005
Reports to Commission	14 August 2009
<a href="#">90/313/EEC</a> (OJ L 158 23.6.1990)	Directive on the freedom of access to information on the environment
Proposed 28.11.1988 – <a href="#">COM(88)484</a>	
<b>Legal base</b>	Article 192 TFEU (originally Article 175 TEC)
<b>Binding dates</b>	
Formal compliance	31 December 1992
Reports to Commission	31 December 1996
Commission report	Following receipt of above reports
Directive <a href="#">90/313/EEC</a> was repealed by Directive <a href="#">2003/4/EC</a> on 14 February 2005.	

## Purpose of the Directive

Access to environmental information is considered a key element in securing improved environmental standards, alongside public participation in Decision making and access to justice. Directive 90/313/EC, for the first time, required Member States' public authorities holding information on the environment to make such information available, subject to certain exclusions. Directive 2003/4/EC, which repeals and replaces Directive 90/313/EC, strengthens access to environmental information provisions further by requiring 'the widest possible systematic availability and dissemination to the public' of such information. It establishes the 'right' to access rather than the 'freedom' of access, and emphasizes the role of information technology in improving access.

## Summary of Directive 2003/4/EC

The Directive defines 'environmental information' to include that in 'written, visual, aural, electronic or any other material form' and covering the following:

- The state of the elements of the environment.
- Factors, such as substances, energy or noise, affecting elements of the environment.
- Measures, such as policies, and activities affecting or likely to affect the elements or factors.
- Reports on the implementation of environmental legislation.

- Economic analyses and assumptions used within the framework of measures and activities.
- The state of human health and safety, including the contamination of the food chain, conditions of human life, cultural sites and built structures in as much as they are affected by environmental elements.

The definition of ‘public authorities’ can exclude public bodies or institutions when acting in a judicial or legislative capacity. Environmental information held ‘by’ or ‘for’ a public authority includes information that is in the possession of the public authority, whether or not it produced such information, as well as information that is being held on behalf of the public authority.

Article 3 places a general duty on the Member States to ensure that public authorities make available environmental information held by or for them, to anyone requesting it. Public authorities must respond to a request for information as soon as possible after receipt of a request and within one month at the latest, unless the volume and complexity of the information required is such that one month is not sufficient. In such cases, the time limit is extended to two months, something the applicants are to be informed of as soon as possible and certainly before the end of the one-month period. If a request for information is formulated in too general a manner, the public authority is to ask for the applicant to specify the request and assist the applicant in doing so.

Applicants can request information to be made available in a certain format. The public authority should conform to this unless the information is already available in another form that is easily accessible by applicants, or it is reasonable for the public authority to make it available in another format. To this end, public authorities are required to make all reasonable efforts to maintain environmental information held by or for them in forms and formats that are readily reproducible and accessible using computers and other electronic means. The reasons for any refusal to make information available, whether in part or in full, are to be provided within the time limit.

Member States have to make sure that officials are required to support the public in seeking access to information, that lists of public authorities are available, and that practical arrangements are defined so that the right to environmental information can be effectively exercised. This can include the designation of information officers, the creation and maintenance of facilities for the examination of the information required, and registers or lists of environmental information held by public authorities or information points with clear indications of where such information can be found. Member States are to ensure that authorities inform the public adequately of the rights they enjoy under the Directive, providing information, guidance and advice to this end.

There are a number of cases where a request for information can be refused, as set out in Article 4(1). These are one or more of the following:

- Where the information is not held by the authority – although a request should in this case be transferred to the correct authority, if such is known, and the applicant informed of this.
- The request is manifestly unreasonable or formulated in too general a manner.
- The request concerns material in the course of completion or unfinished documents or data.

- The request concerns internal communications, taking into account the public interest served by the disclosure.

