

Doors to Democracy

*Current Trends and Practices in
Public Participation in Environmental Decisionmaking
in Western Europe*



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THE REGIONAL ENVIRONMENTAL CENTER
for Central and Eastern Europe



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ABBREVIATIONS

BNATSCHG	Federal Nature Conservation Act
CADA	Commission on Access to Administrative Documents
CEE	Central and Eastern Europe
CES	Conselho Economico e Social
CODA	Coordinating Committee of Environmental Defence Groups
CSN	Nuclear Safety Council — Consejo de Seguridad Nuclear Spain
DSCN	The Danish Society for the Conservation of Nature
EEA	European Environmental Area
EEB	European Environmental Bureau
EIA	Directive on Environmental Impact Assessment
EISs	Environmental Impact Statements
ENFO	Environmental Information Service of the Department of the Environment, Ireland
EPA	Environmental Protection Agency
EU	European Union
EUR	European Economic Area
GEOTA	Grupo de Estudos do Ordenamento do Território e Ambiente
GMOs	Genetically Modified Organisms
IDUR	Information Service for Environmental Law
IPAMB	Institute of Environmental Promotion (Instituto Nacional para a Protecção do Ambiente)
IPC	Integrated pollution control
KGV	Point of coordination on information of procedures of authorization of the Oeko-Institut, Darmstadt
NIS	Newly Independent States
NGO	Nongovernmental Organization
OG	Organization Act
PRTR	Pollutant Release and Transfer Register
REC	The Regional Environmental Center for Central and Eastern Europe
SRU	German Council of Environmental Advisors
TRI	Toxins Release Inventory
UDK	Environmental Data Catalogue
UIG	Federal Law on Environmental Information
UN ECE	United Nations Economic Commission for Europe
USG	Federal Law Relating to the Protection of the Environment (Bundesgesetz ueber den Umweltschutz, Switzerland)
VwVfG	Administrative Procedures Law
WBGU	German Advisory Council on Global Change

Preface

Democracy is more than the right to elect and re-elect decisionmakers. It is a societal system where all citizens have the opportunity to contribute to its progress, avoid or repair mistakes, address injustice and threats within a framework of individual rights and common duties and rules of behavior.

The challenges of modern society are huge, and environmental challenges are not the least of them. To address these challenges, all the intellectual input available and all the goodwill and determination of all stakeholders in that society must be mobilized.

For such a society to function effectively, to find paths for sustainable development, the public and its citizens' organizations need to have the tools to function. Transparency of the policies of the authorities and transparency of the actions of the business sector is a must. The right to know is an essential element of democracy, and an indispensable tool for a civil drive to sustainability.

Knowledge is essential, but it is not enough. The traditional ways of decisionmaking are too exclusive. They fail because they close out too many justified interests and opinions. Therefore public participation in forming opinions and taking decisions is the next inevitable step. And finally, the public can have an important role in the actual enforcement of what has been agreed upon. The position that only those who have a direct interest can call upon the judicial powers when rules are violated is therefore too limiting.

These arguments have been brought forward for many years by environmental organizations. Probably the most senior recognition of these arguments by the political leaders of the world is to be found in Principle 10 of the Rio Declaration, which says:

"Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunities to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

In the pan-European cooperation that emerged in the "Environment for Europe" process in the early 1990s, the role of citizens has rightfully been constantly stressed. The adoption of the Sofia Guidelines in 1995 and the agreement on a Convention on Access to Information, Public Participation and Access to Justice are two important results of this process. Furthermore, the transparency and accessibility of the process itself is an example of this broader, more complete concept of democracy. The European Environmental Bureau (EEB) has been using these opportunities, along with other organizations, from the very start, and has played a role in further developing these opportunities, including a very intensive coordinator's role in the input of citizens' organizations in the preparations for the Convention.

The EEB, however, is not satisfied with the content of the Guidelines or the Convention, though they are steps in the right direction. Our concern is about the general and compromised nature of many elements. Our experience in Western Europe teaches us that

legislation needs to be detailed and unambiguous, and regulations need to include specific requirements not only concerning the rights of the public but also the practical duties of authorities to realize these rights.

The EEB deplores the tendency of Western politicians and officials to consider the "Environment for Europe" process and its products as a learning exercise for Central and Eastern European countries. This study demonstrates that Western countries with a longer, and even in most cases very long, tradition of democracy seriously fail to perform in giving their citizens adequate rights and tools to participate in its development. As we observed in our study on the Sofia Guidelines (Madrid, April 1998), none of the 11 countries monitored bothered to act to implement the Guidelines, assuming that they were covered in existing practice. In many cases this proved not to be true. Western countries have a too high self-esteem about the quality of their democracy. This report shows clearly that there are major deficiencies in all three areas: right to know, public participation, access to justice.

For the EEB this is not an entirely new and surprising conclusion. At the end of the 1980s we were working hard at achieving an adequate and unambiguous Directive on Access to Environmental Information for the European Union. Due to the reluctance of some countries, we ended up with a Directive with serious weaknesses. And the implementation of that Directive is a matter of concern. The review of the Directive should lead to improvements, but even starting that review, on the basis of implementation reports from the member states, is a disappointingly slow process.

For public participation, the EU still lacks a general Directive, and access to justice is recognized by the Commission as a tool that could help the enforcement of EU legislation; but our efforts to get that right recognized in the Treaty of the European Union have not lead to success so far.

The report we present you even shows signs of regression in some countries, espe-

cially in the case of public participation. Our conclusions confirm that much needs to be done in the Western countries to make the most of the potential in the public to contribute to sustainable development. Western countries should seriously review their performance. One important opportunity to do so is the early ratification and implementation of the Convention, as a minimum basis. The EEB calls upon the governments to discuss the implementation intensively with environmental citizens' organizations and go beyond the requirements wherever this is seen as necessary and possible. Furthermore, the member states of the European Union should finally agree on similar rules and practices on the Union level.

On behalf of the EEB, I would like to express our thanks to the Danish, Norwegian and Swedish governments as well as the European Commission for having made this study possible. I would like to thank as well the Regional Environment Center for Central and Eastern Europe and Ecopravo-Lviv for their cooperation and inspiration in this project. And last but not least I would like to thank the persons directly involved in the work, in particular Fe Sanchis Moreno of Terra Environmental Policy Centre, who has delivered this excellent report under great time pressure.

John Hontelez
Secretary General

Methodology

This survey seeks to evaluate the developments in access to environmental information, public participation in environmental decisionmaking and access to justice, that occurred between the Sofia Ministerial Conference and the Aarhus Ministerial Conference. The survey gives general historical background on developments in the region, but focuses mainly on the period between October 1995 and January 1, 1998.

The project was initiated by the Public Participation Program of the Regional Environmental Center for Central and Eastern Europe (REC) in June 1997. Shortly after initiation, the project was joined by the European Environmental Bureau (EEB) and a group of NGOs from the Newly Independent States (NIS) led by Ecopravo-Lviv. The result of this cooperative project is a four-volume publication analyzing the situation of public participation in all three regions of Europe, including country reports, regional reports on the CEE, NIS and Western European region and a Pan-European assessment.

The three project partners agreed to follow the same methodology. The framework, methodology and content of country and regional reports were discussed and agreed upon in meetings of the REC Public Participation Working Group. The group consists of independent, NGO and government experts from the CEE, NIS and Western countries. They held two meetings, in September 1997 and February 1998, at the REC in Szentendre, Hungary, to establish the methodology.

The draft country reports were prepared by experts from the respective countries and well-known international experts, based on an agreed-upon framework. A questionnaire was designed to investigate legal and institu-

tional framework and practices regarding access to environmental information, public participation in environmental decisionmaking, access to justice and capacity building. The draft country reports — which were based on the questionnaire — were submitted to government officials for comments before being finalized, although the text remains the responsibility of project partners.

The country reports are broken down into three major sections:

I. Legal and Institutional Framework and Practice of Public Participation in Environmental Decisionmaking.

This first section describes the situation of public participation in each country, looking at the current status as of December 31, 1997, as well as changes that can be expected in the near future.

II. Mapping and Evaluating Opportunities for Public Participation

This section illustrates the level of public participation during various phases of the decisionmaking process, and offers an analysis of the results. (See below for further details.)

III. Conclusions

In this section, we evaluate the progress made in the past years, identifying major achievements, problems and future needs.

The regional reports are based on the information and analysis provided by the country authors. These contain a comparative assessment, showing the trend of developments in the region, as well as best practices using internationally recognized standards of the Sofia Guidelines, Aarhus Convention and the connected EU Directives. The regional reports also include a set of charts showing the progress of

public participation according to certain indicators identifying the level of development.

Additional information is provided in the Annex, such as the list of authors with their contact addresses and short CVs; an overview of the status of signature and ratification of selected international legal instruments dealing with access to information, public participation and access to justice provisions in the environmental field.

Explanation of Charts on Mapping and Evaluating Opportunities for Public Participation

The purpose of this material is to illustrate what level of participation is possible in the different phases of decision making in the various countries. The charts are broken down into main types of decisions, and the level of participation in each of these decisions is rated on a scale of one to five. Instead of looking only at the laws of each country, the charts focus on the actual situation, in other words how the laws are applied in practice.

The charts analyze the following types of decisions:

- international decisionmaking;
- preparation and approval of national laws and regulations;
- preparation and approval of national policies (strategies), programs, plans;
- preparation and approval of regional/local rules and regulations;
- preparation and approval of regional/local policies, programs, plans (including territorial plans, spatial/local land use plans);
- environmental impact assessment;
- siting;
- permitting;
- management of environmental funds;
- others (optional).

In the reports we only use charts where there is public participation indicated. Therefore, some countries may have less charts than others, depending on the level of public participation they allow.

Definition of terms used in the section on Public Participation and the section on Mapping and Evaluating Opportunities for Public Participation

The following terms are used when describing the level of public participation:

Decisionmaking is transparent

The public has a general right to access the information necessary to follow the decision-making process. The different government agencies are responsible for providing the information upon request, without requiring a statement of interest for the request, under various conditions (time limits, exemptions, right to appeal, etc.). The citizens themselves are responsible for seeking information and their sources. The authorities might also actively provide information about the decisionmaking themselves. The citizens have a right to appeal if they feel their right to access information is violated.

Adequate notification

The public has the right to obtain information on decisions concerning specific activities, laws, regulations, projects, policies, programs and plans on the national, regional and local level upon request. The different government authorities are obliged to actively provide information to the public/NGOs affected. The rules on adequate notification include different conditions as to how notification must be handled, including time limits, content of the notice, active and passive obligation of the authorities, etc. Authorities are obliged to give the concerned public free access to all relevant information for examination, upon request, as soon as it becomes available. The information flow should be continuous throughout the decision making process. In most countries, citizens have a right to appeal if they feel their rights to access to information is violated.

Comments are seriously taken into consideration

The concerned or affected public has the right to provide comments or proposals in written format or at a public hearing on the proposed activity or decision. The public

authorities gather the comments/suggestions with legal or political commitment to take them into consideration in decision making. There is a legal obligation or political commitment to analyze and take a due account of the outcome of public participation. The public authority makes accessible the text of the decision along with the reasons and considerations on which the decision is based and an explanation of the extent to which the comments have been taken into account. In most countries, the concerned/affected public has a right to appeal if it feels this right is violated.

Decisionmaking power is shared

The interested citizens or NGOs have the right to participate in the decisionmaking and all parties have the same rights. The decision can be the result of joint decision-making, but also can be made by a third, independent party, based on the result of joint decisionmaking. In most cases the citizens involved have a right to appeal.

Control of decisionmaking

The public has the right to decide directly on the issue in question. The power of decisionmaking is transferred to the citizens. All citizens have the (same) right to vote in decisionmaking. The decision is made by a simple majority of votes. The result of the decision process is legally binding. Examples include: a referendum on the local or national level, the right to initiate lawmaking or rule making, etc. In most countries, citizens have right to appeal if they feel their right is violated.

Scale of evaluation

The scale of evaluation is based on how often public participation reaches a certain level. The evaluation is based on the expert's judgment. The following criteria are used:

1: never

2: rarely

3: sometimes

4: usually

5: always

MAP OF THE REGION



Regional Overview: **Western Europe**

FE SANCHIS MORENO

INTRODUCTION

This report aims to give an overview of the legal status and practices regarding access to environmental information, public participation in environmental decisionmaking and access to justice in environmental issues in 11 countries of Western Europe: Austria, Denmark, Greece, Germany, Ireland, the Netherlands, Norway, Portugal, Spain, Switzerland and the United Kingdom¹. Although most of these countries have in common their membership of the European Union, their legal systems are rather different. On one hand, this makes any analysis complicated; on the other hand, it provides a rich variety of regulatory solutions. It is not possible, nor is it the intention of this study, to give a detailed explanation of the systems analyzed. However, it is important to note that some of these countries (i.e. Austria, Germany, Spain and Switzerland) have federal or quasi-federal systems in which the distribution of competencies in environmental issues is complicated by the existence of three levels of competencies: central/federal, regional and local.

