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NATUUR EN MILIEU

THE HOLLAND SOCIETY
FOR NATURE AND ENVIRONMENT

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**PUBLIC ACCESS TO
ENVIRONMENTAL INFORMATION**

Prepared by

Ralph E. Hallo

STICHTING NATUUR EN MILIEU
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In order to provide possible inputs to the developing work programme of the EEA, and to stimulate debate on issues that may contribute to the identification, framing and evaluation of environmental policy measures, the EEA, from time to time, asks independent experts to summarise their views on topical or upcoming issues, so that the EEA can consider publishing them as "Experts' Corner" reports.

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European Environment Agency
Kongens Nytorv 6
DK-1050 Copenhagen K
Denmark
Tel. (+45) 33 36 71 00
Fax (+45) 33 36 71 99
E-mail: EEA@EEA.DK
Home page: <http://www.eea.dk/>

FOREWORD

This report on public access to environmental information, published by the European Environment Agency (EEA), has come at a particularly timely moment, namely the beginnings of the review of Directive 90/313/EEC which deals with this very issue. It reflects the fact that since the ratification of the Maastricht Treaty, nationals of the Member States have had citizenship of the Union itself; although this confers at present very limited rights and duties it is the germ of a future in which the citizen can look to the Union as a real polity. In conjunction with moves towards greater transparency and accountability in Union decision making, the EU is in a process of becoming closer to the people: a process which all democrats must support and help to continue.

A major factor in this drive for accountability and real citizenship is access to information. Quite simply, citizens must be informed about policy making in order to make reasoned decisions about it. This is particularly important in the field of environmental policy, which is both at the heart of taking mankind into the new millennium and an essential part of the Union's policy competence. My Committee has been vociferous in its advocacy of extended public access to environmental information for many years, and expects the Union to make substantial progress in this matter.

Moreover, 'environmental information' must be subject to a broad definition. On the march towards sustainability, with its emphasis on the integration of environmental and other policies, many

more crucial policy decisions will need to prove they will involve a manageable environmental impact in order to be realised. To prevent confusion over what is environmental and what is not in the minds of public officials, it may even be necessary to move in the direction of an EU Right to Know Act covering all public decisions, so that the citizen is secure in the knowledge that all that he or she needs to know is freely available.

Furthermore, access to information has a real impact on the ability to ensure effective enforcement of environmental legislation. We need to know what member states have done to implement Union regulations and directives. We need to know how they propose to make good any shortfalls they have in compliance with Union law. We need to know how they are setting about making a sustainable society. For all these reasons, public access to environmental information is vital.

I welcome this report, and call upon the Commission to be active in its pursuit of a much reinforced Directive 90/313/EEC. If we are serious about sustainability, and about the democratisation of the EU as a means of providing the political machinery to achieve it, then greatly improved access to environmental information for the citizen is a prerequisite.

Ken Collins, MEP, Chairman of the European Parliament Committee on the Environment, Public Health and Consumer Protection

May 1997

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SUMMARY

SUMMARY

The European Environment Agency's central concern is to put information to work in support of environmental policy-making. Public access to environmental information supports good environmental decision-making. But in order to be able to contribute meaningfully to environmental decision-making, the environmental information must be both accessible and of useful quality.

This report offers an overview of the principal instruments for providing the public with access to environmental information. The report covers the 15 EU member states as well as takes account of the situation in countries of the European Economic Area and Central and Eastern Europe. This report does not deal with the other legal instruments that enable the public to get access to and be provided with environmental information, such as the Seveso Directive concerning Hazardous Installations, and the Environmental Impact Assessment Directive.

The most significant law concerned with public access to environmental information is EU Directive 90/313/EEC on freedom of access to environmental information. The Directive, which has been in effect since 1993, establishes a general right of any person to environmental information held by public (and quasi-public) authorities subject to specified exceptions. The Directive represents a dramatic change for most member states, introducing openness where secrecy was the rule. Four years of experience have shown however that

the process of change is a gradual one and that continued progress, both in terms of the quantity and the quality of the information available, is still desirable.

Developments in other fora indicate the broad interest in this area. This report considers in particular the developments at the level of the EU institutions and the UN ECE efforts to elaborate a Convention on Access to Environmental Information and Public Participation in Environmental Decision-making.

The real challenge ahead is not just putting the terms of the Directive and similar legal instruments to use, as important as that is. The real challenge lies in anticipating and adjusting to future demands and technological innovation. The paper paradigm of Directive 90/313/EEC appears increasingly archaic in today's world of modems and megabytes, where monitoring, retrieval and transmission of data can take place with a precision and rapidity not commonly known even a few years ago. This is also the challenge for the Agency: to help the parties concerned - governments, researchers, industry, environmental organisations and citizens - to develop effective systems of data collection, storage, retrieval, transmission and availability while working with a multitude of diverse systems (and languages) so that the data that enters the system can emerge as useful information.

1. INTRODUCTION

There is a world of environmental information out there.

This report covers the current status of public access to environmental information in accordance with Directive 90/313/EEC in Europe and how we have advanced to this point¹. But this report is not just a review of where we stand. It is also a preview of developments to come as the world of public access to environmental information adjusts to new technologies and other pressures for change and improvement.

The Directive on Freedom of Access to Environmental Information, adopted by the European Union in 1990 has led to the adoption or reinforcement of legislation on access to environmental information in the 15 member states of the EU. Other measures, such as the access to documents rules of the European Commission and Council of Ministers, fill in features the Directive doesn't cover. Beyond the boundaries of the European Union, the Guidelines on Access to Environmental Information and Public Participation in Envi-

ronmental Decision-making, adopted at the Ministerial Environment for Europe Conference in Sofia, in October 1995, create a wider framework for public access to environmental information.

A distinction is often made between "active" and "passive" rights to environmental information. "Active" information is meant, information which the authorities must provide to the public at their own initiative. Examples include requirements to supply information concerning the possible environmental impacts of a proposed project or information on the potential hazards of an industrial facility for its workers and residents of the surrounding area. "Passive" information refers to the right of the public to obtain information upon request. The focus of this report is on this latter type of access to environmental information. It therefore does not consider the reporting requirements which exist, for example, in several EU environmental directives and which require the member states to submit information to the European Commission.

It may also be useful to specify more clearly what is meant by certain terms. For example, what is environmental information? In this report, environmental information is, in the first place, the information generated by environmental legislation and measures at all levels of government and which is held by public authorities.

Environmental information, however, can also include information held by private actors, such as companies. Moreover, some consider that environmental information includes all infor-

¹Elements of this report are drawn from R. Hallo (ed.), *Access to Environmental Information in Europe: The Implementation and Implications of Directive 90/313/EEC*, Kluwer Law International (London, 1996). That volume covers, country-by-country, the legislation and practice concerning access to environmental information for 23 European states, including all 15 EU member states. Material supporting the overview presented here can be found in that volume which includes more detailed information than it is possible to present in this short report.

This report has also been written with the respective roles of the Agency and the European Commission in mind. It is intended to inform rather than advocate - as far as Directive 90/313/EEC is concerned, it is the task of the Commission, in the first instance, to produce a report on the experiences so far and to propose amendments, if any, to the Directive.

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mation relevant to decision-making that concerns the environment: thus financial, social, economic data can also be environmental information.

In short, a great deal of environmental information is being generated and collected as a result of environmental law and regulations or in connection with applications for governmental licences. Some environmental information is generated for purposes of monitoring and control or government oversight generally; sometimes research is the reason for its generation or collection; public awareness and participation can also be a motivation.

Finally, this report addresses the question of whether environmental information laws and systems are keeping up with developments in technology and public needs.

2. ACCESS TO ENVIRONMENTAL INFORMATION IN EUROPE: THE LEGAL INSTRUMENTS

The right of access to environmental information can be established by a variety of legal instruments: national laws, constitutional provisions, international agreements, codes of conduct, or measures adopted by the European Union. The discussion below concentrates on legislative provisions with binding force, in particular the EU Directive on freedom of access to environmental information.

Access to information legislation can be of two types: (1) legislation applicable to all information in the hands of public authorities; or (2) legislation specifically limited to environmental information.

A number of European states have legislation of the first type. These include Sweden, the Netherlands, Denmark and France. While Sweden's legislation is very old, dating in its earliest form from the mid-eighteenth century, the legislation in the other states is a development of the last 15-20 years.

In some states, there are constitutional provisions concerning the right of access to information. Examples can be found in the Greek and Portuguese constitutions. As a rule, such constitutional provisions require legislation or regulations to activate the right they profess to guarantee. Without such secondary legislation, the constitutional provisions are seldom of practical effect.

2.1 Directive 90/313/EEC on freedom of access to environmental information

The most significant legislative development in recent years is the adoption of the EU Directive on freedom of access to environmental information. Because of the significance of the Directive in requiring or guiding legislative developments across Europe, the Directive will be discussed here with some thoroughness. For the text of the Directive, see Annex 1.

The Directive has created a right of access to environmental information in every member state of the European Union. Prior to the Directive, most of the member states did not recognise a right to information at all. The Directive has established, in broad terms, a set of minimum standards for access to environmental information. As a result of the Directive, all EU member states now have legislation on access to environmental information in place.

The European Parliament first took the initiative of calling for a measure of this sort in a resolution adopted in 1985.² Further impetus came from the European Commission's Fourth Environmental Action Program and the Council of Environment Ministers' request that the Commission present a proposal in this area. This the Commission did in 1988, leading to the adoption in June

² European Parliament Document B2-736/85 (16 July 1985). The resolution was introduced by two members of the Parliament's Environment Committee, Ken Collins (Socialist, UK) and Beate Weber (Socialist, Germany).

