



COMMISSION OF THE EUROPEAN COMMUNITIES

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**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN
PARLIAMENT**

**ON THE EXPERIENCE GAINED IN THE APPLICATION OF COUNCIL
DIRECTIVE 90/313/EEC OF 7 JUNE 1990, ON FREEDOM OF ACCESS TO
INFORMATION ON THE ENVIRONMENT**

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1. INTRODUCTION

This Report is made by the Commission to the European Parliament and the Council in accordance with article 8 of Directive 90/313/EEC (“the Directive”) on freedom of access to information on the environment. It is made in the light of the experience gained by Member States in the operation of the Directive which has been the subject of reports made by them to the Commission in accordance with that article¹. It also takes into account reports made by non-governmental organisations (“NGOs”) active in the environmental sphere and developments in Community and international law.

The starting-point of the Directive is that environmental issues are best handled with the participation of all concerned citizens at the relevant level. Public awareness and involvement depends above all on public access to information. By making provision for improved access to information on the environment, the Directive contributes to an increased awareness of environmental matters and so to improved environmental protection.

The purpose of the Directive is to ensure freedom of access to information on the environment held by public authorities and to set out the basic terms and conditions on which such information is to be made available.

Article 3(1) of the Directive provides that Member States shall ensure that public authorities are required to make available information relating to the environment to any natural or legal person at his request and without his having to prove an interest. “Information relating to the environment” and “public authorities” are defined in article 2 of the Directive.

Article 3(2) and 3(3) provide for Member States to be able to refuse a request for information on specific grounds. Article 4 provides for a judicial or administrative review of the decisions of public authorities. Article 5 enables Member States to make a charge for supplying the information but it must not exceed a reasonable cost.

The Directive, by virtue of article 6, also covers information relating to the environment held by bodies which have public responsibilities for the environment and which are under the control of public authorities. The aim of this provision is to ensure that public access to information should not be affected by, for example, a delegation of responsibilities by a public authority to another body.

Article 7 requires Member States to take steps to provide general information to the public on the state of the environment.

¹ see Chapter 2 of, and Annex B to, this report

Under Article 9 of the Directive, Member States had to transpose it into national law at the latest by 31 December 1992. All Member States have done so and a list of the transposing measures communicated by the Member States to the Commission is provided at Annex A to this Report.

2. REVIEW UNDER ARTICLE 8

On 25 July 1996, the Commission sent a letter to the 15 Member States reminding them of the obligation laid down in Article 8 of the Directive to provide reports on their experience by 31 December 1996 at the latest.

In order to enable the Commission to prepare its own report in accordance with that Article, and to maximise its utility, a questionnaire was sent to the Member States listing the matters which, as a minimum, the national reports were expected to cover, as follows:

- Whether the definitions in Article 2 had given rise to particular problems of application
- The practical arrangements made under Article 3(1)1 to determine the effective availability of environmental information and whether any of those arrangements had given rise to any particular problem of application
- Whether there were any administrative directives, such as circulars or guidelines, governing the application of the exceptions provided for in Article 3
- Whether the deadlines set out in Article 3(4) had given rise to particular problems
- Whether the mechanism set up pursuant to Article 4 was an administrative review or a judicial review and how it functioned in practice, including the deadlines within which competent bodies had to act
- How the charges to persons requesting information were calculated in practice
- A description of the bodies with public responsibilities for the environment and under the control of public authorities covered by Article 6 of the Directive
- The steps taken to apply Article 7 on the active supply of environmental information

A request was made for any available statistical data to be supplied and the Commission suggested that Member States should involve the public and consult interested parties when drawing up their reports.

By the end of 1996, only one report had been sent to the Commission. A reminder was sent at the beginning of 1997 to the Member States concerned, urging them to send the reports as soon as possible. In the course of 1997, the Commission decided to launch several infringement procedures on the basis of Article 169 of the EC Treaty (now article 226 of the Treaty establishing the European Community (“EC”)) for failure to communicate the national reports as required under Article 8 of the Directive.

All the reports of the Member States (“national reports”) have now been received and a summary of each of them appears at Annex B. Copies of the full reports may be requested from Member States in accordance with the Directive.

The national reports varied in the amount of useful detail provided in response to the Commission's questionnaire and this is reflected in the headings and content of the summaries at Annex B. The summaries aim to highlight only the most significant points.

Most of the reports contained no, or only very limited, statistical data. Some included a significant amount of data relevant to the national experience but from which no firm conclusions can be drawn at the Community level. For those reasons the summaries at Annex B do not contain a separate section on statistical data.

3. THE COMMISSION'S EXPERIENCE

Complaints, together with petitions and parliamentary questions, play a vital role in keeping the Commission informed of the extent to which obligations arising from directives are actually complied with by Member States.

Up to the time of the preparation of this report (November 1999), 156 complaints had been lodged with the Commission by individuals and organisations on the basis of the Directive. This represents about 6% of the total complaints received in this period (2588) by Directorate General ENV.

The main problems highlighted by the complaints were:

- Art. 2(a): definition of "information relating to the environment"

In some Member States a strict interpretation had led to refusals to provide information considered not to fall within the scope of the definition. Examples of such information included information on the public health effects of the state of the environment, on radiation or nuclear energy and on financial or needs analyses in support of projects likely to affect the environment.

- Art. 2(b): definition of "public authorities"

In some cases, organs of the public administration which were not environmental authorities in the strict sense of the term claimed that their responsibilities did not relate to the environment and so refused to give access to environmental information which they held.

- Art. 3(2) and 3(3): interpretation of the exceptions

Some complaints showed that access to information had been refused even though disclosure would not have undermined the protection of the legitimate interests covered by the exceptions in Article 3(2) or 3(3).

- Art. 3(4): interpretation of the word "respond"

Some Member States had claimed that "respond" required no more than an indication of whether the information would or would not be made available without further indicating when it would in fact be supplied. This is now the subject of a case pending before the Court of Justice: Commission –v-Germany (C-29/00).

- Art. 3(4): time-limits

In some cases, the information requested was only supplied after the deadline of two months had elapsed. In other cases, no answer at all was provided to the applicant.

- Art. 3(4): failure to respond

When transposing the Directive into national law, some Member States had made provision to the effect that failure to reply to a request for access to environmental information should be considered as a refusal. This undermines the requirement in article 3(4) which specifically requires that the reasons for a refusal must be given.

- Art.4: review procedures

Several complaints raised the high costs and long delays associated with the review procedures.

- Art. 5: cost of information

In some cases, unreasonable charges had been demanded. In other cases, the requested information had been refused on the basis of one of the exceptions but a charge had still been made. There were complaints about the lack of information about charges before requests for access to information were made.

- Art. 6: interpretation of the expression “bodies with public responsibilities for the environment”

This expression had given rise to diverging interpretations. Functions traditionally performed by the State are increasingly transferred to quasi-public or private bodies. The final outcome had often been the denial to the public of access to environmental information held by bodies which should have fallen within the scope of the Directive.

4. JUDICIAL PROCEEDINGS

Concluded proceedings

Two requests for preliminary rulings in respect of questions arising from the Directive were made to the Court of Justice under article 177 of the EC Treaty (now Article 234 EC) by the courts or tribunals of Member States. One of them (C-296/97) was subsequently removed from the register². In the other (C-321/96), the Court gave its judgement on 17 June 1998³.

C-321/96 WILHELM MECKLENBURG v KREIS PINNEBERG DER LANDRAT,

This request for a preliminary ruling was made by the Higher Administrative Court of Schleswig-Holstein which referred the following questions to the Court of Justice:

² see OJ C 20 of 23.1.1999, p.29.

³ see OJ C 258 of 15.8.1999, p.11.

- (1) Does the statement of views given in development consent proceedings by a subordinate countryside protection authority participating in those proceedings as a representative of a public interest constitute an administrative measure designed to protect the environment within the meaning of Article 2(a) of the Directive?
- (2) Are the proceedings of an administrative authority within the meaning of the German transposing legislation “preliminary investigation proceedings” within the meaning of the third indent of Article 3(2) of the Directive?

In reply to the first question, the Court of Justice held that Article 2(a) of the Directive is to be interpreted as covering a statement of views given by a countryside protection authority in development consent proceedings if that statement is capable of influencing the outcome of those proceedings as regards interests pertaining to the protection of the environment.

The Court’s reply to the second question of the national court was that “preliminary investigation proceedings” in the third indent of Article 3(2) of the Directive must be interpreted as including an administrative procedure such as that referred to in the transposing legislation, which merely prepares the way for an administrative measure, only if it immediately precedes a contentious or quasi-contentious procedure and arises from the need to obtain proof or to investigate a matter prior to the opening of the actual procedure.

In addition, the Commission brought an action (C-217/97) under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that the Federal Republic of Germany had failed to fulfil its obligations under the Directive. The judgement of the Court was given on 9 September 1999⁴.

C-217/97: COMMISSION v GERMANY

The grounds for the Commission’s action in this case were:

- (1) incorrect transposition of Article 2(b) owing to the general exclusion of “courts, criminal prosecution authorities and disciplinary authorities” from the definition of “public authorities” in the German transposing legislation, not only in the exercise of their judicial functions but also in the exercise of administrative activities;
- (2) incorrect transposition of the third indent of the first subparagraph of Article 3(2) owing to a provision in the German legislation excluding the right to obtain information during “administrative proceedings”;
- (3) failure to transpose the second subparagraph of Article 3(2) inasmuch as the German legislation contained no provision for information to be supplied in part; and
- (4) incorrect transposition of Article 5 inasmuch as the German legislation provided for a charge to be made even if a request for information was refused and did not provide that the charge must be limited to a reasonable sum.

The first ground was rejected as the Court found that the Commission had adduced no detailed evidence to establish that, in Germany, all courts and other bodies acting normally in the exercise of their judicial functions have information on the environment obtained outside their judicial activities.

⁴ [report reference idc]

As respects the second ground, the Court referred to its own decision in *Mecklenburg v Kreis Pinneberg-Der Landrat* [1998] (C-321/96), which is discussed above, and the ground was held to be well-founded.

As respects the third ground, the Court considered that the duty to supply information in part was not guaranteed in a sufficiently clear and precise manner by the German legislation so as to ensure compliance with the principle of legal certainty and to enable persons who may submit a request for information to know the full extent of their rights. The Court found that the mere fact that partial communication was mentioned in a provision setting a tariff for charges was not sufficient to make those seeking information aware of the full extent of their rights and to enable them to rely on those rights before the national courts. Accordingly, the Commission's ground was upheld.

The Commission's fourth ground fell into two parts. The first concerned the absence in the German legislation of provision restricting the charge for supplying information on the environment to a reasonable amount. Here the Court rejected the Commission's argument that a charge is justified only in exceptional cases where providing information which was not otherwise accessible was very time-consuming. The Court held that what constitutes a "reasonable cost" must be determined in the light of the purpose of the Directive as discerned from Articles 1 and 3(1). On that basis the Court decided that the term "reasonable" in Article 5 did not authorise Member States to pass on to those seeking information the entire amount of the costs (and, in particular, the indirect ones) actually incurred in conducting an information search. Having regard to the detailed provisions of the German legislation and decisions by the German courts on charges generally for administrative acts, the Court concluded that the Commission had failed to establish the first part of the fourth ground.