At all levels, on the road to sustainable development there is a clear need for the participation of all the countries involved. Responsibility for assuring a sound environment that takes into account the rational use of natural resources and the improvement of quality of life through environmental protection rests not only on the shoulders of politicians, governments and administrations, but with all the inhabitants of this planet. This responsibility can never be shared without the establishment of effective instruments to make such participation possible. In turn, public par-

ticipation is inevitably based on access to environmental information and must be secured by the guarantee of access to legal protection. Only with the development of the three fundamental tools for environmental policy — participation, information and access to justice — will it become possible to assert the principle of joint responsibility and put into practice much more committed environmental policies that allow us to advance along the road to an environmentally sustainable world and guarantee the quality of life of future generations (Principle 10 of the Rio Declaration on Environment and Development).

In the wake of the Rio Declaration, the U.N. Economic Commission for Europe (UN ECE) provided the framework for the endorsement of the UN ECE Guidelines on Access to Information and Public Participation in Environmental Decisionmaking at the Third Ministerial Conference “Environment for Europe,” held in Sofia, Bulgaria, in October 1995. And following this first step has helped those countries who endorsed the so-called Sofia Guidelines to negotiate a Convention on Public Participation that is ready to be signed at the Fourth Ministerial Conference “Environment for Europe,” to be held in Aarhus, Denmark, in June 1998. The very concept of such a convention represents an important step forward in international law, and the document would harmonize the regulation of rights relating to access to information, participation and access to justice in environmental issues in a broad territorial area.

Finally, most of the countries covered by this survey are part of the European Union, which has already passed regulations designed to harmonize some of the aspects

considered (e.g. Council Directive 90/313/EEC of June 7, 1990, on the freedom of access to information on the environment, and Council Directive 85/337/EEC of June 27, 1985, on the assessment of the effects of certain public and private projects on the environment). These regulations are applicable in all the EU member states.

Constitutional Rights

As shown in Table 1, a generic right to a sound environment is recognized in the constitutions of Austria, Germany, Greece, Portugal, Spain and Switzerland. The Austrian Constitution includes a regulation stating that the Republic of Austria declares itself to be generally committed to environmental protection, and it subsequently gives a comprehensive definition of environmental protection. Nevertheless, no individual right is set out, only a declaration of public interest. The German Constitutional reform identifies environmental protection as an objective of the state, especially the protection of nature as a basis of human life. However, the constitution does not set out any specific individual right, thus individuals cannot take legal action based on this constitutional provision.

The Portuguese Constitution of 1976 establishes a fundamental right to a healthy and ecologically balanced environment, and it gives this right similar protection to that given to the right to life and to freedom.

The Spanish Constitution of 1978 gives any person the right to enjoy an adequate environment for his or her development, and it adds the duty to conserve this adequate environment. Public authorities are constitutionally obliged to protect and improve the state of the environment through the rational use of all natural resources and to defend and restore the environment when necessary. Penal or administrative sanctions are legally provided for those who do not obey, and anyone who damages the environment must repair the damages caused. However, this

TABLE 1: Constitutional Rights Regarding the Environment

General	Austria, Germany, Greece, Portugal, Spain, Switzerland
Access to Information	Greece, the Netherlands, Norway, Spain
Public Participation	Portugal, Spain
Access to Justice	Germany, Greece, Portugal, Spain

right is not considered a fundamental right but a guiding principle for economic and social policy. This is why the environmental right merits a lesser degree of protection, and further legislation is necessary to make this right usable and applicable.

In Denmark, environmental rights are set forth by specific laws. Nevertheless, the constitution recognizes that the main purpose of Danish environmental regulations is to ensure a healthy environment for all. This constitutional provision is developed by specific legislation, thus the rights recognized under this specific legislation have been seen as equivalent to constitutional rights.

In other countries such as Ireland and Norway, whose constitution does not explicitly mention a right concerning the environment, such a right is sometimes interpreted through the right to bodily integrity or the right to health. Finally, the Norwegian Constitution recognizes the environmental right to health, reproduction and diversity with consideration for future generations.

Implementation of International Legal Instruments

The countries of Western Europe have endorsed and/or implemented several international legal instruments concerning the environment. The most important of these are listed in Table 2.

TABLE 2: International Instruments Related to the Environment

<i>International Conventions</i>	<i>Signed</i>	<i>Ratified</i>
Universal Declaration of Human Rights. Adopted by the U.N. General Assembly at New York, U.S.A., on December 10, 1948	Austria, Denmark, Germany, Greece, Ireland, the Netherlands, Norway, Portugal, Spain, Switzerland, United Kingdom	Norway, Spain
Convention on the Conservation of European Wildlife and Natural Habitats. Adopted by the Council of Europe at Bern, Switzerland, on September 19, 1979	Austria, Greece, Norway, Spain, Switzerland	Greece, Norway, Spain
Convention on Environmental Impact Assessment in a Transboundary Context. Adopted at Espoo, Finland, on February 25, 1991	Austria, Greece, Norway, Spain	Austria, Greece, Norway, Spain
Convention on the Transboundary Effects of Industrial Accidents. Adopted at Helsinki, Finland, on March 17, 1992	Greece, Norway, Spain	Greece, Norway, Spain
Convention on the Protection and Use of Transboundary Watercourses and International Lakes. Adopted at Helsinki on March 17, 1992	Austria, Norway, Spain, Greece	Norway, Spain
Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment. Adopted at Lugano, Switzerland, on June 21, 1993	Greece, Norway, Spain	
<i>EC Directives</i>	<i>Implemented</i>	
90/313 EEC on the Freedom of Access to Information on the Environment. Adopted on June 7, 1990	Austria, Denmark, Germany, Greece, Ireland, the Netherlands, Norway*, Portugal, Spain, United Kingdom	
85/337 EEC on the Assessment of the Effects of Certain Public and Private Projects on the Environment. Adopted on June 27, 1985	Austria, Denmark, Germany, Greece, Ireland, the Netherlands, Norway*, Portugal, Spain, United Kingdom	
<i>Nonbinding Instruments</i>	<i>Signed</i>	
Sofia Guidelines	Austria, Denmark, Germany, Greece, Ireland, the Netherlands, Norway, Portugal, Spain, Switzerland, United Kingdom	
Agenda 21. Adopted by the U.N. Conference on Environment and Development at Rio de Janeiro, June 14, 1992	Austria, Denmark, Germany, Norway, the Netherlands Spain	
Rio Declaration on Environment and Development. Adopted by the U.N. Conference on Environment and Development at Rio de Janeiro, June 14, 1992	Austria, Denmark, Germany, Norway, the Netherlands Spain	

* Norway implemented Directive 90/313/EEC and Directive 85/337/EEC as part of the European Economic Area (EEA) Agreement

Implementation of International Nonbinding Instruments: Sofia Guidelines

Although the Sofia Guidelines have been endorsed by all the countries in this survey, the existence of this instrument has not received adequate dissemination within the 11 countries covered by this survey. In several of them (e.g. Spain), the Guidelines were not even translated into the local language and therefore remain unknown. No governmental activities have been reported in relation with the implementation of the Sofia Guidelines, and there have also been no NGO activities apart from the publication and distribution of the booklet "Access to Environmental Information and Public Participation in Environmental Decisionmaking — UN ECE Guidelines: From Theory to Practice" by J. Wates (EEB, Brussels). This booklet was published in April 1996 in English with a French translation of the guidelines and was distributed to EEB member NGOs throughout Europe.

None of the 11 countries has adopted a strategy for the implementation of the Sofia Guidelines, which should be developed as a result of a broad consultative process³. In Norway, they were assessed as limited in their effectiveness due to a number of factors including excessive time limits for responding to requests, exclusion of human health and legislative bodies, a broad range of exempt categories of information, and lack of clarity on minimum requirements for public participation. When looking at the explanation for this situation, the following might be taken into account:

- The Sofia Guidelines were often seen as an instrument useful in the hands of the CEE and NIS countries but whose application was not as needed in Western countries, where systems more in accordance with the provisions of the guidelines are already in place. This is especially true in EU member states, which already must comply with several EU directives that in many cases include provisions similar to those set forth by the guidelines;
- The nonbinding Sofia instrument was followed by negotiations aimed at the adoption of a Convention on Public Participation; therefore, interest has been focused more on these negotiations than on the implementation of the guidelines themselves.

The lack of attention paid to the Sofia Guidelines does not mean access to environmental information; public participation in environmental decisionmaking and access to administrative and judicial proceedings is not granted. The situation is far from this, especially with regard to access to environmental information, and the Western countries surveyed already follow many of the provisions set out in the guidelines. Nevertheless, there is still a lot of progress to be made to comply with all the recommendations of the guidelines.

Access to Environmental Information

Legislation on Access to Information/ Environmental Information

The right of access to information is constitutionally recognized in six of the surveyed countries. This right refers to access to information in general and not specifically to environmental information. In Norway, however, the constitution recognizes both the right to access to information in general and specifically to environmental information.

In Germany, although there is no such recognition at the federal level, the regions of Brandenburg and Mecklenburg-Vorpommern include the right of access to environmental information in their regional constitutions. Even so, it is not possible to exercise this right because the corresponding legislation has not yet been developed. Similarly, the right to access information is not recognized in the national constitution of Denmark; however, some interpretations say the character of the constitution points to the right of access. The constitution establishes that the main purpose of the environmental regulations in Denmark is to ensure a healthy environment for all, and

TABLE 3: Sources of the Right to Information and/or Environmental Information

	<i>Access to information</i>	<i>Access to environmental information</i>
The right is based in the constitution	Austria, Germany,* Greece, Denmark, the Netherlands, Norway, Portugal, Spain	
Specific or general law regulating access to information	Austria, Denmark, Germany, Greece, Ireland, the Netherlands, Norway, Portugal, Spain, Switzerland, UK	Austria, Denmark, Germany, Greece, Ireland, the Netherlands, Portugal, Spain, Switzerland, UK

*The newly established East German States of Brandenburg and Mecklenburg-Vorpommern

administrative legislation, which recognizes the right to access to information, is prescribed on the basis of this constitutional precept.

Laws on Access/Provision of Information

Laws recognizing the right of citizens to access to information exist in all the countries included in this survey.

Laws on Access/Provision of Environmental Information

Together with legislation on access to information in general, regulations related to access to environmental information have recently been approved in seven of the surveyed Western countries (Austria, 1993; Denmark, 1994; Germany, 1994; Greece, 1995; Ireland, 1993 then updated in 1996 and 1998; Spain, 1995; United Kingdom, 1992). These regulations represent the implementation of Directive 90/313/EEC on the Freedom of Access to Information on the Environment. Modifications to these regulations are expected in the future due to the process of revision of the directive and the poor transposition of the directive in some cases.

In some countries, (Ireland, United Kingdom), the introduction of laws on access to environmental information preceded, and may have been a catalyst for, the development of more general freedom of information laws.

Since 1983 Switzerland also has had specific regulations related to access to environmental information. Under the EUROLEX legislation,

Directive 90/313/EEC would have been transformed into Swiss law; but after the Economic European Area was rejected in December 1992, the directive was not finally adopted.

Apart from the existence of general regulations or specific regulations on access to environmental information, access to specific types of information is regulated in some countries by sectoral regulations (*lex specialis*) as opposed to more general regulations (*lex generalis*). This circumstance can be seen in several countries. For example, the Netherlands has a general law on access to information and also specific regulations, such as the Environment Management Act, which regulates licensing procedures and environmental impact assessment. Ireland regulates some environmental matters with the Local Government Acts and the Air Pollution Act, etc.; and the United Kingdom relies upon the Local Government Act.

Due to the distribution of competences between the central or federal authorities and the regions (states/lander/cantons/autonomias), the appropriate regulation must be found at the different levels: national, regional and even local. In Austria, the Federal Law on Environmental Information (July, 1993) is not applicable throughout the federation of states. Only three states adopted their own laws on access to environmental information, and in the others access to information of the competency of the federated states is based on their Laws on the Duty to Furnish Information.

Similar situations occur in countries such as Germany and Spain. In the latter, the autonomous regions can adopt their own legislation on access to environmental information which can be different from the regulations that regulate access to information in the hand of the national authorities.