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1990 of Directive 90/313/EEC on freedom of access to environmental information.³

In addition to its direct impact in the member states of the EU, the Directive is having a further secondary effect. The Directive's framework informs and is guiding the development of access to environmental information legislation elsewhere. For example, Austria's 1993 law on access to environmental information is modelled on the EU Directive. The Directive also forms the basic reference point for the countries of Central and Eastern Europe who wish to join the EU.

Thus, the Directive is an important influence both inside and outside the area of its direct application.

2.1.1 The Directive's provisions

The purpose of the Directive is to give the public access to information on the environment held by public and quasi-public authorities and to set out the basic terms on which information is to be made available.

The structure of the Directive is a broad one. The Directive contains a broad definition of environmental information, a broad definition of what a public authority is, and a broad general rule of access for any person without the need to show an interest in the information requested.

The Directive also includes a number of exceptions to the general rule of access. A refusal to release information must be based on one of the exceptions set

out by the Directive. These exceptions are meant to protect legitimate interests in, for example, national defence, commercial confidentiality or personal privacy.

The Directive also contains provisions on the time limits for a response, appeals and costs.

It is important to remember that the Directive requires a minimum level of access to environmental information. Member states are free to maintain or adopt measures providing for a greater degree of access than the minimum required by the Directive. Member states are equally free to refrain from incorporating exceptions from the Directive in their national legislation. The implementing legislation reveals however that a substantial number of the member states have transposed provisions of the Directive literally, frequently verbatim.

2.2 The effect of the Directive on national law

The Directive established 31 December 1992 as the date by which the member states had to implement its provisions in national law. The member states thus had a period of thirty (30) months (from June 1990 to December 1992) in which to adopt the provisions needed to introduce the Directive's requirements into national law. For a list of the measures implementing the Directive in the member states, see Annex 2.

Those member states (Denmark, France, and the Netherlands) with general access to information legislation in effect prior to the adoption of the Directive were able to implement the Directive with the fewest changes to their national legislation. In each case, only

³ For the legislative background to the Directive, see generally, L. Krämer, *Focus on European Environmental Law*, Sweet and Maxwell (London, 1992), pp.290-309.

minor modifications to national law have been necessary. The Directive has not had any large impact on either legislation or practice in these countries.

The new member states which entered the EU in 1995, likewise had little difficulty meeting the requirements of the Directive. As noted above, Austria, in anticipation of EU membership, adopted legislation parallel to the Directive in 1993. Finland and, in particular, Sweden both have strong laws on access to information, not limited to environmental information. The practice in Finland and Sweden is distinguished by a climate of openness, swift response to requests, and narrowly drawn exceptions.

For the majority of member states, however, new legislation was needed. Briefly, a number of key aspects of the process in these member states will be noted.

In some member states, the division of competencies among governmental structures can complicate implementation. For example, in Belgium, legislative changes took place at both the national and regional level (Flanders, Wallonia and Brussels). Thus, four separate regimes have now been established for access to environmental information depending on location and administrative competencies. In Germany, it is the federal states which have responsibility for much of environmental regulation and a number of federal states acted in advance of federal implementing legislation.

Certain member states, such as the United Kingdom, prepared the way by engaging in a consultation process be-

fore adopting the necessary legislation. Others, such as Luxembourg, transposed many of the provisions of the Directive into national law, virtually verbatim.

Ireland is the only member state to have revised its original implementing legislation to take initial experiences into account. Moreover, extension of access to information rights to government information in general is now under discussion.

Portugal is an example of a member state which added an innovative touch to its legislation by establishing a special body to consider disputes arising from refusals to provide access to environmental information. Portugal's step is presaged by France which had established an administrative tribunal to consider disputes arising under its pre-existing general law concerning access to government information.

In some cases, pressure from the European Commission and other sources helped move the process of implementation forward.

2.3 Access to environmental information: key elements and good practices

The following discussion considers a number of the most important elements for an effective mechanism to provide access to environmental information.

2.3.1 Type of instrument

Access to information principles or standards may be set out in constitutional provisions, legislation, or guidelines.

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Constitutional provisions most often state a right of access to information in general terms or express a general principle in favour of access. Constitutional provisions also generally require implementing legislation to become effective. Moreover, access to information requires a more developed structure than a constitutional provision alone can give. Such a structure works out matters such as the authorities covered, the exceptions, costs provisions, etc. This is a task for which legislation is more suited. In comparison with guidelines, legislation also has the additional advantage of being binding.

2.3.2 *Principle of access*

The legislation or other instrument should state a general rule in favour of access for any person upon request without their having to show an interest in the information requested. The Directive takes this approach. A general rule in favour of access establishes a presumption that information is available upon request and requires a refusal to be justified in terms of one of the exceptions to access. Extending the right of access to any person, natural or legal, is the most open approach and avoids divisions along lines of citizenship or other criteria. If no interest need be proved or even stated, it is clear that the right of access to information belongs to any person and that inquiries into the reason why a person is seeking information are improper. Such inquiries or even the possibility of such inquiries can discourage individuals from exercising their right of access to information.

2.3.3 *Information covered*

How environmental information is de-

finied is important since whatever information is not considered to be environmental information will not be available. Although the Directive defines environmental information broadly, important categories of information, such as health-related information, can fall outside the scope of the Directive's coverage.

Systems which recognise a right to all information in possession of the public authorities have a significant advantage. In Sweden or the Netherlands, for example, where there is such a general right to information, the question of whether information is environmental information or not and therefore available or not simply does not arise.

2.3.4 *Public authorities and other bodies covered*

Similarly, it is obviously of great importance that all environmental information held by public authorities comes within the scope of the legislation. The Directive applies to authorities with "responsibilities ... relating to the environment" and also excepts bodies acting in a judicial or legislative capacity.

It sometimes happens therefore that a public authority will claim that it is not responsible for the environment but for transportation or for housing construction, etc. It will therefore deny access to environmental information in its possession.

In some countries, including the Netherlands and the United Kingdom, an attempt has been made to list or otherwise specify the bodies which fall within the scope of the legislation.

There is also the possibility that the ex-

ception for bodies acting in a judicial or legislative capacity can be stretched to cover public authorities not primarily judicial or legislative in character.

A further issue arises with the definition of a public body in connection with privatisation. In many countries, important public functions are carried out by privatised or private bodies. If such bodies are considered to fall outside the scope of the application of legislation on access to environmental information, then the environmental information they hold will not be accessible for public scrutiny.

The Directive attempts to address this concern by a specific provision (article 6) which provides that environmental information "held by bodies with public responsibilities and under the control of public authorities" be made available on the same terms as apply to public authorities. The precise meaning of the requirement that the body concerned be "under the control of" a public authority is not well established.

2.3.5 *Formal requirements*

In general, the definition of requirements concerning the form of the request has not been considered necessary. The Directive itself states no formal requirements for a request. Thus, requests may be made orally or in writing. An oral request has the advantage of speed. A written request has certain advantages, too. It can more easily be passed on and it can add to the clarity of the request to spell it out in writing. Moreover, a written request can be preferable in connection with the time periods for response and in obtaining a written response. Moreover, it may be

necessary, as in the Netherlands, to obtain a written response in order to be able to commence an appeal. Finally, information should, wherever possible, be made available in the form (e.g. photocopy, diskette, inspection) preferred by the person requesting it.

2.3.6 *Exceptions*

Exceptions to the general rule in favour of access to environmental information exist to protect certain legitimate interests which would be harmed by disclosure of information in a particular case. In order that the exceptions in any legal instrument not overwhelm the right of access, they should be specified in clearly-defined terms and invoked only after balancing the harm disclosure would cause against the public interest in access to information.

The Directive, like most legal instruments regulating access to information, includes exceptions designed to protect the confidentiality of international relations, national defence, public security and personal privacy. Other exceptions of particular importance for environmental information requests concern confidential commercial and industrial information; matters under inquiry; information voluntarily supplied; and internal communications and unfinished documents.

Commercial confidentiality interests can be protected by an exception strictly limited to information which is a confidential trade secret - that is information not known to parties other than the company and the public authority - the release of which would significantly harm the company and assist its competitors. If commercial confidentiality is understood to protect any

information which affects a company, then access to much environmental information will be denied. Moreover, the company in question should have actively indicated its desire that the information concerned be given confidential treatment, preferably when it supplied it to the public authority. In the Netherlands, if confidential commercial information has been removed from a document before its release, a so-called 'second text' must be supplied. This redacted document indicates where information has been removed and, in a general way, the substance of the information withheld.

An exemption for proceedings and inquiries can best be limited to ongoing court proceedings and investigations that might result in criminal charges. The exemption should not apply to legislative proceedings.

In access to information systems with a list of exceptions which protect legitimate interests in confidentiality, there is no need for a further exemption for voluntarily supplied information. The other exceptions provide protection for confidential information based on its contents - not on the manner by which the public authority obtained it. Moreover, in systems where mandatory reporting of environmental information to public authorities is less well developed, a correspondingly greater amount of environmental information may be obtained voluntarily. In such systems, an exception for voluntarily supplied information threatens to exclude much of the available information from public access.

Any exemption for unfinished documents should be limited in time and

not apply to any documents which have been used or considered by a public authority in arriving at a decision.

2.3.7 *Practical arrangements*

Practical arrangements are an essential component of effective access to information. Where the practical arrangements have been organised with care, the usefulness of access to environmental information legislation is substantially increased. The Directive authorises the member states to define the practical arrangements for organising access to environmental information within their own system.

Practical arrangements include such matters as establishing reasonable hours and reasonable places for inspection of documents or mechanisms which allow the public to identify which public authority has what information. Introduction of such arrangements also benefits public authorities as it helps make access to information easier to administer.