The second part of that ground related to provision in the German legislation which permitted a charge to be made even where a request for information had been refused. The Court upheld this part of the ground on the basis that a charge made where a request for information is refused cannot be described as reasonable since, in such a case, no information has in fact been supplied within the meaning of Article 5.

Pending proceedings

On 21 May 1999, the Commission brought an action (C-189/99) before the European Court for a declaration that the Kingdom of Spain had failed to fulfil its obligations under the Directive⁵. The Commission claims that the Spanish transposing legislation does not comply with the provisions of Articles 3(2) (3rd indent), 4 and 5 of the Directive and that Spain has failed to fulfil its obligations under Article 5 by permitting high fees laid down under other legislation to be charged for the supply of information under the legislation transposing the Directive. The judgement of the Court is awaited.

On 19 October 1999 the Commission brought an action (C-402/99) against Belgium⁶ claiming that the Belgian legislation has not properly transposed Articles 3(2) and (4) of the Directive.

On 1 February 2000 the Commission brought an action (C-29/00) against Germany in respect of the practices of certain authorities in fulfilling the duty to "respond" to a request for information within the appropriate time period: in effect only a provisional response was given and the requested information was not supplied within the time period.

⁵ see OJ C 226 of 7.8.99, p.16.

⁶ OJ C 6 of 8.1.2000, p.17

5. VIEWS OF NON-GOVERNMENTAL ORGANISATIONS AND OTHER EXPERTS IN THE FIELD

On 26 January 1998, the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) organised a workshop on the implementation and application of the Directive. It was attended by representatives of IMPEL, of the Commission and of public authorities and NGOs concerned with the environment in the Member States and in states seeking admission to the Community. It thus provided an opportunity for an open exchange of views in the light of experience gained by the participants in the application of the Directive. A report on the workshop was published in May 1998⁷.

A report had earlier been published which drew on the discussions at that workshop and also on work done over a five-year period in conjunction with experts in the Member States⁸. This Report made a number of recommendations for the revision of the Directive which are summarised in Annex C.

6. THE AARHUS CONVENTION

The Convention on Access to Environmental Information, Public Participation in Environmental Decision-Making and Access to Justice, drafted under the auspices of the Economic Commission for Europe of the United Nations, was signed by the European Community and 14 Member States at a Ministerial Conference held in Aarhus, Denmark on 25 June 1998 (Germany signed the Convention on 21 December 1998). It is commonly referred to as the "Aarhus Convention".

Although the first draft of the provisions in the Convention relating to access to environmental information were largely inspired by the Directive, subsequent negotiations highlighted the weaknesses or shortcomings of the latter in the light of experience gained in its application. NGOs concerned with the environment participated actively and constructively in the negotiations on an equal footing with national delegations. The Commission considers that the final text of the Convention represents a clear advance on the provisions of the Directive.

The main improvements may be summarised as follows:

- an extended definition of "environmental information" which encompasses a wider range of matters related to the environment such as human health and safety, conditions of human life, cultural sites, cost-benefit and other economic analyses and assumptions used in environmental decision-making;
- an extended definition of "public authorities" so that government at national, regional and local level is covered as well as persons who perform public administrative functions under national law, including specific duties, activities or services in relation to the environment, and other persons who have public responsibilities or functions, or providing public

⁷ Access to Environmental Information: The Review and Further Development of Directive 90/313/EEC, Workshop Report published in May 1998 by Stichting Natuur en Milieu, Donkerstraat 17, NL-3511KB Utrecht, the Netherlands

⁸ Recommendations for the Review and Revision of Directive 90/313/EEC on the Freedom of Access to Information on the Environment, published in March 1998 by Stichting Natuur en Milieu (address as above).

services, in relation to the environment under the control of Government or those performing public administrative functions

- more detailed provision concerning the form in which information is to be made available so that information and, where requested, copies of the documentation containing or comprising the information must be made available in the form requested by the person seeking access to it unless it is reasonable (with the reasons given) for the public authority to make it available in another form or the information is already publicly available in another form.
- shorter deadlines for making available the information requested namely, one month after the request, with the possibility of an extension of this deadline by up to one further month where the volume and the complexity of the information requested so require;
- limitations on the operation of exceptions: a request for “environmental information” may only be refused if disclosure would adversely affect one of the interests specified and public authorities are required to interpret the exceptions in a restrictive way taking into account the public interest served by disclosure;
- express mention of emissions in the exceptions
- additional duties placed on national authorities for collecting and disseminating information going beyond the duty to disclose information when requested to do so;
- improved procedures for review of actions or omissions of public authorities in particular, where a review by a court of law is provided, an expeditious procedure for reconsideration of a decision by the public authority concerned or for review of the decision by an independent and impartial body established by law must also be provided.

7. CONCLUSIONS

The national reports summarised in Annex B indicated that, since its entry into force, individuals and organisations throughout the European Union have made use of legislative provisions for access to environmental information arising from the Directive. In those reports, Member States themselves raised questions about the scope and interpretation of the Directive and some made suggestions for improvement. In some cases, for example, with respect to the definition of the authorities required to supply information, time-limits and exceptions, some Member States had adopted legislation which marked an advance on the strict provisions of the Directive.

The national reports showed that implementation of the Directive had brought positive results. In many cases, few practical problems were encountered. Nonetheless, experience gained in the application of the Directive as described in this Report has enabled the identification of a number of concrete difficulties encountered by Member States, NGOs and those requesting access to environmental information. The main problems were found to be in the following areas (which are also the areas where provisions of the Aarhus Convention improve on the provisions of the Directive).

Problem areas

- The definitions of the information required to be disclosed and of the public authorities and other bodies required to disclose it

The Commission considers that these should be clarified with the aim of extending each of the categories concerned

- The practical arrangements for ensuring that information is effectively made available

The Commission considers that these should not be prescribed in detail in a Directive and are best left to the discretion of Member States. Nonetheless, it is apparent from the national reports that Member States can learn from each other as respects the best means for facilitating access to information.

Among the best practices adopted by some Member States were the following:

- Registers describing the existence, types and amount of environmental data available from the various authorities and bodies within the scope of the Directive
- Allowing a person seeking information to request that it be supplied in a specific form
- Ensuring special contact officials or services are responsible for handling requests for information
- Making information accessible by means of computer-supported databases or the Internet
- Placing a legal duty on relevant authorities and bodies to help and advise those inquiring about access to information
- Issuing Circulars or other guidance documents to the authorities and bodies subject to the duties in the Directive in respect of practical arrangements.

- The exceptions from the duty to provide access

The Commission recognises that there is a potential conflict between allowing free access to information and protecting legitimate interests on the basis of broadly framed exceptions. Drawing on the experiences of some Member States, it seems desirable to draw exceptions more narrowly and to make provision for the carrying out of a proper balancing exercise between the conflicting interests.

- The duty to “respond”

Having regard to the stated objectives of the Directive, an excessively narrow interpretation of this duty seems misplaced. In the Commission’s view, a full response should be given, within the time-limits, to the person seeking information. Such a response should consist either of the making available of the information requested, in whole or in part, or a reasoned refusal of a request, in whole or in part.

- The time-limits for fulfilling the duty

In the Commission’s view, those seeking information are entitled to a full response as quickly as is reasonably practicable. It is recognised, however, that a minority of requests may cause

difficulties, for example, because a request is inadequately formulated at the beginning or on account of the sheer amount of information requested. From the national reports, it did not appear that those Member States whose transposing legislation laid down a time-limit shorter than that allowed by the Directive had experienced greater problems in practice than those Member States which had made provision for the full 2 month time-limit. A shorter initial period for responding to requests seems desirable with the possibility of extending it for specified reasons which should be notified to the person making the request.

- The duty to give reasons for a refusal

Where the response to a request for provision of information is a refusal, article 3(4) of the Directive requires that the reasons are given to the person making the request. The national reports revealed that several member states, in their transposing legislation, had provided that a failure to respond within the time-limits should be deemed to constitute a decision of refusal. The justification given was usually the need, in the national legal order, to have a “decision”, even if fictitious, to enable the person making a request to have recourse to the review procedure after the expiry of the deadline. In the Commission’s view, such a legal fiction should not be taken in any way to relieve public authorities and other bodies from the duty to give reasons for a refusal within the time-limit specified in the Directive. It appears desirable, therefore, that the position should be clarified.

- Procedure for review of decisions to refuse access to information

The national reports showed that Member States had adopted different approaches in providing review procedures. Some had provided only for a judicial procedure, others an administrative procedure for objection with the possibility afterwards of a judicial review. Several Member States combined these procedures with access to an Ombudsman. In the Commission’s view, a review procedure must be both timely and inexpensive if it is to aid those seeking access to environmental information. The Commission recognises that recourse to the courts is desirable in some cases but is not persuaded that judicial review alone is the best option. Administrative procedures which enable decisions to be reconsidered without excessive formality are likely to be quicker and less costly than judicial procedures and the Commission considers that these should be available in all cases.

- Charges

From the national reports, it appeared that most Member States, in law or practice, made no charge for responding to simple requests or for allowing consultation of information on the premises of the authorities concerned. Often only the cost of photocopies was charged. However, other Member States had fixed charges and there had been complaints to the Commission of excessive charging. The Commission accepts that charges must be made in some cases, especially where the complexity of the request and the amount of the material justifies it, and believes that the fixing of charges should be left, as at present, to the discretion of Member States. Nonetheless it is considered that persons requesting information should, before or at the time they make the request, have adequate information about the charging policy applicable to their case.

- Active supply of information

Member States reported a number of initiatives they had taken to supply information on environmental matters to the public at large or to particular sections of the public. There is no doubt that public interest in environmental matters is growing. Furthermore developments in

information technology provide ever greater opportunities for a wider dissemination of environmental information. Member States will have to become even more active in meeting the demand for information and using the latest technological tools. It seems desirable to strengthen the provisions of the Directive in respect of these matters.

Proposal for new Directive

In the light of the foregoing, the Commission considers it desirable to replace the Directive with a new Directive on freedom of access to environmental information. A proposal for such a new Directive accompanies this Report⁹. The Commission's proposal aims to correct the shortcomings in the Directive identified above and so lead to strengthened legislation in the Member States. It also aims to align Community legislation with the Aarhus Convention so as to enable the Community to ratify that Convention. Proper implementation of any new Directive, as well as its effective application, will be of the utmost importance in securing improved rights to information across the European Union.

⁹ [reference ?????]