Passive Provision of Information and/or Environmental Information

Definition of Environmental Information

The definition of environmental information varies from country to country, though all of them have common patterns to follow: the EU Directive and the Sofia Guidelines.

Seven surveyed countries have specific provisions defining the term environmental information. The Netherlands, Norway, Portugal and Switzerland do not have such definitions for environmental information, although the Netherlands is about to amend its law to include a definition. This lack of definition does not, however, prevent breadth of interpretation that allows access to all the information described in the EU Directive and Sofia Guidelines. Nevertheless, financial and economic analyzes and information related to environmental agreements are somewhat difficult to obtain in practice. Norway applies a general rule of access to any document in the possession of the authorities unless it falls under an exception set out by law. Portugal does not define the term environmental information, but access is granted to all kinds of administrative documents prepared or held by the public administration, including reports, studies, opinions, records, actions, circulars, service rules, internal dispatches, instructions and guidance of legal interpretation or other informative elements. These documents can be in graphic, audio or visual format.

Some of the countries that do have a legal definition follow the pattern established by the EU directive. This is the case in Germany, Greece, Ireland, Spain and the United Kingdom. The Greek legislation makes special reference to reports, studies, files, statistical elements, circulars, directives, responses of the administration, opinions and decisions. In other

countries, such as Austria and Denmark, the definitions are slightly more detailed, but the Austrian definition leaves out access to all information that is not kept in databases. In some countries, the definition established by the Draft of the Public Participation Convention would permit the inclusion of elements that are not currently contemplated or that could be interpreted as not contemplated by the definition (i.e. construction, cultural sites, energy, radiation, conditions of human life, financial and economic analysis, and safety matters).

Conditions for Obtaining the Information

Public authorities with environmental functions that hold information on the environment are responsible for providing information upon request from the members of the public in all of the countries surveyed. This covers all levels of the public administration (i.e. local, prefectural, provincial, federal, regional, and national). Legislative and judicial bodies are generally excluded from the obligation to provide environmental information.

In Norway, the general rule is that all central and local governmental bodies are obliged to provide information unless they are exempted by a statute or a decree, and the same provision is set out for any private persons or companies making decisions or issuing regulations on behalf of central or local governmental authorities.

On the other hand, businesses are not generally obliged to provide information to the public. The only obligations in place are those regarding major accidents, which require business to provide information about risks and applicable measures when accidents occur. This obligation also applies to public and semi-public enterprises and companies partly owned, controlled or supervised by public authorities, except in Austria and Germany, where private enterprises are excluded from fulfilling public assistance functions if they do not act directly as a governmental agency.

In Spain, individual entrepreneurs or companies that manage public services are also obliged to make the environmental information they

TABLE 4: Time Frame for Provision of Information

<i>Time limits for:</i>	<i>Up to 8 days</i>	<i>Up to 15 days</i>	<i>Up to 1 month</i>	<i>Up to 2 months</i>
Refusal		Denmark Norway		Denmark
Provision of information	Norway	Denmark the Netherlands Portugal	Greece Ireland	Denmark ¹ Austria Germany Spain UK
Possibility of prolongation		the Netherlands Norway	Ireland Portugal	

1 Absolute time frame

possess available to the public, but only through the administration responsible for the service they manage and never directly. Under Swiss legislation, the information received by the administration from individuals and private entities may be made public if it is of general interest; the concerned parties must be consulted before any such information is made public, and trade and business secrecy must be preserved. Finally, in the UK there is a dispute as to whether this obligation is applicable to publicly regulated privatized utilities.

In the majority of these countries, following the criteria of the EU Directive and the Sofia Guidelines, any natural or legal person has the right to request and receive environmental information without having to prove any evidence of legal entitlement or legal interest. Nevertheless, some criteria are set out in two of these countries. In Spain, for instance, discrimination criteria are based on nationality, domicile and the applicability of the principle of reciprocity. In Switzerland, access may be limited to requesters who can demonstrate that they are interested or affected parties.

Few countries grant requesters the right to receive the information in the format they prefer. This right is granted in Austria, the Netherlands ("whenever possible"), and Spain ("if the information is available in different formats"). In Germany, the Federal Administrative Court ruled in 1996 that the

authority is generally obliged to give information in the format requested by the applicant and significant reasons must be cited if a different format is chosen. In Denmark, it is common practice to provide information in the requested format even though there is no legal obligation to do so.

The time limits vary for providing a response to requests for environmental information. The shortest time limits are set in Norway ("without undue delay," which in practice means two to three days); Portugal (10 days); the Netherlands (as soon as possible, within two weeks); and Denmark (the legal time limit is two months but in practice it is within 10 days). The countries with the longest time limits are Germany, Spain and the United Kingdom (two months). In the UK, there is a Code of Practice on Access to Government Information, which states the intention to provide citizens with requested information within 20 days. In Ireland, the Netherlands, Norway and Portugal there are certain circumstances in which the time limit may be extended; in Ireland to one extra month and in the Netherlands and Norway to a maximum of two extra weeks.

In some countries the information must be provided within the time set out for answering the request. No such provision is made in Spain. In Denmark, the time limit for actually providing the information is from 10 days to two months.

Not all the countries have a special time limit for issuing a refusal, though this is the case in Denmark (two months) and in Norway (two weeks).

In some countries, in clear non-compliance with what is established by Directive 90/313/EEC, negative administrative silence is permitted. This means refusing access to environmental information by not replying, thus refusal is inferred and does not require the authorities to state the reasons why information was denied. This is the case in Germany and Spain. In Germany this implies in practice that access to information can be refused up to three months after the request is made. In Spain, at the national level, negative silence would be inferred after the expiration of the two month time limit for

responding to the request for information. At the regional level, the lack of regulations on access to environmental information could allow periods for negative silence of up to three months.

As explained above and shown in Table 4, there are different solutions with regard to established time limits. Not all countries follow the six week time period set out by the Sofia Guidelines. Having access to information within a short period of time is obviously imperative if the information is to be useful. It should also be noted that access to information in an adequate time frame permits the development of effective public participation systems. In this sense we find examples of good practice in terms of access to information in some countries, while the situation in

TABLE 5: Information Excluded from the Right of Access to Information

<i>Type of information classification</i>	<i>Countries in which classification can be used to withhold information</i>
Confidentiality of the proceedings of a public authority	Denmark, Germany, Greece, Ireland, the Netherlands, Norway, Portugal, Spain, Switzerland, UK
International relations	Denmark, Germany, Greece, Ireland, the Netherlands, Norway, Portugal, Spain, Switzerland, UK
National Defense	Austria, Denmark, Germany, Greece, Ireland, the Netherlands, Norway, Portugal, Spain, Switzerland, UK
Public Security	Austria, Denmark, Germany, Greece, Ireland, the Netherlands, Norway, Portugal, Spain, Switzerland, UK
Matters which are, or have been, awaiting judicial determination	Denmark, Germany, Greece, Ireland, the Netherlands, Portugal, Spain, Switzerland, UK
Subjects of preliminary investigative proceedings	Denmark, Germany, Greece, Ireland, the Netherlands, Norway, Portugal, Spain, Switzerland, UK
Commercial and industrial confidentiality	Austria, Denmark, Germany, Greece, Ireland, the Netherlands, Portugal, Spain, Switzerland, UK
Intellectual property	Austria, Denmark, Germany, Greece, Ireland, the Netherlands, Portugal, Spain, Switzerland, UK
Confidential personal data and files	Denmark, Germany, Ireland, the Netherlands, Norway, Portugal, Spain, Switzerland, United Kingdom.
Information supplied by a third party not legally obliged to do so	Denmark, Germany, Greece, Ireland, the Netherlands, Norway, Portugal, Spain, Switzerland, UK
Material whose disclosure could cause further environmental damage	Austria, Denmark, Germany, Greece, Ireland, the Netherlands, Norway, Portugal, Spain, Switzerland, UK
Material contained in unfinished documents, data or internal documents, or when the request is manifestly unreasonable or formulated in a too general manner	Austria, Denmark, Germany, Greece, Ireland, the Netherlands, Spain, UK

others is to maintain the long two month time period set out by the EC directive.

Refusal to Provide Information

Public authorities can refuse to provide access to certain information in all the countries considered. However, the general principle sides in favor of access to information, so authorities are usually required to state the reasons for denying access to information. In some countries though, as mentioned above, negative silence is permitted.

The majority of countries have a set list of mandatory or discretionary (depending on the country) exemptions, sometimes also called limitations, to access to environmental information. These lists generally include information regarding the following:

- confidential proceedings of public authorities;
- international relations;
- national defense;
- public security;
- matters which are awaiting judicial determination (*sub judice*),
- matters subject to preliminary investigation proceedings;
- commercial and industrial confidentiality,
- intellectual property;
- confidential personal data and files;
- information supplied by a third party not legally obliged to do so;
- material whose disclosure could contribute to further environmental damage.

A request also can be denied regarding information contained in unfinished documents, data or internal documents, or when the request is manifestly unreasonable or formulated in too general a manner.

In Greece, authorities cannot refuse to provide information on the basis of the protection of privacy, medical, industrial or commercial confidentiality if this information is related exclusively to the person requesting it.

TABLE 6: Public Interest Test	
No possibility of a public interest test	Denmark, Germany, Greece, Ireland, Norway, Portugal, Spain, Switzerland, UK
Possibility does exist	Austria, the Netherlands

Most of the countries allow the possibility of providing information in part, after extracting the part of the information subject to an exemption. In the Netherlands, for instance, when the confidential business exception is applied, a so-called “second text” must be provided. This means confidential information will be withheld while access to the rest will be granted.

The list of possible exceptions set out by the EC Directive is similar to that established by the Sofia Guidelines and by the Draft Convention on Public Participation.

Public interest is only required to be taken into account in withholding information in two of these countries: Austria and the Netherlands. In Austria, it applies only to exceptions regarding commercial and industrial secrets. In such cases, the authority is required to investigate in detail whether there are confidential interests at stake, whether these interests are actually subject to protection and whether the confidential interests outweigh the public interest in access to information. In the Netherlands, if the requested information falls under a relative exception it must be assessed. The interest protected by the exception is weighed against the interests of open government, meaning the public interest and not the interest of the individual making the request. Thus, the public interest test is applied in the following cases: investigation and prosecution of criminal acts; inspection, monitoring and oversight by or on behalf of public authorities; personal privacy; and the interest of the person concerned to be the first to obtain the information.

TABLE 7: If a Public Authority Does Not Possess the Information

<i>Agency will ...</i>	<i>Countries</i>
Search for information	
Provide contact to the institution that possesses the information	
Forward request to the institution that possesses the information	Austria, Denmark, Germany, the Netherlands, Norway
Refuse to provide information	Ireland, Portugal, Spain, Switzerland, UK

In Denmark, although the description of exceptions offers a wide margin for breadth interpretation, this interpretation has been restrictive in practice, with more weight given to the general principle of access to information. In other countries, the situation regarding the application of exceptions, which in general are rather vague and leave a lot of room for arbitrary interpretation, would clearly improve with the adoption of provisions that require restrictive interpretations and public interest tests. This is the tendency set out in the draft of the Convention on Public Participation.

If an Authority does not Possess the Information

In most of the countries there is no obligation for an authority to whom a request is addressed to generate, gather or obtain information which is not in its possession. Only a few countries set out in their legislation the obligation for an authority who receives a request for information and does not hold the requested information or is not competent for providing it to forward the request to the authority which holds or is competent for the requested information. This occurs in Denmark, Germany and the Netherlands. In Austria, only for environmental information, the authorities can forward their request. However, in most of these countries it is legally established or common practice to help the requester identify the authority which possesses or is responsible for the requested information.

However, the Greek legislation sets out that a competent public authority cannot legally refuse to supply copies of documents or material on the grounds that it is not the service who prepares the document requested or for not being the service primarily responsible for it, since this body has the legal competence on the grounds that it is responsible for collecting the information requested and supplying it.

In any case, with a view to speeding up information requests, especially in those countries with complicated competency frameworks, it would be desirable to see the publication and distribution of information

TABLE 8: Costs of Information

Costs are not regulated	
Reasonable charges	Austria ¹ , Denmark ¹ , Greece, Ireland, the Netherlands, Norway ¹ , UK
Costs cover only copying of information	Portugal, Switzerland
Costs cover processing of information	
Costs can be an obstacle	Germany, Spain
1 Generally information is provided for free, though reasonable fees can be charged to cover costs	

TABLE 9: Dissemination of Information on the Internet

<i>Type of Information</i>	<i>Is available on the Internet</i>	<i>Is required to be on the Internet</i>
State of environment	Austria, Denmark, Germany, Norway, Spain, Switzerland	
Legislation	Denmark, Germany, Spain	
Other	Austria, Denmark, Germany, Spain	

about what environmental responsibilities are held at the different levels of administration. This would make it easier to know to whom a request for information should be addressed in each case.