Some member states have developed practical arrangements that help provide practical access to information. Examples of practical arrangements that can be useful are the designation of an information officer for each ministry, department or public authority. The establishment and maintenance of registers is also useful and helps the person seeking information quickly to get an idea of what information a public authority holds. Some member states require the public authority to provide assistance to a requester to help him or her make the request as specific as possible, or to direct it to the proper public authorities. Some public authorities have arranged

for proper inspection facilities that are comfortable and convenient for the user.

2.3.8 *Costs*

If requested information is made available at excessive cost, the exercise of the right of access to environmental information is frustrated. The Directive permits charging for supplying information provided the charge does not exceed a reasonable cost. Unreasonable costs obviously operate to restrict the access to information intended by the Directive.

Fortunately, reasonable fees are being charged as a rule. Charges for photocopies are generally only somewhat higher than the costs of a photocopy at a copy-shop; for computer discs, cost price. Inspection is free and there is often no charge for a small number of copies. A number of member states have assisted the public by establishing - and publishing - standard lists of charges for photocopying and other means of supplying information. Charging for search time is the exception, moreover.

2.3.9 *Appeals*

To be effective, the appeals process should be timely, transparent, affordable, independent, comprehensive, and result in a binding decision. A decision on an appeal should be made in time for it to be relevant in the context of the proceeding for which the information is sought.

The decisions should be made known so that the decisions can provide guidance to both the public and the public authorities. The use of special administrative tribunals exclusively concerned

with access to information cases may be a desirable way to establish experience and expertise with these matters.

The process should not entail such high costs that the right of appeal cannot be effectively used. The recovery of the costs of appealing and of lawyers costs, if any, should be possible if the appeal is successful.

While an internal review of a decision to refuse a request by the public authority holding the information may be a first step in the appeals process, the process should further provide for review by a body independent of the public authority itself.

The appeals process should cover all public and quasi-public authorities.

The appeals process should, ultimately, result in a decision binding on the authority.

The Directive requires that an avenue of appeal exist where a request for information has been denied in whole or in part. The appeals process is a component of the existing legal system in the country concerned. Thus, in some countries, the high cost of proceeding can discourage appeals. This can be the case where appeals must be taken to courts rather than to administrative bodies, since the costs of administrative appeals are generally more reasonable. The speed of decision-making is also a factor. A favourable decision on appeal is of little value if the proceeding for which the requested information is relevant has already been completed.

Some countries, notably France and Portugal, have created a special admin-

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istrative tribunal to deal exclusively with appeals in cases concerning access to information. Such tribunals can have significant advantages, even when their opinions are not binding on public authorities, because the tribunal has the greatest expertise and experience in these matters and its views will generally be followed.

2.3.10 Time limits

The Directive specifies that requests must be answered as soon as possible and at the latest within two months.

In a number of countries, within and outside the EU, legislation sets a shorter deadline for responding to requests. In these countries, requests are often dealt with promptly and without undue administrative burden. Such shorter time frames, e.g. ten days or two weeks, reflect the time sensitive nature of many requests. In many cases, the moment in, for example, administrative proceedings for which the requested information would be useful will have passed if the information is received after a delay of two months.

It is also possible to establish a system of staggered time limits with, for example, shorter time limits for response than for supply. Thus, if the request is to be refused, that must be communicated within say two weeks whereas four weeks would be the time limit for actually supplying the information. Or four weeks could be the standard time limit for supply, unless exceptional circumstances, such as the volume of documents requested, justified extending the period by a further four weeks.

2.3.11 Active information

Mention may be made of the Directive's single provision concerning active information. The Directive requires member states to provide general information to the public on the state of the environment without specifying how or at what intervals.

This single reference makes clear that the Directive is primarily concerned with the passive right to information and does not attempt to address in any extensive way the various aspects of active information. Such provisions might include notice requirements, environmental reporting provisions, pollution release and transfer registers, etc.

2.4 The EU Institutions

The Directive applies to the member states, not to the EU institutions. Although at various times the Commission has considered developing measures to extend the coverage of the Directive to the institutions⁴, no such proposals have yet been launched. Instead, the Commission and the Council have adopted general rules for access to their documents.

The measures adopted by the Commission and the Council emerge from the Treaty of Maastricht. Annexed to the Treaty of Maastricht is a declaration on the right of access to information. In it, the member states urged the Commis-

⁴ See, for example, the answer of Environment Commissioner Ripa di Meana to parliamentary question no. 2712/90, O.J. No. C 130, 21.5.91, p. 29 indicating the intention to develop a proposal to apply to environmental information held by the Commission and the Commission's Legislative Program for 1994 declaring its intention to put forward a proposal to extend the application of the Directive's provisions to the Community institutions, EC Bulletin, Supp. 1/94, p.18.

sion to present a report during 1993 on measures "to improve public access to information available to the institutions".⁵

The Commission's report and a related series of communications led to the adoption by the Commission and the Council of a Code of Conduct in late 1993, followed shortly thereafter by the adoption of separate decisions of the two bodies on the implementation of the Code.⁶

2.4.1 *The Commission*

The Commission Decision of 8 February 1994 adopts the Code of Conduct agreed with the Council (art. 1). The two documents must be read together.

Access to Commission documents is open to anyone. A person requesting information also does not have to show an interest in the information requested. These provisions are derived from the general principle stated in the Code that the "public will have the widest possible access to documents held by the Commission and the Council".⁷

A document is "any written text, whatever its medium, which contains exist-

ing data and is held" by one of the two institutions (Code, second paragraph). The Code limits access to documents produced by the Commission or the Council itself. If the requested document "was written by a natural or legal person, a Member State, another Community institution or body of any other national or international body", the request must be directed to the source of the document.

An application must be in writing, in any of the official languages of the Community,⁸ and addressed to the relevant department of the Commission or to the Commission offices in the member states or third countries. Consultation on the spot or receipt of a copy are both possible. In keeping with usual practice, a reply and any document supplied is to be made in the language used in the request.

The Code establishes, in broad terms, a set of exceptions which the Commission Decision has adopted. These exceptions cover:

- the protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations);
- the protection of the individual and of privacy;
- the protection of commercial and industrial secrecy;
- the protection of confidentiality as requested by the natural or legal persons that supplied the information or as required by the legislation of the Member State that supplied the information.

⁵ Declaration (No. 17) on the right of access to information, annexed to the Final Act of the Treaty on European Union, O.J. No. C 191, 29.7.92, p. 101.

⁶ Declaration 93/730/EC on a Code of Conduct concerning public access to Council and Commission documents and Council Decision 93/731/EC of 20 December 1993 on public access to Council documents, O.J. L 340, 31.12.93, p. 43; Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents, O.J. No. L 46, 18.2.94, p. 58.

⁷ See European Commission, Access to Commission Documents: User's Guide (Luxembourg: Office for Official Publications, 1994), p. 9.

⁸ User's Guide, see note 7.

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The Commission and the Council may also refuse access in order to protect the institution's interest in the confidentiality of its proceedings.

The rules require a response, in writing, within one month. If the request is to be refused, the applicant must at the same time be informed that "he has one month in which to apply to the Secretary-General of the Commission for review of the intention to refuse access".

Printed documents of less than 30 pages are to be provided free of charge. For longer documents, the Commission may charge a fee of 10 ECU plus 0.036 ECU per page for copies.

In order to assist the Commission services with the implementation and application of the new Commission rules, the Secretary-General circulated a guide on access to Commission documents. The Guide reminds the Commission's officials that the rules are meant to provide the widest possible access to Commission documents, that requests are to be considered on a case by case basis, and urges the Commission's staff to apply the rules in a "genuine spirit of openness" (Preface). The Guide anticipates a number of questions that were expected to arise and offers guidance on handling and responding to requests, interpreting the exceptions and placing the Decision in relation to other Commission rules concerning confidentiality.

The public has made relatively little formal use of the right of access.

According to figures from the Commission, approximately 500 requests were

made in the first two years after the Decision took effect. Some 20% of these concerned requests for environmental information. This represents the largest single category of requests. No breakdown by subject matter is available to indicate how many requests in each category were granted or denied.

2.4.2 *The Council*

Following its agreement on the Code of Conduct with the Commission of 6 December 1993, the Council adopted its own Decision on access to documents on 20 December 1993.⁹

Council statistics indicate that of the 142 requests for documents made in 1994 and 1995, some 10% concerned environmental information.

No specified indication is available of whether the environmental requests have been granted or denied. The reason cited most often for the denial of a request is the protection of the confidentiality of the Council's deliberations.¹⁰

2.4.3 *The Parliament*

The European Parliament has long been a proponent of greater transparency in the workings of the institutions of the Community. The Parliament's own rules on access to documents reflect this approach. In general, the Parliament's documents are available to the public.

⁹ Council Decision of 20 December 1993, O.J. No. L 340, 31.12.93, p. 43.

¹⁰ The data in this paragraph are taken from the Report by the Secretary General on the Implementation of the Council Decision on Public Access to Council Documents (July 1996) on the first two years of experience with the Code of Conduct.

A "document" of the European Parliament includes both official documents prepared or considered by the Parliament in the course of its work as well as studies, brochures and other material issued by the Parliament's Secretariat-General.

Official documents are understood to include all the documents which have been given a session number. These include reports, including plenary voting records, draft resolutions and recommendations.

The official documents are as a rule to be provided free unless a price appears on the document's cover.

