

Subsidiary Legislation made under s.18.

## **Freedom of Access to Information on the Environment Regulations 2005**

### **LN.2005/165**

*Commencement (LN.2007/006)*

**18.1.2007**

<b>Amending enactments</b>	<b>Relevant current provisions</b>	<b>Commencement date</b>
LN. 2014/060	rr. 19-20	2.5.2014
2018/124	rr. 2(2)(a), 13(2)-(4)	25.5.2018
2019/211	rr. 2(2), 13(2)(ii)	1.1.2021

#### **EU Legislation/International Agreements involved:**

Directive 90/313/EEC

Directive 2003/4/EC

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*In the exercise of the powers conferred on it by section 18 of the Environment Act 2005 and all other enabling powers, the Government has made the following Regulations—*

**PART 1**

*Introductory*

**Title and commencement.**

1. These Regulations may be cited as Freedom of Access to Information on the Environment Regulations 2005 and come into operation on the date designated by the Government by notice in the Gazette.

**Interpretation.**

2.(1) In these Regulations—

“applicant” in relation to a request for environmental information, means the person who made the request;

“the Directive” means Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC, reproduced in the Schedule;

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on—

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;

- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

“Minister” means the Minister with responsibility for information and public relations;

“public authority” means–

- (a) government departments;
- (b) any other body or other person, that carries out functions of public administration; or
- (c) any other body or other person, that is under the control of a person falling within paragraphs (a) or (b) and–
  - (i) has public responsibilities relating to the environment;
  - (ii) exercises functions of a public nature relating to the environment; or
  - (iii) provides public services relating to the environment.

(2) The following expressions have the same meaning in these Regulations as they have in the Gibraltar GDPR, namely–

- (a) *Deleted*
- (b) “the data protection principles”;
- (c) “data subject”; and
- (d) “personal data”.

(3) Except as provided by this regulation, expressions in these Regulations which appear in the Directive have the same meaning in these Regulations as they have in the Directive.

**Application.**

3.(1) Subject to subregulations (3) and (4), these Regulations apply to public authorities.

(2) For the purposes of these Regulations, environmental information is held by a public authority if the information—

(a) is in the authority's possession and has been produced or received by the authority;  
or

(b) is held by another person on behalf of the authority.

(3) These Regulations shall not apply to any public authority to the extent that it is acting in a judicial or legislative capacity.

(4) Each government department is to be treated as a person separate from any other government department for the purposes of Parts 2 and 4 of these Regulations.

**PART 2***Access to environmental information held by public authorities***Dissemination of environmental information.**

4.(1) Subject to subregulation (3), a public authority shall in respect of environmental information that it holds—

(a) progressively make the information available to the public by electronic means which are easily accessible; and

(b) take reasonable steps to organise the information relevant to its functions with a view to the active and systematic dissemination to the public of the information.

(2) For the purposes of subregulation (1) the use of electronic means to make information available or to organise information shall not be required in relation to information collected before 1st January 2005 in non-electronic form.

(3) Subregulation (1) shall not extend to making available or disseminating information which a public authority would be entitled to refuse to disclose under regulation 12.

(4) The information under subregulation (1) shall include at least—

(a) the information referred to in Article 7(2) of the Directive namely—

- (i) texts of international treaties, conventions or agreements, and of Community, national, regional or local legislation, on the environment or relating to it;
  - (ii) policies, plans and programmes relating to the environment;
  - (iii) progress reports on the implementation of the items referred to in (i) and (ii) when prepared or held in electronic form by public authorities;
  - (iv) the reports on the state of the environment referred to in Article 7(3) of the Directive;
  - (v) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;
  - (vi) authorisations with a significant impact on the environment and environmental agreements or a reference to the place where such information can be requested or found in the framework of Article 3 of the Directive;
  - (vii) environmental impact studies and risk assessments concerning the environmental elements referred to in Article 2(1)(a) of the Directive or a reference to the place where the information can be requested or found in the framework of Article 3 of the Directive, and
- (b) facts and analyses of facts which the public authority considers relevant and important in framing major environmental policy proposals.