**ANNEX A: LIST OF NATIONAL TRANSPOSING MEASURES OF DIRECTIVE
90/313/EEC COMMUNICATED BY THE MEMBER STATES TO THE
COMMISSION**

Austria:

- (1) Bundesgesetz über den Zugang zu Informationen über die Umwelt (Umweltinformationsgesetz - UIG), BGBl. Nr. 495/1993
- (2) Gesetz des Landes Burgenland vom 27. Oktober 1988, LGBl. 1989/3, über die Auskunftspflicht der Organe des Landes, der Gemeinden, der Gemeindeverbände und der durch Landesgesetz geregelten Selbstverwaltungskörper (Bgl. Auskunftspflichtgesetz)
- (3) Gesetz des Landes Kärnten vom 19. Mai 1988, LGBl. 29, über die Auskunftspflicht in der Verwaltung des Landes und der Gemeinden
- (4) Niederösterreichisches Auskunftsgesetz, LGBl. 0020-0
- (5) Niederösterreichisches Jagdgesetz 1974, LGBl. Nr. 6500
- (6) Niederösterreichisches Fischereigesetz, LGBl. Nr. 6550
- (7) Niederösterreichisches Bodenschutzgesetz, LGBl. Nr. 6160
- (8) Landesgesetz von Oberösterreich vom 4. Juli 1996 über die Maßnahmen zum Schutz der Umwelt und den Zugang zu Informationen über die Umwelt (O.Ö. Umweltschutzgesetz), LGBl. Nr. 84/1996
- (9) Gesetz des Landes Salzburg vom 6. Juli 1988, LGBl. 73, über die Auskunftspflicht der Verwaltung des Landes und der Gemeinden (Salzburger-Auskunftspflicht-Ausführungsgesetz)
- (10) Gesetz des Landes Steiermark vom 26. Juni 1990, LGBl 73, über die Erteilung von Auskünften (Steiermärkisches Auskunftspflichtgesetz)
- (11) Gesetz des Landes Tirol vom 22. November 1995, LGBl 3, über den Zugang zu Informationen über die Umwelt (Tiroler Umweltinformationsgesetz – TUIG)
- (12) Gesetz des Landes Wien vom 25. April 1988, LGBl 20, über die Auskunftspflicht (Wiener Auskunftspflichtgesetz)
- (13) Gesetz des Landes Wien vom 19. Oktober 1984 über den Schutz und die Pflege der Natur (Wiener Naturschutzgesetz 1984), LGBl. Nr. 6/1984
- (14) Gesetz des Landes Vorarlberg über den Zugang zu Informationen über die Umwelt (Landes-Umweltinformationsgesetz – L-UIG), LGBl. Nr. 55/1994

Belgium:

Federal State

- (1) Loi du 11/04/1994 relative à la publicité de l'administration, Moniteur belge du 30/06/1994, p. 17662 - Wet van 11/04/1994 betreffende de openbaarheid van bestuur, Belgisch Staatsblad van 30/06/1994, bl. 17662
- (2) Arrêté royal du 23/06/1994 fixant la date d'entrée en vigueur de la loi du 11 avril 1994 relative à la publicité de l'administration, Moniteur belge du 30/06/1994, p. 17666 – Koninklijk besluit van 23 juni 1994 tot vaststelling van de datum van inwerkingtreding van de wet van 11 april 1994 betreffende de openbaarheid van bestuur, Belgisch Staatsblad van 30/06/1994, bl. 17666
- (3) Arrêté royal du 27/06/1994 réglant la composition et le fonctionnement de la Commission d'accès aux documents administratifs, Moniteur belge du 30/06/1994, p. 17666 - Koninklijk besluit van 27/06/1994 tot regeling van de samenstelling en de werkwijze van de Commissie voor de toegang tot bestuursdocumenten, Belgisch Staatsblad van 30/06/1994, bl. 17666
- (4) Arrêté royal du 27/06/1994 portant les nominations à la Commission d'accès aux documents administratifs, Moniteur belge du 30/06/1994, p. 17669 - Koninklijk besluit van 27/06/1994 houdende de benoemingen bij de Commissie voor de toegang tot bestuursdocumenten, Belgisch Staatsblad van 30/06/1994, bl. 17669
- (5) Loi du 12 novembre 1997 relative à la publicité de l'administration dans les provinces et les communes, Moniteur belge du 19/12/1997, p. 34253 - Wet van 12 november 1997 betreffende de openbaarheid van bestuur in de provincies en gemeenten, Belgisch Staatsblad, bl. 34253.

Brussels

- (6) Ordonnance du 29/08/1991 sur l'accès à l'information relative à l'environnement dans la Région de Bruxelles-Capitale, Moniteur belge du 01/10/1991, p. 21505 - Ordonnantie van 29/08/1991 inzake de toegang tot informatie met betrekking tot het milieu in het Brusselse Hoofdstedelijk Gewest, Belgisch Staatsblad van 01/10/1991, bl. 21505
- (7) Arrêté du Gouvernement de la Région de Bruxelles-Capitale du 10/11/1994 déterminant les modalités d'organisation de l'accès à l'information en matière d'environnement auprès de certaines administrations régionales, Moniteur belge du 01/12/1994, p. 29795 - Besluit van de Brussels Hoofdstedelijke Regering van 10/11/1994 tot vaststelling van regels inzake de organisatie van de toegang, bij bepaalde gewestelijke besturen, tot de informatie inzake leefmilieu met betrekking tot het milieu, Belgisch Staatsblad van 01/12/1994, bl. 29795
- (8) Ordonnance du 30/03/1995 relative à la publicité de l'administration, Moniteur belge du 23/06/1995, p. 18049 - Ordonnantie van 30/03/1995 betreffende de openbaarheid van bestuur, Belgisch Staatsblad van 23/06/1995, bl. 18049

Flanders

- (9) Besluit van de Vlaamse Executieve van 06/02/1991 houdende vaststelling van het Vlaams reglement betreffende de milieuvergunning, Belgisch Staatsblad van 26/06/1991, bl. 14269 – Arrêté de L'Exécutif flamand du 06/02/1991 fixant le règlement flamand relatif à l'autorisation écologique, Moniteur belge du 26/06/1991, p. 14343 [Article 33 of this Order, which transposed the Directive, was repealed by the decree mentioned at (15) below]
- (10) Decreet van 23/10/1991 betreffende de openbaarheid van bestuursdocumenten in de diensten en instellingen van de Vlaamse Executieve, Belgisch Staatsblad van 27/11/1991, bl. 26562 – Décret du 23/10/1991 relatif à la publicité des documents administratifs dans les services et établissements de l'Exécutif flamand, Moniteur belge du 27/11/1991, p. 26564 [This decree was repealed by the decree mentioned at (15) below]
- (11) Besluit van de Vlaamse Executieve van 09/12/1992 tot uitvoering van de passieve openbaarheid zoals bepaald in het decreet van 23/10/1991 betreffende de openbaarheid van bestuursdocumenten in de diensten en instellingen van de Vlaamse Executieve, Belgisch Staatsblad van 15/12/1992, bl. 26657 – Arrêté de l'Exécutif flamand du 9/12/1992 portant exécution de la publicité passive telle que définie dans le décret du 23/10/1991 relatif à la publicité des documents administratifs dans les services et établissements de l'Exécutif flamand, Moniteur belge du 15/12/1992, p. 26659 [This Order was repealed by the decree mentioned at (15) below]
- (12) Besluit van de Vlaamse Executieve van 07/01/1992 houdende vaststelling van het Vlaams reglement inzake milieuvoorwaarden voor hinderlijke inrichtingen, Belgisch Staatsblad van 14/12/1992, bl. 25778 - Arrêté de l'Exécutif flamand du 01/01/1992 portant fixation du règlement flamand relatif aux conditions écologiques applicables aux établissements incommodes, Moniteur belge du 14/12/1992, p. 26192 [This order was annulled by the Council of State and replaced by the order mentioned at (14) below]
- (13) Besluit van de Vlaamse Executieve van 31/07/1992 tot wijziging van het besluit van de Vlaamse Executieve van 07/01/1992 houdende vaststelling van het Vlaams reglement inzake milieuvoorwaarden voor hinderlijke inrichtingen, Belgisch Staatsblad van 14/12/1992, bl. 26630 – Arrêté de l'Exécutif flamand du 31/07/1992 modifiant l'arrêté de l'Exécutif flamand du 07/01/1992 portant fixation du règlement flamand relatif aux conditions écologiques applicables aux établissements incommodes, Moniteur belge du 14/12/1992, p. 26636 [This order was annulled by the Council of State and replaced by the order mentioned at (14) below]
- (14) Besluit van de Vlaamse regering van 01/06/1995 houdende algemene en sectorale bepalingen inzake milieuhygiëne, Belgisch Staatsblad van 31/07/1995, bl. 20526 - Arrêté du Gouvernement flamand du 01/06/1995 fixant les dispositions générales et sectorielles en matière d'hygiène de l'environnement, Moniteur belge du 31/07/1995, p. 21447
- (15) Decreet van 18 mei 1999 betreffende de openbaarheid van bestuur, Belgisch Staatsblad van 15/06/1999, bl. 22313 - Décret du 18 mai 1999 relatif à la publicité de l'administration, Moniteur belge du 15/06/1999, p. 22317.

Wallonia

- (16) Décret du 13/06/1991 concernant la liberté d'accès des citoyens à l'information relative à l'environnement, Moniteur belge du 11/10/1991, p. 22559 – Decreet van 13/06/1991 met betrekking tot de vrije toegang van de burgers tot de informatie betreffende het leefmilieu, Belgisch Staatsblad van 11/10/1991
- (17) Arrêté de l'Exécutif régional wallon du 06/05/1993 fixant le modèle des documents à utiliser en exécution du décret du 13/06/1991 concernant la liberté d'accès des citoyens à l'information relative à l'environnement, Moniteur belge du 07/07/1993, p. 16083 – Besluit van de Waalse Gewestexecutieve van 6/05/1993 tot bepaling van het model van de krachtens het decreet van 13/06/1991 met betrekking tot de vrije toegang van de burgers tot de informatie betreffende het leefmilieu te gebruiken documenten, Belgisch Staatsblad van 07/07/1993, bl. 16089
- (18) Arrêté de l'Exécutif régional wallon du 06/05/1993 définissant les règles relatives au recours prévu par le décret du 13/06/1991 concernant la liberté d'accès des citoyens à l'information relative à l'environnement, Moniteur belge du 07/07/1993, p. 16093

Denmark:

- (1) Lov nr. 572 af 19/12/1985, Lovtidende A
- (2) Lov nr. 292 af 27/04/1994
- (3) Bekendtgørelse nr. 646 af 18/09/1986
- (4) Bekendtgørelse nr. 579 af 27/06/1994
- (5) Bekendtgørelse nr. 585 af 24/06/1994
- (6) Vejledning nr. 123 af 30/06/1994
- (7) Bekendtgørelse nr. 647 af 18/09/1986

Finland:

- (1) Laki yleisten asiakirjain julkisuudesta (83/51) 09/02/1951
- (2) Hallintomenettelylaki (598/82) 06/08/1982
- (3) Laki vesi- ja ympäristöhallinnosta (24/86) 17/01/1986 [This Act was replaced by the Act mentioned at (5) below]
- (4) Valtion maksuperustelaki (150/92) 21/02/1992
- (5) Laki ympäristöhallinnosta (55/95) 24/01/1995
- (6) Asetus ympäristöministeriöstä (326/93) 02/04/1993 [This Decree was replaced by the Decree mentioned at (7) below]
- (7) Asetus ympäristöministeriöstä (54/95) 24/01/1995

- (8) Landskapslag om landskapet Ålands centrala ämbetsverk (25/73) 10/05/1973 [This Act of Åland was replaced by the Act mentioned at (10) below]
- (9) Landskapslag om allmänna handlingars offentlighet (72/77) 19/07/1977
- (10) Landskapslag om Ålands landskapstyrelses allmänna förvaltning (70/98) 02/07/1998

France:

- (1) Loi n° 78-753 DU 17/07/1978 portant diverses mesures d'amélioration des relations entre l'administration et le public et diverses dispositions d'ordre administratif, social et fiscal, JORF du 18/07/1978 p.2851.
- (2) Décret n° 88-465 du 28/04/1988 relatif à la procédure d'accès aux documents administratifs, JORF du 30/04/1988 p.5900.
- (3) Décret n° 90-918 du 11 octobre 1990 relatif à l'exercice du droit à l'information sur les risques majeurs, JORF du 13/10/1990 p.12415.
- (4) Décret n° 94-841 du 26 septembre 1994 relatif aux conditions d'information sur la qualité de l'eau distribuée en vue de la consommation humaine, JORF du 1/10/1994 p.13880.
- (5) Décret n° 93-1410 du 29 décembre 1993 fixant les modalités d'exercice du droit à l'information en matière de déchets, JORF du 31/12/1993 p.18703.
- (6) Décret n° 95-21 relatif au classement des infrastructures de transports terrestres et modifiant le code de l'urbanisme et le code de la construction et de l'habitation, décret n° 95-22 du 9 janvier 1995 relatif à la limitation du bruit des aménagements et infrastructures de transports terrestres, JORF du 10/01/1995 p.454 .
- (7) Loi n° 96-1236 du 30 décembre 1996 sur l'air et l'utilisation rationnelle de l'énergie.