2.5 The situation in non-EU member states

2.5.1 EEA countries: Iceland, Liechtenstein and Norway

Although not members of the EU, Iceland, Liechtenstein and Norway are bound by the European Economic Area (EEA) agreement to adopt the "acquis communautaire", including the Directive. Thus, under the EEA agreement, the Directive is also applicable in these three states.

Liechtenstein implemented the Directive's provisions in late 1992 in a law which is almost a verbatim transposition of the Directive's provisions. Liechtenstein does not, however, charge any fees for the supply of environmental information. With the transposition of the Directive, the situation in Liechtenstein now differs in some measure from that of its close neighbour, Switzerland. In Switzerland, the right of access to information is clearly subordinate to the

protection of trade and business secrecy and other interests as well. Moreover, Swiss law does not specify all grounds for refusing access to information but permits the authorities to weigh conflicting interests against one another.

Like its Scandinavian neighbours, Norway has a tradition of good access to information in possession of the public authorities. Existing legislation already satisfies the requirements of the Directive and has moreover recently been supplemented by an amendment to the Norwegian constitution on the right of access to environmental information.

2.5.2 Central and Eastern Europe

Most countries of the region enacted much new legislation in the aftermath of the transition from Communist rule. Included in this wave of legislation were new laws on administrative procedure, environmental protection and, in some cases, access to information.

The rights provided by this legislation have to date generally not led to effective access to (environmental) information, however. In a number of states, proposals for more specific and strengthened legislation on access to environmental information have been made or adopted.

The Directive is of particular importance for those states which wish to become members of the European Union since a condition for joining will be the adoption of the "acquis communautaire", including the Directive. In Poland and other states, steps are already taking place to bring national laws into conformity with the Direc-

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tive's requirements.¹¹

2.6 Relevant international instruments

2.6.1 *Principle 10 of the Rio Declaration and Chapter 40 of Agenda 21*

The Declaration adopted at the U.N. Conference on Environment and Development (UNCED), in Rio de Janeiro in 1992, includes an important statement on the right to information on the environment. Principle 10 of the so-called Rio Declaration provides, in relevant part:

“At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes.”

This statement forms the springboard for the subsequent adoption of the Sofia Guidelines discussed below.

Chapter 40 of Agenda 21, also adopted at UNCED, contains important provisions on information for decision-making as well. Worth noting here are the call for “attention [to] be directed to the quality of the information and the ease with which users can find the appropriate, accurate and timely information they require” (para. 35); and the concern that as access to information

improves for some, “the gap between these groups and those who are not able to keep pace will widen dramatically” (para. 38).

2.6.2 *The UN ECE Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-Making*¹²

The Environment Ministers of the UN ECE region's countries (comprised of more than 50 states including all of Europe) adopted Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-making at their third Ministerial Conference in Sofia, Bulgaria, in October 1995.

The Guidelines draw significantly on the provisions of the EU's Directive on freedom of access to environmental information and in certain respects go beyond what the Directive requires. The Guidelines are however just that, guidelines, and are not binding. They are significant in that they do reach beyond the EU to all the countries of Europe as well as a number of former Republics of the Soviet Union, including states where access to environmental information rules have yet to be adopted.

The ECE Guidelines are in four sections including one on access to environmental information. The Guidelines cover most of the key issues pertaining to access to environmental information in its “passive” mode.

Notable elements of the Guidelines are:

¹¹ For a more detailed review of the developments in six Central and Eastern European countries, see the chapters on Poland, Hungary, the Czech Republic, Slovakia, Bulgaria and Romania in R. Hallo (ed.), *Access to Environmental Information in Europe*, note 1 above. Further information can be found in the publications of the Regional Environmental Center in Budapest on Public Participation in Environmental Decisionmaking. These publications cover 13 states in the region, including the three Baltic states.

¹² This section is drawn from J. Wates, *The UN ECE Guidelines and draft Convention on Access to Environmental Information and Public Participation in Environmental Decisionmaking*, in *Access to Environmental Information in Europe* note 1 above.

- the presumption in favour of access to environmental information for any person (i.e. in principle, all environmental information should be available to any person unless it falls in an exempt category);
- a fairly broad definition both of environmental information, and of the bodies which are supposed to supply it;
- a requirement that in each case where it is proposed to withhold information, the public interest served by disclosure must be taken into consideration;
- a qualified requirement to limit charges for information to the costs of reproduction and dissemination (qualified by "where appropriate"), with the right to inspect information free of charge;
- a requirement that where information is held in various forms, it should be supplied in the form specified by the person requesting the information (a measure which could significantly reduce the costs of information, where for example voluminous reports can be obtained on diskette or accessed through a modem).

Some of these aspects go slightly further than the EU Directive and (notwithstanding their non-binding status) could point the way to possible changes in the Directive in the course of its forthcoming review. On the other hand, other access to information elements in the Guidelines have drawn criticism from environmental NGOs and other groupings¹³, on the grounds that they replicate provisions of other

¹³ Notably the European Parliament (PE 213.458/fin.), GLOBE EU (Global Legislators' Organisation for a Balanced Environment) and the federation of European Green Parties.

legislation, including the Directive, which have been found wanting. Among the points raised are the following:

- the wide range of broadly defined categories of information which may be exempt from disclosure (in particular, information relating to matters which have been, but are no longer, *sub judice* or under enquiry; commercially confidential information; and voluntarily supplied information);
- the failure to include in express terms information relating to human health in the definition of environmental information;
- the blanket exemption of legislative bodies from the obligation to supply information;
- the length of the time-frame allowed for a response to a request for information (six weeks, only slightly less than the two months allowed under the EU Directive) and the lack of clarity as to whether the information is actually meant to be supplied within that period or merely that a response must be given.

In endorsing the ECE Guidelines, the Ministers invited the ECE "to review their implementation in 1997 and to report to the next Conference".¹⁴

The Guidelines themselves also address the question of their own implementation:

- states are encouraged to use a "broad consultative process" in developing the necessary strategies for implementing the Guidelines;
- reference is made to the need for "a clear regulatory framework providing

¹⁴ Sofia Ministerial Declaration, para. 43.

procedural and institutional guarantees and proper enforcement programmes" in order to achieve effective implementation of access to environmental information and public participation in environmental decision-making processes;

- specific measures which states are to a greater or lesser extent encouraged to introduce are the designation of information officials, the use of Ombudspersons and educational and training activities;
- states are urged to "promote regular monitoring of the implementation of the present Guidelines". States are also requested to "support ongoing activities and facilitate the exchange of experiences of implementation";
- a recommendation is made that "states should report about the progress made in implementing the present Guidelines to the United Nations Economic Commission for Europe not later than two years after the adoption of the document", i.e. October 1997.

In Sofia, the ECE Environment Ministers also agreed that the possibility of a Convention on Public Participation should be considered, with "appropriate involvement" of NGOs. Negotiations for such a Convention have indeed commenced, as discussed in section 3.3 below.

Even assuming that a Convention is adopted by the target date of mid-1998 and that it covers the same ground as the Guidelines, it would be a number of years from now before it would enter into force. Even after that time, the Guidelines will continue to be relevant for any state which has not signed the Convention.

2.7 Conclusions: Toward a culture of openness

The discussion above reviews the existing legal instruments and their scope. The question whether existing access to environmental information legislation is working well has not been addressed.

In the EU member states, issues have arisen over whether to define the practical arrangements; the scope of the public bodies covered and the extent to which the legislation applies to privatised bodies; the application of the legislation to public authorities when they act in a (quasi-)judicial capacity; over whether the Directive provides a right to a copy of a document or only a right to inspect it; obtaining responses to requests within the two-month time period set by the Directive; what should be understood as a reasonable cost; the appeals mechanism; and the scope of the exceptions, in particular for commercial information, public proceedings, matters under enquiry, and internal communications.

As this list of issues indicates, the transposition of the Directive in national law is but the beginning of a gradual process of improving access to environmental information. Time and experience is required to make legislation work well in practice. Thus, the Directive's yield of information can be expected to grow, especially if legal provisions and practice draw on the experience gained to date and improvements are made.

Moreover, experience to date indicates that the quality of the environmental information made available can be disappointing and therefore of limited utility for public input in decision-making

processes. This can be because public authorities themselves often do not hold the information desired or because the information that they do have is not in usable or comprehensible form.¹⁵

This illustrates, that the value of the access to environmental information instrument is dependent on the quality of the information that public authorities gather. The development of systems of sampling, monitoring and reporting on the part of public and private actors whose activities affect the environment is therefore of critical importance. Examples of such systems include emissions registers or requirements that environmental license holders measure and report on their pollution discharges at such regular intervals and with such specificity that it is possible to determine whether they are meeting or violating the license requirements.

Court decisions are another avenue which can lead to improvements in the effectiveness of the legislation. Decisions by administrative or civil courts can contribute significantly to make laws more effective.

There is no doubt, however, that access to (environmental) information legislation marks an important turning point in the relationship between officials and the public.

It should be no surprise that the transition from a standard of official secrecy to one of openness is not easily accomplished. This is the experience under the Directive in member states with distinguished systems of professional bu-

reaucracy where official secrecy was a firm rule, such as Germany and the United Kingdom, and in those states where democratic systems are of more recent vintage, such as Spain. It suggests, that in Central and Eastern Europe the transition to openness will also not be a matter of enacting legislation alone.

An interesting phenomenon to observe in countries where access to information legislation is firmly established, such as the Netherlands or Sweden, is that government officials act in the spirit as well as the letter of the law. In practice, the formalities for requests for information are often waived and the information provided without delay.

The effects of the Directive on the climate in the member states can also be observed. In the member states where access to information laws already existed, little has changed. In the member states where implementation was necessary and was accomplished more or less promptly, the beginnings of a climate of openness can already be observed. In contrast, in the member states where implementation has been late, the Directive has to date had less effect.