In addition, Member States can provide for requests to be refused if disclosure of information would adversely affect (Article 4(2)) one or more of the following:

- The confidentiality of the proceedings of public authorities, where such confidentiality is provided by law.
- International relations, public security and national defence.
- 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.
- The confidentiality of commercial or industrial information where provided for by national or Community law to protect legitimate economic interests.
- Intellectual property rights.
- The confidentiality of personal data and/or files where the person has not consented to public disclosure of the information.
- The interests or protection of third persons supplying information on a voluntary basis without being under a legal obligation to do so, unless the person consented to the release of such information.
- Protection of the environment to which such information relates, such as location of rare species.

Any grounds for refusal are to be interpreted in a restrictive way, taking into account the public interest of disclosure. For many of the potential grounds for refusal, these are not valid where the information relates to emissions into the environment. Information must be supplied in part if it can be separated out from items exempted by the Directive's confidentiality provisions. A refusal to make available information is to be notified to the applicant, stating the reasons for the refusal and including information on the procedure for reviewing that Decision.

Access to public lists or registers and *in situ* examination must be free of charge, according to Article 5. Public authorities can charge for supplying information but this must not exceed a reasonable amount. Where charges are made, they are to be set out in a schedule and accompanied by information on when such charges will or will not be applied.

An applicant who considers that their request was ignored, wrongfully refused, inadequately answered or otherwise not dealt with in accordance with the Directive is to have access to a review procedure. Under Article 6, such a procedure can involve reconsideration by the same or another public authority, or review by an independent and impartial body established by law. Procedures are to be expeditious and free of charge or at least inexpensive. Member States are, in addition, to ensure that the applicant has access to a review procedure before a court or other independent and impartial body established by law. Decisions taken by such bodies are to be binding on the public authority holding the information.

More general requirements for the proactive dissemination of environmental information are set out in Article 7. Member States are to ensure that public authorities organize environmental information with a view to its active and systematic dissemination. Environmental information is to become progressively available in easily accessible electronic databases. The information that is to be made available and disseminated is at least to include the following:

- International treaties, conventions or agreements, and Community, national, regional or local legislation on the environment or relating to it.
- Policies, plans and programmes relating to the environment.
- Progress reports on the implementation of such laws and agreements, when prepared or held in electronic form.
- Reports on the state of the environment.
- Data or summaries of data derived from the monitoring of activities affecting or likely to affect the environment.
- Authorizations with a significant impact on the environment and environmental agreements or a reference to the place where such information can be requested or found.
- Environmental impact studies and risk assessments concerning environmental elements or a reference to the place where such information can be found.

Member States are to ensure that national state of the environment reports and, where appropriate, regional and local reports are published regularly and at least every four years. Reports are to include information on the quality or and pressures on the environment. In the event of an imminent threat to human health of the environment, all information held which could enable the public to prevent or mitigate harm arising, is disseminated immediately and without delay. This provision is subject to the general exceptions listed under Article 4(1) and (2).

Member States have to ensure, as far as possible, that information being compiled by them or on their behalf is up to date, accurate and comparable (Article 8(1)). Public authorities have to reply to requests for information or referring the applicant to the place where such information is held, on measurement procedures used in compiling information.

The Member States are to report, under Article 9, on their experience in applying the Directive no later than 14 February 2009, based on Commission reporting guidelines to be produced by 14 February 2004. The Commission is then to draft a report, including any proposals for revision, based on experiences and in light of developments in information technology.

## **Development of the Directive**

Legislation on access to environmental information was signalled in the fourth Action Programme, which mentioned the need for an EU Freedom of Information Act. The Parliament had previously adopted a resolution on ‘the compulsory publication of information by the European Community’ in May 1984.

The Commission's explanatory memorandum stated that the obligation to provide access to information should apply to Community institutions (which are not included in the scope of the proposal) as well as to Member States' bodies, and promised other initiatives to this end.

The Economic and Social Committee generally welcomed the proposal, but saw no reason for putting off legislation applying to Community institutions. The European Parliament put forward a number of amendments at its consideration of the proposal in April 1989. It included broadening the scope of the Directive to encompass noise, radioactivity and waste incinerators, with no exemption for providing information on emissions.

