



MINISTERIAL CONFERENCE
ENVIRONMENT FOR EUROPE

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**DRAFT GUIDELINES ON ACCESS TO ENVIRONMENTAL INFORMATION
AND PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION-MAKING**

submitted by the

**ECE Working Group of Senior Governmental Officials
"Environment for Europe"**



UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE

PREAMBLE

Recalling Principle 10 of the Rio Declaration on Environment and Development which states that: "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level",

Recognizing that in order to increase awareness of environmental problems and promote effective public participation, access to environmental information should be guaranteed,

Recognizing that public participation contributes to the endeavours of public authorities to protect the environment, and bearing in mind that environmental policy and decision-making should not be restricted to the concerns of authorities,

Recognizing that in order to promote effective public participation the public need to be aware of the means and methods of participation in environmental decision-making processes, and in the solving of environmental problems,

Recognizing that public participation can be a source of additional information and scientific and technical knowledge to the decision makers,

Convinced that environmental authorities should raise public awareness in order to promote greater public understanding and support for environmental policies and enforcement,

Aware that the promotion of public participation requires the transparency and the accountability of public authorities, thus improving their credibility and strengthening support for their activities,

Concerned that when emphasizing the importance of public participation in protecting environmental rights, it should also be recognized that all persons, both individually and in association with others, have a duty to protect and preserve the environment,

Whereas practicable access to the courts and administrative complaints procedures for individuals and public interest groups will ensure that their legitimate interests are protected and that prescribed environmental measures are effectively enforced and illegal practices stopped,

The following Guidelines are approved:

Nothing in these Guidelines shall be construed as diminishing any of the rights of access to information and public participation which may be guaranteed under the laws of any member State or under any agreement to which it is a party.

I. Access to Environmental Information

1. For the purpose of these Guidelines environmental information means any information on the state of water, air, soil, fauna, flora, land and natural sites, and on activities or measures adversely affecting or likely to affect these, and on activities or measures designed to protect these, including administrative measures and environmental management programmes.
2. Any natural or legal person should have free access to environmental information at their request, subject to the terms and conditions contained in these Guidelines, without regard to citizenship, nationality or domicile and without having to prove a legal or other interest.
3. Public authorities (at national, regional and local level) and bodies having public responsibilities for the environment, with the exception of bodies which are acting in a judicial or legislative capacity, should supply environmental information subject to the terms and conditions contained in these Guidelines.
4. Public authorities should regularly collect and update adequate environmental information. In addition, States should establish, where voluntary systems are inadequate, mandatory systems for ensuring that there is an adequate flow of information about activities significantly affecting the environment to the public authorities.
5. States should take the necessary steps to make their environmental information systems more transparent, e.g. by specifying the type and scope of the environmental information available and the basic terms and conditions under which it is made available and the process by which it can be obtained, and by the establishment and maintenance of registers and the designation of information officers.
6. A request for information may be refused only where it affects:
 - (a) The confidentiality of the proceedings of public authorities, international relations and national defence;
 - (b) Public security;
 - (c) Matters which are, or have been, sub judice or under enquiry (including disciplinary enquiries), or which are the subject of preliminary investigation proceedings;
 - (d) Commercial and industrial confidentiality (for example in relation to agricultural or other business activities), including intellectual property;
 - (e) The confidentiality of personal data and/or files;
 - (f) Material supplied by a third party without that party being under, or being capable of being put under, a legal obligation to do so, and where that party has not consented to the release of the material;
 - (g) Material, the disclosure of which could endanger the environment, e.g. information on the breeding sites of rare species.

A request may also be refused if it would involve the supply of any material in the course of completion. The aforementioned grounds for refusal are to be interpreted in a restrictive way with the public interest served by disclosure weighed against the interests of non-disclosure in each case. Reasons for a refusal to comply with a request for information must be stated in writing. Where only part of the information requested falls within one of the exempt categories, the remainder of the information should be separated out and supplied to the person making the request.

7. Public authorities should respond to a person requesting information as soon as possible and at the latest within six weeks.

8. Environmental information, such as that contained in public registers, should be available to the public for inspection free of charge. Any person requesting information should be provided with adequate facilities for obtaining copies of such information (subject to copyright provisions), on payment of cost of reproduction and dissemination, if appropriate. Where information is held in various forms, it should be provided in the form specified by the person requesting the information, e.g. in written, visual, aural or electronic form.