The Directive has had a notable effect on environmental organisations, however. Many of these, particularly in member states where the right of access to environmental information is new, have been vigorously campaigning for, and on the basis of, the rights meant to be provided by the Directive. In Central and Eastern Europe, environmentalists are also acutely aware of the importance of the right of access to information and are campaigning for national legislation to be at least as strong as the

¹⁵ For a study illustrating this point in some detail, see C. Wattiez, Information available to the public on industrial pollutant releases and transfers in Belgium, WWF PRTR/North Sea Inventory Project WWF (Brussels, 1995).

EU Directive.

Finally, the anxiety about a flood of requests for information has proven to be unfounded. Opponents of access to information laws often fear that a vast increase in the workload and administrative burden on public authorities will result. Experience to date shows that public authorities are well able to manage the volume of requests. Indeed, the development of practical mechanisms and structures to respond to public requests for information often helps the authorities to better manage their data collection, storage and retrieval systems.

In fact, the more attention given to the practical arrangements, the easier it is to manage the requests that are made. The establishment of information points, public registers, and other measures identified above, all contribute to incorporating access to information into the routine business of a public authority.

As far as Central and Eastern Europe is concerned, there has been uneven progress in shedding the systems of secrecy which characterised the former governments. Steps are being taken to establish the legislative framework needed in the first instance to generate environmental information and to strengthen the data collection systems. In some cases, access to environmental information rules are now being put into place.

In the broader UN ECE context, the Guidelines go further than the Directive in some respects and cover a greater geographical area, including some states without any tradition or legislation for public access to environmental information. The Guidelines are limited in their effect, however, by their non-binding character. The negotiation of a Convention, which would contain binding provisions, is therefore a logical next step.

3. DEVELOPMENTS

3.1 The review of the EU Directive

The Directive contemplates an evaluation and review in two parts.

To begin with, there is the obligation on the member states to report on their experience with the Directive. Article 8 of the Directive requires the member states to report to the Commission "[f]our years after the date referred to in Article 9(1)". The date referred to in Article 9(1) is 31 December 1992. Thus, the deadline for the member states to report to the European Commission is 31 December 1996. This is the first part of the review.

Then, there is the obligation of the Commission to report to the European Parliament and the Council of Ministers. The Commission's report will be made after the member states' reports. This is the second part of the review.

This review process offers a special opportunity to proceed further to improve access to environmental information in the member states of the European Union, and indeed in Europe generally. The EU Directive has, to date, formed the principal reference point for access to environmental legislation in Europe. As such, improvements which would increase the effectiveness of the Directive (and the national legislation based on it) would be of broad impact.

The review also offers each member state the opportunity to evaluate how access to environmental information is working within its own borders and to initiate its own steps to introduce improvements in its national system of ac-

cess to (environmental) information. Examples of good practice from the member states and elsewhere can usefully inform this process.

3.2 Review of the EU institutions' rules

The Commission and the Council have each recently completed a review of the first two years of experience with the Code of Conduct and related rules on access to documents which took effect in 1994. The Commission's review resulted in one change to the costs provisions of its rules to reflect actual practice.¹⁶ The Council likewise made only minor changes to its rules.¹⁷ The Council's conclusions accompanying its decision do raise the possibility that the Council may establish a register of documents.

3.2.1 *Revision of the Treaty on European Union*

The member states of the European Union are currently engaged in an Intergovernmental Conference (IGC) to negotiate the revision of the Treaty on European Union, adopted at Maastricht in 1992. One item on the agenda is transparency and the democratic workings of the EU. Accordingly, proposals are being discussed to anchor the principle of transparency, and, in particular,

¹⁶ The Commission's rules now provide that a charge may be made for the supply of documents longer than 30 pages. Previously, the charge was mandatory. Commission Decision of 19 September 1996 amending Decision 94/90/3CSC, EC, Euratom on public access to Commission documents, O.J. No. L 247, 28.9.96, p. 45.

¹⁷ Council Decision of 6 December 1996 amending Decision 93/731/EC on public access to Council documents, O.J. No. L 325, 14.12.96, p. 19.

access to documents held by the EU institutions in the Treaty itself. Provisions to this effect can be found in the draft Treaty elements submitted by the Irish Presidency to the Dublin summit meeting in December 1996.

3.3 International developments

3.3.1 *Review of the UN ECE Guidelines and negotiation of a UN ECE Convention on Access to Environmental Information and Public Participation in Environmental Decision-Making.*

The UN ECE Sofia Guidelines call for their review two years after adoption. Two years after adoption is October 1997.

The Sofia Ministerial Declaration also opened the way to the negotiation of a Convention on Access to Environmental Information and Public Participation in Environmental Decision-Making. Negotiations formally commenced in June 1996 with the objective of having the Convention ready for signature at the next Environment for Europe Ministerial Conference to be held in Denmark, in June 1998.

3.3.2 *Review of Agenda 21: Rio plus 5*

It is perhaps also worth noting that Agenda 21 and progress toward sustainable development since UNCED will be the subject of review in the UN Commission on Sustainable Development meeting and UN General Assembly Special Session, in June 1997.

3.4 Conclusions: Building on existing experience

It is evident that there is now, or will be in the near future, a great deal of activity in a variety of fora on the subject of access to (environmental) information. These processes are running in parallel and yet to a certain extent can be significant influences on each other, as for example the review of the EU Directive and the ECE Convention negotiations. It is too early to predict whether these various developments will result in significant improvements in the legal instruments for access to environmental information.

The foregoing has been intended to outline the state of affairs regarding access to environmental information in Europe.

In many states, a foundation has been laid for a useful and effective regime of access to environmental information. At the same time, it is also clear that improvements can and, where possible, should be made.

For both kinds of situations, improving or establishing access to environmental information, it can be useful to draw on experience to date. As sketched above, a best practice model is already emerging which indicates how both legal instruments and the practice under them may be employed to the benefit of public access to environmental information.

4. THE EUROPEAN ENVIRONMENT AGENCY'S CONTRIBUTION: PUTTING INFORMATION TO WORK

The preceding sections of this report have examined existing mechanisms for providing access to environmental information for the public.

The European Environment Agency has a mandate to put information to work. The data collected - which is a task in the first instance for the authorities in the member states - must be useful to policy-makers, legislators, researchers, managers, the media as well as the public.

The following section will consider the theme of access to environmental information in the context of "putting information to work".

4.1 Identification of areas for improvement in the structures for collecting and presenting information and of effective working models

4.1.1 *Moving from a sectoral to an integrated approach*

Environmental regulation to date has often taken a sector-by-sector, compartment-by-compartment, one-problem-at-a-time approach. This is the case both for the national level and the EU. Thus, water, air, soil, waste, hazardous substances, land use, etc. have generally been separately regulated.

One unintended consequence of the sectoral approach is a diversity of requirements for environmental data generation, collection, and reporting. Not only may the requirements vary from

regulation to regulation but also the intended users and recipients of the information collected may vary. Thus, information may be collected by companies but not transmitted to public authorities; or information may be collected under several different laws and transmitted to the several different government agencies responsible for environmental control under the different laws. As a result, a member of the public wishing to obtain a complete picture of the environmental performance of a particular company or the state of the environment in a particular area may need to hunt down information from several different public authorities, some of which may be national authorities, others of which may be regional or local authorities, or even semi-governmental entities. Under such circumstances, the practical hurdles to access to environmental information become very high indeed. The difficulty is not limited to the individual member of the public; also for governmental authorities, the difficulty in locating and obtaining information from other authorities may interfere with their effectiveness.

In recent years, some first steps have been taken to address these problems. Some countries, among them the United Kingdom, the Netherlands, and Ireland, have introduced a system of integrated licensing, an approach the EU has adopted with the Integrated Pollution Prevention and Control (IPPC) directive.¹⁸

¹⁸ O.J. No. L 275, 10.10.96, p. 26.

Another measure is the introduction of environmental reporting requirements for companies by which a single, consolidated picture of a company's environmental objectives and performance can be obtained (e.g. the EU's EMAS Regulation). Instruments at national and EU level exist or are under discussion but can be strengthened and expanded in scope if they are to meaningfully respond to the need for more readily available and useful information.

4.1.2 Sampling, monitoring, and reporting requirements

The question of what data should be collected and reported is another important area where improvements can be sought. In developing new legislation or evaluating existing measures, a hard look should be taken at data collection and transmission requirements.

In particular, are environmental actors being asked or, better yet required to measure their activities in such a way that it is possible to determine not just whether such activities are in keeping with all legal requirements but also what the impact of the activities is on the environment? This is a complicated matter and requires first an answer to the question of what do we wish to know.

It is thus worth recommending that far more attention be paid to the inclusion of provisions in laws and regulations which lead to the generation of information which responds to the need for effective monitoring, which gives a clear and reliable picture of the state of the environment, and which works in compatibility with requirements in other laws.

4.1.3 The privatisation of information

Another trend which can be observed is the increasing privatisation of information. This may take place both in connection with the use of negotiated agreements and the privatisation of public functions.

Negotiated agreements are in essence contracts between parties¹⁹. Often, the parties are a government authority on the one hand and an industry or industry group on the other hand. In some cases, a semi-governmental or private entity may be established by government in order to perform certain policy functions, including concluding negotiated agreements with industry. Where this is the case, uncertainty can exist whether the information generated by the parties to the agreement is "held by a public authority" and accessible to non-parties, including in particular the public. Provision should therefore be made to clarify under what circumstances the information collected is accessible to the public.