The French Presidency, which took over in July 1989, declared the proposal to be one of its priorities and the Environment Council discussed the draft Directive at its November 1989 meeting. After publication of a revised proposal by the Commission and an apparent change of heart by the United Kingdom, which with Spain had expressed doubts about some aspects of the proposal, the Council agreed the Directive in March 1990, subject to a German reserve. This was lifted and the Directive finally adopted in May.

The requirement for those requesting information to state their purpose was dropped, along with that for state of the environment reports (a similar provision had been included in the Regulation establishing the European Environment Agency) (see section on the [EU agencies](#)). The scope of the Directive was broadened to take in noise, but not radioactivity, the reporting requirement added and the response period extended to two months.

In 1998 the Århus Convention on Access to Information, Public Participation in Decision making and Access to Justice in Environmental Matters was signed by the EC. The 1990 Directive was instrumental in influencing the access to information section of The Convention. However, on some key points The Convention went beyond EU legislation.

In order to comply with The Convention and to address the shortcomings identified in a Commission report ([COM\(2000\)400](#)), a proposal for a new Directive was put forward in accordance with Article 8 of the 1990 Directive. Experience had shown that a process of openness as regards public access to environmental information had been initiated by the 1990 Directive, increasing public awareness of environmental matters. Building on this and advancements in information technology, the Commission stressed the need to replace, rather than to amend, the 1990 Directive, in order ‘to define improved minimum terms and conditions for the right of access to environmental information throughout the Community’ ([COM\(2000\)402](#)). A process of consultation, which included NGOs, industry and relevant authorities in the Member States, substantiated the formal review procedure.

There was disagreement as to the cost of implementing the new legislation and particularly those aspects relating to proactive information provision. The Commission stated that implementation ‘may involve extra capital expenditure at the outset, and possibly an increase in human resources to set up and maintain the system, any disadvantage should be outweighed by the subsequent reduction of direct requests for information’. The United Kingdom, on the other hand, estimated an additional cost of £48.7 million to establish and £0.6 million/annum to maintain access to environmental information<sup>1</sup>.

The European Parliament had hoped to broaden the scope of the new Directive, for example, by calling for tighter deadlines for responding to information requests, but the Council took a more conservative approach, arguing against a tightening of the Directive beyond the requirements of the Århus Convention<sup>2</sup>. The final agreement did go beyond The Convention in some respects, notably by introducing provisions on the quality of environmental information. The requirements of disclosure were also extended beyond traditional public bodies to private utilities providing public services, such as energy and water companies.

## Implementation of the Directive

Information on the measures taken by the Member States to transpose Directive 90/313/EEC can be found in their national [execution measures](#).

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Under Article 8 of Directive 90/313/EEC, Member States were required to report by 31 December 1996 ‘on the experience gained’ in implementing it. By the end of that year, only one report had been received by the Commission. The United Kingdom reported in February 1997 but the Commission launched infringement proceedings against several other Member States in 1997. The last national report was finally received in April 1999 and the Commission's summary report on experience in the Member States followed in 2000. In it, the Commission notes that the ‘national reports varied in the amount of useful detail provided [...] Most of the reports contained no, or only very limited, statistical data’ (COM(2000)400).

Under Article 9 of Directive 2003/4/EC, Member States must report ‘on the experience gained’ in the application of the Directive by 14 February 2009 and must communicate the report to the Commission no later than 14 August 2009. On the basis of Member States' experience the Commission will draft an implementation report together with any proposals for revision and communicate this to the European Parliament and the Council. So far the Commission has not drafted such a report.