**Duty to make available environmental information on request.**

5.(1) Subject to subregulation (3) and in accordance with subregulations (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

(2) Information shall be made available under subregulation (1) as soon as possible and no later than 1 month after the date of receipt of the request.

(3) To the extent that the information requested includes personal data of which the applicant is the data subject, subregulation (1) shall not apply to those personal data.

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(4) For the purposes of subregulation (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

(5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to a standardised procedure used.

(6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

**Form and format of information.**

6.(1) Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless—

- (a) it is reasonable for it to make the information available in another form or format;  
or
- (b) the information is already publicly available and easily accessible to the applicant in another form or format.

(2) If the information is not made available in the form or format requested, the public authority shall—

- (a) explain the reason for its decision as soon as possible and no later than 1 month after the date of receipt of the request for the information;
- (b) provide the explanation in writing if the applicant so requests; and
- (c) inform the applicant of the provisions of regulations 11 and 17.

**Extension of time.**

7.(1) Where a request is made under regulation 5, the public authority may extend the period of 1 month referred to in subregulation (2) to 2 months if it reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so.



(2) The provisions referred to in subregulation (1) are–

- (a) regulation 5(2);
- (b) regulation 6(2)(a); and
- (c) regulation 14(2).

(3) Where subregulation (1) applies the public authority shall notify the applicant accordingly as soon as possible and no later than 1 month after the date of receipt of the request.

#### **Charging.**

8.(1) Subject to subregulations (2) to (8), where a public authority makes environmental information available in accordance with regulation 5(1) the authority may charge the applicant for making the information available.

(2) A public authority shall not make any charge for allowing an applicant–

- (a) access to any public registers or lists of environmental information held by the public authority; or
- (b) to examine the information requested at the place which the public authority makes available for that examination.

(3) A charge under subregulation (1) shall not exceed an amount which the public authority is satisfied is a reasonable amount.

(4) A public authority may require advance payment of a charge for making environmental information available and if it does it shall, no later than 1 month after the date of receipt of the request for the information, notify the applicant of this requirement and of the amount of the advance payment.

(5) Where a public authority has notified an applicant under subregulation (4) that advance payment is required, the public authority is not required–

- (a) to make available the information requested; or
- (b) to comply with regulations 6 or 14,

unless the charge is paid no later than 2 months after the date on which it gave the notification.

(6) The period beginning with the day on which the notification of a requirement for an advance payment is made and ending on the day on which that payment is received by the public authority is to be disregarded for the purposes of determining the period of 1 month referred to in the provisions in subregulation (7), including any extension to those periods under regulation 7(1).

(7) The provisions referred to in subregulation (6) are—

- (a) regulation 5(2);
- (b) regulation 6(2)(a); and
- (c) regulation 14(2).

(8) A public authority shall publish and make available to applicants—

- (a) a schedule of its charges; and
- (b) information on the circumstances in which a charge may be made or waived.

**Advice and assistance.**

9.(1) A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

(2) Where a public authority decides that an applicant has formulated a request in too general a manner, it shall—

- (a) ask the applicant as soon as possible and in any event no later than 1 month after the date of receipt of the request, to provide more particulars in relation to the request; and
- (b) assist the applicant in providing those particulars.

(3) Where subregulation (2) applies, in respect of an application under—

- (a) regulation 5(2);
- (b) regulation 6(2)(a); or
- (c) regulation 14(2),

the period of 1 month referred to in those provisions shall be calculated from the date on which the further particulars are received by the public authority.

**Transfer of a request.**

10.(1) Where a public authority that receives a request for environmental information does not hold the information requested but believes that another public authority holds the information, the public authority shall either–

- (a) transfer the request to the other public authority; or
- (b) supply the applicant with the name and address of that authority,

and inform the applicant accordingly with the refusal sent under regulation 14(1).