Another development of recent years is the privatisation of public functions. One result has been that commercial rates may be charged for access to information of public interest. This is justified from the point of view of the privatised bodies by their need to cover their own costs. It can however make it impossible in practice for members of the public to afford access to the information. Privatisation also raises the issue of whether a body falls under the coverage of instruments for access to

¹⁹ The EEA has recently completed a report on Environmental Agreements, at the request of the European Parliament, ("Environmental Issues Series, No 3," EEA, 1997).

information held by public or quasi-public authorities. This is an area of increasing dispute despite the attempts, for example of the Directive, to address the question. Privatisation can also reduce the availability of national and regional data, e.g. on CO₂.

4.2 Practical suggestions for improvements in information collection and distribution systems

The preceding section identified three areas where developments are taking place in the structure of environmental regulation. The positive development in the direction of improved integration threatens to be offset by the segmentation of environmental supervision which privatisation may imply. In between, lies the issue of whether sampling, monitoring and reporting requirements are being effectively employed to generate useful data.

One recommendation that can be made is for more emphasis to be given to information provisions and requirements in the field of environmental management, on the part of both public and private actors. Concretely, it would be useful if the environment ministry or comparable bodies reflected increased priority to these issues by the designation of a senior official - an "information czar" - with responsibility for these matters. Presently, the information function within most ministries is primarily concerned with external relations and not the policy of ensuring that environmental measures generate useful data efficiently and effectively.

At the same time, collection and distribution of information must incorporate

the advances that technology has made possible, as discussed in the following section. Thus, for example, the U.S. Environmental Protection Agency has begun working to link its data so that people can locate quickly information that a single company reports under various environmental laws.²⁰ The EPA's effort is intended to overcome the difficulty caused by information housed in separate data bases, in different places and formats, and subject to different disclosure rules.

4.3 Environmental information in the information society

Only a short time ago, when the drafters of the Directive on freedom of access to environmental information set about their work, they had in mind a world in which information was found in documents and documents were made of paper.

Since the adoption of the Directive in 1990, the world has changed rapidly. Not only have there been advances in the distribution and use of computerisation but electronic communication has become part of everyday life. Responding to a request by pulling open a file cabinet to take out a folder filled with paper increasingly belongs to the past. A request for information may now be sent electronically for data which can also be transmitted electronically back to the requester.

This transformation suggests that transformation may also be necessary for the provisions of the Directive and similar

²⁰ See "EPA Prepares Information Reforms", *Working Notes on Community Right-to-Know* (U.S. Public Interest Research Group Education Fund, Washington, D.C.) (January-February 1996).

instruments. What, for example, does it mean to "make information available"? The notion of inspection or supplying a copy of a paper document seems strangely out-dated in these days of electronic browsing and Web-sites open to any Internet surfer.

For that matter, what is the meaning of information "held by" public authorities when computerised data collection and storage by regulated bodies can be continuous and instantaneous? Such information may be held by the regulated body and available upon request to a public authority. If a public authority can summon the data up upon command, why should a member of the public not have the same opportunity?

What is an appropriate time limit for a response given the speed of electronic communication? The time limit in the Directive of two months appears almost ludicrous given the developments in "real-time monitoring" and given that electronic transmission of huge volumes of data can occur in seconds or minutes. For example, the French government already publishes daily air and water quality bulletins on-line, demonstrating that the time line from sampling and reporting to public availability can be shortened enormously.²¹

Electronic communication also adds a new element to the question of charging. Generally, charges are meant to cover copying costs but inspection is free. Isn't electronic browsing the equivalent of inspection? Are fees for on-line connections or entry to a data-

base then appropriate? What fee, if any, should be charged for information made available electronically?

What practical arrangements should be made to provide electronic access to information? The needs of the electronic searcher and user will differ from the traditional requester who walks into an authority's office or submits a request in a letter. The requester may also possess expertise and equipment more sophisticated than that of the authority holding the information. Demands of this sort from the public, however, will increasingly bring pressure on authorities to develop mechanisms to serve the public as it actually is.

These are just a few of the questions which arise in connection with re-thinking access to environmental information in an age of more and more computerised data and electronic communication.

4.4 Via comparability toward sustainability

The difficulty of making use of data gathered in different formats, under different laws, for different purposes, by different agencies and other actors is only compounded when one moves from the national to the international level. Therefore, efforts to make the information from one source comprehensible, and if possible, comparable to that of another source are necessary.

The European Environment Agency has already taken one concrete step toward making it possible to communicate about environmental matters across the divides of language and political sys-

²¹ See "Exchange of Environmental Information Boosted by Growth in On-line Communications", *International Environment Reporter* (April 17, 1996), pp. 341-342).

tems.²² The Agency has created a multi-lingual thesaurus covering more than 2000 environmental subjects in the hope of making key terms more understandable. At European level, a common understanding is an important prerequisite for common actions to protect the environment and move towards sustainability. At national level and below, authorities also need to speak the same language, whether communicating between departments or between different governmental levels. The Agency can perhaps assist with programs directed at statistical offices, ministries, parliaments and others concerned.

4.5 Conclusions

The notion that good information is the basis for good policy-making, implementation and enforcement underlies the mission of the Agency. The Agency can assist by identifying good practices and by publicising them, by bringing attention to the gaps in the systems which need to be closed, and by working together with the authorities at relevant levels to improve the entire trajectory from data collection to information provision.

Improving the structures and practical arrangements for collecting and providing information, practical improvements, and a forward-looking view which takes heed of the revolutionary technological developments in the information field are all important steps which can be taken.

²² The overall approach of the EEA to information provision is described in its "Information Strategy" and Work Programme.

5. FINAL SUMMARY

Public access to environmental information is an important right and essential support to effective environmental policy. An informed public can contribute meaningfully to decision-making on environmental issues. Moreover, an informed public can act as a watch-dog supplementing governmental environmental management and supervision efforts. Where possible and necessary, an informed public can also act to supplement government enforcement efforts. None of this is possible without access to environmental information.

The principal legal instrument in this area, the EU Directive, has initiated a process of making environmental information more accessible. Instruments to provide access to documents now also apply to the EU institutions. Beyond the EU itself, the ECE Guidelines and draft Convention are the most promising measures for extending the public's right of access to environmental information.

Making public access to environmental information work effectively is primarily a task for public authorities, in which the European Environment Agency can play an important supporting role. In particular, there is a need for improvements in the quality of the data collected and therefore for strengthening the sampling, monitoring and reporting requirements of environmental laws. Organising information for public access is also a priority task which the Agency can support. Moreover, thought should be given to the kinds of provisions which will meet tomorrow's needs in the information society. Finally, account should also be taken of the danger of a division of society into the information-poor and information-rich. Such divisions can arise not just among individuals but also among authorities within states and among states themselves.

Ralph Hallo
Co-ordinator International Program
Stichting Natuur en Milieu
Donkerstraat 17
NL-3511 KB UTRECHT
The Netherlands
tel: +31 30 233.1328
fax: +31 30 233.1311
e-mail: rhallo@snm.antenna.nl

ANNEXES

ANNEX 1: Directive 90/313/EEC on freedom of access to information on the environment

ANNEX 2: List of national measures implementing Directive 90/313/EEC.

ANNEX 3: UN ECE Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-Making, Environment for Europe Ministerial Conference, Sofia, October 1995.

ANNEX 4: SNM Activities on Access to Environmental Information.

Annex 1: Council Directive of 7 June 1990 on freedom of access to information on the environment (90/313/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 130s thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Considering the principles and objectives defined by the action programmes of the European Communities on the environment of 1973 ⁽⁴⁾, 1977 ⁽⁵⁾ and 1983 ⁽⁶⁾, and more particularly the action programme of 1987 ⁽⁷⁾, which calls, in particular, for devising "ways of improving public access to information held by environmental authorities";

Whereas the Council of the European Communities and the representatives of the Governments of the Member States, meeting within the Council, declared in their resolution of 19 October 1987 on the continuation and implementation of a European Community policy and action programme on the environment (1987 to 1992) ⁽⁸⁾ that it was important, in compliance with the respective responsibilities of the Community and the Member States, to concentrate Community action on certain priority areas, including better access to information on the environment;

Whereas the European Parliament stressed, in

its opinion on the fourth action programme of the European Communities on the environment ⁽⁹⁾, that "access to information for all must be made possible by a specific Community programme";

Whereas access to information on the environment held by public authorities will improve environmental protection;

Whereas the disparities between the laws in force in the Member States concerning access to information on the environment held by public authorities can create inequality within the Community as regards access to information and/or as regards conditions of competition;

Whereas it is necessary to guarantee to any natural or legal person throughout the Community free access to available information on the environment in written, visual, aural or data-base form held by public authorities, concerning the state of the environment, activities or measures adversely affecting, or likely so to affect the environment, and those designed to protect it;

Whereas, in certain specific and clearly defined cases, it may be justified to refuse a request for information relating to the environment;

Whereas a refusal by a public authority to forward the information requested must be justified;

Whereas it must be possible for the applicant to appeal against the public authority's decision;

Whereas access to information relating to the environment held by bodies with public responsibilities for the environment and under the control of public authorities should also be ensured;

¹ OJ No. C 335, 30. 12. 1988, p. 5.

² OJ No. C 120, 16. 5. 1989, p. 231.

³ OJ No. C 139, 5. 6. 1989, p. 47.

⁴ OJ No. C 112, 20. 12. 1973, p. 1.

⁵ OJ No. C 139, 13. 6. 1977, p. 1.

⁶ OJ No. C 46, 17. 2. 1983, p. 1.

⁷ OJ No. C 70, 18. 3. 1987, p. 3.

⁸ OJ No. C 289, 29. 10. 1987, p. 3.

