



DECISION OF THE COUNCIL OF MINISTERS

No _____, date _____

ON

ACCESS TO PUBLIC ON ENVIRONMENTAL INFORMATION *

Pursuant to the Article 100 of the Constitution, and to Articles 42 and 43 of the Law no dated “On Environmental Protection”, the Council of Ministers

DECIDED:

CHAPTER I

GENERAL PROVISIONS

1. Scope of the Decision

- a) The scope of the Decision is to ensure that environmental information is continuously made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination to the public and, to guarantee the right to access to environmental information held by or for public authorities.
- b) This Decision sets out the basic terms and conditions and practical arrangements for the exercise of the right to access to environmental information and for dissemination to the public of environmental information and to make possible a free exchange of views, and more effective participation by the public in environmental decision making.

2. Definitions:

- a) “**Environmental information**” has the meaning as referred in the Article 42 of the Law no dated “On Environmental Protection”;
- b) “**Public Authority**”, has the meaning as referred in the Article 4 of the Law no.. dated ... “On Environmental Protection”;

* It transposes 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; 32003L0004 OJ L 041 , 14/02/2003 P. 0026 - 0032

- c) “**Information held by public authority**” means environmental information in its possession which has been produced or received by that public authority;
- d) “**Information held for a public authority**” means environmental information which is physically held by a natural or legal person on behalf of a public authority;
- e) “**Applicant**” means any natural and legal person requesting environmental information;
- f) “**Public**” has the meaning as referred in the Article 4 of the Law no. dated “On Environmental Protection”

CHAPTER II

AVAILABILITY AND DISSEMINATION OF ENVIRONMENTAL INFORMATION

3. Dissemination of environmental information

- a) Subject to Sub-paragraph b) public authorities collect and organises the environmental information which is relevant to its functions and which is held by or for them, in order to systematically disseminate it to the public by means of computer telecommunication and/or electronic technology, where available.
- b) The requirement to make environmental information available by means of computer telecommunication and/or electronic technology does not apply to environmental information collected before this Decision comes into force, unless such information is already in electronic form.
- c) The public authorities inform the public adequately of the rights they enjoy under this Decision and provide information, guidance and advice to this end.
- d) The public authorities make all efforts to maintain environmental information held by or for it and which is relevant to its functions, in forms of format that are readily reproducible and accessible by the public by means of computer telecommunications and/or by electronic technology.

4. Types of information made available and disseminated to the public

The relevant public authorities makes available and disseminate to the public at least the following information:

- a) texts of international treaties, conventions or agreements, and of European Community, national, or local legislation, on the environment or relating to it;
- b) policies, plans and programmes on the environment or relating to the environment;
- c) progress reports on the implementation of the two above-mentioned items when prepared or held in electronic form by public authorities;

- d) the reports on the state of the environment referred to in Paragraph 5;
- e) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;
- f) Authorisations, permits and licences with a significant impact on the environment and environmental agreements or a reference to the place where such information can be requested or found;
- g) Environmental impact studies and risk assessments concerning the environmental elements such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, and Protected Areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements, or a reference to the place where the information can be requested or found.

5. State of the environment reports

- a) Relevant public authorities shall publish reports on the state of the environment at least every four years [every two years]¹.
- b) Such reports are on a national level and, where appropriate on a regional or local level.
- c) Such reports shall, in particular, include information on the quality of, and pressures on, the environment.

6. Dissemination of environmental information in the event of imminent threat

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.

CHAPTER III

PROCEDURES ON ACCESS TO ENVIRONMENTAL INFORMATION UPON REQUEST

¹ Note that the existing Law on Environmental Protection requires such reports every 2 years. The Directive requires reports “at regular intervals not exceeding four years”. The new draft LEP does not specify the frequency of such reports. Thus still need to discuss whether reports should be every 2 years or every 4 years: one the one hand more frequent reports may be better, but on the other hand there is the question whether the relevant public authorities have the capacity to prepare reports every 2 years.

7. Access to environmental information upon request

- a) The public authority makes available environmental information held by or for them to any applicant at his request.
- b) The applicant is not obliged to state an interest when requesting the environmental information from the public authority.
- c) The public authority makes the environmental information available to the applicant as soon as possible or at the latest, within one month after the receipt of the request by the public authority.

8. Form or format of environmental information provided

- a) Subject to Sub-paragraph b), where an applicant request that the environmental information be provided in a specific form or format, including in the form of copies, the public authority makes that environmental information available in that form or format requested.
- b) The public authority does not make environmental information available, as provided in the Sub-paragraph a) when:
 - i. the environmental information is publicly available in another form or format, as provided in the Paragraph 4 and is easily accessible by the applicant, or
 - ii. it is reasonable for the public authority to make the environmental information available in another form or format. In such cases the public authority gives reasons for making the environmental information available in such form or format.
- c) Where Sub-paragraph b) applies, the public authority shall give its reasons in writing to the applicant for refusing to make the environmental information available, in full or in part, in the form or format requested within one month of the request.
- d) For the purposes of this Paragraph, public authorities shall take all reasonable steps 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.