Costs of Obtaining Information

Austria, Denmark and Norway have provisions to provide information free of charge. In Austria, this practice has two exceptions: when the requested information is available in a publication with a purchase price, or when the request is extensive. In the first case the requester is charged the publication price; in the second, the petitioner must pay a total amount that “may not exceed a reasonable cost.” In Denmark, information is provided free of charge or sometimes charged at the cost of the report, etc. In Norway, though inspection of documents is always free, charges may be applied for reproduction.

Several country surveys stress that unreasonable costs can be a barrier to access to information. In Germany, federal regulations on fees for the work of federal authorities performed under the Federal Access to Environmental Information Act are mentioned as an example of charge regulations that act as an obstacle to general access to information. In Spain, a case was cited that is subject to an infringement proceeding by the European Commission based on unreasonable charges. In other countries, such as the Netherlands, charges are considered to be reasonable.

The EC Directive’s provision about charges being reasonable is not observed in all the legal systems studied. These reasonable costs may include not only reproduction costs but

also the costs of the staff or other costs connected with searching for, retrieving, compiling and copying the information.

Active Provision of Information

Obligation to Disseminate Information Actively

The obligation for public authorities to actively inform the public about the environmental situation is clear in the case of emergency situations. All the countries provide for this in one way or another, and in these cases authorities are obliged to actively inform the public, especially information about how to act. Most of these provisions have their origin in the so-called Seveso Directive on the major accident hazards of certain industrial activities.

The following countries set out additional legal provisions to guarantee public authorities actively disseminate information on the environment: Denmark, Germany, Ireland, the Netherlands, Norway, Portugal, Spain, and the United Kingdom. It is common practice for environmental authorities responsible for different environmental sectors and at different levels to publish periodic reports on the state of the different elements of the environment. It is also common to find a comprehensive report on the State of the Environment in each country. The regularity of these publications varies from once a year to once every four years, depending on the country.

In this respect, the draft convention sets out a more specific regulation regarding provisions on the active dissemination of information which may help to harmonize the existing situation.

Methods of Dissemination

Legal provisions are published in official journals/gazettes, accessible to all the public. Other common means for actively disseminating information are the publication of reports, brochures, surveys and studies, the maintenance of websites and the distribution of regular newsletters.

In some countries, such as the United Kingdom, there are mailing lists of NGOs who periodically receive information about policy, new legislative developments, etc. In many countries there are also specific environmental authorities responsible for actively spreading information on the environment, such as the Institute for Environmental Promotion in Portugal and the Environmental Protection Agency in Ireland.

Electronic Means of Dissemination

None of the countries incorporate in their legislation an obligation to disseminate information electronically. However, this is an increasingly common form of storing and disseminating information. Furthermore, websites allow the responsible authorities to save money and resources. Improving the electronic provision of environmental information reduces the number of requests for information (and the authority work load) because the information is already in the hands of the public via the website.

Public Participation in Environmental Decisionmaking Legislation on Public Participation

The right to public participation is not constitutionally recognized in the surveyed countries, except for Portugal and Spain. Nevertheless, it is possible in all the countries to find legislation and/or practices which in one way or another recognize the right to public participation. This right is exercised in many different ways: legislative initiative, referendum, participation in consultative bodies, public consultation, the right to make submissions prior to decisionmaking, the right to have such

submissions taken into account when the final decision is made, and so on. These possibilities for participation exist on the local, regional and central levels.

In general, participation is limited to the following matters:

- elaboration of regulations about environmental matters;
- approval of plans, programs and policies that affect the environment;
- territorial planning, including the planning of land-use and resources and urban planning;
- decisionmaking about the issuing of authorization or permits for installations and the performance of certain activities, which also includes the environmental assessment of certain projects.

Especially in relation with the last point, the existence of Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, recently amended by Directive 97/11/EEC, has served as a harmonizing element of the requirements for participation in relation to environmental impact assessment.

Public participation systems are clearly a reflection of the different societies, cultural traditions and histories of the different nations, thus explaining the differences encountered from one system to another, though they are always within the context of a series of common principles.

The Sofia Guidelines, together with the future Convention on Public Participation, are the only instruments that deal globally with this matter and which do so in an international framework with the aim of promoting harmonization. The Sofia Guidelines include a series of recommendations about public participation including: transparent procedures and provision of relevant information; consultations that take place early in the decisionmaking process, when options are still open and effective public influence can be exerted; guarantees that public opinion is taken into account, etc.

Although strict compliance with these recommendations is not found in all the countries, they should nevertheless be taken as a reference when examining the different situations.

Public Participation in Making Laws and Regulations

Participation in the adoption of environmental laws and regulations is achieved through participation in legislative and executive bodies. Given the current system of separation of powers, the approval of regulations is usually carried out by the parliaments. In federal or quasi-federal systems, there is a distribution of competences in environmental matters, also affecting the legislative function, which is thus exercised both by the national parliament and by the different regional parliaments. Furthermore, in the approval of specific regulations, it is the executive that plays the decisive role. The executive body also has an important weight with regard to legislative initiatives. This executive exists at both central and regional level in the case of a federal or quasi-federal systems.

Public Control of Decisionmaking

Public participation is not provided in parliamentary deliberations or in the voting to decide on approval of laws and/or regulations in any of the countries in this survey. Public attendance of parliamentary sessions is permitted but without the right to speak, and certainly without the right to vote. Sometimes, upon invitation, it is possible to participate in the deliberations of a parliamentary committee in relation to the environment, or even, if so requested, to present opinions and postures about a specific issue.

Public participation in the legislative function is achieved directly through the instruments of referendum and legislative initiative. Both permit the public to intervene in the legislative process.

Referenda

Austria, Germany, Greece, the Netherlands, Norway, Portugal, Spain, and Switzerland include the right to referendum in their sys-

tems. This instrument is applicable at different levels (i.e. state, regional and/or local), depending on the country.

Austria has three types of referendum, only one of which, regulated by a federal law, can be initiated by voters (10,000 voters are required). All three referendum types are applicable to all types of political issues and have been used for environmental matters. The nine states also each have different laws on referendum. The first type, "Volksabstimmung," is legally binding and an example of its use was the referendum about the nuclear power plant at Zwentendorf. The second, "Volksbefragung," is politically but not legally binding and has been used in some states; for example, the citizens of Vienna voted for the construction of the Freudenu hydropower plant in 1994. Finally, the "Volksbegehren" can be initiated by voters and, if it is signed by 100,000 voters, parliament is obliged to discuss a text, although it is not obliged to adopt it. This last type of referendum is quite similar to legislative initiative, and it has been used for animal protection and for last year's engineering referendum. In the engineering referendum, 1.2 million Austrians signed a text with proposals against genetic engineering in agriculture. Implementation of these demands has not been very successful until now.

In Germany, there are also three types of referendum, only one of which is legally binding. The referendum is possible in some states and also at the local level. The state of Bavaria has conducted more referenda than any other German state, and some environmental issues have been subjected to referendum, including development planning, traffic projects, and waste disposal projects.

In the Netherlands there is no provision for a national referendum, although there is currently a proposal to regulate a referendum which would allow popular nullification of legislation. Provinces and municipalities are able to organize referenda concerning their own regulations. However, the threshold requirements for such referenda were raised recently after a referendum in the city of

TABLE 10: Public Control of Decisionmaking

Public participation is based in Constitution	Portugal, Spain
Right to Initiative	Denmark, Spain, Switzerland
Referendum	Austria, Germany, Greece, the Netherlands, Norway, Portugal, Spain, Switzerland
Participation in Consultative Bodies	Austria, Denmark, Ireland, Norway, Portugal, Spain, Switzerland

Amsterdam blocked a plan to build 150 housing units on open space at the edge of the city.

In Switzerland, referenda are possible at the federal and canton (district) level. There are three types of referendum, one of which permits the nullification of a law or decree already approved by the Federal Assembly. All environmental issues can be subject to referenda which are binding and widely used in practice.

In Norway, Portugal, Spain and Greece, referendums have never been used for environmental issues, and in Greece there has never been a referendum on any issue.

Right to Initiative

Legislative initiative is only possible in Denmark, Switzerland and Spain. In Denmark there is a privileged NGO that has the right to take initiative in cases related to conservation of natural sites.

In Switzerland, all environmental issues can be the subject of legislative initiative and are often addressed through this kind of public participation instrument. This is also possible at the local level, where the required number of signatures is much lower and depends on the number of residents.

In Spain, it is possible for the public to initiate legislation at both the national level and in many autonomous regions. A national initiative requires 500,000 signatures of Spanish nationals who are recorded on the census in order to oblige parliament to debate the text of the proposition which forms the subject of the initiative. The law allows citizens to take to parliament an articulated legislative proposal but does not oblige the parliament to

approve it. The legal requirements demanded, together with the high number of signatures required, has prevented any national initiative from succeeding so far. Its use for environmental issues has been attempted though — several NGOs started a legislative initiative proposing a law to stop the production and use of nuclear energy in 1991. The measure failed to collect the necessary 500,000 signatures.

Public Shares Power to Decide

Another form of participation in the elaboration and adoption of laws and regulations is through consultation procedures in the phase prior to the approval of a draft law or a regulation by the executive body. Most countries covered by this survey have some formal and effective procedures in this respect.

The largest environmental NGOs in Denmark are regularly consulted on laws and policymaking. It is common practice for draft proposals to be sent out for consultation to hearings among NGOs potentially interested in the issue. NGO representatives are also appointed as members of several advisory committees, as is the case of the advisory committee on environmental investments in Central and Eastern Europe. The Danish system also offers many examples of good practice built on a culture of consultation with the public. Environmental NGOs are members of many official committees that have advisory functions, and through that participation are allowed to influence the decisionmaking process. This is the case, for instance, for the

Board of Environmental Product Labeling, which makes recommendations on which products should be labeled “green.” In short, Danish environmental NGOs have the right to be heard and to have their comments and proposals seriously taken into account by government officials. This privileged position in Europe nevertheless has scope for improvement, especially in relation to support to these organizations to meet the technical and quality standards required to represent public opinion in an appropriate way, and on the issue of practically gaining influence on the final outcome in the decisionmaking process.

The Dutch system is consensus-oriented. The preparation of decisions is accompanied by a great deal of consultation with the representatives of concerned groups. All levels of government consider it an ordinary function of public authorities to grant opportunities for public participation, public sessions, hearings, etc. Environmental NGOs may be informally involved in the preparation of a decision; consultation occurs through the invitation of the authorities.

In Norway, public participation takes place during the formal process of passing a law, when the minister responsible finalizes the draft proposal and sends it out for public hearing to all institutions and interested groups. These participants have a time limit of three months to express their opinions in written form. The informal process involves several parties, including the media and influential groups and individuals who provide debate on the issue. Public opinion surveys and television debates also can be conducted. NGOs also often play advisory roles and are invited to sit on committees and form reports. Some groups are appointed to participate in the National Committee for International Environmental Issues and the Sustainable Development Committee. In addition, informal contacts are also maintained.

Under the Swiss system, each new law proposal is sent to all interested groups and parties for written comments before the draft enters parliament.

In Spain, environmental NGOs are allowed to participate in several consultative bodies at the national and regional levels, where the representatives express their opinions and state their positions regarding environmental legislation. Although there are no specific criteria for appointing NGOs, priority is usually given to NGOs with the greatest representation or presence in the specific environmental issue. Some examples include the national Environment Advisory Council, similar bodies at the regional level, and the National Water Council. However, environmental NGO involvement in such bodies is quite a novelty in Spain, and is not yet provided with budgetary means to help the councils or the NGOs to support its development. These conditions recently caused a majority of the NGOs participating in the Environment Advisory Council to leave because the council failed to meet expectations.

In Ireland there is no regular process for involving or informing environmental organizations on legislative issues. This happens on an informal basis, however, and it is possible for these groups to give input into legislation. In certain cases individual government ministers or public officials can invite submissions from environmental organizations or can organize meetings with them. In general, selected individuals and some NGOs can give input through the Advisory Committee created to make recommendations to the Environmental Protection Agency or the Minister for the Environment relating exclusively to the functions of the EPA.

In Austria, some authorities invite environmental NGOs to comment on law initiatives, although they do not have a right to comment in the same way as other Austrian NGOs that belong to the so-called “social partnership.”