⁹ OJ No. C 156, 15. 6. 1987, p. 138.

Whereas, as part of an overall strategy to disseminate information on the environment, general information should actively be provided to the public on the state of the environment;

Whereas the operation of this Directive should be subject to a review in the light of the experience gained,

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

Article 2

For the purposes of this Directive:

- (a) 'information relating to the environment' shall mean any available information in written, visual, aural or data-base form on the state of water, air, soil, fauna, flora, land and natural sites, and on activities (including those which give rise to nuisances such as noise) or measures adversely affecting, or likely so to affect these, and on activities or measures designed to protect these, including administrative measures and environmental management programmes;
- (b) 'public authorities' shall mean any public administration at national, regional or local level with responsibilities, and possessing information, relating to the environment with the exception of bodies acting in a judicial or legislative capacity.

Article 3

1. Save as provided in this Article, 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.

Member States shall define the practical arrangements under which such information is effectively made available.

2. Member States may provide for a request for such information to be refused where it affects:

- the confidentiality of the proceedings of public authorities, international relations and national defence,
- public security,
- matters which are, or have been, *sub judice*, or under enquiry (including disciplinary enquiries), or which are the subject of preliminary investigation proceedings,
- commercial and industrial confidentiality, including intellectual property,
- the confidentiality of personal data and/or files,
- material supplied by a third party without that party being under a legal obligation to do so,
- material, the disclosure of which would make it more likely that the environment to which such material related would be damaged.

Information held by public authorities shall be supplied in part where it is possible to separate out information on items concerning the interests referred to above.

3. A request for information may be refused where it would involve the supply of unfinished documents or data or internal communications, or where the request is manifestly unreasonable or formulated in too general a manner.
4. A public authority shall respond to a person requesting information as soon as possible and at the latest within two months. The reasons for a refusal to provide the information requested must be given.

Article 4

A person who considers that his request for information has been unreasonably refused or ignored, or has been inadequately answered by a public authority, may seek a judicial or administrative review of the decision in accordance with the relevant national legal system.

Article 5

Member States may make a charge for supplying the information, but such charge may not exceed a reasonable cost.

Article 6

Member States shall take the necessary steps to ensure that information relating to the environment held by bodies with public responsibilities for the environment and under the control of public authorities is made available on the same terms and conditions as those set out in Articles 3, 4 and 5 either via the competent public authority or directly by the body itself.

Article 7

Member States shall take the necessary steps to provide general information to the public on the state of environment by such means as the periodic publication of descriptive reports.

Article 8

Four years after the date referred to in Article 9 (1), the Member States shall report to the Commission on the experience gained in the light of which the Commission shall make a report to the European Parliament and the

Council together with any proposal for revision which it may consider appropriate.

Article 9

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992 at the latest. They shall forthwith inform the Commission thereof.
2. Member States shall communicate to the Commission the main provisions of national law which they adopt in the field governed by this Directive.

Article 10

This Directive is addressed to the Member States.

Done at Luxembourg, 7 June 1990.

*For the Council
The President
P. Flynn*

Annex 2: List of national measures implementing Directive 90/313/EEC
Belgium

01. Arrête de l'exécutif flamand no 91/1617 du 06/02/91, moniteur belge 26/06/91 p. 14269
02. Ordonnance no 91/2617 du 29/08/91, moniteur belge 01/10/91 p. 21505
03. Besluit van vlaamse executieve houdende vaststelling van het vlaamse reglement betreffende milieuvergunning, moniteur belge van 26/06/91 blz 14269
04. Decret region wallonne no 91/2798, moniteur belge du 11/10/91 p. 22559
05. Arrête de l'exécutif flamand no 92-3045 du 31/07/92, moniteur belge du 14/12/92 p. 26636
06. Arrête de l'exécutif flamand no 92-3044 du 07/01/92, moniteur belge du 14/12/92 p. 26192
07. Arrête de l'exécutif regional wallon du 06/05/93, moniteur belge du 07/07/93 p. 16094-16095
08. Arrête de l'exécutif regional wallon du 06/05/93, moniteur belge du 07/07/93 p. 16083-16086
09. Arrête de l'exécutif flamand du 23/10/91, moniteur belge du 27/11/91 p. 26562
10. Arrête de l'exécutif flamand du 09/12/92, moniteur belge du 15/12/92 p. 26657
11. Loi du 11/04/94, moniteur belge du 30/06/94 p. 17662
12. Arrête royal du 23/06/94, moniteur belge du 30/06/94 p. 17666
13. Arrête royal du 27/06/94, moniteur belge du 30/06/94 p. 17666
14. Arrête royal du 27/06/94, moniteur belge du 30/06/94 p. 17669
15. Arrête de l'exécutif flamand no 95-2096 du 01/06/95, moniteur belge du 31/07/95 p. 21447

Germany

01. G. Vom 08/07/94, bundesgesetzblatt (teile i, ii, iii) nr. 42 vom 15/07/94 s. 1490
02. Verordnung vom 07/12/94, bundesgesetzblatt (teile i, ii, iii) nr. 88 vom 13/12/94 s. 3732

Denmark

01. Lov nr. 572 19/12/85, lovtidende a
02. Lov nr. 292 af 27/04/94
03. Bekendtgørelse nr. 646 af 18/09/86
04. Bekendtgørelse nr. 579 af 27/06/94
05. Bekendtgørelse nr. 585 af 24/06/94
06. Vejledning nr. 123 af 30/06/94
07. Bekendtgørelse nr. 647 af 18/09/86

Spain

01. Ley regimen juridico las administraciones publicas y del procedimientode administracion comun 26/11/92, boletin oficial del estado n. 285 27/11/92 p. 40300
02. Ley n. 38/1995 12/12/95, boletin oficial del estado n. 297 13/12/95

France

01. Loi n. 78-753 du 17/07/78, journal officiel p. 2851 18/07/78
02. Decret n. 88-465 du 28/04/88, journal officiel p. 5900 30/04/88

Greece

01. Decision ministerielle no 77821/1440 de 06/09/95, fek b no 795 du 14/09/95 p. 9358

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Ireland

01. Environmental protection agency act 1992 of 23/04/92
02. Access to information on the environment regulations of 20/05/93, statutory instruments no 133 of 1993
03. Ombudsman act 1980 of 14/07/80, no 26 of 14/07/80
04. Ombudsman (amendment) act 1984 of 21/11/84, no 19 of 21/11/84
05. Ombudsman act (first schedule) (amendment) order 1984 of 06/12/84, s.I. No 332 of 1984
06. Finance act 1981
07. The rules of the superior courts, statutory instruments no 15 of 1986
08. Environmental protection agency (licensing) regulation of 13/04/94, statutory instruments no 85 of 1994
09. Local government (planning and development) (no 2) regulations of 06/04/95, statutory instruments no 75 of 1995
10. E.c (environmental impact assessment) regulations of 19/12/89, statutory instruments no 349 of 1989
11. Local government (planning and development) act of 16/07/92
12. Environmental protection agency (licensing) (amendment no 2) regulations of 06/04/95, statutory instruments no 76 of 1995
13. Air pollution act, 1987 (licensing of industrial plant regulations of 14/10/88, statutory instruments no 266 of 1988
14. Local government (planning and development) regulation of 14/04/94, statutory instruments no 86 of 1994

Italy

01. Legge n. 241 del 07/08/90, decreto del presidente della repubblica n. 192 del 18/08/90
02. Decreto del presidente della repubblica n. 352 del 27/06/92, gazzetta ufficiale n. 177 del 29/07/92

Luxembourg

01. Loi du 10/08/92, memorial a du 28/09/92 p. 2204 nr 71
02. Reglement grand-ducal du 10/08/92, memorial a du 28/09/92 nr 71 p. 2206

The Netherlands

01. Wet openbaarheid van bestuur van 31/10/91, staatsblad nr. 703 van 31/12/91 blz 1;
02. Wet algemene bepalingen milieuhygiene van 30/03/88, staatsblad nr. 133 van 19/04/88 blz 1
03. Wet administratieve rechtspraak overheidsbeschikkingen van 01/05/75, staatsblad nr 284 van 17/06/75 blz 1
04. Wet milieugevaarlijke stoffen van 05/12/85, staatsblad nr 639 van 17/12/85
05. Besluit van 20/04/76 tot vaststelling van datum inwerkingtreding produktschap voor vee en vlees 01/05/75 van 20/04/76, staatsblad nr 234 van 27/04/76
06. Besluit van 20/04/92 tot vaststelling inwerkingtreding wet openbaarheid van bestuur van 10/04/92, staatsblad nr 185 van 28/04/92
07. Besluit van 07/08/80 tot vaststelling inwerkingtreding wet algemene bepalingen milieuhygiene en daarmee samenhangende regelingen, staatsblad nr 443 van 28/08/80
08. Besluit van 11/12/86 tot vaststelling gedeeltelijke inwerkingtreding wet milieugevaarlijke stoffen, staatsblad nr 623 van 23/12/86
09. Besluit van 09/01/86 tot vaststelling gedeeltelijke inwerkingtreding wet milieugevaarlijke stoffen, staatsblad nr 10 van 23/01/86
10. Aanwijzingen inzake openbaarheid van bestuur van 08/04/92, staatscourant nr 84 van 01/05/92 blz 13
11. Regeling uitvoering wob van 18/06/92, staatscourant nr 118 van 23/06/92

Portugal

01. Decreto-lei n. 422/91 05/11/91, diario da republica i aviso n. 263 15/11/91 p. 5852
02. Lei n. 65/93 26/08/93, diario da republica i serie aviso n. 200 26/08/93 p. 4524