Germany:

- (1) Gesetz zur Umsetzung der Richtlinie 90/313/EWG des Rates vom 07/06/1990 über den freien Zugang zu Informationen über die Umwelt vom 08/07/1994, Bundesgesetzblatt Teil I vom 15/07/1994 Seite 1490
- (2) Verordnung über Gebühren für Amtshandlungen der Behörden des Bundes beim Vollzug des Umweltinformationsgesetzes (Umweltinformationsgebührenverordnung - UIGebV) vom 07/12/1994, Bundesgesetzblatt Teil I vom 13/12/1994 Seite 3732

Greece:

- (1) Décision ministérielle numéro 77921/1440 du 06/09/1995, FEK B numéro 795 du 14/09/1995 Page 9358

Ireland:

Principal transposing measures

- (1) The Environmental Protection Agency Act, 1992, No.7 of 1992

- (2) The Access to Information on the Environment Regulations, 1993, S.I. No. 133 of 1993 (replaced by item (3))
- (3) The Access to Information on the Environment Regulations, 1996 S.I. No.185 of 1996 (replaced by item (4))
- (4) The European Communities Act 1972 (Access to Information on the Environment) Regulations, 1998 S.I. No.125 of 1996

Other Acts notified as transposing measures

- (5) The Air Navigation and Transport Act, 1936, No. 40 of 1936
- (6) The Arterial Drainage Act, 1945, No. 3 of 1945
- (7) The Air Navigation and Transport Act, 1950, No. 4 of 1950
- (8) The City and County Management (Amendment) Act, 1955, No. 12 of 1955
- (9) The Local Government (Planning and Development) Act, 1963, No. 28 of 1963
- (10) The Local Government (Planning and Development) Act, 1976, No. 20 of 1976
- (11) The Wildlife Act, 1976, No. 39 of 1976
- (12) The Local Government (Water Pollution) Act, 1977, No. 1 of 1977
- (13) The Ombudsman Act, 1980 No. 26 of 1980
- (14) The Fire Services Act, 1981, No 30 of 1981
- (15) The Ombudsman (Amendment) Act, 1984 No.19 of 1984
- (16) The Air Pollution Act, 1987, No. 6 of 1987
- (17) The Shannon Navigation Act, 1990, No. 20 of 1990
- (18) The Local Government (Water Pollution) (Amendment) Act, 1990, No. 21 of 1990
- (19) The Radiological Protection Act, 1991, No. 9 of 1991
- (20) The Local Government Act, 1991, No. 11 of 1991
- (21) The Local Government (Planning and Development) Act, 1992, No. 14 of 1992
- (22) The Roads Act, 1993 No. 14 of 1993
- (23) The Irish Aviation Authority Act 1993, No. 29 of 1993
- (24) The Road Traffic Act , 1994, No. 7 of 1994
- (25) The Freedom of Information Act 1997, No.13 of 1997

Other secondary legislation notified as transposing measures

- (26) The Public Bodies Order, 1946, S.R &O No. 273 of 1946
- (27) The European Communities (Water Pollution) Regulations, 1978, S.I. No. 108 of 1978
- (28) The European Communities (Toxic and Dangerous Waste) Regulations, 1982, S.I. No. 33 of 1982
- (29) The Ombudsman Act (First Schedule) (Amendment) Order, 1984, S.I. No. 332 of 1984
- (30) The Rules of the Superior Courts, S.I. No. 15 of 1986
- (31) The European Communities (Major Accident Hazards of Certain Industrial Activities) Regulations, 1986, S.I. No. 292 of 1986
- (32) The Air Pollution Act, 1987 (Licensing of Industrial Plant) Regulations, 1988, S.I. No. 266 of 1988
- (33) European Communities (Quality of Salmonid Waters) Regulations, 1988, S.I. No. 293 of 1988
- (34) The European Communities (Environmental Impact Assessment) Regulations, 1989, S.I. No.349 of 1989
- (35) The Building Control Regulations, 1991, S.I. No.305 of 1994
- (36) The European Communities (Major Accident Hazards of Certain Industrial Activities) (Amendment) Regulations, 1992, S.I.No 21 of 1992
- (37) The European Communities (Quality of Bathing Waters) (Amendment) Regulations, 1992, S.I. No. 155 of 1992
- (38) The European Communities (Water Pollution) Regulations, 1992, S.I. No. 271 of 1992
- (39) The Environmental Protection Agency (Licensing) Regulations, 1994, S.I. No. 85 of 1994
- (40) The Local Government (Planning and Development) Regulations, 1994, S.I. No. 86 of 1994
- (41) The Roads Regulations, 1994, S.I. No 119 of 1994
- (42) The European Communities (Authorization, Placing on the Market, Use and Control of Plant Protection Products) Regulations, 1994, S.I. No. 139 of 1994
- (43) The Local Government (Planning and Development) (No. 2) Regulations, 1995, S.I. No. 75 of 1995
- (44) The Environmental Protection Agency (Licensing) (Amendment No. 2) Regulations, 1995, S.I. No 76 of 1995

Italy:

- (1) Legge del 08/07/1986 n. 349, Istituzione del Ministero dell'ambiente e norme in materia di danno ambientale, in Supplemento ordinario alla Gazzetta Ufficiale Serie generale n. 162 del 15/07/86, pag 5.
- (2) Legge del 07/08/1990 n. 241, Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi, in Gazzetta Ufficiale Serie Generale n.192 del 18/08/90, pag.7.
- (3) Decreto del Presidente della Repubblica del 27/06/1992, n.352, Regolamento per la disciplina delle modalità di esercizio e dei casi di esclusione del diritto di accesso ai documenti amministrativi, in attuazione dell'art. 24, comma 2, della legge 7 agosto 1990, n. 241, recante nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi, Gazzetta Ufficiale - Serie generale - del 29/07/1992 n. 177 pag. 3
- (4) Decreto legislativo del 24/02/1997 n. 39, Attuazione della direttiva 90/313/CEE, concernente la libertà di accesso alle informazioni in materia di ambiente, Supplemento ordinario alla Gazzetta Ufficiale Serie generale, n.54, del 06/03/1997, pag 3.

Luxembourg:

- (1) Loi du 10/08/1992 concernant 1) la liberté d'accès à l'information en matière d'environnement; 2) le droit d'agir en justice des associations de protection de la nature et de l'environnement, Mémorial Grand-Ducal A Numéro 71 du 28/09/1992 Page 2204
- (2) Règlement grand-ducal du 10/08/1992 déterminant la taxe à percevoir lors de la présentation d'une demande en obtention d'une information relative à l'environnement, Mémorial Grand-Ducal A Numéro 71 du 28/09/1992 Page 2206

Netherlands:

- (1) Wet openbaarheid van bestuur van 31/10/1991, Staatsblad nummer 703 van 31/12/1991 bladzijde 1
- (2) Wet algemene bepalingen milieuhygiëne van 30/03/1988, Staatsblad nummer 133 van 19/04/1988 bladzijde 1
- (3) Wet administratieve rechtspraak overheidsbeschikkingen van 01/05/1975, Staatsblad nummer 284 van 17/06/1975 bladzijde 1
- (4) Wet milieugevaarlijke stoffen van 05/12/1985, Staatsblad nummer 639 van 17/12/1985
- (5) Besluit van 20/04/1976 tot vaststelling van datum inwerkingtreding wet 01/05/1975 van 20/04/1976, Staatsblad nummer 234 van 27/04/1976
- (6) Besluit van 20/04/1992 tot vaststelling inwerkingtreding Wet Openbaarheid van Bestuur van 10/04/1992, Staatsblad nummer 185 van 28/04/1992

- (7) Besluit van 07/08/1980 tot vaststelling van inwerkingtreding wet algemene bepalingen milieuhygiëne en daarmee samenhangende regelingen, Staatsblad nummer 443 van 28/08/1980
- (8) Besluit van 11/12/1986 tot vaststelling van gedeeltelijke inwerkingtreding wet milieugevaarlijke stoffen, Staatsblad nummer 623 van 23/12/1986
- (9) Besluit van 09/01/1986 tot vaststelling van gedeeltelijke inwerkingtreding wet milieugevaarlijkstoffen, Staatsblad nummer 10 van 23/01/1986
- (10) Aanwijzingen inzake openbaarheid van bestuur van 08/04/1992, Staatscourant nummer 84 van 01/05/1992 bladzijde 13
- (11) Regeling uitvoering Wet Openbaarheid van Bestuur van 18/06/1992, Staatscourant nummer 118 van 23/06/1992

Portugal:

- (1) Decreto-lei número 422/91, de 05/11/1991, Diário da Republica série I, de 15/11/1991, Página 5852.
- (2) Lei número 65/93, de 26/08/1993, Diário da Republica série I, número 200 de 26/08/1993, Página 4524.
- (3) Lei número 8/95, de 29/3/95.
- (4) Lei número 94/99, de 16/7/99, Diário da República série I-A, número 164 de 16/7/99, Página 4428

Spain:

- (1) Ley número 30/92 de 26/11/1992, de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común, Boletín Oficial del Estado número 285 de 27/11/1992 Página 40300 (Marginal 26318)
- (2) Ley número 38/95 de 12/12/1995, sobre el derecho de acceso a la información en materia de medio ambiente, Boletín Oficial del Estado número 297 de 13/12/1995 Página 35708 (Marginal 26838)

Sweden:

- (1) Tryckfrihetsförordning, Svensk författningssamling (SFS) 1949:105
- (2) Sekretesslag, Svensk författningssamling (SFS) 1980:100

United Kingdom:

- (1) The Environmental Information Regulations 1990, Statutory Instruments number 3240 of 1990
- (2) The Environmental Information Regulations (Northern Ireland) 1993, Statutory Rules of Northern Ireland number 45 of 1993
- (3) The Public Health (Freedom of Access to Information on the Environment) Rules 1992, Legal Notice No. 143 of 1992, Gibraltar Gazette No. 2,697 of 12/11/1992

ANNEX B: SUMMARY OF REPORTS BY MEMBER STATES ON EXPERIENCE GAINED FROM THE IMPLEMENTATION OF DIRECTIVE 90/313/EEC

Austria: Report of February 1997

Introduction

General laws on access to information relating to the activities of federal and provincial authorities had been enacted between 1988 and 1990. These general laws were supplemented in 1993 by specific legislation transposing the Directive at the federal level and, later, in some of the provinces

Article 2 Definitions

Questions had arisen as to how far information on drinking water (as opposed to natural water resources like surface and groundwater) was covered by article 2 of the Directive and so by the transposing legislation.