In Germany, the partnership approach has not yet been introduced. Environmental NGOs with legal status only have the right to observe and inspect expert reports in connection with the preparation of laws by authorities responsible for environmental affairs.

In Greece the partnership approach has not been introduced at all. Public participation consists of the right to address petitions and

applications to political parties or members of parliament and to submit petitions and reports to the authorities, which are obliged to act in a short time and to give a response, properly based, to any petition or report.

In Portugal, although environmental NGOs do not legally have the right to be heard on national law-making, the government often consults them.

Finally, there are no public participation rights as such set out in any legislation in the United Kingdom. There are some provisions for consultation to take place, and such consultations depends on the invitation made by the public authority for representations to be made by members of the public.

Overall, the systems are rather different. There are some cases of good practices, but in most of the countries there is great room for improving the procedures for participation in the elaboration and approval of laws and regulations. In this sense, and as has been mentioned above, the future Convention on Public Participation can help to harmonize criteria and practices for lawmaking.

Public Participation in Policies, Plans and Programs

Public participation in the elaboration of environmental policies, plans and programs, including participation in land management plans, follows similar patterns to those seen in the previous section.

Danish environmental NGOs are regularly consulted on policymaking. Regarding plans and programs, legislation provides that proposals should be presented at an early stage, that it must be assured that plans are debated among the public and that it is possible for the public and other groups to comment on them. In some cases, notification of plans is restricted to people and organizations that have the right to appeal. At the local level, NGOs participate in the monitoring and influencing of decisions through the so-called Green Councils.

In the Netherlands, the right is recognized for any person to contribute comments on draft plans such as provincial and national environmental policy plans. Public participa-

tion is the first step in some legal proceedings, including municipal zoning plans. When some of these proceedings are formally restricted to interested parties, the definition of "interested" is given a broad enough interpretation that environmental NGOs active in the region concerned have access to the proceedings based on the objectives established in their statutes.

In Switzerland, policymaking includes regular consultations with NGOs, provided the subject of the decisionmaking process is relevant to them. Besides this, and at the canton level, individuals and NGOs have the right to petition.

Spanish NGOs can participate in approval of policies, plans and programs through their participation in different consultative bodies at national and regional levels. Land legislation sets out mandatory periods for public participation in town planning procedures and allows affected individuals and interested NGOs to participate in these procedures. The effectiveness of these procedures are considered to be far from the desirable level of development, though some good examples can be found in recent years.

In Ireland, public involvement in the planning process is set forth by different acts. Development and environmental plans are approved every five years, and draft plans are put on public display for at least three months. Any person is allowed to comment on a draft, and changes approved consequently must be displayed afterward for at least another month. Local waste management plans and Environmental Protection Agency hazardous waste management plans are put on public display for two months. Written comments on the proposals are taken into consideration by the authority when it finally approves the plans. Water quality management plans are also available for public inspection, and members of the public may make written comments on them. Finally, air quality management plans may be also subject to inspection by the public and any comments made on them must be taken

into account by the local authority when making the final decision.

As mentioned above, some Irish NGOs and individuals are members of the Advisory Committee created to make recommendations regarding functions of the Environmental Protection Agency. This ability to give comment directly to the EPA or to the Minister of Environment constitutes direct participation in some environmental planning decisionmaking. It should also be mentioned that the National Trust for Ireland — An Taisce — as a prescribed body, is designated by the Planning Act to receive privileged treatment with regard to participation in decisionmaking about environmental plans. This gives them the right to receive copies of draft plans and notices of planning applications, etc.

In Austria, some authorities can invite environmental NGOs to participate in working groups involved in preparing national environmental plans. However, this rarely happens in practice, and NGOs do not receive money for such work. Also, comments on plans for releasing genetically modified organisms have to be taken into account. Finally, every time an individual right is affected, public participation is allowed, but only for affected individuals.

The German system regulates public participation in formal public planning procedures and in development planning. The par-

ticipation rights provided by transport planning laws have been reduced. Many non-public procedures are of this type; it is possible to gain information, inspect files and submit comments, but the procedural rights are limited to those people who may be affected. Environmental NGOs with legal status have only the right to observe and inspect expert reports in connection with the preparation of district and regional landscape plans and formal public planning procedures.

Portuguese law gives environmental organizations a specific right to consultation and information concerning the plans, proposals and studies of the central, regional and local administrations. These rights apply primarily to regional land-use plans; general municipal plans and other urban studies and projects; integrated regional development plans; and plans and projects for hunting, forestry or agricultural development or protection.

As mentioned above, there are no public rights as such set out in any legislation in the UK. However, there are some provisions regarding consultation, in particular within the planning system. Furthermore, in recent years the public's right to be consulted has been recognized by the courts in certain cases.

Throughout the region, public participation in preparation of policies, plans and programs is not adequately developed, and in some countries the arbitrariness is very

TABLE 11: Participation in Land-Use Planning

<i>Land-use Planning Steps</i>	<i>Every person/ organization</i>	<i>Natural/legal persons</i>		<i>NGOs</i>	
		<i>Interested</i>	<i>Affected</i>	<i>Everyone</i>	<i>Privileged</i>
Preparation/ Consultation	Denmark Ireland the Netherlands	Portugal		Austria Norway Portugal Spain Switzerland UK	
Proposal/ Comments	Denmark Ireland the Netherlands	Portugal	Austria Germany Spain	Norway Portugal Spain Switzerland UK	Germany

broad. In addition, there is a clear need to commit funding and general institutional support to encourage public participation in environmental planning. The lack of participation in many cases makes the necessary environmental planning totally ineffective. The principle of shared responsibility demands public participation in the design, approval and application of policies, plans and programs. This fact should be taken into account more by planners, particularly by those who really wish to have effective plans, programs and policies.

Public Participation in Siting, Permitting and Environmental Impact Assessment

With regard to Environmental Impact Assessment (EIA) procedures, the harmonizing instrument for most of these countries is Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, recently amended by Directive 97/11/EC. The European Union member states must incorporate in their legislation the provisions established by this directive with regard to the procedures for public participation in the approval of projects and activities subject to EIA. In the same way, the Sofia Guidelines also set out a series of conditions in which there should be participation, in this case referring also to siting and permitting. These conditions include the right to be heard, the right to propose alternatives where feasible, a reasonable time to comment, and the right to a reasoned decision. The Directive on Integrated Pollution Control will harmonize participation procedures in the granting of licenses and permits related to the environment. The Draft Convention on Public Participation is an important step forward in relation to the Sofia Guidelines in the sense that it defines the types of activities and projects to which these harmonization procedures should apply, and also establishes a series of conditions in which this process must take place.

In Austria, when there is a formal procedure and individual rights are affected, or in an EIA issue, individuals and NGOs are adequately

notified about the decisionmaking process. The Law on Environmental Impact Assessment and Public Participation entered into force in 1993. According to that law, everybody is allowed to get information about the project and to comment on it within six weeks. EIA results are to be published and discussed in a public hearing. Affected individuals can create a citizens' group which is a formal party in the permitting proceedings. Their opinion must be taken into account and they are able to challenge the permitting even at constitutional court level. A similar system has been established regarding release of genetically modified organisms (GMOs). The Law on Genetic Engineering (1994) provides for a six week period during which anyone is allowed to comment before companies can receive a permit to release a GMO.

In Germany, several attempts to deregulate and simplify several environmental laws in order to speed up permitting procedures have led to a decline in public participation in recent years. The number of industrial permitting procedures that require public notification and public participation has been reduced. Genetic engineering legislation has also faced some changes; for example, public hearings in permitting procedures have been abolished. This trend is not applicable to the EIA procedure, which remains unchanged.

The Dutch system allows public participation in the most important environmental proceedings concerning environmental and emissions licenses for industrial, energy-producing and waste-processing installations; proceedings to establish the routes of highways and rail lines; and the construction or extension of airports. Many of these proceedings are open to the public, and when restricted the broad interpretation of the concept of interested parties allows NGOs to participate in the procedure.

The Irish system provides different provisions regarding public participation on licensing application procedures. For instance, regarding planning permission, any person may inspect an application and submit a written comment which must be taken into con-

sideration by the planning authority when making its decision. In the case of applications for integrated pollution control licenses, submissions may be made in the early stages and are available for public inspection for two months. Similar provisions apply to waste license applications, waste collection permits, applications for licenses for direct discharges into waters (but not for discharges to sewers) and for air pollution licenses.

Spanish legislation allows public participation on procedures regarding EIA; authorizations for the installation and activity of annoying, unhealthy, harmful and dangerous activities; and authorizations for activities likely to cause pollution or degradation of public waters, particularly discharges of wastewaters and products. These procedures allow all citizens to present comments and claims. Although sometimes this participation is limited to affected or interested parties, the interpretation of this concept includes environmental NGOs. Despite the fact that notification is usually restricted to affected parties, information can be accessible in official journals or by other means (e.g. town council notice boards).

Some countries reported important concerns regarding EIA. In Portugal, for instance, where NGOs have the right to consultation and information regarding EIA procedures, the law provides the right to participate only after the project is already defined, thus making participation an ineffective form of social legitimization of the decision rather than ensuring real participation. In fact, EIA legislation is currently under review in several countries because of varying levels of non-compliance with the EU Directive. This is the case in Denmark and in Spain. The EIA procedure is viewed in several countries as a formalized and empty procedure without a proper influence on the final decision.

Public participation in granting licenses and permits is also limited in several of the surveyed countries. The most common problem is that by the time participation is allowed it is not feasible to contribute alternatives because the proposals are almost completely closed. In addition, this type of

participation is often restricted to affected parties, although in many countries the participation of environmental NGOs is permitted within the interpretation of this concept. For effective participation, it is also important for information provided to be sufficiently broad and widely available. Finally, there is a need to promote participation in these procedures in a more decided way and, specifically, by providing the technical assistance necessary for this participation.

Access to Justice²

General Rights and Sources of Law

Effective participation in environmental decisionmaking must be reinforced by access to constitutional or other legal protection of citizen rights to participate. This is set out in the Sofia Guidelines and also in the Draft Public Participation Convention.

Such a right to access to justice in environmental cases is recognized in the constitutions of a few of the countries analyzed in this survey, at least indirectly connecting the right to access to justice together with the constitutional recognition of the right to the environment. The constitutions of Spain and Portugal provide explicitly for an *actio popularis*, or “popular action,” in certain circumstances not necessarily limited to environmental matters. In such circumstances, the constitutions allow open standing to sue, or “citizen enforcement,” without the need to show a special legal interest to challenge actions that violate the laws. However, such cases are rare. Portugal’s constitution ties the *actio popularis* specifically to protection of the environment and similar matters. It states that everyone “enjoys the right to *actio popularis* in the case and under the conditions provided by law, notably the right to promote the prevention, the suppression, and the prosecution of offenses against public health, the environment, the quality of life, and the cultural heritage.” This extends to nongovernmental associations as well as natural persons. This should also be viewed in conjunction with the constitutional right of every citi-

zen to a healthy environment and, of course, with relevant legislation.

In Germany, the constitution allows anyone who considers that his or her rights have been infringed to complain to the courts, but this has served primarily to protect traditional, individual rights as opposed to collective or societal rights. As a consequence, this provision has not been used for environmental cases and it seems unlikely that it could be. It is erroneous, however, to contend as some might that this provision of the German Constitution prohibits the broadening of standing through legislation. Indeed, some minor legislation has been enacted on the national level to broaden NGO standing, and a great deal has been enacted on the federal or state level.

In some countries, such as Greece, where a “legal interest” normally has been required for standing in lawsuits, the constitution’s imposition of a duty on the state to protect the environment has led the courts to recognize broadly the interests of individuals and NGOs in enforcing that duty. The result has been to grant standing liberally in a wide variety of environmental cases, particularly in the supreme administrative court. A similar development might be possible in Ireland, where the “right to life” provision of the Irish Constitution has been held to allow an anti-abortion NGO access to justice without meeting normal rules of standing. Right-to-life provisions in constitutions elsewhere in the world have been used in the same manner by environmental NGOs to achieve liberalized standing. For the most part, however, the right to legal protection is specified in different legislation, either that of a general character or more specific rules which recognize this possibility.

In the majority of countries, it is administrative legal protection that covers most cases of environmental protection. In others, such as the Netherlands, the civil jurisdiction is commonly used, and still in others, such as Denmark, there is only one type of jurisdiction which encompasses all protections. Criminal protection is seldom used in general for environmental cases filed by citizens on the continent, but individuals do have the

right to initiate “private criminal enforcement” actions in England in both environmental and other matters. Citizens and NGOs also have this right of criminal enforcement in Spain.