United Kingdom

01. Environmental information regulation 1992 of 18/12/92, statutory instruments 1992 no 3240 of 31/12/92
02. European communities environmental protection - the environmental information regulations (Northern Ireland) 1993 of 09/02/93, statutory instruments no 43

Source: Celex

Annex 3: UN ECE Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-Making, Environment for Europe Ministerial Conference, Sofia, October 1995

**GUIDELINES
ON ACCESS TO ENVIRONMENTAL INFORMATION
AND PUBLIC PARTICIPATION
IN ENVIRONMENTAL DECISION-MAKING**

PREAMBLE

Recalling Principle 10 of the Rio Declaration on Environment and Development which states that: "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level",

Recognising that in order to increase awareness of environmental problems and promote effective public participation, access to environmental information should be guaranteed,

Recognising that public participation contributes to the endeavours of public authorities to protect the environment, and bearing in mind that environmental policy and decision-making should not be restricted to the concerns of authorities,

Recognising that in order to promote effective public participation the public need to be aware of the means and methods of participation in environmental decision-making processes, and in the solving of environmental problems,

Recognising that public participation can be a source of additional information and scientific and technical knowledge to the decision makers,

Convinced that environmental authorities should raise public awareness in order to promote greater public understanding and support for environmental policies and enforcement,

Aware that the promotion of public participation requires the transparency and the accountability of public authorities, thus improving their credibility and strengthening support for their activities,

Concerned that when emphasising the importance of public participation in protecting environmental rights, it should also be recognised that all persons, both individually and in association with others, have a duty to protect and preserve the environment,

Whereas practicable access to the courts and administrative complaints procedures for individuals and public interest groups will ensure that their legitimate interests are protected and that prescribed environmental measures are effectively enforced and illegal practices stopped,

The following Guidelines are approved:

Nothing in these Guidelines shall be construed as diminishing any of the rights of access to information and public participation which may be guaranteed under the laws of any member State or under any agreement to which it is a party.

I. Access to Environmental Information

1. For the purpose of these Guidelines environmental information means any information on the state of water, air, soil, fauna, flora, land and natural sites, and on activities or measures adversely affecting or likely to affect these, and on activities or measures designed to protect these, including administrative measures and environmental management programmes.

2. Any natural or legal person should have free access to environmental information at their request, subject to the terms and conditions contained in these Guidelines, without regard to citizenship, nationality or domicile and without having to prove a legal or other interest.

3. Public authorities (at national, regional and local level) and bodies having public responsibilities for the environment, with the exception of bodies which are acting in a judicial or legislative capacity, should supply environmental information subject to the terms and conditions contained in these Guidelines.

4. Public authorities should regularly collect and update adequate environmental information. In addition, States should establish, where voluntary systems are inadequate, mandatory systems for ensuring that there is an adequate flow of information about activities significantly affecting the environment to the public authorities.

5. States should take the necessary steps to make their environmental information systems more transparent, e.g. by specifying the type and scope of the environmental information available and the basic terms and conditions under which it is made available and the process by which it can be obtained, and by the establishment and maintenance of registers and the designation of information officers.

6. A request for information may be refused only where it affects:
- (a) The confidentiality of the proceedings of public authorities, international relations and national defence;
 - (b) Public security;
 - (c) Matters which are, or have been, *sub judice* or under enquiry (including disciplinary enquiries), or which are the subject of preliminary investigation proceedings;
 - (d) Commercial and industrial confidentiality (for example in relation to agricultural and other business activities), including intellectual property;
 - (e) The confidentiality of personal data and/or files;
 - (f) Material supplied by a third party without that party being under, or being capable of being put under, a legal obligation to do so, and where that party has not consented to the release of the material;
 - (g) Material, the disclosure of which could endanger the environment, e.g. information on the breeding sites of rare species.

A request may also be refused if it would involve the supply of any material in the course of completion. The aforementioned grounds for refusal are to be interpreted in a restrictive way with the public interest served by disclosure weighed against the interests of non-disclosure in each case. Reasons for a refusal to comply with a request for information must be stated in writing. Where only part of the information requested falls within one of the exempt categories, the remainder of the information should be separated out and supplied to the person making the request.

7. Public authorities should respond to a person requesting information as soon as possible and at the latest within six weeks.

8. Environmental information, such as that contained in public registers, should be available to the public for inspection free of charge. Any person requesting information should be provided with adequate facilities for obtaining copies of such information (subject to copyright provisions), on payment of cost of reproduction and dissemination, if appropriate. Where information is held in various forms, it should be provided in the form specified by the person requesting the information, e.g. in written, visual, aural or electronic form.

9. States should ensure that a person who considers that his or her request for information has been wrongfully refused or ignored, or has been inadequately answered by a public authority, or overcharged, may seek judicial or administrative review in accordance with the relevant national legal system.

10. States should regularly publish up-to-date information on the state of the environment, e.g. in a report.

11. States should actively publicize the availability of important national and international documents on the environment, where they exist, such as strategies, programmes, action plans and progress reports on their implementation.

12. States should actively publicize the availability of the texts of international legal instruments, to which they are a party, and which establish procedures for public access to environmental information or public participation rights, preferably in their own language(s) together with relevant conference resolutions or recommendations.

13. States should inform the public of the possibilities of submitting information to international bodies concerning non-compliance with international rules.

14. States should encourage entities whose activities have a significant adverse impact on the environment to report regularly to the public on the environmental impact of their activities.

15. Public access to information stemming from such voluntary schemes as eco-audits ^{1/} should be encouraged, as should eco-labelling schemes for more environmentally friendly products.

II. Public Participation

16. States should facilitate public participation in environmental decision-making processes and decision-making processes having significant environmental implications.

17. States are encouraged to establish formal and informal consultative processes to facilitate the involvement of NGOs in decision-making processes having significant environmental implications and to eliminate impediments or obstacles to public participation.

18. States should make special efforts to promote public participation in environmental policy-making and decisions that are of particular interest to regional and local communities.

19. Consultations should take place early in the decision-making process, at a stage when options are still open and effective public influence can be exerted. States should establish transparent procedures and provide relevant information. Where appropriate, the relevant authorities should give the public additional assistance and explanations. States are encouraged, where feasible, to relate time limits placed on public consultation to those under the access-to-information regimes with a view to ensuring informed public participation.

20. The relevant authorities should be responsible for the effective training of public officials to improve their understanding of their responsibilities in granting the public access to information and facilitating public participation in environmental decision-making.

21. Before decisions significantly affecting the environment are taken, States should introduce measures ensuring that public opinion, including the views of NGOs, other interest groups and environmental advisory bodies, is taken into account.

22. States should ensure public participation in environmental administrative decision-making processes preferably by means of explicit rules governing certain procedures such as, if applicable, environmental impact assessment (EIA) and the issuing of permits or licences, particularly where these may have significant effect on the environment. Those rules could include, *inter alia*, the right to be heard, procedures which include the right to propose alternatives where feasible, a reasonable time to comment, the right to a reasoned decision and the right of recourse to administrative and/or judicial proceedings in order to challenge failures to act and to appeal decisions.

23. States are encouraged to take as a minimum standard the obligations and recommendations on EIA as contained for example in the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991).

24. States should ensure that persons involved in public participation in environmental matters are not penalised in any way for activities that are otherwise lawful.

III. Administrative and Judicial Proceedings

25. The public should have access to administrative and judicial proceedings, as appropriate. Suitable legal guarantees should ensure that proceedings are fair, open, transparent and equitable. It is desirable that proceedings are not prohibitively expensive.

26. It is desirable that standing should be given a wide interpretation in proceedings involving environmental issues.

IV. Implementation of the Guidelines

27. States are encouraged to adopt the necessary strategies for the implementation of the present Guidelines, which should be developed as a result of a broad consultative process.

28. The effective implementation of access to environmental information and public participation in environmental decision-making processes calls for the establishment of a clear regulatory framework providing procedural and institutional guarantees and proper enforcement programmes. Where appropriate, States should set up organisational structures to facilitate the effective operation of the above guarantees, e.g. designation of information officials and officials to promote contacts with the public, the allocation of environmental responsibilities to an ombudsman, etc.

29. States should recognise the special role of local and regional governments and delegate the necessary authority to these bodies to ensure implementation of these Guidelines.

30. States should promote environmental education and training for the general public and specified target groups, especially regarding the methods and techniques of access to information and public participation. The decisive role of NGOs, educational institutions and the media should be recognised and they should be given appropriate support.

31. States should promote regular monitoring of the implementation of the present Guidelines. States are requested to support ongoing activities and facilitate the exchange of experiences of implementation. States should report about the progress made in implementing the present Guidelines to the United Nations Economic Commission for Europe not later than two years after the adoption of the document.

Note:

1/Such as, for example, in Regulation (EEC) no. 1836/93 of 29 June 1993.

Annex 4: SNM Activities on Access to Environmental Information

Since 1992, **Stichting Natuur en Milieu (SNM)** has been directing a series of activities on access to environmental information and, in particular, on the implementation and application of the Directive 90/313/EEC.

These activities include the establishment and co-ordination of the work of a network of experts in all 15 EU member states (as well as 8 non-member states). These experts have been tracking developments in their countries and reporting regularly to SNM.

SNM has also directed the preparation by its experts group of a series of User's

Guides to the Directive and national implementing legislation. A Guide to the Directive has been issued as well as Guides for each of the 15 member states in the language(s) of the member state concerned.

SNM has organised a series of annual workshops on implementation of the Directive, beginning in 1993.

SNM has also recently published a book on **Access to Environmental Information in Europe** which analyses the legislation and practice in 23 European countries, the EU institutions and international developments.