Public access to environmental information (repeal. Directive 90/313/EEC)

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The Commission presents a report on the experience gained in the application of Directive 2003/4/EC on public access to environmental information. Taking into account developments in electronic technology, the review forms part of the Digital Agenda for Europe. It focuses on the new provisions, such as the broader definitions of terms and more active dissemination of information. It must also be seen in the context of recent policy developments such as the Communication on Implementation, in which the Commission identified access to information as a key priority for improving implementation of environmental law and committed itself to assessing how to make the Directive more effective.

The report recalls that the Directive built on the experience gained under its predecessor, Directive 90/313 /EEC, and it examines the changes introduced by the Directive.

In the Commission's view, **overall, the level of transposition seems satisfactory**. However, there are a **number of difficulties** in both transposition and practical application. It highlights the following points:

New definition of "environmental information": the Commission has found only isolated instances of incorrect, notably incomplete or ambiguous, transposition of the definition of "environmental information" into the laws of the Member States. It is following these up with the Member States concerned. As for application of the definition, the Commission has learned of instances where national authorities have been reluctant to classify certain sector-specific or technical documents as "environmental information". It discusses the broad interpretation by the Court of Justice in its case-law. The Commission is following up on only a limited number of apparently too narrow interpretations by public authorities.

Article 4 – exceptions: Article 4 is one of the key provisions of the Directive. It contains an exhaustive list of all cases where Member States may refuse a request for environmental information. Disclosure is the general rule, unless one of the specific exceptions applies. The report notes the following points:

- some national legislation unduly adds grounds for refusal to those in the Directive;
- Member States feel that certain terms, although used in the previous directive, still pose difficulties when it comes to interpretation;
- the relationship between Article 4 and provisions on access to information in sector-specific EU legislation is sometimes obscure;

Article 5 - charges: access to clear rules on the fees charged could be further improved to ensure greater transparency. This is particularly valid in cases where Member States opted to make the rules available only at local level. In that case, availability should be improved by further means, such as dedicated websites, in order to create an easily accessible, well-structured framework on charges. Some Member States have adopted legislation clearly indicating the costs charged. This solution ensures legal certainty and, at the same time, guarantees wide availability.

Article 6 - access to justice: there are certain shortcomings with application of Article 6 in some Member States. If the provisions in the Directive are to be effective, they must be applied to all levels of appeal.

Article 7 - dissemination of environmental information: Member States have implemented this provision in different ways. Most offer electronic portals and/or websites to give access to some of the categories of information listed in Article 7(2) at different levels of government. However, it can be difficult to find online information on how individual environmental directives are implemented in national legislation and how authorities are meeting their demands. In general, to allow easier and more effective use of information, further progress is needed on how active dissemination is organised.

Article 8 - quality of environmental information: data quality proved a difficult objective as it largely depends on resources, capacity and technology. Moreover, there is often no standard method to ensure and measure data quality and achieve comparability of environmental information.

Overall, the Commission considers that application of the Directive has substantially improved access to environmental information on request. The Commission follows up individual instances of infringements in specific Member States. It expects that, over time, the new provisions will be adequately integrated into the Member States' legal orders and duly applied by their authorities.

The report adds that the emergence of an information society with an increased emphasis on wide access requires a shift from an approach dominated by information-on-request needs to an approach centred on active and wide dissemination using the latest technologies. The Directive leaves flexibility for Member States to choose the appropriate means to disseminate environmental information actively and accommodate changes in computer telecommunications and electronic technology. Some Member States have developed user-friendly websites – for example, allowing the public to see on a map the level of waste-water treatment for their city or town. In that context, the Commission calls on all Member States to make the widest possible use of the provisions on active dissemination.

In line with its Communication on Implementation and the proposed 7th Environmental Action Programme, the Commission will seek to help Member States to structure information better for active dissemination. It will also conduct separate studies to review in more detail the current practices on active dissemination and the challenges related to the quality of environmental information. Depending on the outcome and on wider developments in information technology, the Commission will decide whether any further amendments to the Directive might be necessary in the future.