Practical arrangements under article 3(1)

The transposing legislation provides for an Environmental Data Catalogue (EDC) which gives the public information about the existence, types and amount of environmental data available from the various administrative bodies. It exists both as a computer-supported database and as a register. It is also accessible via Internet.

The transposing legislation contains several provisions concerning the form of the request for information. A request has generally to be in writing but up-to-date information could also be requested orally. The form in which information is to be furnished is left, in the first place, to the discretion of the administrative body but if, the person asking for the information requires it in a specific form, the administrative body is obliged to meet this request.

The Federal Ministry for the Environment, Youth and the Family had issued a Circular on the implementation of the transposing legislation ("the UIG Circular") in February 1994 which also contained advice on practical arrangements.

Exceptions in Article 3(2) and (3)

The transposing legislation had provided for the exceptions included in Article 3(2) of the Directive in respect of the confidentiality of national defence, public security, commercial and industrial confidentiality and the confidentiality of personal data. It also covered the exceptions in Article 3 (3) of the Directive concerning internal communications and unreasonable requests. The UIG Circular also included more detailed explanations of the exceptions.

In the case of commercial and industrial confidentiality, a procedure was provided for balancing the interests of free access to environmental information against the interests of commercial and industrial confidentiality. The specific concerns expressed in respect of confidentiality needed to exceed the specific environmental concerns if the requested information was to be withheld. The law stipulated that commercial and industrial confidentiality could not be claimed where information was requested on the status of water, air, soil, noise, fauna, flora and natural sites or on violations of emission threshold values.

Time-limits in Article 3(4)

The transposing legislation imposed on administrative bodies a duty to respond to a request for environmental information as soon as possible, but at the latest within eight weeks. If, for particular reasons, the deadline could not be met, the person making the request had the right to request an official notice from the body concerned which could then be the subject of review proceedings.

Review procedure under Article 4

Where a request for information was refused, in whole or in part, the administrative body had to notify the fact to the person concerned within a period of eight weeks. The notification had to include an informal statement of the reasons for the refusal. The person requesting the information then had the right to request an official notice about the withheld information. The administrative body had to issue such a notice as soon as possible, and at the latest, within six months. The person concerned could then lodge an appeal against the official notice before one of the independent Administrative Senates which existed for each Austrian province and from there to the Federal Administrative Court.

Charges under Article 5

As a general rule, access to environmental information was free of charge in Austria. A costs ordinance of limited scope had been envisaged but it had not been issued because the correct interpretation of article 5 of the Directive was unclear, especially, whether administrative costs incurred in the search for the requested information could be charged to the person making the request or only costs involved in, for example, copying and mailing the information.

Active information policy under Article 7

At the federal, provincial and local levels, several, reports on the state of the environment were published regularly as well as other general and descriptive reports and periodicals.

The transposing legislation goes beyond the provisions of the directive by requiring enterprises which have a duty to measure and record emission data to issue them to the public.

Belgium: Report of April 1997

Introduction

The Directive had been transposed from 1991 onwards by several pieces of legislation both at federal and regional levels. The number of transposing instruments was due to the fact that environmental matters fell largely within the remit of the Regions. In addition, the general subject of access to information held by public administrations was regulated by means of separate legislation at both federal and regional levels. Since June 1993, article 32 of the Belgian Constitution provided a right for each citizen to consult and obtain copies of any administrative document subject to possible exceptions to be made by law.

Article 2 definitions

No particular problem had been encountered in respect of the definitions. The Brussels Region had expressly provided in its legislation that information possessed by officials and

civil servants fell within the scope of the legislation unless the information was clearly unrelated to the functions performed by such a person in the administration.

Practical arrangements under Article 3(1)

In the Walloon Region, an official of the Directorate-General for Natural Resources and the Environment was responsible for handling all requests for information. The official identified the appropriate department for answering a particular request and forwarded it to that department where a senior official was required to sign an acknowledgement of receipt. On receipt the department examined any request to see if there were reasons for refusing it in whole or in part.

In the Brussels Region, persons seeking information could either have access to it on the premises of the public authority concerned or request a copy of the relevant documents. The legislation specifically dealing with access to environmental information went beyond what was provided in the general legislation on access to administrative documents.

Most of the Brussels municipalities have an official specifically responsible for answering environmental queries either by phone or through consultation of the relevant documents on the spot. In general, the municipalities do not keep a registry of requests.

In the Flemish Region, orders of the Flemish Government set out the detailed arrangements for the making of requests (by registered mail with an indication of the name and address of the applicant and the manner in which the applicant wished to receive the information), the making of appointments with a view to consultation of documents on the spot, the keeping of a register of information requested and the working of the review.

Time-limits in Article 3(4)

The different pieces of legislation in force in Belgium provide for time-limits for answering requests which range from 14 days to a maximum of two months. There were scarcely any problems in practice as many requests for information could be answered immediately.

In the Brussels Region, the absence of a response within one month was deemed to constitute a refusal.

In the Flemish Region, the provincial executive had to respond to the person requesting information within one month. The general legislation on access to administrative documents provided that any decision to turn down a request had to be notified within 60 days, but a Circular of 24 January 1995 specified that the Flemish administration had to respond within 14 days. If the 14 day time-limit could not be respected, the administration was required to acknowledge receipt of the request and notify the time-limit within which the information would be supplied.

Review procedure under Article 4

At the federal level, a Commission on Access to Administrative Documents had been set up. A dissatisfied applicant for information could request the public authority concerned to reconsider its initial decision and, at the same time, seek the opinion of the Commission, which had to be given within 30 days.

In Wallonia, a dissatisfied applicant could lodge an application for review with a Commission specifically set up for this purpose. Each application had to be made within 15 days of either

the notification of the contested decision or (in the absence of a decision) of the end of the two months time-limit for a response.

In the Brussels Region, a request for information could only be refused following a decision of a special administrative body whose terms of reference included mention of articles 3(2) and (3) of the Directive. If a public authority intended to refuse a request, it had to inform the person making it and also refer the case to the special administrative body. Where the authority had failed to respond within one month, the person making the request could refer the case to that body. The body was required either to supply the information requested or to notify the applicant that the request was refused. If the body failed to reach a decision within two months of the original request, the request was deemed to have been refused.

The Flemish transposing legislation provided that a dissatisfied applicant could lodge a petition for review with the Flemish Minister for the Environment within 30 days of receipt of the contested decision. The general legislation in the Flemish Region on access to administrative documents provided that a dissatisfied applicant could, within 30 days, lodge a written petition with the competent Ombudsman.

Different remedies had been provided at different levels of the Belgian State but, in each case, a decision of a review body to turn down a petition by a person requesting information could be contested before the Council of State

Charges under Article 5

Consulting documents on the public authority's premises was free of charge; copies were charged at the cost price. In some cases, there is a charge reflecting the costs incurred for publishing information. Costs related to the use of the authority's personnel could not be included. In practice, no charge was often made, partly because of the Ombudsman's recommendations to that effect and partly because of the administrative burden that managing a charging system would entail.

Policy on active information under Article 7

The Brussels and Flemish Regions had adopted legislation providing for the publication, every two years, of a report on the state of the regional environment. A similar report was required to be published every year in respect of the Walloon Region. Several of the authorities subject to the Directive published annual reports on their activities as well as other information documents (such as newsletters and guides to services) from time to time. The Flemish Region had created several websites where information on the regional environmental policy could be found.

Denmark: Report of February 1997

Introduction

The main requirements of the Directive had already been satisfied by the Law on the freedom of access to information in administration of 1985 ("the 1985 Law"), a general law applying to all information held by public administrations, including information on the environment. However, complete implementation of the Directive required some supplementary provisions and a new Law on the Freedom of Access to Information on the Environment was adopted in 1994 ("the 1994 Law").

Practical arrangements under Article 3(1)

Readily available guidelines had been published in connection with the 1985 and 1994 Laws. The Environment Protection Agency had also supported a project to publish an information booklet which describes the Danish provisions on access to environmental information and gives practical information on how to request this information. Moreover, public authorities were under a legal duty to help and advise citizens inquiring about access to information.

An environmental shop run by the Ministry of Environment had been opened in Copenhagen. The shop comprised a bookshop dealing with Ministry's publications and material from other publishers on the environment, and an information unit supplying legal texts, brochures, political papers and other material published by the Ministry of the Environment.

Time-limits in Article 3(4)

The 1985 Law provided that requests for information had to be answered as quickly as possible and that, if no answer was available within ten days, the authority concerned had to notify reasons to the person seeking information and state when a decision could be expected. In most cases a decision was made within 10 days but problems could occur in cases where a large number of documents had to be examined. In view of these problems, the 1994 Law had introduced a 2 month time limit for giving or refusing access to environmental information.

Review procedure under Article 4

The 1985 Law provided that appeals against refusals of access to information could be submitted to the appeal authority specified in the decision. Appeals concerning the decisions of decentralised environmental authorities could be submitted to the central environmental authorities. Appeals against the decisions taken by central authorities could be submitted to two independent boards and appeals against the decisions of those boards could be submitted to the Minister responsible for their supervision. Additionally, the citizens could complain to the Parliamentary Ombudsman.

Public administrations were subject to the usual control of the courts which could hear cases on the legality of any administrative act.

Charges under Article 5

The 1985 Law provided for charges for photocopies. Under rules made by the Minister of the Environment under the 1994 Law, a person requesting access to information stored in a medium from which information could not directly be supplied on paper had to cover the actual costs of producing a copy.

Article 6 bodies

The 1985 Law applied only to public authorities and certain energy-supply companies. In the light of article 6 of the Directive, the 1994 Law extended the duty to give access to environmental information to all those companies whose activities could influence the environment and whose ownership gave the public a decisive influence on those activities.

Active information policy under Article 7

The Ministry of the Environment and Energy and its associated agencies have a long tradition of preparing and publishing information on work to protect nature and the environment. All the different publications were available in the Environment Shop in Copenhagen.

Finland: Report of February 1997

Introduction

The Directive was implemented, mainly, by the Publicity of Official Documents Act 85/1951 (the Documents Act) and the Administrative Procedure Act 598/1982. Those Acts, which were already in force when Finland joined the European Union, created a general system for public access to information and had not been specifically amended because of the Directive.

Definitions in Article 2

In principle, all official documents and technical records of the entire public administration were available to the public and so the Finnish legislation also ensured free access to “information relating to environment” held by “public authorities” as defined in the Directive

Practical arrangements under Article 3(1)

The general practice on giving access to information was well established and in line with the Directive and so no special practical arrangements were considered necessary for environmental information.

The person seeking information could get an official copy of, or an excerpt from, a public document or could get permission to read and copy the document on the premises of the authority concerned.

Exceptions under Article 3(2) and (3)

No administrative instructions or guidance had been given. Exceptions to the right of access based on the secrecy of an issue or a document were as laid down by law. The Documents Act stipulated that a matter or document could be kept secret under a separate decree.

Time-limits under Article 3(4)

The maximum time-limit of two months in the Directive was considerably longer than the existing practice in Finland. There, a public authority had an obligation to deal with a matter “forthwith” which had been interpreted to mean that a decision had to be reached at once or, if the matter was more difficult than normal, in the course of a few days.