(2) Where a request is transferred to another public authority, for the purposes of the provisions referred to in subregulation (3) the request is received by that public authority on the date on which it receives the transferred request.

(3) The provisions referred to in subregulation (2) are–

- (a) regulation 5(2);
- (b) regulation 6(2)(a); and
- (c) regulation 14(2).

**Representations and reconsideration.**

11.(1) Subject to subregulation (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

(2) Representations under subregulation (1) shall be made in writing to the public authority no later than 2 months after the date on which the applicant believes that the public authority has failed to comply with the requirement.

(3) The public authority shall on receipt of the representations and free of charge–

- (a) consider them and any supporting evidence produced by the applicant; and

(b) decide if it has complied with the requirement.

(4) A public authority shall notify the applicant of its decision under subregulation (3) as soon as possible and no later than 2 months after the date of receipt of the representations.

(5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under subregulation (4) shall include a statement of—

- (a) the failure to comply;
- (b) the action the authority has decided to take to comply with the requirement; and
- (c) the period within which that action is to be taken.

### **PART 3**

#### *Exceptions to the duty to disclose environmental information*

#### **Exceptions to the duty to disclose environmental information.**

12.(1) Subject to subregulation (2), (3) and (8), a public authority may refuse to disclose environmental information requested if—

- (a) an exception to disclosure applies under subregulation (4) or (5); and
- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

(2) A public authority shall apply a presumption in favour of disclosure.

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

(4) For the purposes of subregulation (1)(a), a public authority may refuse to disclose information to the extent that—

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;
- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;

- (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or
  - (e) the request involves the disclosure of internal communications, including communications between government departments.
- (5) For the purposes of subregulation (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect–
- (a) international relations, defence, national security or public safety;
  - (b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
  - (c) intellectual property rights;
  - (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
  - (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
  - (f) the interests of the person who provided the information where that person–
    - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
    - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
    - (iii) has not consented to its disclosure; or
  - (g) the protection of the environment to which the information relates.
- (6) For the purposes of subregulation (1), a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, if that confirmation or denial would involve the disclosure of information which would adversely affect any of the interests referred to in subregulation (5)(a) and would not be in the public interest under subregulation (1)(b).

(7) For the purposes of a response under subregulation (6), whether information exists and is held by the public authority is itself the disclosure of information.

(8) To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception referred to in subregulation (5)(d) to (g).

(9) Nothing in these Regulations shall authorise a refusal to make available any environmental information contained in or otherwise held with other information which is withheld by virtue of these Regulations unless it is not reasonably capable of being separated from the other information for the purpose of making available that information.

**Personal data.**

13.(1) To the extent that the information requested includes personal data of which the applicant is not the data subject and where either condition in subregulation (2) or (3) is satisfied, a public authority shall not disclose the personal data.

(2) The first condition applies to a case where the information falls within the scope of the Data Protection Act 2004, and the disclosure of that information to a member of the public otherwise than under these Regulations would contravene—

- (i) any of the data protection principles; or
- (ii) the data subjects right to object under the Gibraltar GDPR and in all the circumstances of the case, that the public interest in not disclosing the information outweighs the public interest in disclosing it.

(3) The second condition is that by virtue of any provision of the Data Protection Act 2004 the information is exempt from the right to access and, in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

(4) For the purposes of this regulation a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, to the extent that—

- (a) the giving to a member of the public of the confirmation or denial would contravene any of the data protection principles or the Data Protection Act 2004; or
- (b) by virtue of any provision of the Data Protection Act 2004, the information is exempt from the right of access.

**Refusal to disclose information.**

14.(1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with this regulation.

(2) The refusal shall be made as soon as possible and no later than 1 month after the date of receipt of the request.

(3) The refusal shall specify the reasons for not disclosing the information requested, including—

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

(4) If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.