9. States should ensure that a person who considers that his or her request for information has been wrongfully refused or ignored, or has been inadequately answered by a public authority, or overcharged, may seek judicial or administrative review in accordance with the relevant national legal system.

10. States should regularly publish up-to-date information on the state of the environment, e.g. in a report.

11. States should actively publicize the availability of important national and international documents on the environment, where they exist, such as strategies, programmes, action plans and progress reports on their implementation.

12. States should actively publicize the availability of the texts of international legal instruments, to which they are a party, and which establish procedures for public access to environmental information or public participation rights, preferably in their own language(s) together with relevant conference resolutions or recommendations.

13. States should inform the public of the possibilities of submitting information to international bodies concerning non-compliance with international rules.

14. States should encourage entities whose activities have a significant adverse impact on the environment to report regularly to the public on the environmental impact of their activities.

15. Public access to information stemming from such voluntary schemes as eco-audits ^{1/} should be encouraged, as should eco-labelling schemes for more environmentally friendly products.

II. Public Participation

16. States should facilitate public participation in environmental decision-making processes and decision-making processes having significant environmental implications.
17. States are encouraged to establish formal and informal consultative processes to facilitate the involvement of NGOs in decision-making processes having significant environmental implications and to eliminate impediments or obstacles to public participation.
18. States should make special efforts to promote public participation in environmental policy-making and decisions that are of particular interest to regional and local communities.
19. Consultations should take place early in the decision-making process, at a stage when options are still open and effective public influence can be exerted. States should establish transparent procedures and provide relevant information. Where appropriate, the relevant authorities should give the public additional assistance and explanations. States are encouraged, where feasible, to relate time limits placed on public consultation to those under the access-to-information regimes with a view to ensuring informed public participation.
20. The relevant authorities should be responsible for the effective training of public officials to improve their understanding of their responsibilities in granting the public access to information and facilitating public participation in environmental decision-making.
21. Before decisions significantly affecting the environment are taken, States should introduce measures ensuring that public opinion, including the views of NGOs, other interest groups and environmental advisory bodies, is taken into account.
22. States should ensure public participation in environmental administrative decision-making processes preferably by means of explicit rules governing certain procedures such as, if applicable, environmental impact assessment (EIA) and the issuing of permits or licences, particularly where these may have significant effect on the environment. Those rules could include, *inter alia*, the right to be heard, procedures which include the right to propose alternatives where feasible, a reasonable time to comment, the right to a reasoned decision and the right of recourse to administrative and/or judicial proceedings in order to challenge failures to act and to appeal decisions.
23. States are encouraged to take as a minimum standard the obligations and recommendations on EIA as contained for example in the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991).
24. States should ensure that persons involved in public participation in environmental matters are not penalized in any way for activities that are otherwise lawful.

III. Administrative and Judicial Proceedings

25. The public should have access to administrative and judicial proceedings, as appropriate. Suitable legal guarantees should ensure that proceedings are fair, open, transparent and equitable. It is desirable that proceedings are not prohibitively expensive.

26. It is desirable that standing should be given a wide interpretation in proceedings involving environmental issues.

IV. Implementation of the Guidelines

27. States are encouraged to adopt the necessary strategies for the implementation of the present Guidelines, which should be developed as a result of a broad consultative process.

28. The effective implementation of access to environmental information and public participation in environmental decision-making processes calls for the establishment of a clear regulatory framework providing procedural and institutional guarantees and proper enforcement programmes. Where appropriate, States should set up organizational structures to facilitate the effective operation of the above guarantees, e.g. designation of information officials and officials to promote contacts with the public, the allocation of environmental responsibilities to an ombudsman, etc.

29. States should recognize the special role of local and regional governments and delegate the necessary authority to these bodies to ensure implementation of these Guidelines.

30. States should promote environmental education and training for the general public and specified target groups, especially regarding the methods and techniques of access to information and public participation. The decisive role of NGOs, educational institutions and the media should be recognized and they should be given appropriate support.

31. States should promote regular monitoring of the implementation of the present Guidelines. States are requested to support ongoing activities and facilitate the exchange of experiences of implementation. States should report about the progress made in implementing the present Guidelines to the United Nations Economic Commission for Europe not later than two years after the adoption of the document.

Note:

1/ Such as, for example, in Regulation (EEC) no. 1836/93 of 29 June 1993.