Review procedure under Article 4

Where an official responding to a request for information refused to provide it, the public authority concerned could be requested to give a written decision with the reasons for the refusal. Under the Documents Act, an appeal against such a written decision could be taken all the way to the Supreme Administrative Court

Charges under Article 5

There was no charge for merely inspecting files on the premises of the authority. If a person requested copies, a charge was made in accordance with a statutory price-list and calculated on a cost price basis

Active information policy under Article 7

Environmental information was published by Government departments, the Environment Agency and regional environment centres in the form of reports, publications, magazines, articles, press releases, videos and multimedia. The Internet was also increasingly used. The Finnish environmental administration actively supported the environmental education which was carried out in schools. "State of the Environment" reports were published every three or four years

France: Report of February 1997

Introduction

A general right of access to administrative documents had already been established by Law 78-753 of 17 July 1978 ("the Law of 1978") and this had been notified as the legislation transposing the provisions of the Directive.

Article 2 Definitions and Article 6 bodies

The Law of 1978 drew up a list of administrative documents to which the public had a right of access and this was not in the same terms as the definition in Article 2(a) of the Directive. Nonetheless the Commission on Access to Administrative Documents ("CADA") had refused to consider this list to be exhaustive and recommended a broad interpretation of the legislation. This approach had been confirmed by the Council of State which was the Supreme Court on administrative cases.

Furthermore other more recent legislation (in particular, in respect of waste, hazardous risks and noise) had provided rights to specific kinds of environment related information going beyond the notion of "administrative document" in the Law of 1978.

Practical arrangements under Article 3(1)

The Law of 1978 obliged public administrations or services to publish certain documents such as directives, circulars or ministerial answers and to publish the title and references of other documents which they produced.

Under the Law of 1978, access to information could be provided by consultation of documents on the premises of the body concerned or by issuing a single set of copies at the expense of the person requesting them.

French law established a special regime for access to information during public inquiries into matters such as planning proposals or classified installations. During the inquiry, access to documents could be refused to members of the public under special rules. Since 1995, however, access to inquiry files could be granted, on request, to relevant non-governmental organisations.

Time-limits under Article 3(4)

Decree 88-465 of 28 April 1988 obliged the Administration to respond within one month to a request for access to information. If there had been no express decision by the end of this period, there was deemed to have been a refusal. Reasons are required only for express refusals but a review procedure for deemed refusals was available.

Review procedure under Article 4

The CADA was an independent administrative body with consultative status. Every express refusal of access to information under the Law of 1978 had to be referred to the CADA within two months of the refusal. In the case of a deemed refusal the person seeking information had to refer a case to the CADA within the same period. Such referrals were required before a case could be submitted to the administrative courts for review.

The CADA only had power to give an advisory opinion to the authority or body concerned. The authority or body had two months from the date of the CADA's opinion to take its decision again. If it confirmed its original refusal, or again failed to notify a decision, the person seeking information could submit a case to the administrative courts. In most cases, recommendations by the CADA to allow access were followed.

Charges under Article 5

A Ministerial Order of 29 May 1980 had fixed the charges made by state administrations for photocopies. Local authorities and private bodies within the scope of the Law of 1978 were free to fix their own charges for photocopies, provided they did not exceed the actual costs. The CADA had advised that the expenses of looking for a document could not be added to the copying charges.

Active information policy

After the coming into force of the Directive, concrete measures had been taken with the aim of facilitating the supply of information to the public:

Circular 92-71 of 15 December 1992 and Decree 96-388 of 10 May 1996 made provision for organising public discussion prior to the carrying out of large-scale infrastructure projects. A commission was established to watch over the quality and relevance of information brought to the attention of the public.

Decree 93-245 of 25 February 1993 on environmental impact assessments required the publication of a non-technical summary to accompany an assessment

Decree 94-841 of 26 September 1994 in respect of information on water required data, or a summary of data, on water quality to be published at local authority offices.

Germany: Report of July 1997

Introduction

The Directive had been transposed by means of specific legislation in 1994. The Governments of the Länder were the competent authorities for the application of the legislation and most of the public authorities falling within the scope of the Directive were those of the Länder.

Time-limits

In most cases the deadline set by the Directive had proved sufficient. However, in cases where a long list of questions was raised, two months were not, in practice, enough. In such cases, applicants were informed about the difficulties and an estimate of the additional time needed to furnish the information. In general the applicants agreed with this course of action.

It was considered to be in accordance with the Directive for a public authority to give only a formal reply within the two month time-limit and to inform the applicant that more time was needed even if the precise period was not further specified.

Review procedure under article 4

Where access to information is refused, or given only in part, the written decision informed the applicant of the existence of a review procedure. This procedure was governed by the Law on Administrative Courts under which the person seeking information could object to a decision within one month to the authority concerned. If the authority did not change its decision, that person could challenge the decision before the administrative court. In a case of a failure by an authority to act at all, the person seeking information could go to the administrative court after three months.

Charges under article 5

According to the transposing legislation, charges should cover the foreseeable costs of the public authority from whom information is being sought. On the federal level, a regulation set the framework for charges. The setting of charges in specific cases was also governed by the Law on Administrative Charges. This required the charging authority to take into consideration factors such as the administrative burden involved, the importance, economic value or other benefit of the service being provided as well as the economic situation of the applicant.

On the level of the Länder, specific rules had been set up which are based on the general Law on Administrative Charges.

At both levels, simple information and information given orally were free of charge.

Active information policy under Article 7

Every four years the federal government published a report on the state of the environment in Germany and an environmental data report was published every two years. The governments of the Länder acted in a similar way, with respect to the different areas of environmental interest (air, radioactivity etc); in some cases reports were made on an annual basis. Administrations at both levels published activity reports and brochures addressed to the general public. Environmental data were also transmitted on the Internet. Ecological forums and similar activities were also organised.

Greece: Report of July 1997

Introduction

Under the Greek Constitution there was a decentralised administrative structure and laws passed in 1994 had effected a real transfer of powers from the central government to the

regional and local authorities, including powers in respect of environmental matters. This was reflected in the transposing legislation adopted in 1995.

Practical arrangements under Article 3(1)

Relevant local authority services were the first port of call for those seeking information relating to the environment, whether in writing, in person or by telephone. If a request did not relate to the powers of the local authority, the person making it was invited to contact the relevant regional authority. If that authority could not respond to the request, the person making it was referred to the relevant Government ministry.

Review procedure under Article 4

Under the framework of the Directive, a committee had been established, under the presidency of a judge of the administrative courts, to examine complaints against public authorities which refused to allow access to information and ensure that information is supplied in accordance with the provisions of the Directive. The committee could also offer advice to public authorities and other bodies.

Active information policy under Article 7

Each year the Ministry of the Environment organised “information days” at both central and regional levels aimed at NGOs and individuals. It also distributed ecological information at regional and local authority level with the aim of facilitating public access to information.

Assessment of Directive’s application

There was evidence of a growing interest in environmental questions. This was shown by the number of requests made to Government ministries and the regional and local authorities. Persons requesting information included those motivated by economic interests, those intending to challenge decisions of public authorities, Greek and foreign NGOs concerned with the environment and university and school students.

Ireland: Report of June 1997

Introduction

The Directive was first transposed into national law in 1993 by regulations made under the Environmental Protection Act 1992 (“the 1993 Regulations”). These regulations complemented a wide range of already existing legislation, listed in Annex A to this Report, designed to give access to specific categories of environmental information.

The 1993 Regulations were reviewed in the latter half of 1994. As a result of concerns expressed by those consulted as part of the review, new legislation was adopted in 1995 and 1996¹⁰. The 1995 legislation gave improved access to information held by the national planning appeals board (“ABP”) as well as information concerning integrated pollution control. The 1996 Regulations replaced the 1993 Regulations, clarifying several matters including the definition of “public authority”, reducing the general response time for requests for information to one month, and limiting the number of discretionary grounds for refusing access to information.

¹⁰ See entries (9), (12) and (16) for Ireland in Annex A to this Report.

Definitions in Article 2

Initially there had been a concern in relation to the exception for bodies acting in a judicial or legislative capacity in the Article 2(b) definition. The ABP was considered to be acting in a judicial capacity and so outside the scope of the Directive and the 1993 Regulations. This was remedied by the 1995 legislation; and, in any event, the view had subsequently been taken that the ABP acted in an administrative capacity. Furthermore the definition of “public authorities” in the 1996 transposing legislation was wider than that in the Directive as it covered authorities holding information relating to the environment irrespective of whether their responsibilities related to the environment.

Practical arrangements under Article 3(1)

Detailed definition of arrangements in the 1996 Regulations had been considered impracticable. Nevertheless Guidance Notes, issued by the Irish Government in 1993, provided practical guidance to public authorities covering matters such as providing assistance to the public in formulating requests, registration of requests early notification of any charges payable before granting a request and internal reviews before any request is refused.

Exceptions in Article 3(2) and (3)

The 1996 Regulations restricted the scope of the exceptions provided for in the 1993 Regulations. The discretion to refuse information as mentioned in the third indent of Article 3(2) was restricted to matters currently *sub judice*, under inquiry or the subject of preliminary investigation proceedings. The discretion to refuse access on the grounds of the confidentiality of the deliberations of public authorities was simply deleted. The discretion to refuse a “manifestly unreasonable” request was changed to require the authority to have regard to the nature or range of the information sought.

Time-limits in Article 3(4)

The 1994 review of the 1993 Regulations had identified the two month time-limit as being far too long. As a result, the 1996 Regulations reduced the general time-limit to one month, while allowing for an extension of a maximum of one month where there were specific reasons which had to be notified to the person requesting the information.

Review procedure under Article 4

No special review mechanisms had been introduced in the transposing legislation: normal administrative and judicial remedies applied. The 1994 review had identified the lack of an all-embracing administrative appeals system as a deficiency. In the meantime, the Ombudsman had played an important role in respect of complaints relating to refusal of access to information. In respect of the discretionary refusals, the Ombudsman had applied a “harm test” even though this was not provided for in the 1993 and 1996 Regulations or the Directive.

Charges under Article 5

Charges are discretionary under the Irish legislation, and the 1993 Guidance Notes suggested that there should be a presumption in favour of free provision of information where costs were not significant. Some public authorities had provision for minimum or maximum charges.

Where charges were made, it appeared that the critical determinant was the volume of work required to respond to a request.

Active information policy under Article 7

There was statutory provision for “state of the environment reports” to be published by the Environmental Protection Agency every five years. The Agency also published environmental quality reports in different sectors from time to time. The Department of the Environment had an environmental information service which operated a public enquiry service, distributed information leaflets and organised exhibitions, lectures and other activities. In addition to its own Internet site, the information service also had a data-base connected to 36 public libraries.

Italy: Report of July 1997

Introduction

In 1990, Italy had introduced legislation conferring a general right of public access to administrative documents. This legislation covered some of the provisions of the Directive but the Directive was finally transposed into national law by legislative decree in 1997 (“the Decree”).

However, because the Decree had come into force only a short time before the date of Italy’s report, it had not been possible for the report to deal in any significant way with experience gained in implementing the Directive.

Practical arrangements under Article 3(1)

Practical arrangements for making information effectively available under the Decree were similar to those in connection with the 1990 legislation and the Decree provided that, in order to exert their right to information, citizens were not obliged to justify their interest.