(5) The refusal shall inform the applicant—

- (a) that he may make representations to the public authority under regulation 11; and
- (b) of the appeal provisions in regulation 17.

**Ministerial certificates.**

15.(1) The Minister may certify that a refusal to disclose information under regulation 12(1) is because the disclosure—

- (a) would adversely affect national security; and
- (b) would not be in the public interest under regulation 12(1)(b).

(2) For the purposes of subregulation (1)—

- (a) the Minister may designate a person to certify the matters in that subregulation on his behalf; and

- (b) a refusal to disclose information under regulation 12(1) includes a response under regulation 12(6).
- (3) A certificate issued in accordance with subregulation (1)–
- (a) shall be conclusive evidence of the matters in that subregulation; and
  - (b) may identify the information to which it relates in general terms.
- (4) A document purporting to be a certificate under subregulation (1) shall be received in evidence and deemed to be such a certificate unless the contrary is proved.
- (5) A document which purports to be certified by or on behalf of the Minister as a true copy of a certificate issued by him under subregulation (1) shall in any legal proceedings be evidence of that certificate.

#### **PART 4**

#### *Appeals and revocation*

#### **Determination by the Gibraltar Regulatory Authority.**

16.(1) Where an applicant is not satisfied with either–

- (a) the information disclosed as a result of an application;
- (b) the withholding of information; or
- (c) the lack of response to an application for environmental information,

the applicant may apply to the Gibraltar Regulatory Authority for a determination requiring the disclosure of the information originally requested.

(2) Upon considering an application pursuant to subregulation (1) the Gibraltar Regulatory Authority may–

- (a) uphold the action of the public authority;
- (b) direct the disclosure of information requested by the applicant;

and in any case before it, issue such directions as it deems appropriate.

#### **Appeal to the Magistrates' Court.**



17.(1) An applicant under regulation 16 or a party to whom a determination made under regulation 16 applies is not satisfied with that determination the applicant or that party may appeal the determination to the magistrates' court.

(2) Upon hearing an appeal pursuant to subregulation (1) the magistrate's court may—

(a) uphold the action of the public authority;

(b) direct the disclosure of information requested by the applicant;

and in any case before it, issue such directions as it deems appropriate.

(3) Where any appeal to the magistrates' court is or is likely to involve the consideration of issues related to national security, defence or public order, the court shall conduct its proceedings in private and, other than to the extent to which the court directs, no reporting of the proceedings shall be permitted.

#### **Revocation.**

18. The Public Health (Freedom of Access to Information on the Environment) Rules 1992 are revoked.

### **PART 5**

#### *Miscellaneous*

#### **Information to be made available in emergencies.**

19.(1) In the event of an imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information held by or for public authorities which could enable the public likely to be affected to take measures to prevent or mitigate harm arising from the threat shall be disseminated, immediately and without delay by the public authority which holds the information.

(2) Where the information is held on behalf of a public authority, the public authority shall take such steps as are required to enable the dissemination of the information referred to in subregulation (1) immediately and without delay.

(4) The requirements of this regulation may be satisfied by creating links to internet sites where the information can be found.

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(5) The exceptions set out in regulation 12 apply to information to which this regulation applies.

**Quality of information.**

20. Without prejudice to regulation 5(4), it shall be the duty of a public authority which provides or disseminates information under these Regulations to ensure that that information is up to date, accurate and comparable, so far as the public authority reasonably believes.

SCHEDULE

Section 2

Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

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

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

Acting in accordance with the procedure laid down in Article 251 of the Treaty in the light of the joint text approved by the Conciliation Committee on 8 November 2002,

Whereas:

(1) Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.

(2) Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment initiated a process of change in the manner in which public authorities approach the issue of openness and transparency, establishing measures for the exercise of the right of public access to environmental information which should be developed and continued. This Directive expands the existing access granted under Directive 90/313/EEC.

