

Decision of 21 March 1997 on public access to European Environment Agency documents

Official Journal C 282, 18 September 1997, pp. 5-7

Explanatory memorandum

1. Pursuant to Council Regulation (EEC) No 1210/90 of 7 May 1990 on the establishment of the European Environment Agency and the European environment information and observation network (1) it is one of the tasks of the Agency 'to ensure that the public is properly informed about the state of the environment' (Article 1 (2)). In conformity with this general statement, the Agency is in charge of ensuring 'the broad dissemination of reliable environmental information' (Article 2, point (vi)).

2. Considering that free access to available information on the environment held by public authorities of Member States will improve environmental protection, access to documents held by Member States has been ensured by Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment (2).

3. On 6 December 1993 the Council and the Commission approved a code of conduct concerning public access to Council and Commission documents (3). Shortly afterwards, both institutions, implementing this code of conduct, adopted decisions on public access to their respective documents (4).

4. The Agency has until now applied the Commission decision by analogy. However, having been granted legal personality and legal autonomy, it is not bound by the abovementioned decisions and it is therefore necessary for the Agency to adopt its own set of rules on public access to European Environment Agency documents.

It is strongly indicated that these rules follow closely those adopted by the Council and the Commission. In conformity with the principle of legal autonomy, the decision does not refer to the abovementioned code of conduct but is to be applied on an independent basis.

5. As to the substance of the decision, the point of departure should be, and this should be made perfectly clear, that the Agency is determined to grant access to existing documents in the widest possible way. The purpose of the decision is to set up the rules following which the public is entitled to apply for available documents without having to prove an interest. It must be understood that the applicants are only entitled to receive or to consult existing documents. There will be no obligation for the Agency to undertake research work or to produce new documents at the request of the public.

6. Access to documents (whatever their format) will normally be restricted to documents emanating from the Agency. For all other documents requested, applicants should be invited to apply to the authority from which these documents emanate.

7. While consultation of Agency documents on Agency premises will normally be free of charge, the Agency should have the possibility to charge a small fee for photocopies of documents exceeding 30 pages.

8. Access to Agency documents should be refused under certain conditions, especially in cases where public interest, the protection of the individual and of privacy, the protection of commercial and industrial secrecy so require. For reasons of coherence, it was found advisable to draft these exceptions (Article 5) exactly the same way as did the code of conduct adopted by the Council and the Commission.

9. The procedure set up by the decision is as follows:

- all applications should be addressed to the Office Executive Director. All requests should be handled under the responsibility of the Executive Director,
- if the Agency intends to refuse access to documents, the applicant is to be informed in writing of the reasons motivating this intention. Against this decision, the applicant may lodge an appeal to the Management Board chairperson. It is expected that this will take place only on very exceptional occasions.

- If the Management Board chairperson decides to reject the appeal, its decision shall state the reasons thereof and inform the applicant of the possibility of referring the matter to the Ombudsman pursuant to Article 138c of the EC Treaty.

10. The decision of the Management Board of the European Environment Agency has been adopted and should be reviewed after two years by the same body. It should be published in the Official Journal of the European Communities ('C' series) and made available to the public.

Text of the decision

I. The public shall have the widest possible access to Agency documents under the conditions laid down in this decision.

'Agency documents' means any existing written text, whatever its format, containing existing data and emanating from the European Environment Agency. This decision is not applicable to documents already published.

II. An application for access to an Agency document shall be sent in writing to the Executive Director of the Agency (5). Applicants do not have to prove an interest.

Applications must be made in a sufficiently precise manner and must contain information enabling the particular document requested to be identified. Where necessary, the applicant shall be asked for further details.

III. The applicant shall have access to Agency documents either by consulting them on Agency premises or by having a copy sent at his own expense. For photocopies exceeding 30 sheets of paper, the Agency may charge a fee of ECU 10, plus ECU 0,036 per sheet. Charges for information in other formats shall be set on a case-by-case basis but shall not exceed what is reasonable.

Documents shall be provided in the language available, taking account of the applicant's preference.

Anyone given access to an Agency document may not sell the document, or distribute it for commercial purposes without prior authorization. Reproduction of published documents is authorized, provided the source is acknowledged.

IV. Applications shall be dealt with as quickly as possible under the responsibility of the Executive Director.

The applicant shall be informed in writing within one month whether his application is granted or whether the intention is to refuse access. In the latter case, the applicant shall be informed of the reasons for this intention. He shall also be informed that he has one month in which to apply to the Management Board chairperson for review of the intention to refuse access failing which he will be deemed to have withdrawn his application.

Failure to reply to an application within a month of submission shall be equivalent to a refusal. In this case the applicant may apply to the Management Board chairperson within one month, failing which he will be deemed to have withdrawn his application.

The decision on the application for review shall be taken as soon as possible and within two months of submission of such application, at the latest. If the application is rejected, the decision shall state the grounds on which it is based. At the same time, the applicant shall be informed of the possibility of referring the matter of the Ombudsman pursuant to the provisions of Article 138e of the EC Treaty.

V. Access to an Agency document shall not be granted where its disclosure could undermine

- 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 the Community's financial interests,

- the protection of confidentiality as requested by the natural or legal person who supplied any of the information contained in the document or as required by the legislation of the member country which supplied any of that information.

Access to an Agency document may be refused in order to protect the confidentiality of the Agency's proceedings.

VI. This decision shall be reviewed after two years of operation. In preparation for that review, the Executive Director shall submit in due time a report to the Management Board on the implementation of this Decision.

VII. This Decision shall take effect on 1 June 1997. It shall be published in the Official Journal of the European Communities and made available to the public.

(1) OJ L 120, 11. 5. 1990, p. 1.

(2) OJ L 158, 23. 6. 1990, p. 56.

(3) OJ L 340, 31. 12. 1993, p. 41.

(4) Council Decision of 20. 12. 1993 on public access to Council Documents (OJ L 340, 31. 12. 1993, p. 43), Commission Decision of 8. 2. 1994 on public access to Commission documents (OJ L 46, 18. 2. 1994, p. 58), as modified by Decision of 19. 9. 1996 (OJ L 247, 28. 9. 1996, p. 45).

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