Exceptions in Article 3(2) and (3)

As the Decree had only recently been enacted, no guidelines or circulars had been issued in respect of exceptions, but one was in preparation. The Decree required public authorities to send an annual report to the Environment Ministry on its implementation. The circular would ask those authorities to compile information for that report about the kinds of requests made for access to information under the Decree and the percentages of requests granted and refused as well as details of the reasons for any refusals

Time-limits in Article 3(4)

The Decree provided a time-limit of 30 days for public authorities to satisfy citizens’ requests. A failure to meet the time-limit is deemed to be a refusal.

Review procedure under Article 4

A person whose request for information had been refused had recourse to the appropriate Regional Administrative Tribunal (TAR). The application for review had to be made within 30 days of a refusal and the TAR had to make a decision within 30 days. Within 30 days of the TAR’s decision, the applicant could lodge an appeal against it before the Council of State whose decision was final.

Charges under Article 5

There were no charges for the inspection of information but charges were made in respect of the costs of copies and the copying of documents.

Active information policy under Article 7

Under a law of 1986 (No 349/86), the Minister of the Environment had, since 1986, been required to publish a report every two years on the state of the environment.

Luxembourg: Report of September 1996

Introduction

The Directive had been transposed by means of specific legislation in 1992. A Ministerial Circular (“the Circular”) on the transposing legislation was issued soon after to relevant persons and bodies and, in December 1994, a guide was published to give practical information to the public at large.

Practical arrangements under Article 3(1)

The transposing legislation stipulated that access to information could be by free consultation of information on the premises of a relevant authority or by supplying a single copy at the expense of the person making the request. No particular form of request for information was required. The Circular stressed the simplicity and efficiency of oral communication of information and requested that the transposing legislation should be interpreted with common sense in a non-bureaucratic spirit.

Exceptions in article 3(2) and (3)

Of the permissible grounds for refusing information mentioned in article 3(2) of the Directive, the transposing legislation referred only to those relating to external and internal security, respect for personal privacy and commercial and industrial confidentiality. It reproduced all the grounds mentioned in article 3(3) of the Directive.

The Circular gave special attention to the exceptions since it was felt that the relevant provisions of the Directive were not sufficiently precise. The Circular advised that, subject to any other rights of access, no detailed information about a particular application to a public authority could be supplied under the transposing legislation until a formal decision on it had been reached. Advice or opinions given by others to a public authority for the purposes of an administrative decision should only be accessible after the decision had been reached. There should then be free access to advice or opinions given under a legal requirement or which were referred to on the face of the decision; other internal advice or opinions were to be disclosable at the discretion of the public authority, after having regard to the public interest. Reports, studies and similar documents of a public authority were to be accessible when finalised.

Time-limits in Article 3(4)

The transposing legislation replicated the time-limits in the Directive. If there had been no response to a request within two months of receiving it, the request was deemed to be refused so as to provide a remedy before the Council of State.

Review procedures under article 4

In the case of an actual or deemed refusal of access to information, the person making the request was able to lodge an application for review before the Council of State through which a new decision could be taken. No case had been brought before the Council of State under the review procedures.

Charges under article 5

Regulations adopted in August 1992 fixed two sets of fees payable for photocopies depending on the number requested. There was no other provision for charges. The review procedure applicable in cases of refusal was also available if the applicant wished to contest the fee charged for obtaining copies

Active information policy under article 7

It was the practice that documents originating from the Department of the Environment, such as reports on the state of the environment or on the activities of the Department, were publicised in an appropriate way and made available in appropriate ways to concerned bodies and the public at large.

The Netherlands: Report of April 1997

Introduction

The Directive had been transposed in the Netherlands through a law of 1991 (“the 1991 Law”) which contained general provisions granting freedom of access to the public of government information (including environmental information). The Environmental Management Act also had specific provisions on access to environmental information.

Definitions in Article 2

The definition of “information relating to the environment” in the Directive had given rise to difficulties under the 1991 Law because the definition did not provide sufficient distinguishing criteria to determine what information does, and what does not, relate to the environmental aspects in question. The 1991 Law was amended in 1998 to include the Directive’s definition.

It was suggested that the present definition in the Directive should be revised in such a way as to include a broad formulation of the term “environment” but without an exhaustive list of all environmental elements. Furthermore a revised definition had to allow for a clear distinction between “state of the environment” elements and the activities or measures designed to protect those elements.

Practical arrangements under Article 3(1)

The structure set up by public authorities for the provision of information appeared to be adequate in practice. Special contact officials in the different Ministries were responsible for dealing with requests for access to information.

Exceptions in Article 3(2) and (3)

The exceptions in the 1991 Law had had to be amended to bring them in line with the Directive. No administrative instructions or guidance had been given in respect of the exceptions. The exception for “commercial and industrial confidentiality” was invoked regularly.

Time-limits in Article 3(4)

The 1991 Law provided for a deadline of two weeks for a decision on a request for information, which could be extended for a further two weeks. It was regarded as undesirable that a person seeking information should have to wait up to two months for a decision (especially if the final decision was a refusal). In most cases the deadline of two or four weeks was sufficient and the information was provided at the same time as the decision. Under the legislation, it was possible for a public authority to agree a different deadline with the person seeking information, for example, where a large amount of information had been requested.

Review procedure under Article 4

Following a decision on a request for information, an objection could be raised and an appeal lodged under the General Administrative Law Act. The objection procedure comprised a review of the original decision by the public authority concerned and the taking of a new decision within a period of six weeks. An appeal could be lodged against the new decision with the administrative court. A person seeking information, who had an urgent interest in a speedy decision on his request (e.g. where significant pollution of the environment was actually taking place), could at any time ask the court to grant a stay in respect of a decision of an authority to which the information request related.

Charges under Article 5

The amount of, and arrangements for, charges for the provision of information by governmental authorities are laid down in an administrative order and calculated on the basis of national tariffs. The national legislation expressly enables local authorities to determine their own charges. In practice, no charge was often made for straightforward requests. A national court had ruled that access to information could not be refused on the ground that a charge had not yet been paid by the person seeking information.

Article 6 Bodies

A list of bodies with public responsibilities for the environment had not been made in line with the policy that environmental concerns were integrated into all governmental activities. In consequence, responsibility for the environment was spread very wide. All the bodies with responsibilities for the environment within the meaning of the Directive are regulated by the 1991 Law.

Active information policy under Article 7

In the Netherlands examples of an active supply of environmental information included:

- at national level, the publication of national environment studies by the national Institute for Public Health and the Environment and national environment policy plans; campaigns

on television; a variety of publications by the information departments of the Ministry of Housing, Spatial Planning and the Environment

- at provincial level, the publication by provincial authorities of environmental newsletters and brochures on specific matters of environmental interest or concern

Portugal: Report of April 1999

Introduction

The Directive was transposed into Portuguese law by a general law concerning public access to administrative documents (“the 1993 Law”) which was amended in 1995. Under the “open archive principle” enshrined in this Law, the public has free and general access to administrative documents subject to certain specified exceptions.

Definitions in Article 2

These had not caused problems of application as the definition of “administrative document” in the 1993 Law was a broad one and covered the organs of the central, regional and local administration. In case of doubt about the scope of a definition, it was possible to seek the opinion of the Commission on Access to Administrative Documents (“CADA”), an independent public body empowered to interpret the 1993 Law and to monitor and ensure compliance with it.

Practical arrangements under Article 3(1)

The 1993 Law enabled consultation of documents free of charge on the premises where they were held, reproduction of documents by photocopying or other appropriate technical means and issuing of authenticated copies. The public not only had the right of access to documents but also the right to be informed of their existence and content.

Time-limits under article 3(4)

The 1993 Law allowed 10 working days for a response to a request for information. Some authorities had had problems in meeting this deadline. A response could consist of the supply of information or a reasoned refusal of all or part of the request. If the authority concerned did not hold the information, it could (where known) notify the person making the request of the place where it was held.

Review procedure under Article 4

Where a request for information was refused in whole or in part, the person making it could make a complaint to the CADA which was required to give its non-binding opinion within 30 days. The authority concerned then had 15 days to communicate its final decision. Recourse to the courts was available against that decision.

Charges under Article 5

Charges are calculated in accordance with rules laid down by Ministerial ordinance. This provides that the charge for reproduction of information must correspond to the cost of the materials used and the service provided. People in receipt of legal aid are exempt from payment of charges.

Article 6 bodies

At the time of the Portuguese report, it was proposed to amend the 1993 Law so as to cover all the bodies falling within the scope of Articles 2 and 6.

Active information policy under Article 7

A law of 1987 required the Government to present an annual state of the environment report to the National Assembly and, every three years, a White Paper on the state of the environment. Several of the bodies to which the Directive applies produce reports and general information in newspapers and magazines or accessible on the Internet.

Spain: Report of June 1997

Introduction

In Spain, the Directive was transposed into national law by a general law on public administrations of 1992 and by a specific law of 1995 in respect of access to environmental information. Overall few problems had been experienced in practice.

Time-limits

A two month maximum time-limit had been provided for. Where problems existed they were likely to be caused by the manner in which the request for information had been framed or by the need to co-ordinate information from a number of bodies or to carry out preparatory work before supplying the information requested.

Review procedure under Article 4

The Law 38/1995 on access to environmental information foresees only a judicial review before and administrative court against decisions of public authorities.

Charges under Article 5

There were no specific provisions in the transposing legislation in respect of charges. Whether charges were made, and their amount, depended on the internal rules of each authority or body or general laws about public charges. It seemed the majority of public authorities and bodies covered by the Directive made no charges for supplying information and, where charges were made, they usually related to the costs of photocopies.

Active information policy under article 7

The transposing legislation required an annual report on the state of the environment to be published yearly by the central state administration. Regional administrations, public authorities and other concerned bodies also issued regular reports and other documents, as well as press releases, with the aim of providing the public with environmental information.

Sweden: Report of April 1997

Introduction

The Freedom of Press and Information Act of 1949 (“the 1949 Act”) applied to public documents generally and was considered to cover the scope of the Directive. The Secrecy Act

of 1980 (“the Secrecy Act”) contained provisions restricting the right of access to public records and was considered to be in conformity with the exception provisions of the Directive.

Definitions in article 2

The 1949 Act gave a right of access to “official documents” which was defined very widely. There seemed to have been no problems in practice.

Practical arrangements under article 3(1)

Access to all official documents (except those which are secret under the Secrecy Act) had to be given, on request, by the responsible authority. The authority was not entitled to require the identity of the person requesting information unless it was a significant factor in deciding whether or not a document was secret. Every public authority had to arrange for the public to have access to registers – with or without the help of officials – in order to find the document they wanted to see. The authority also had to have arrangements in place for the production of copies of documents for those seeking information.

Exceptions under Article 3(2) and (3)

There were clear rules in the Secrecy Act on whether a document was to be considered secret or not. Furthermore, the authorities concerned usually had written instructions on how to interpret the law.

Time-limits in Article 3(4)

A request for access to an official document had to be dealt with “speedily” by the authority. Some delay was permitted if the authority had to consider whether the information contained in the document was secret or not. In most cases a request was dealt with in a couple of days or, in a more difficult case, within two weeks.

Review procedure under Article 4

An appeal could be brought against a refusal to hand over a document. In the majority of cases, the appeal was made to an Administrative Court of Appeal with the possibility of a further appeal to the Supreme Administrative Court. In some cases, however, the appeal was made to the Government. A decision by the Government was often not subject to review.