## Enforcement and court cases

Few cases were concluded by the European Court of Justice (ECJ) on Directive 90/313/EEC. These include:

- [C-217/97](#). This was a judgement of 9 September 1999 against Germany. The ECJ ruled that Germany had failed to fulfil its obligations under the Directive for several reasons one of which was that Germany applied the derogation from the general rules for access to information on the environment, in relation to matters which are the subject of preliminary investigation proceedings, incorrectly by interpreting ‘preliminary investigation proceedings’ too broadly. Other reasons were that Germany did not limit the payment of a charge to cases in which information has in fact been supplied and did not provide an explicit provision in its legislation which requires authorities to communicate information from which it is possible to detach information which may be covered by the requirements of confidentiality or privilege.
- [C-233/00](#). This was a judgement of 26 June 2003 against France. The ECJ ruled that France failed to transpose the Directive correctly and completely among others as it interpreted ‘access to information on the environment’ too strictly by restricting the Directive's scope to documents which are not related to carrying out a public service. France also interpreted the grounds which may justify a refusal to supply information on the environment too broad.

So far the ECJ has made two judgements concerning failure by Member States adequately to transpose Directive 2003/4/EC:

- [C-340/06](#). This was a judgement of 5 July 2007 against Austria. The ECJ ruled that Austria had failed to adopt all the measures necessary to comply with the Directive within the prescribed period and so had failed to fulfil its obligation under the Directive.
- [C-391/06](#). This was a judgement of 3 May 2007 against Ireland. The ECJ ruled that Ireland had failed to adopt all the measures necessary to comply with the Directive within the prescribed period and so had failed to fulfil its obligation under the Directive.

In addition, the ECJ has delivered some preliminary rulings with respect to Directive 2003/4/EC:

- [C-71/10](#). This was a preliminary ruling of 28 July 2011 in which the ECJ concluded that a public authority may take into account the cumulative effect of several grounds for refusal to disclose environmental information it is holding, when weighing the public interests served by disclosure against the interests served by refusal to disclose. This refers in particular to a situation whereby the request for access involves more than one of the interests protected under the Directive and whereby the adverse effect on each interest is insufficient in itself to justify refusal of access to the information.
- [C-524/09](#). This was a preliminary ruling of 22 December 2010 in which the ECJ concluded that information relating to greenhouse gas emission allowance trading falls exclusively under the specific rules governing public reporting and confidentiality contained in Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community and in Commission Regulation (EC) No 2216/2004 for a standardised and secured system of registries pursuant to Directive 2003/87/EC (see section on [emissions trading](#)).
- [C-266/09](#). This was a preliminary ruling of 16 December 2010 in which the ECJ concluded among others that information communicated to the national authorities within the framework of a procedure for the authorisation of a plant protection product falls within the scope of ‘environmental information’ as defined under Directive 2003/4/EC. The ECJ also concluded that protection of commercial information is limited where it relates to information on emissions into the environment or refusal to disclose is outweighed by public interest.

## Related legislation

There are a number of other items of EU legislation which are closely related to the Directive on Access to Environmental Information. These are:

- Regulation (EC) No 1367/2006 (see section on access to [EU institutions and bodies](#)) on the application of the provisions of the Århus Convention to Community institutions and bodies.
- Directive 2003/35/EC (see section on [public participation](#)) providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment.

Regulation (EC) No 1367/2006 complements Directive 2003/4/EC by setting out the obligations of Community institutions and bodies to collect and disseminate environmental



information and to make available such information upon request to any member of the public.

Directive 2003/35/EC is mainly concerned with ensuring proper public participation in environmental Decision making at Member State level and therefore contributes to the implementation of the ‘second pillar’ of the UNECE Convention on Access to Information, Public Participation in Decision making and Access to Justice in Environmental Matters (Århus Convention), whereas Directive 2003/4/EC contributes to the implementation of the ‘first pillar’ of the Århus Convention.

## **References**

1 Department of the Environment, Transport and the Regions (2000) *Explanatory Memorandum on European Community Legislation: Proposal for a Directive of the European Parliament and the Council on Public Access to Environmental Information*, 10004/00, 6 October 2000

2 European Information Service (2001) *Cautious Council*, EIS Issue 221, p. 28.