(3) Article 8 of that Directive requires Member States to report to the Commission on the experience gained, in the light of which the Commission is required to make a report to the European Parliament and to the Council together with any proposal for revision of the Directive which it may consider appropriate.

(4) The report produced under Article 8 of that Directive identifies concrete problems encountered in the practical application of the Directive.

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(5) On 25 June 1998 the European Community signed the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (“the Aarhus Convention”). Provisions of Community law must be consistent with that Convention with a view to its conclusion by the European Community.

(6) It is appropriate in the interest of increased transparency to replace Directive 90/313/EEC rather than to amend it, so as to provide interested parties with a single, clear and coherent legislative text.

(7) Disparities between the laws in force in the Member States concerning access to environmental information held by public authorities can create inequality within the Community as regards access to such information or as regards conditions of competition.

(8) It is necessary to ensure that any natural and legal person has a right of access to environmental information held by or for public authorities without his having to state an interest.

(9) It is also necessary that public authorities make available and disseminate environmental information to the general public to the widest extent possible, in particular by using information and communication technologies. The future development of these technologies should be taken into account in the reporting on, and reviewing of, this Directive.

(10) The definition of environmental information should be clarified so as to encompass information in any form on the state of the environment, on factors, measures or activities affecting or likely to affect the environment or designed to protect it, on cost-benefit and economic analyses used within the framework of such measures or activities and also information on the state of human health and safety, including the contamination of the food chain, conditions of human life, cultural sites and built structures in as much as they are, or may be, affected by any of those matters.

(11) To take account of the principle in Article 6 of the Treaty, that environmental protection requirements should be integrated into the definition and implementation of Community policies and activities, the definition of public authorities should be expanded so as to encompass government or other public administration at national, regional or local level whether or not they have specific responsibilities for the environment. The definition should likewise be expanded to include other persons or bodies performing public administrative functions in relation to the environment under national law, as well as other persons or bodies acting under their control and having public responsibilities or functions in relation to the environment.

(12) Environmental information which is physically held by other bodies on behalf of public authorities should also fall within the scope of this Directive.

(13) Environmental information should be made available to applicants as soon as possible and within a reasonable time and having regard to any timescale specified by the applicant.

(14) Public authorities should make environmental information available in the form or format requested by an applicant unless it is already publicly available in another form or format or it is reasonable to make it available in another form or format. In addition, public authorities should be required to make all reasonable efforts to maintain the environmental information held by or for them in forms or formats that are readily reproducible and accessible by electronic means.

(15) Member States should determine the practical arrangements under which such information is effectively made available. These arrangements shall guarantee that the information is effectively and easily accessible and progressively becomes available to the public through public telecommunications networks, including publicly accessible lists of public authorities and registers or lists of environmental information held by or for public authorities.

(16) The right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases. Grounds for refusal should be interpreted in a restrictive way, whereby the public interest served by disclosure should be weighed against the interest served by the refusal. The reasons for a refusal should be provided to the applicant within the time limit laid down in this Directive.

(17) Public authorities should make environmental information available in part where it is possible to separate out any information falling within the scope of the exceptions from the rest of the information requested.

(18) Public authorities should be able to make a charge for supplying environmental information but such a charge should be reasonable. This implies that, as a general rule, charges may not exceed actual costs of producing the material in question. Instances where advance payment will be required should be limited. In particular cases, where public authorities make available environmental information on a commercial basis, and where this is necessary in order to guarantee the continuation of collecting and publishing such information, a market-based charge is considered to be reasonable; an advance payment may be required. A schedule of charges should be published and made available to applicants together with information on the circumstances in which a charge may be levied or waived.

(19) Applicants should be able to seek an administrative or judicial review of the acts or omissions of a public authority in relation to a request.

(20) Public authorities should seek to guarantee that when environmental information is compiled by them or on their behalf, the information is comprehensible, accurate and comparable. As this is an important factor in assessing the quality of the information supplied the method used in compiling the information should also be disclosed upon request.