In general, legal protection is restricted in most cases to affected persons or persons who are said to have a “legal interest.” Environmental organizations do not have any broad legal standing recognized in this respect. This situation is clearly unfavorable for the protection of the environment, whose content in many cases is diffuse because it affects all, and it is sometimes difficult to determine personal and not collective effects. Consequently, several countries have already enacted legislation that grants standing to environmental organizations in some such circumstances.

This is one of the facets of public participation which seems to need greater development of legislation, means, ideas and social and institutional change. This need for change applies especially to judicial procedures that are obsolete in terms of their conception of active and passive subjects involved in environmental issues and of their concept of the environment itself.

Administrative Standing

Administrative standing is governed by existing procedures in the process of granting permits and site licenses, EIA, and general participation in the approval of laws and regulations, policies, plans and programs. The administrative processes give the possibility of participating in administrative decision-making, as explained in the preceding sections, and they also provide the possibility of using the system to appeal decisions resulting from these administrative procedures.

In general, the right to appeal through the administrative system is recognized for affected parties in all the surveyed countries, subject to a complex set of exceptions. For example, this type of appeal occurs only occasionally in the United Kingdom, and is not applied at certain times in the case of territorial plans for affected residents in

Denmark. These two examples show the complexity of this generalization and are not the only possible examples. In Austria, Denmark, Greece, Ireland, Portugal and Spain, administrative standing is recognized for interested parties also on the basis of the different procedures. Only in countries such as Ireland, the Netherlands, Portugal and Spain is recognition given within some procedures to all persons.

Administrative standing in the case of NGOs is more limited than for individuals. The legal standing of NGOs is not recognized in Austria, Portugal or the United Kingdom. Affected and/or interested NGOs are granted legal standing in the rest of the countries. In some cases this standing is recognized only for certain organizations and in other cases there are certain conditions for them to demonstrate the content of their "interest" or "affectedness." For example, NGOs may be required to show their statutes include among the association's objectives the issues relating to the appeal or that their territorial scope coincides with that of the case in question. The ability for NGOs to automatically gain standing is far from being the general rule in the systems analyzed.

In all cases the broadest eligibility for standing is given to physical or legal bodies in matters related to access to environmental information, especially in the European Union member states through the application of Directive 90/313/EEC.

Standing Against Government Agencies

Again, it is the different general legislation which regulates access to legal protection in relation with specific environmental regulations which design the possibilities of access to the courts to appeal against decisions, actions or omissions adopted by the administration in relation with environmental issues.

Access to standing in the courts against decisions, actions or omissions of government agencies is governed not necessarily by environmental regulations but instead by

general laws on legislative procedures.

In Austria, if public authorities fail to implement laws or act incorrectly, individuals can only appeal to the court or to the higher administrative body when their individual rights are affected. Decisions of the courts are legally binding, and enforcement is guaranteed and is carried out by the public authorities themselves. Affected individuals can also bring cases before civil, criminal, and constitutional courts. In the case of EIA issues, a citizen group is granted legal standing in administrative courts. With regard to NGOs, legal standing is granted to all NGOs as legal entities only in civil courts, and to some NGOs in the arbitration courts. As a result, NGOs are generally unable to seek court protection for the environment in Austria.

In Denmark, the right to legal standing includes the courts as well as the administrative appeal system. Legal standing is defined differently from case to case since no general statutory rules on objections and appeals are set out. However, anybody with a substantial individual interest can appeal to the Danish courts. Several environmental cases have been brought before the courts as criminal cases. The issues treated include waste disposal, agricultural matters, use of pesticides, etc. The appeal system, in connection with the environmental law system, consists of two independent appeal boards, one dealing with nature protection issues (the Nature Protection Board of Appeal) and the other with environmental issues (the Environmental Appeal Board). The first time an environmental NGO tried to bring a case to court was in 1994, when the Danish Ornithological Society took legal action against the Ministry of Transport. It was the first time an environmental organization was found to have a right to action without having to show actual damage to its members' economic interests.

The German legal system allows every citizen to appeal for the right of access to environmental information before the court. Denial of public participation rights can be also challenged in administrative court,

although in practice without much chance of success. General environmental issues can be brought before the courts only when a breach of the law occurs and when an individual's rights are affected. Legal standing is granted under certain conditions to some nature protection associations. Thus, legal standing is restricted to affected individuals before administrative, civil and criminal courts and in very few cases is granted to NGOs. It is established that the state is liable for material losses or harm to individual health caused by illegal actions by the authorities.

The Greek laws grant legal standing before the Council of State (administrative court) for individuals and NGOs as long as proof of legal interest is submitted. The same applies to civil courts. The Council of State has substantially broadened the standing of NGOs while staying within the language of "legal interest" by referring to the constitution's imposition of a state duty to protect the environment. In criminal courts, only individuals can gain legal standing. When a public official fails to act properly, justice can be sought in civil or criminal court.

In Ireland, very few environmental cases, mostly related to planning issues, are heard in court. The main type of action taken in the high court relating to environmental and information cases is judicial review of a decision of a public authority. Individuals in general have the right to appeal before an administrative court on issues regarding planning applications, air pollution, specific authorization of pollution licenses, and in the case of integrated pollution control and waste license applications. NGOs are granted legal standing before the same courts in the same cases. Only affected individuals and NGOs are allowed to go before the constitutional court in the cases mentioned above. The Law on Access to Information on the Environment grants legal standing before administrative and constitutional courts only to affected individuals and NGOs.

In the Netherlands, there is no opportunity for active participation in criminal cases for NGOs. There is also no constitutional

court. This kind of constitutional review is carried out by the Council of State. The duration of an appeal to the courts is approximately two years. A violation of the law by public authorities is difficult to pursue; action in the civil courts is the best way to proceed in those cases.

In Norway, the Access to Justice Act grants individuals and NGOs the right to go before the court. Where there is legal standing against the government, affected individuals or NGOs can bring both the government and/or the wrongdoer before the court, although NGOs must prove to have a legal interest and that the case is a question of public and/or environmental concern.

Legal standing is granted broadly in Portugal. All individuals and NGOs are allowed to go before administrative and civil courts, and affected individuals and all NGOs are allowed to go before the criminal courts. However, neither individuals nor NGOs are entitled to legal standing before the constitutional court on environmental issues. Although the percentage of environmental cases is very low, NGOs have succeeded in bringing their positions before the courts in some cases. In addition, Portuguese citizens can appeal an administrative decision to the courts using a process called "injunction to grant access to documents," regulated in the Administrative Law. This injunction appeal permits the court to order the administration to provide access to a document very quickly, within 20 to 40 days.

In Spain, legal standing is granted before the administrative, civil, and arbitration courts to individuals who can show a direct and legitimate interest. NGOs have legal standing before administrative courts, though they have to be legal entities and they must act in defense of legitimate interests concerning protection of the environment. Anyone is entitled to legal standing in criminal cases, and public penal action is also allowed. This action allows citizens and organizations to go before the criminal courts to challenge possible harm to the environment. In cases when civil servants fail to comply with legal provi-

sions or they fail to implement applicable legal provisions, individuals or NGOs can seek damages. Civil and even criminal damages can be exacted in the most serious cases, but less serious cases would be settled within the administrative system.

Public action is also allowed in Switzerland within the public appeal procedure. NGOs that have been recognized as legal entities or at least 10 years old are granted legal standing to challenge all projects subject to the EIA procedure before the courts. Apart from that, only affected individuals have general legal standing before the administrative, civil, criminal, and constitutional courts. However, the federal laws relating to the protection of the environment and the protection of nature allow interested NGOs to go before administrative and constitutional courts in relevant cases.

Under the system in the United Kingdom, if a public authority fails to enforce a law, citizens may either carry out the law themselves or they may challenge the public authority by way of judicial review. If anyone suffers damages as a result of an authority's failure to carry out the law, a civil action may be brought against the authority. A similar procedure applies when the authority itself is the wrongdoer. Legal standing is granted in the UK to all individuals and NGOs in administrative courts, to affected individuals and NGOs in civil courts, and finally to all individuals and NGOs in criminal courts. There are no arbitration courts nor is there a constitutional court.

Remedies and Enforcement

Injunctive Relief

Most of the countries provide some sort of injunctive relief, although the possibilities vary from one system to another and depend on the type of jurisdiction in question.

In Austria it is possible to request interim injunctive relief from the administrative court and the constitutional court. The civil and criminal procedures also allow interim and permanent injunctive relief, though they are generally used in media and commercial

cases. Similarly, interim injunctive relief is possible in administrative, civil and constitutional procedures in Germany, but not in criminal courts.

It is also possible to obtain injunctive relief under Irish law. The legislation gives individuals the ability to act independently of the public authority to protect the environment. Under the planning law, for instance, any person can apply to the corresponding court for an order to stop a development where permission has not been sought or to restore land to its original state when a non-authorized use has occurred. Similar action is possible regarding pollution of the environment, for example water pollution or discharges to water, or emissions to the atmosphere. Finally, under the Waste Management Act, interim or temporary injunctions or remedies can be sought when improper holding, recovery or disposal of waste occurs.

In Spain, injunctive relief is allowed in civil courts for both individuals and NGOs. It is also allowed in administrative, civil and penal courts to request the adoption of precautionary measures to block the continuation of a situation that could produce adverse effects. Precautionary measures can also be ordered to assure the effectiveness of a future resolution.

The problem with injunctive relief in most countries is the bond required to secure such relief. In general, a bond must be offered by the party seeking the injunction to cover possible damages to the subject whose activity would be blocked. The amount of the bond is set by the judges, who usually do not apply appropriate significance to the protection of the environment and therefore set the bonds too high. This favoritism of the interests of economics and private property often makes injunctive relief difficult and it impedes any real legal protection of environmental interests.

Enforcement of Judgments

Generally, all the systems studied here rely on judgement summons, which provides for the consistent and meaningful enforcement of court judgments. No serious problems were mentioned regarding the systems for the

application of judicial decisions. However, some reports have highlighted legal situations in which it is easier or preferable for polluters to simply pay penalties or sanctions than to comply with environmental protection regulations. Tougher penalties could help alleviate this problem.

The guarantee of compliance with judicial sentences is achieved in a variety of ways, including the seizure of goods and property or of bank accounts. In some legal systems, failure to comply with a court order can be punishable by imprisonment. However, the legal procedures are not always effective. The Netherlands survey, for example, points out that “problems may arise in administrative law cases where the matter is referred back to the competent public authority,” and the case of spatial planning is expressly mentioned. In cases of this type, delays in applying the court decision can lead to lack of enforcement.

Court Expenses/Litigation Expenses

Generally, litigation expenses, along with the length of proceedings, are the main obstacles to effective access to the right to justice. As a good example, the Austrian system states appeals against denial of information are to be free of charge. However, even though the appeal in EIA suits is also free of charge, the need for lawyers and experts causes these cases to be rather expensive.

The Danish system provides legal aid in non-business matters, and it is also possible to obtain a waiver of court fees if a party can prove it has only modest means. About 69 percent of the Danish population falls under this category. In Spain, it is also possible to participate in judicial proceedings free of charge, although this is not often used in environmental cases, which require special expert support.

Some legal systems establish different costs depending on the type of matter challenged and the value of the matter being debated. The fees may depend also on the levels of the court hierarchy and the type of jurisdiction involved (i.e. civil, administrative, criminal).

Some countries (e.g. Denmark, Ireland, Spain and the United Kingdom) also allow the winner in a case to recover court costs, including lawyer and expert fees. In this respect, the Dutch system limits cost recovery in court cases. The positive side of this provision is that there is a maximum the losing party could have to pay to the winner; thus the risk of losing a court case, economically speaking, is more reasonable.

The UK system proves to be extremely expensive. People on a low income may receive legal aid, meaning that most of the costs will be covered. One of the main advantages of being granted legal aid is that the beneficiary of the legal aid does not have to pay the costs of the winning party if the beneficiary is unsuccessful.

Legal Assistance

There are few examples of organized legal assistance for environmental cases, although in many of the countries there are lawyers who work closely with NGOs, often voluntarily.

In Germany, one NGO, IDUR (information service for environmental law), has lawyers who provide free advice and legal representation in court to associated groups. There are also NGOs that offer technical or procedural support in authorization matters, including the Oko Institut in Darmstadt. In Ireland, the Free Legal Advice Centre runs an advisory service that provides initial legal guidance. This service depends on volunteer lawyers. In the Netherlands, NGOs, particularly at the provincial level, offer assistance to people and local organizations regarding legal proceedings. There are also legal aid offices, which are independent and offer legal assistance to those who do not have means to pay for an attorney. The offices often assist environmental organizations in their cases, too. In Norway, some legal aid on environmental issues is provided by the JUSBUSS voluntary organization, run by law students; however, this assistance is limited because the students cannot appear before the courts. In Portugal

and Spain, different NGOs (GEOTA, CODA) also offer voluntary support or are supported by lawyers who help NGOs defend environmental rights. In the UK there are two legal advisory services provided by or through NGOs: EarthRights and the Environmental Law Foundation.