9. Responsibilities of the public authority

The responsibilities of the public authority are as follows:

- a) Support the public in seeking access to information
- b) Make available and accessible the list of public authorities/institutions
- c) Defines the practical arrangements for ensuring the exercise of right to access to environmental information including the designation of information officers, the

establishment and maintenance of facilities for the examination of the information required, and registers or lists of the environmental information held by public authorities or information points with clear indications of where such information can be found.

10. Delays in providing the environmental information due to its volume or complexity

- a) When the volume or the complexity of the information is such that the one-month period referred in the Paragraph 7 c) of this decision is not enough time, the public authority makes the environmental information available to the applicant within two months after the receipt of his request.
- b) The public authority informs the applicant before the ending of one month period of such extension and of the reasons for it.

11. Delays in providing the environmental information due to an unclear request

- a) When the request for environmental information is formulated in too general a manner the public authority asks to the applicant as soon as possible, and at the latest within one month of the request, to specify the request.
- b) The public authority shall assist the applicant in specifying the request, in particular by providing information on the use of the public registers provided in the Paragraph 9.c).

12. Exceptions to the duty to disclose environmental information

- a) The public authority refuses the request for environmental information in cases when disclosure of the information would adversely affect:
 - i. the confidentiality of the proceedings of public authorities, where such confidentiality is provided for by the Law “On data protection” or other legislation;
 - ii. international relations, public security or national defence;
 - iii. the course of justice, the possibility of any person to receive a fair trial or the possibility of a public authority to conduct an enquiry of a criminal or disciplinary nature;
 - iv. the confidentiality of commercial or industrial information where such confidentiality is provided for by the Law “On data protection” or other legislation to protect a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy;
 - v. Intellectual property rights;

- vi. 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 the Law “On data protection” or other legislation;
 - vii. 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;
 - viii. the protection of the environment to which such information relates, such as the location of rare species.
- b) The public authority may refuse a request for environmental information if:
- i. The information requested is not held for or by the public authority to whom the request is made. 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 public authority and inform the applicant accordingly. Alternatively the public authority may inform the applicant of the details of the public authority to which it believes it is possible to apply for the information requested;
 - ii. The request is manifestly unreasonable;
 - iii. The request is formulated in too general a manner, taking into account Paragraph 11;
 - iv. The request concerns material in the course of completion or unfinished documents or data. In such a case the public authority shall inform the applicant of the name of the authority preparing the material and the estimated time needed for completion;
 - v. The request concerns internal communications, taking into account the public interest served by disclosure;
- c) Where a public authority intends to refuse a request for environmental information, in full or in part, it shall, before making a decision on a case by case basis, take into account the public interest served by disclosure of the information. In every case the public interest served by disclosure shall be weighed against the interest served by the refusal.
- d) For the purposes of Sub-paragraph a) points i, iv, vi, vii and viii a public authority shall not refuse a request for environmental information where the request relates to information on emissions into the environment.

- e) Environmental information held for or by a public authority which has been requested by an applicant shall be made available in part where it is possible to separate out any information which falls within the scope of Sub-paragraph a) or Sub-paragraph b) points iv or v.

13. Reasons for refusal of providing information

- a) The public authority gives reasons for the refusal to make information available, in full or in part, in writing or electronically to the applicant.
- b) The public authority gives those reasons within the timeframe provided in the Paragraph 8 c) or where relevant Paragraph 10 of this Decision.
- c) At the same time as giving reasons for the refusal, the public authority shall also inform the applicant of his rights to administrative and judicial appeal as set out in Paragraph 15.

CHAPTER IV FINAL DISPOSITIONS

14. Charge for receiving environmental information

- a) The access to any public registers or lists established and maintained as provided in the Paragraph 9.a).iii, and examination *in situ* of the information requested is free of charge.
- b) The public authority defines a reasonable charge (amount) to be paid by the applicant for receiving any environmental information.
- c) The public authority publishes the schedule of such charges as well as information on the circumstances in which a charge may be levied or waived.

15. Administrative and Judicial Appeal

- a) The applicant who considers that his/her rights, recognized by this decision, are infringed, is entitled to make an administrative appeal, as provided by the Article 15 of the Law no. 8503, dated 30.6.1999 “On the right to information on official documents”.

The applicant who considers that his/her rights, recognized by this decision, are infringed, is entitled to pursue a judicial appeal, as provided by the Article 16 of the Law no. 8503, dated 30.6.1999 “On the right to information on official documents”.

16. Sanctions

The representative of the public authority, who provides to the applicant false information, or who alters, defaces, blocks, erases, destroys or conceals any record held by the public authority which the applicant would have been entitled to will be subject to the provisions of the Article 186 of the Albanian Penal Code.

17. Implementation

The Ministry of Environment, Forestry and Water Administration is in charge for the implementation of this Decision.

18. Entry into force

This Decision of the Council of Ministers will enter into force on its publication in the Official Journal.