(21) In order to increase public awareness in environmental matters and to improve environmental protection, public authorities should, as appropriate, make available and disseminate information on the environment which is relevant to their functions, in particular by means of computer telecommunication and/or electronic technology, where available.

(22) This Directive should be evaluated every four years, after its entry into force, in the light of experience and after submission of the relevant reports by the Member States, and be subject to revision on that basis. The Commission should submit an evaluation report to the European Parliament and the Council.

(23) Since the objectives of the proposed Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(24) The provisions of this Directive shall not affect the right of a Member State to maintain or introduce measures providing for broader access to information than required by this Directive,

HAVE ADOPTED THIS DIRECTIVE:

Article 1  
Objectives

The objectives of this Directive are:

- (a) to guarantee the right of access to environmental information held by or for public authorities and to set out the basic terms and conditions of, and practical arrangements for, its exercise; and
- (b) to ensure that, as a matter of course, environmental information is progressively made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination to the public of environmental information. To this end the use, in particular, of computer telecommunication and/or electronic technology, where available, shall be promoted.

Article 2  
Definitions

For the purposes of this Directive:

1. “Environmental information” shall mean any information in written, visual, aural, electronic or any other material form on:

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).

2. “Public authority” shall mean:

- (a) government or other public administration, including public advisory bodies, at national, regional or local level;
- (b) any natural or legal person performing public administrative functions under national law, including specific duties, activities or services in relation to the environment; and

- (c) any natural or legal person having public responsibilities or functions, or providing public services, relating to the environment under the control of a body or person falling within (a) or (b).

Member States may provide that this definition shall not include bodies or institutions when acting in a judicial or legislative capacity. If their constitutional provisions at the date of adoption of this Directive make no provision for a review procedure within the meaning of Article 6, Member States may exclude those bodies or institutions from that definition.

- 3. "Information held by a public authority" shall mean environmental information in its possession which has been produced or received by that authority.
- 4. "Information held for a public authority" shall mean environmental information which is physically held by a natural or legal person on behalf of a public authority.
- 5. "Applicant" shall mean any natural or legal person requesting environmental information.
- 6. "Public" shall mean one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organisations or groups.

### Article 3

#### Access to environmental information upon request

- 1. Member States shall ensure that public authorities are required, in accordance with the provisions of this Directive, to make available environmental information held by or for them to any applicant at his request and without his having to state an interest.
- 2. Subject to Article 4 and having regard to any timescale specified by the applicant, environmental information shall be made available to an applicant:
  - (a) as soon as possible or, at the latest, within one month after the receipt by the public authority referred to in paragraph 1 of the applicant's request; or
  - (b) within two months after the receipt of the request by the public authority if the volume and the complexity of the information is such that the one-month period referred to in (a) cannot be complied with. In such cases, the applicant shall be informed as soon as possible, and in any case before the end of that one-month period, of any such extension and of the reasons for it.
- 3. If a request is formulated in too general a manner, the public authority shall as soon as possible, and at the latest within the timeframe laid down in paragraph 2(a), ask the applicant



to specify the request and shall assist the applicant in doing so, e.g. by providing information on the use of the public registers referred to in paragraph 5(c). The public authorities may, where they deem it appropriate, refuse the request under Article 4(1)(c).

4. Where an applicant requests a public authority to make environmental information available in a specific form or format (including in the form of copies), the public authority shall make it so available unless:

- (a) it is already publicly available in another form or format, in particular under Article 7, which is easily accessible by applicants; or
- (b) it is reasonable for the public authority to make it available in another form or format, in which case reasons shall be given for making it available in that form or format.

For the purposes of this paragraph, public authorities shall make all reasonable efforts to maintain environmental information held by or for them in forms or formats that are readily reproducible and accessible by computer telecommunications or by other electronic means.

The reasons for a refusal to make information available, in full or in part, in the form or format requested shall be provided to the applicant within the time limit referred to in paragraph 2(a).