Ombudsman

Only the German and Austrian systems do not include the institution of ombudsman. The rest of countries have an ombudsman, but the capacity and responsibilities of this figure varies from one place to another.

In Austria, even though there is no national figure, some states provide so-called “environmental attorneyships,” who are members of the public administration but independent and not subject to orders. They have legal standing in the EIA procedure and in other administrative processes.

The institution of ombudsman dates back rather far in some countries. There have ombudsmen in Denmark since 1954. The ombudsman of the parliament deals with complaints about the administrative decisions made by public authorities, and the ombudsman of the consumers deals with complaints related to commercial issues. Many of the cases dealt with by the ombudsman of the parliament concern access to information.

In Norway, one in every eight cases dealt with by the ombudsman is related to the environment. This does not include the many issues that are beyond the competency of the ombudsman, including some decisions made by the local governmental committee or counties.

In fact, the ombudsman is a common figure in most of the Scandinavian countries, but it is not as traditional elsewhere. In Greece, for example, this is an extremely recent institution and is less than six months old.

In Ireland, the Office of the Ombudsman was created in 1984. Only a fraction of the complaints deal with specific environmental

TABLE 12: Ombudsman	
There is an Ombudsman	Denmark, Greece, Ireland, the Netherlands, Norway, Portugal, Spain, Switzerland, UK
There is no Institution of Ombudsman	Austria, Germany

issues, but many of the complaints refer to access to environmental information. The Irish ombudsman is not empowered to deal with all types of cases; for example, the ombudsman has no competency for complaints relating to the Environmental Protection Agency or quasi-governmental institutions whose activity can affect the environment, such as the Electricity Supply Board or Irish Rail.

The Dutch ombudsman has competency on the national level only and is not allowed to examine decisions made by the provinces, municipalities or water board authorities. Environmental complaints to the ombudsman are rare, probably because of the existing broad scope for bringing environmental cases to the courts.

In Spain there is a national ombudsman and similar institutions in many of the autonomous regions. Though this is a new institution, people often apply for the intervention of the ombudsman as a quicker and less expensive way of solving many of the dysfunctions caused by the decisions, actions or lack of decision or action by the public authorities. This is particularly the case when public authorities fail to respond to requests for information. The ombudsmen publish annual reports, and since 1994 many of these reports have included special chapters on environmental issues. A lot of space has been dedicated to complaints regarding access to information.

CONCLUSIONS AND RECOMMENDATIONS

Access to Information

In general, most of the Western European countries recognize and allow access to environmental information. In some cases this access is formulated as a right, supported by all the guarantees of the concept of law, while in others the allowance is granted with less protection. It is also true that the different historic and cultural backgrounds regarding access to information mark important differences from one country to another. Nevertheless, it is safe to say that the past few years have seen an evolution toward the opening up of possibilities for access to environmental information.

Since the Third Ministerial Conference in Sofia, Bulgaria, in 1995, the greatest achievement in terms of access to information has been the adoption of new regulations or the modification of those already existing, depending on each particular case, to comply with the provisions of EC Directive 90/313/EEC on the Freedom of Access to Information on the Environment. The directive was adopted in June 1990, and it includes provisions similar to those of the Sofia Guidelines. It has been transposed in all the EU member states included in this survey (i.e. all the countries considered except Switzerland).

The European Commission has received several complaints about incorrect transposition and/or application of the directive. This has led to the opening of infringement proceedings against some countries and the consequent modification of the regulations adapting the directive. Currently, the directive is being reviewed, and this may lead to the elaboration by the commission of a reform proposal to improve the possibilities of effective access to environmental information within the EU.

Based on the situation described in this survey, attention should be drawn to the following areas that need improvement:

- The right of access to information is still not recognized in all the countries for all persons, without discrimination on the basis of nationality, domicile, etc.
- The definition of the environment does not clearly include issues such as construction, cultural sites, energy radiation, conditions of human life, financial and economic analysis, health, and transgenic issues in all the countries.
- The public is not always sufficiently informed in all the countries about how to gain access to information or to whom their requests for information should be addressed. In many cases it is not obligatory to help citizens find the body that should address their requests for information based on the distribution of competencies, and any such help is provided on a voluntary basis or depends on the discretion of the civil servant involved.
- Not all the systems offer the person requesting information the possibility to choose the format in which the information will be provided.
- It is not possible to access information held by private, public or semi-public enterprises managing environmental services in all the countries.
- In some of the countries, the time limits for responding to a request for information or for providing the requested information are too long (two months), especially considering information is often only useful or valuable if it is recent and updated.
- In a few countries, the long time limits combined with the possibility of negative administrative silence poses a significant obstacle to effective access to information.
- The exceptions listed for the mandatory or discretionary denial of access to information are very similar in all these countries. On the whole it can be said that these lists need to be more clearly defined in order to prevent excessive room for arbitrary interpretation.

- Few of the region's legal systems allow the possibility of a public-interest test to allow release of otherwise classified information. This type of test is an appropriate and necessary instrument because it upholds the general principle of freedom of access to environmental information, and would lead to more precise criteria for denying access.
- The cost of obtaining information has been noted in some countries to be one of the greatest barriers to accessing information, although many systems offer good practices in this respect.
- Active provision of environmental information, especially using the Internet, has proven to be a good way to reduce the work load brought about by citizen requests for environmental information. Improving and adding traditional and electronic means to actively provide the public with environmental information could quickly improve the efficiency and effectiveness of the entire governmental system.

There is clearly a need to improve the legal regulation of access to information in certain cases. On the other hand, it is also necessary to adopt measures to build capacity, including public information programs that explain the information available, the ways to request such information, the bodies responsible for providing the information, etc. Similarly, there is also a need for training programs for the authorities to teach them about their obligation to provide environmental information, as well as a need for computerization and systematization of environmental data compilation and its effective treatment to improve environmental decisionmaking and the provision of information to the public.

Finally, it is necessary to mention the importance, for almost all the countries included in the survey, of the access to information policy pursued by institutions of the EU itself. This matter is also linked with public participation, as will be noted below. In some of these countries, where

there is broad recognition of the right of access to information, the lack of guarantees or regulations of the type established by Directive 90/313/EEC at the level of EC institutions is difficult to explain. Though it is true that codes of conduct have been adopted (e.g. by the commission itself), it is also true that given the weight of environmental considerations in the decisions made at the EC level there is an obvious need for the adoption of principles similar to those which are being applied at the national level. The adoption by the European Commission of the Convention on Public Participation could signify a step forward in this respect.

Public Participation

Public participation is the area in which the greatest differences occur from country to country. This is due not only to the historic and cultural backgrounds of each country, as in the previous case, but also to the fact that there are few harmonizing measures in this area, either at the international level or at the EC level.

It is not easy to identify public participation achievements in all the countries given that its evolution varies not only from one country to another but also from one type of matter in which public participation is permitted to another. Except for in countries where there is a tradition of public participation, this is a matter in which European countries still have a long way to go. Furthermore, in some countries there is a tendency toward the regression and questioning of existing public participation systems, leading to involvement processes which in no way support adequate development of public participation.

Some of the points which may be developed include the following:

- Greater clarification is needed in defining which environmental issues must include public participation, and access should be opened to parties other than those expressly affected or interested.

- In all but a few countries, public participation in the making of laws and regulations is rather poor.
- Public participation is also poor in decision-making processes regarding policies, plans and programs, but not for town planning.
- Participation does not always occur at a sufficiently early stage. Opportunities for the public to give input should be offered from the start of the process.
- The concept of the interested or affected party clearly should include NGOs as representatives of legitimate collective interests.
- Mechanisms should be established to oblige the final decisionmaking body to sufficiently take into account the opinions, comments and positions tendered by the public during the period of public participation.
- There is a need for procedures to go beyond the basic transparency already common in these countries. Environmental issues should also be publicized, meaning the public must be informed in a clear and understandable way of its rights and/or possibilities for participating.
- Technical assistance and support is deficient in most of the countries and should be expanded.
- Few countries provide specific training for civil servants about public participation. This type of training should be institutionalized.
- The absence of training combined with the lack of sufficient means for promoting public participation schemes (i.e. funds dedicated to promoting public participation and education) leads to an abundance of cases in which the public does not take advantage of the existing possibilities to participate. The presence of capacity-building activities for the public could improve the situation enormously.

Decisionmaking at the local level is another area where improvements are possible. Up to

now, public participation in local decision-making has occurred on an informal basis that does not adequately guarantee the observance of the general principles of effective public participation.

Access to Justice

Access to justice is the weakest part of the framework for public participation in every country. Although some countries offer good solutions to overcome some of the more crucial obstacles (i.e. the length and cost of the processes), the situation in general needs improvement.

One aspect of great importance is the general slowness of many administrative and judicial appeal procedures. This is especially problematic concerning cases of denial of environmental information. Few of the countries have procedures for quick resolution of such cases, and this has led to situations in which the information was useless when it was finally received, up to three years after it was originally requested.

Another important obstacle to effective access to justice is the high fees and costs. The prohibitive expenses include bonds that often are set too high for parties with limited means who are acting to protect the environment. This problem requires not only improvement of the regulations but also a change in the priorities and social values which the judges and courts are obliged to apply.

Another obstacle that deserves mention is the restriction of legal standing. In many of the surveyed countries, only those directly affected are afforded the right to go to court, and this concept does not always include NGOs as representatives of collective and social interests worthy of promotion, as is the case of the environment.

Finally, it should be noted that in the context of the EU, legal standing before the Court of Justice of Luxembourg is also restricted to affected parties. This does not in any case include NGOs, who are forced to appeal any

breach of community environmental legislation indirectly by presenting a complaint to the commission. Just as national legal systems need to broaden their opportunities for legal standing, the courts of the EU must also allow broader access to international justice.

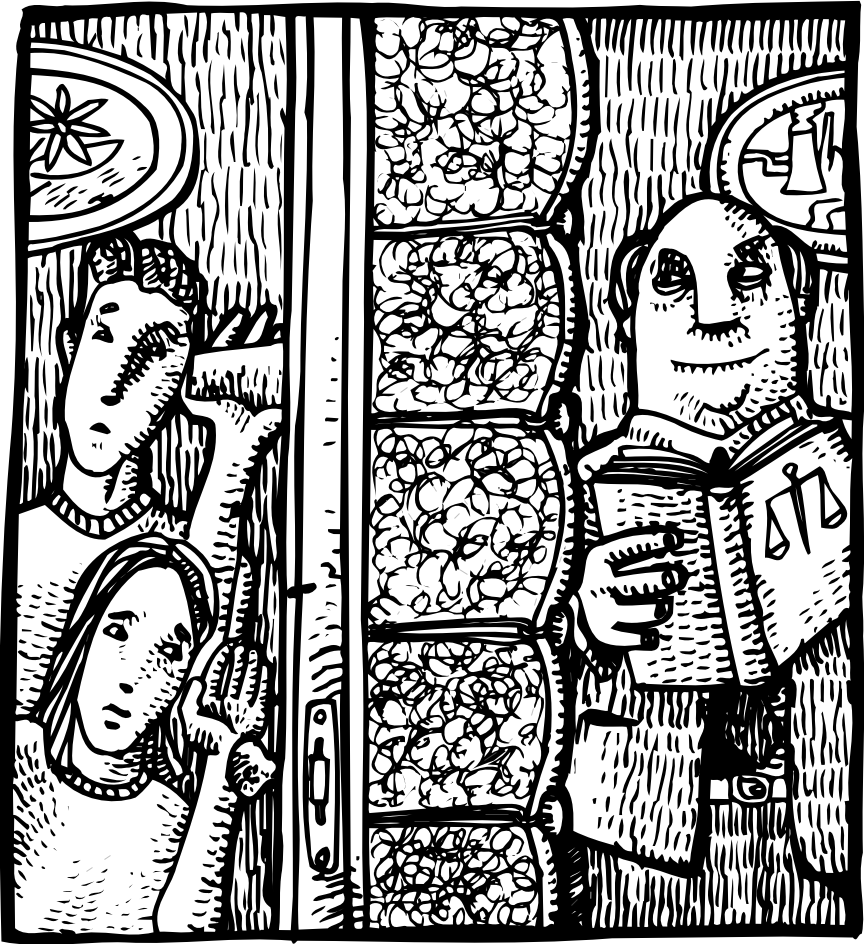
NOTES:

1 In this report, the United Kingdom refers to England and Wales only.

2 See Guidelines IV (31)

3 This part includes comments received by John Bonine.

The author wishes to express thanks to Nyonga Rugumayo Amundsen, John Bonine, John Hontelez, Kirsten Sloth and Jeremy Wates for their comments on this report.



