

**Opinion of the Committee of the Regions on the 'Proposal for a Directive of the European Parliament and the Council on Public Access to Environmental Information'**

(2001/C 148/03)

THE COMMITTEE OF THE REGIONS,

having regard to the Proposal for a Directive of the European Parliament and the Council on Public Access to Environmental Information [COM(2000) 402 final — 2000/0169 (COD)];

having regard to the decision of the European Council of 25 July 2000, under Article 175 (paragraph 1) of the Treaty establishing the European Community, to consult the Committee on the subject;

having regard to the decision by the Bureau on June 13, which directs Commission 4 — Spatial Planning, Urban Issues, Energy and Environment, to draw up the relevant opinion;

having regard to the draft opinion (CdR 273/2000 rev. 1) adopted by Commission 4 on 7 December 2000, for which the rapporteur was Margaret Eaton (UK/EPP),

adopted the following opinion at its 37th plenary session on 14 and 15 February 2001 (meeting of 14 February).

**Views and recommendations of the Committee of the Regions**

**General comments regarding the scope of the proposed directive**

The proposed Directive relates to the way environmental information is made available to the public at national, regional and local authority level. However, at this point in the preparation of the Opinion from the Committee of the Regions, two areas require clarification:

- What is the mechanism for the Aarhus Convention to be adopted by the European Commission, European Parliament, and other European institutions?

Article 1 states that 'The objective of the Directive is to ensure that, as a matter of course, environmental information is made available and disseminated to the public ...'. The definition of 'applicant' covers 'any natural or legal person requesting environmental information'. Thus the term applicant is taken to also apply to public authorities themselves. It needs to be noted that in their leadership role some public authorities will themselves require environmental information to be made available from other organisations. This information will then, in due course, be used to provide information for the public. For example, it is important that local and regional government is able to gather information from other public authorities to enable the support of national government to meet objectives relating to climate protection. [This links to the points made in relation to commercial confidentiality set out in paragraph 9.] It is therefore suggested that the definition should be extended by adding the words 'including public authorities themselves'.

**1. The proposal for a Directive on Freedom of Access to Environmental Information**

The proposal contributes to the goal of sustainable development by improving the rights of public access to environmental information. It will enable the public to be better able to participate in the decision-making affecting the environment. This will lead to a better quality of life for present and future generations. These principles are warmly welcomed.

**2. Recital 8 — Who is entitled to request environmental information**

The COR urges the Commission to extend the right of access to environmental information to include any natural or legal person, thereby deleting the precision 'in the Community'.

**3. Article 2[1] — Extending the definition of 'environmental information'**

It is recommended that 'aural' information requires clarification within the terms of the definition. If this term relates only to audio-recorded information, that is similar to information held in written or electronic form. However, if it extends to word-of-mouth information, which is difficult to verify it could be open to misrepresentation. This latter case would pose potential difficulties. As regards the remaining types of information, although these are probably covered in the 1990 Directive, the greater clarity is welcomed.

**4. Article 2[2] — Definition of 'Public authority'**

The proposal for the definition goes further than both the 1990 Directive and the Aarhus Convention. It would cover those organisations that are not in the public sector but are involved with services such as gas, electricity, water or transport. The definition also applies to organisations carrying out functions either directly or indirectly on behalf of the public authority. It would apply to contractors or organisations that manage the information archive or database on behalf of the public authority. The environmental impacts of organisations such as these are clearly significant. Therefore, this widening of the definition of is welcomed.

**5. Article 3[2][a] — Time limits for a response**

The reduction in the time limit from two months to one month is a first welcome step. The COR nevertheless urges for a more prompt service to the citizens. It should also be stated clearly that where a request is submitted to the wrong authority the period only begins to run from the time when the request is received by the correct authority. The COR also proposes that all requests are made in writing.

**6. Article 3[3] — Requests made for a specific purpose**

The Committee of the Regions welcomes this provision. It is considered helpful for the public authority to be notified of the details of any processes and deadlines, which are relevant in connection with the use to which the environmental information is being put.

**7. Article 3[4] — Make reasonable efforts regarding the supply of information in a specific form or format**

It is not clear what the implications of adding this requirement to the proposal will be; however, the test of reasonableness should make it manageable.

**8. Article 3[5] — Practical arrangements under which environmental information shall be effectively made available.**

The COR calls for an obligation on the Member States to work towards creating a system where public authorities have to publish a list/register of the environmental information held by the authority.

**9. Article 4[1] — Criteria for transfer and refusal of requests**

This addresses a failing of the 1990 Directive where information may have been inadvertently denied through applications being made to the wrong authority. In the proposal, public authorities are required to pass the request onto another more appropriate body or authority if they themselves do not hold the information. However, the Aarhus Convention suggests a second option of responding to the applicant and informing them of the authority which is believed to hold the information. The Committee of the Regions believes there is merit in retaining both options. The COR opposes § 4.1.b which allows public authorities to refuse requests which are formulated in too general a manner. Instead the public authorities should be required to advise the applicant on how the application should be drafted in order to obtain the required documents.

**10. Article 4[1][c] — protocol re unfinished documents or internal communications**

It is suggested that further clarity is required regarding the question of 'unfinished documents'. If the information which is stored on file is clear and not open to misinterpretation, then it should be made available on request. Current practice is for working papers such as records of meetings, interviews etc. not to be accessible in draft form. However, if working papers are stored for any length of time they then can become accessible. If such data is used to produce a formal document [after which it may be destroyed], then the formal item should be accessible whilst the working papers are not.

**11. Article 4[2][d] — Emissions and commercially confidential information**

The Committee of the Regions recommends that commercial sensitivity shall be waived in circumstances where information on emissions, relevant for the protection of the environment, should be disclosed.

**12. Article 4[2][f] — Exemption from release for personal data**

This proposal is welcomed. The link is made, between the release of environmental information, with the regime concerning the protection of individuals with regard to the processing of personal data and the free movement of such data.

**13. Article 5 — Charges**

Where charges are incurred the proposal should allow for the supply of information to be dependent on payment. It is common practice to make supply dependent on payment and the Convention explicitly allows this. It is understood that the principle consideration is to respond to enquiries as soon as possible but this may impose problems with debt recovery. If the cost of carrying out procedure for debt recovery is prohibitive, a significant source of reimbursement may be lost to public authorities.

**14. Article 5[3] — Free access to information on public registers or lists**

The Committee of the Regions welcomes this.

**15. Article 6 — Access to Justice**

The COR stresses the importance of an effective access to justice (timely, transparent, affordable and comprehensive); the practical arrangements for this should be based on national law. The process should not entail such high costs that the right of appeal cannot be effectively used.

**16. Article 7[1] — Dissemination of environmental information**

As drafted, the Committee of the Regions finds this unwelcome and suggests that both archive material and monitoring data should be specifically excluded from the proposal. The cost of making all archive material available is likely to outweigh the benefits, whilst monitoring data which has not been interpreted is likely to be misunderstood or misinterpreted.

**17. Article 7[2] — publication of state of the environment reports**

This further pressure to provide State of the Environment reports is welcomed. However, it is important to recognise that these State of the Environment reports do not have to be 'stand alone' documents. It might be the case that all the relevant environmental data is disseminated in a report which addresses sustainable development or well-being.

**18. Article 7[3] — Making information available in emergencies**

The Committee of the Regions recognises this as formalising current good practice and welcomes the measure.

Brussels, 14 February 2001.

*The President  
of the Committee of the Regions*  
Jos CHABERT

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