5. For the purposes of this Article, Member States shall ensure that:

- (a) officials are required to support the public in seeking access to information;
- (b) lists of public authorities are publicly accessible; and
- (c) the practical arrangements are defined for ensuring that the right of access to environmental information can be effectively exercised, such as:
  - the designation of information officers;
  - the establishment and maintenance of facilities for the examination of the information required,
  - registers or lists of the environmental information held by public authorities or information points, with clear indications of where such information can be found.

Member States shall ensure that public authorities inform the public adequately of the rights they enjoy as a result of this Directive and to an appropriate extent provide information, guidance and advice to this end.

Article 4  
Exceptions

1. Member States may provide for a request for environmental information to be refused if:
  - (a) the information requested is not held by or for the public authority to which the request is addressed. In such a case, where that public authority is aware that the information is held by or for another public authority, it shall, as soon as possible, transfer the request to that other authority and inform the applicant accordingly or inform the applicant of the public authority to which it believes it is possible to apply for the information requested;
  - (b) the request is manifestly unreasonable;
  - (c) the request is formulated in too general a manner, taking into account Article 3(3);
  - (d) the request concerns material in the course of completion or unfinished documents or data;
  - (e) the request concerns internal communications, taking into account the public interest served by disclosure.

Where a request is refused on the basis that it concerns material in the course of completion, the public authority shall state the name of the authority preparing the material and the estimated time needed for completion.

2. Member States may provide for a request for environmental information to be refused if disclosure of the information would adversely affect:
  - (a) the confidentiality of the proceedings of public authorities, where such confidentiality is provided for by law;
  - (b) international relations, public security or national defence;
  - (c) the course of justice, the ability of any person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature;

- (d) the confidentiality of commercial or industrial information where such confidentiality is provided for by national or Community law to protect a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy;
- (e) intellectual property rights;
- (f) the confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for by national or Community law;
- (g) the interests or protection of any person who supplied the information requested on a voluntary basis without being under, or capable of being put under, a legal obligation to do so, unless that person has consented to the release of the information concerned;
- (h) the protection of the environment to which such information relates, such as the location of rare species.

The grounds for refusal mentioned in paragraphs 1 and 2 shall be interpreted in a restrictive way, taking into account for the particular case the public interest served by disclosure. In every particular case, the public interest served by disclosure shall be weighed against the interest served by the refusal. Member States may not, by virtue of paragraph 2(a), (d), (f), (g) and (h), provide for a request to be refused where the request relates to information on emissions into the environment.

Within this framework, and for the purposes of the application of subparagraph (f), Member States shall ensure that the requirements of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data are complied with.

3. Where a Member State provides for exceptions, it may draw up a publicly accessible list of criteria on the basis of which the authority concerned may decide how to handle requests.

4. Environmental information held by or for public authorities which has been requested by an applicant shall be made available in part where it is possible to separate out any information falling within the scope of paragraphs 1(d) and (e) or 2 from the rest of the information requested.

5. A refusal to make available all or part of the information requested shall be notified to the applicant in writing or electronically, if the request was in writing or if the applicant so requests, within the time limits referred to in Article 3(2)(a) or, as the case may be, (b). The

notification shall state the reasons for the refusal and include information on the review procedure provided for in accordance with Article 6.

Article 5  
Charges

1. Access to any public registers or lists established and maintained as mentioned in Article 3(5) and examination in situ of the information requested shall be free of charge.
2. Public authorities may make a charge for supplying any environmental information but such charge shall not exceed a reasonable amount.
3. Where charges are made, public authorities shall publish and make available to applicants a schedule of such charges as well as information on the circumstances in which a charge may be levied or waived.