Charges under article 5

Access to public documents was free of charge. Copies of official documents could be obtained on payment of a fee fixed by Government ordinance. Authorities could waive charges in certain circumstances.

Active information policy under article 7

The Environmental Protection Agency was engaged in providing information to the public by publishing annual reports and books on the state of the environment, by providing a nationwide library service, with environmental literature and magazines, and through the Internet as well.

United Kingdom: Report of February 1997

Introduction

In the United Kingdom (“the UK”), the Directive had been transposed by Regulations (“the Regulations”) in 1990 (as respects England, Scotland and Wales) and in 1993 (as respects Northern Ireland). The Department of the Environment had prepared Guidance (“the Guidance”) on the Regulations and copies of both had been widely distributed to those likely to be subject to the Regulations

Definitions in Article

It was considered that the definition in Article 2(a) could be made more comprehensive and explicit and the report favoured a revision to reflect an agreed definition of "environmental information" in the draft of the Aarhus Convention.

For the purposes of the Regulations, the UK Government had considered listing, rather than defining, the bodies subject to the Directive but had concluded that any list would create difficulties. A non-exhaustive list would lead to additional uncertainty and controversy about whether non-listed bodies were covered. More organisations were likely to provide access to environmental information in the absence of such a list than would be the case if such a list existed

Practical arrangements under Article 3(1)

The Regulations prescribed certain basic requirements in respect of the practical arrangements for making information effectively available. Over zealous prescription of detailed arrangements could have the effect of inhibiting access if it imposed entirely unsuitable arrangements on particular bodies.

Exceptions in Article 3(2) and (3)

There had been criticism that the exceptions in the Regulations were couched in unnecessarily wide terms. The UK Government was willing to consider options to discourage abuse. It agreed in principle that the Directive should be revised to include provisions requiring potential harm to be demonstrated where an exception was claimed (“harm test”) and for exceptions to be overridden where the public interest demanded it (“public interest test”).

Some doubts had been expressed about the exception relating to “legal proceedings. The UK Government believed that it was important that any information that might be pertinent to legal proceedings should be capable of being withheld and was not aware of any significant instances of abuse relating to the exception.

Concern had been expressed about the possible abuse of the remaining discretionary exceptions relating to “confidential deliberations”, “internal communications” and “incomplete information”. In the UK Government’s view, it was important, in the interests of good administration, not to inhibit the frank exchange of original and perhaps controversial ideas.

The exception for commercially confidential information had attracted most criticism. The UK Government had doubts about suggestions that a harm test should apply to this exception. Public officials were not best placed to judge whether the release of such information would

cause actual "harm" to third parties so they were more likely to release the information on "public interest" grounds. Nevertheless, the UK Government was ready to consider the scope for changes in the wording of this exception.

Review procedure under Article 4

Under the Regulations, any refusal to supply information had to be given in writing with the reasons for the refusal specified. In cases of refusal, paragraph 72 of the Guidance urged any aggrieved applicant to try and resolve a dispute using administrative procedures. Some Government Departments had set up special arrangements to deal with complaints and had set targets, ranging from 20 days to 6 weeks, to resolve disputes. If those arrangements failed to resolve the dispute, it could be referred, in an appropriate case, to the appropriate Ombudsman.

If administrative procedures failed to resolve the dispute, the applicant could apply for judicial review. Alternatively, in an appropriate case, the applicant could pursue an action for breach of statutory duty in the civil courts. Judicial remedies provided a fair means of resolving difficult disputes but they could be slow and expensive and, for these reasons, the UK Government had signalled its intention of providing an independent appeal procedure.

Charges under Article 5

The Regulations allowed the imposition of charges in respect of the costs reasonably attributable to the supply of information but did not prescribe a standard charging regime to be applicable in all cases. The Guidance tried to strike a balance between recovering the extra costs incurred in supplying information and the desire not to impose a barrier to access. Thus charges for general enquiries, simple requests, explaining reasons for refusals and handling appeals were discouraged. Beyond this, each body was free to decide whether to charge and the amount of any charge. The UK Government opposed standardised charging regimes but accepted that charging was a contentious issue and that, in some cases, the legal basis was unclear.

Article 6 bodies

Clarification of the status of privatised public utilities for the purposes of Article 6 would be welcomed. It was unsatisfactory, in terms of environmental protection, that two bodies with relevant functions in common could be differently treated, for example, public water authorities and privatised water companies. Clarification, in article 2(b), of the expression "responsibilities relating to the environment" and, in Article 6, of the expressions "public responsibilities for the environment" and "control" would also be welcomed.

Active information policy under Article 7

In addition to the access rights under the Regulations, UK national legislation had created a number of statutory public registers containing environmental information. The Government had also tried to improve the flow of environmental information through a variety of publications by Government Departments: some were statistical or technical and others were aimed at a wider audience. Booklets and other similar documents had been published and distributed explaining citizens' legal rights to information.

ANNEX C: RECOMMENDATIONS FOR REVIEW AND REVISION OF DIRECTIVE 90/313/EEC

The Report published by the Dutch organisation, Stichting Natuur en Milieu, based on the conclusions of the IMPEL Workshop of January and a variety of other sources made recommendations which can be summarised as follows.

- (1) The Directive should expressly state that access to environmental information is a right, so that limitations on its exercise would have to be applied in a narrow and specific way.
- (2) Article 1 refers to information “held” by public authorities but, increasingly, information is held by other bodies subject to the control of a public authority. The Directive should specify that a public authority “holds” information if that information is available to it but physically in the possession of a private entity which is subject to the regulation of the public authority.
- (3) The Directive’s definition of “information relating to the environment” should be amended to make it clear that it covers information on health, radiation and nuclear energy as well as information (including financial or economic information) on activities or proposals which may affect the environment.
- (4) The Directive currently applies to public authorities with “responsibilities... relating to the environment”. The Directive should, however, apply to environmental information held by any public administration irrespective of whether they have responsibilities relating to the environment. Publication of indicative (but not exhaustive) lists of bodies covered by the Directive could be useful.
- (5) The Directive excludes bodies acting in a judicial or legislative capacity from the definition of public authorities. This exception has in some cases been interpreted to mean that a body which sometimes acts in a judicial or legislative capacity always falls outside the scope of the Directive. The Directive should therefore clarify that the exclusion of a body applies only on the occasions when such a body is acting in a judicial or legislative capacity.
- (6) Increasingly, functions traditionally performed by governmental authorities are being transferred to quasi-public or private bodies. Article 6 is intended to bring them within the scope of the Directive but is limited to those “under the control” of public authorities”. Therefore article 6 needs to be clarified and extended to cover bodies, controlled, directed, influenced or established in whole or in part by government to carry out a public service or a governmental function and the current requirement for such bodies to have “public responsibilities for the environment” should be deleted.
- (7) Article 3(1) of the Directive requires public authorities to make information “available” but is unclear about whether authorities are required to make it available for inspection or for copying. The Directive should provide for the person seeking the information to decide how he or she wishes to have the information made available.
- (8) Article 3(1) currently states that any person may make a request without his having to “prove” an interest. The Directive should make clear that a person may request information without having to offer any explanation to the public authority.

- (9) The Directive only requires Member States to define the practical arrangements for making information effectively available without providing further for what constitutes such arrangements. The Directive should address, at least, the following matters:
- the designation of information units or officers for each relevant public authority
 - the keeping of registers of information held
 - the making of arrangements for forwarding information requests to the proper authorities
 - the establishment of inspection facilities at reasonable locations and open at reasonable hours
 - the publication of cost schedules
 - the organisation of training programmes for officials.
- (10) Article 3(2) provides for a long list of broadly formulated exceptions which are capable of undermining the Directive's stated object. They should be carefully limited to those strictly necessary to protect legitimate public and private interests. Exceptions should apply only if it can be demonstrated that disclosure of information would adversely affect the protected interest and that the harm which would result from the release of the information would exceed the benefit to the public interest in giving access to the information. Clear and specific reasons should be given for a refusal of access.
- (11) In addition to the provision recommended in paragraph (10) :
- the reference to the "confidentiality of the proceedings of public authorities" should be narrowed to more specific kinds of "proceedings" and to "confidentiality" as established by law or comparable rules.
 - the too broad exception by reference to "matters which are, or have been, sub judice, or under enquiry (including disciplinary enquiries), or which are the subject of preliminary investigation proceedings" should be limited to matters currently sub judice and to what is necessary to prevent the release of information which would adversely affect the right of a fair trial or the course of justice. The protection for "preliminary investigation proceedings" should be clearly limited to investigations which would result in criminal charges.
 - the exception related to "commercial and industrial confidentiality" should be limited to sensitive commercial information (such as trade secrets) which has been designated as confidential by the company concerned and the disclosure of which would significantly harm its commercial interests and assist a competitor. A person claiming the protection of commercial confidentiality should have to justify the claim. The Directive should specify that data relating to releases into the environment (emissions, waste etc) cannot be confidential.
 - the exception concerned with "material supplied by a third party" can be difficult to apply in practice as it may be unclear whether information was supplied to meet

a legal obligation or not. Moreover, much of the information which public authorities hold for the purpose of environmental protection is supplied voluntarily. The need for confidential treatment of information should be based on its contents and not on the manner in which a public authority obtained it and so there should be no general exception for voluntarily supplied information.

(12) As respects Article 3(3):

- “unfinished documents” should not be capable of being withheld if they have been considered by a public authority in arriving at a decision
- “unfinished data” should be deleted from the grounds for refusal as the notion that data can be withheld pending processing is difficult to defend.
- the Directive should clarify when communications between different public authorities can be withheld as “internal communications”.
- the ground for refusal which refers to a request being “formulated in too general manner” should be reviewed. A request may need to be formulated in a general manner if the public authority does not keep lists or registers of information held which would help a person to make a more specific request.

(13) Article 3(4) should be amended to provide that a response must be made as soon as possible and the information must be supplied at the latest within a specified time period. The current two months deadline should be drastically reduced as requests for information are often time-sensitive and data are increasingly stored in computerised form which can be accessed and transmitted quickly.

(14) As respects Article 4, the Directive should expressly require that there should be the opportunity of an administrative review of the matters currently covered as well as of related matters (such as overcharging) while preserving the opportunity of ultimate recourse to judicial review of the administrative decision. This should help to mitigate the high costs or the long delays associated with review proceedings at present in cases where they are a component of the existing judicial system in the Member State concerned. Furthermore the Directive should provide that, in accordance with the relevant national legal system, the review process should be characterised by low cost and by swift, independent, binding and transparent decision-making.

(15) As respects Article 5, the Directive should:

- require the establishment and publication of a schedule of maximum costs;
- make explicit that inspection is free of charge;
- provide that there should be no charge for a set initial amount of search time; and
- provide for the possibility of a reduction or waiver of charges for requests for non-commercial purposes.

(16) The Directive should establish sanctions against public authorities which improperly withhold information.

- (17) Article 7 should be strengthened to respond to public interest in environmental information and also brought up-to-date in the light of developments in information technology.
- (18) Since all Member States have now transposed the Directive, a relatively short period such as 12 months should be allowed for transposing any amendments which may result from the Article 8 review. There should again be provision for evaluation and review with a clearer statement of the date by which Member States should submit their reports.