Article 6  
Access to justice

1. Member States shall ensure that any applicant who considers that his request for information has been ignored, wrongfully refused (whether in full or in part), inadequately answered or otherwise not dealt with in accordance with the provisions of Articles 3, 4 or 5, has access to a procedure in which the acts or omissions of the public authority concerned can be reconsidered by that or another public authority or reviewed administratively by an independent and impartial body established by law. Any such procedure shall be expeditious and either free of charge or inexpensive.
2. In addition to the review procedure referred to in paragraph 1, Member States shall ensure that an applicant has access to a review procedure before a court of law or another independent and impartial body established by law, in which the acts or omissions of the public authority concerned can be reviewed and whose decisions may become final. Member States may furthermore provide that third parties incriminated by the disclosure of information may also have access to legal recourse.
3. Final decisions under paragraph 2 shall be binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused under this Article.

Article 7  
Dissemination of environmental information

1. Member States shall take the necessary measures to ensure that public authorities organise the environmental information which is relevant to their functions and which is held by or for them, with a view to its active and systematic dissemination to the public, in particular by means of computer telecommunication and/or electronic technology, where available.

The information made available by means of computer telecommunication and/or electronic technology need not include information collected before the entry into force of this Directive unless it is already available in electronic form.

Member States shall ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunication networks.

2. The information to be made available and disseminated shall be updated as appropriate and shall include at least:

- (a) texts of international treaties, conventions or agreements, and of Community, national, regional or local legislation, on the environment or relating to it;
- (b) policies, plans and programmes relating to the environment;
- (c) progress reports on the implementation of the items referred to in (a) and (b) when prepared or held in electronic form by public authorities;
- (d) the reports on the state of the environment referred to in paragraph 3;
- (e) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;
- (f) authorisations with a significant impact on the environment and environmental agreements or a reference to the place where such information can be requested or found in the framework of Article 3;
- (g) environmental impact studies and risk assessments concerning the environmental elements referred to in Article 2(1)(a) or a reference to the place where the information can be requested or found in the framework of Article 3.

3. Without prejudice to any specific reporting obligations laid down by Community legislation, Member States shall take the necessary measures to ensure that national, and, where appropriate, regional or local reports on the state of the environment are published at regular intervals not exceeding four years; such reports shall include information on the quality of, and pressures on, the environment.

4. Without prejudice to any specific obligation laid down by Community legislation, Member States shall take the necessary measures to ensure that, in the event of an imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information held by or for public authorities which could enable the public likely to be affected to take measures to prevent or mitigate harm arising from the threat is disseminated, immediately and without delay.

5. The exceptions in Article 4(1) and (2) may apply in relation to the duties imposed by this Article.

6. Member States may satisfy the requirements of this Article by creating links to Internet sites where the information can be found.

#### Article 8

#### Quality of environmental information

1. Member States shall, so far as is within their power, ensure that any information that is compiled by them or on their behalf is up to date, accurate and comparable.

2. Upon request, public authorities shall reply to requests for information pursuant to Article 2(1)b, reporting to the applicant on the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling, and pre-treatment of samples, used in compiling the information, or referring to a standardised procedure used.

#### Article 9

#### Review procedure

1. Not later than 14 February 2009, Member States shall report on the experience gained in the application of this Directive.

They shall communicate the report to the Commission not later than 14 August 2009.

No later than 14 February 2004, the Commission shall forward to the Member States a guidance document setting out clearly the manner in which it wishes the Member States to report.

2. In the light of experience and taking into account developments in computer telecommunication and/or electronic technology, the Commission shall make a report to the European Parliament and to the Council together with any proposal for revision, which it may consider appropriate.

Article 10  
Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 14 February 2005. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 11  
Repeal

Directive 90/313/EEC is hereby repealed with effect from 14 February 2005.

References to the repealed Directive shall be construed as referring to this Directive and shall be read in accordance with the correlation table in the Annex.

Article 12  
Entry into force

This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.

Article 13  
Addressees

This Directive is addressed to the Member States.

Done at Brussels, 28 January 2003.

For the European Parliament  
The President  
P. Cox

For the Council  
The President  
G. Papandreou