A closed door to citizens is a missed opportunity.

Chapter 1: Austria

EVA GLAWISCHNIG ■ GEORG GUNSBERG

LEGAL AND INSTITUTIONAL FRAMEWORK AND PRACTICES FOR PUBLIC PARTICIPATION

General

Constitutional Rights

The Constitution of Austria¹ includes a regulation in which the Republic of Austria (at the national, state, and municipal levels) declares itself generally committed to environmental protection. The second section gives a definition of comprehensive environmental protection. This constitutional law² was published in 1984 and does not establish an individual right, but a declaration of public interest. It therefore gave a certain impetus towards environmental legislation in Austria. But the Austrian Constitution does not directly address access to information, public participation and access to justice.

Implementation of International Legal and Nonbinding Instruments: Sofia Guidelines

Austria is a member state of the Espoo Convention, the UN ECE Convention on Environmental Impact Assessment in a Transboundary Context.³

The convention was signed and ratified by Austria, and implementation has already begun under the law on environmental impact assessment and public participation.⁴ Austria is also a member of the Universal Declaration of Human Rights, adopted by the UN General Assembly on December 10, 1948.⁵ It is also a member of the Convention on the Conservation of European Wildlife and Natural Habitats, adopt-



ed by the Council of Europe on September 19, 1979⁶ and a member of the Convention on the Protection and Use of the Transboundary Watercourses and International Lakes, adopted at Helsinki on March 17, 1992.⁷

Austria has been a member of the European Union since 1995, and has implemented Directive 90/313/EEC of the European Community Council on the freedom of access to information on the environment, adopted on June 7, 1990. It has also implemented Directive 85/337/EEC of the European Community Council on the assessment of the effects of certain public and private projects on the environment, adopted on June 27, 1985. Austria has ratified Agenda 21, adopted by the United Nations Conference on Environment and Development at Rio De Janeiro and the Rio Declaration on the Environment and Development, adopted by the United Nations Conference on Environment and Development at Rio de Janeiro on June 14, 1992.

There have been no attempts either by the government or by NGOs to evaluate the implementation of Sofia Guidelines on Public Participation and Access to Environmental Information. Unfortunately there has been little discussion within the NGOs on governmental action towards the Sofia Guidelines.

Powers and Responsibilities of Local/Regional Governments Concerning the Environment

Austria is a confederation, and as such the authority to regulate environmental protection is split between the federal government and the nine individual states (*Bundesländer*). Legislation and enforcement of environmental civil law (i.e. civil liability for environmental damage) and environmental criminal law is undertaken at the federal level, as are most other important environmental affairs. The states are responsible for landscape conservation, hunting, fishing and construction. In these areas, the states can also regulate the procedures within the framework of the constitution. Local governments can adopt their own laws and regulations, especially in the areas of construction and regional development.

Access to Environmental Information⁸

Legislation on Access to Information/Environmental Information

The Austrian constitution does not establish a general right to environmental information. The right is provided by various laws.

Passive Provision of Information

The right on access to environmental information is provided in the Federal Law on Environmental Information (UIG).⁹ The Austrian parliament developed and adopted this law in anticipation of membership in the European Economic Area (EEA). With regards to environmental information, it replaces the Federal Law on the Duty to Furnish Information (*Auskunftspflichtgesetz*) which obliges public authorities only to provide general information. The Federal Law on Environmental Information (UIG) came into force on July 1, 1993.

The UIG is not universally applicable throughout the federation of states. Only three states have adopted their own laws regarding environmental information.¹⁰ Environmental information relating to areas of competencies

which belong to the states can be accessed as general information by their own laws on the duty to furnish information.

Definition of Environmental Information

The UIG defines the term “environmental information” and “environmental data” as all information on the environment held by public authorities and stored in a database. All data with an environmental aspect falls within the scope of the UIG, provided that the requested information is held by a public authority. But one has to keep in mind that only information/data on matters under federal law is subject to the UIG. Information which falls under the responsibility of the states is not covered by the UIG.

Section 2 of the UIG defines “environmental data” as information about:

- the condition of and changes to water (water quality data), air (air quality data), the soil, noise pollution, interrelations between and effects on human beings, the consumption of natural resources, environmentally harmful characteristics, quantities and effects of chemical waste, etc.;
- environmentally harmful activities and proposals, for example, industrial activities and plans relating to the establishment of a plant, in particular information/data about emission values, waste, the introduction or release of chemicals, genetically-altered organisms or ionizing radiation into the environment;
- data about environmentally harmful characteristics of chemicals, waste, dangerous organisms, released energy, radioactivity and noise;
- public or private environmental protection measures of all types aimed at improving the quality of the environment, or at damage prevention and remediation (e.g. clean-up plans, statutory protected environmental zones, waste management plans, environmental programs, etc.).

Cultural sites or constructions are not included by the UIG as construction is a subject of the federal states.

Conditions for Obtaining Information

The public authorities and bodies obliged to provide environmental information are administrative authorities with environmental functions which are subject to federal law, administrative bodies without supreme power (e.g. the federal environmental agency), and private executive bodies responsible for environmental matters.

The UIG does not apply to private enterprises fulfilling functions of public assistance which do not act as governmental agencies (e.g. the power supply enterprises). The business sector is generally not obliged to provide information to the public. In some areas, factories have to publish emission data and the operators of factories surpassing accepted emission standards are obliged to inform the public about the risks of accidents as well as applicable measures to take in case of an accident.

The federal ministry of the environment is able to provide further information for industries by decree. But such decrees can only be developed in coordination with other ministries, in particular with the ministry for economic affairs. This is a significant barrier to the expansion of the active information obligations for companies.

The UIG requires an authority to reply to a request for environmental data as quickly as possible, but at the latest within eight weeks.

The UIG says that "everyone has the right of free access to environmental data, without evidence of legal entitlement or legal interest." Each natural or legal person, whether an Austrian citizen or a foreigner, is entitled to environmental information. This right exists irrespective of the person's age.

After clarification, if the requested information is available and if there are no pressing interests of confidentiality, the response must be communicated in a "generally understandable way" so that unintelligible technical terms or codes are not included. Information can be made available on discs, videos, films, CDs, tape recordings, hard-discs and, of course, written documents.

Refusal to Provide Information

In the case of some environmental data, there may in specific circumstances be a declared interest of the state or of third parties in maintaining confidentiality which can operate to prevent access to environmental data.

These interests are:

- public safety (serious risks to establishment of importance to the state);
- national defense (protection of national security and territorial integrity in relation to military, spiritual, civil and economic matters); or
- private interests (i.e. the interest of third parties, including "legal personae," including businesses).

The third point is specifically important for environmental questions because so-called "business secrets" are also included among the interests of third parties. Although there is no clear definition of this term in the Austrian legislation, some elements can be outlined:

- facts relating to a company and of commercial or technical character;
- facts which are only accessible to a limited or limitable number of persons, because of an economic interest of the entitled party.

Commercial secrets include capacities, market shares, turnovers, investment plans and balance sheets. Industrial secrets refer especially to the process of production, technical know-how, stock-keeping, etc. In addition, there is also the view expressed that the contents of some decisions should be considered to be business secrets.

The authority is required to investigate in detail:

- whether there are confidentiality interests at stake;
- whether these interests are actually subject to protection;
- whether the confidentiality interests outweigh the public interest in access to information (protection of public health, protection against environmental damage, etc.).

The two further cases where access to information can be refused are:

- if the request relates to environmental data which is only available to the authorities in the form of an “internal notice,” publication of which would hinder or prevent a legal decision;
- if the information is clearly being requested for abusive reasons, (i. e. if it is fully apparent to any observer that the person requesting the information is not doing so out of an interest in environmental information).

Informal Guidelines for Agencies and the Public

The guidelines for authorities concerning the provision of environmental information are the regulations of the UIG. Concerning general information, the regulations of the Federal Law on the Duty to Furnish Information (*Auskunftspflichtgesetz*) are relevant. In contrast to this law, the UIG is more detailed and specified. For example, the former law does not include the right to inspection of public records. If there is a potential conflict with a business or a potential industrial secret, the Federal Law on the Duty to Furnish Information does not define a detailed procedure and criteria for a decision by the public authority on whether the information must be provided or not.

The authorities are obliged to respond to a request for environmental information. The request may be:

- the disclosure of the environmental data requested;
- a partial disclosure of information;
- a notification that the information be disclosed after the expiration of the eight-week period, due to special circumstances;
- a notification of rejection of the request; in the case of rejection, the authorities must also supply the reason for the rejection.

A request for environmental information can be expressed in any form. To formulate it in written form, by letter or fax is in most cases preferable. Requests for current daily data can

of course also be made by phone. One can freely choose the form in which the information shall be provided. If the requesting person does not express a particular form, the officials can choose the most suitable one.

The public has the right to specify the form in which information has to be provided if the requested information falls within the scope of the UIG. This right applies to access to information and to access to documents.

Specific Institutions/Official to Provide Information

As noted above, the UIG applies to all authorities of the federal government. This means the UIG applies not only to those authorities primarily involved in environmental functions such as waste management or environmental control, but also to those for which environmental protection is perhaps only a minor part of their administrative function. As a consequence, trade authorities having to take aspects of environment and nature protection into consideration, such as traffic authorities administering aspects of air and noise pollution control or authorities responsible for regional planning, are equally obliged to provide information. Excluded from these regulations are law enforcement agencies of the security police and the federal police departments.

The Federal Law on the Duty to Furnish Information applies to all authorities of the federal government. The several Laws on the Duty to Furnish Information of the nine states are substantially similar to the Federal Law. The three environmental laws of Vorarlberg, Tyrol and Upper Austria are also substantially similar to the UIG on the federal level.

If an Authority Does Not Possess the Information

In nearly all circumstances, if the public authorities do not have particular information available, they are entitled to refuse to provide this information. The laws on the duty to furnish information do not oblige the authority to get information from other bodies.

If the public authorities do not have the envi-

ronmental information available, however, the situation is quite different. The UIG obliges the authorities to provide all available information requested. They are not expressly obliged to gather the information themselves, but can forward the request within an eight week period.

Information Held in Public Registers

In Austria, environmental information is held in the register of the Federal Environmental Agency (*Umweltbundesamt*) and is available free of charge. The agency has a very good home page, where all the data about air quality, water resources and water control, soil, forests, nature and landscapes, hazardous chemical substances, pesticides, waste, contaminated sites, noise, energy, radiation monitoring, genetic engineering and biotechnology, etc., can be found. The publications are available to the public on payment of costs. The agency is also obliged to establish and update the national Environmental Data Catalogue.

Costs of Obtaining Information

There are nearly always adequate facilities for obtaining copies of environmental information throughout the country. The authorities are obliged to make copies free of charge of all environmental information falling within the scope of the UIG. In other cases it happened in the past that requesting persons had to pay very much for copies — for example for regional development plans or construction maps. But this did not happen very often and citizens have often been quick to protest against this.

Active Provision of Information

Obligation to Disseminate

Information Actively

Public authorities are not obliged to actively disseminate information to the public, but they can publish environmental data if interests of confidentiality are not contradicting. The ministry of the environment is obliged to provide the parliament with a report on the state of the environment (*Umweltkontrollbericht*). The report has to be presented every second year by the federal ministry of the environment and

is compiled by the Austrian Federal Environmental Agency. The agency is also the national focus point of the European Environmental Agency.

Section 10 of the UIG obliges the federal ministry of environment to establish an environmental data catalogue for public information. The national Environmental Data Catalogue (UDK) has been drawn up to assist in locating environmental information. The UDK is a computer supported database which has been available to the public since 1995. The UDK provides information as to who has what environmental data available and other useful information relevant to environmental matters and is accessible via Internet. The UDK is continually updated by the federal ministry for the environment.

In case of accidents, the authorities are obliged to inform the affected people about the correct emergency behavior or even to evacuate endangered people. The authorities must not actively inform the public when nobody is directly affected. The minister of the competent body is ultimately responsible for the decision. Although a comprehensive radiation control and monitoring system has existed in Austria for many years, information about dramatically increased radioactivity levels was available only a few days after the 1986 accident at Chernobyl.

There is no regulation which provides the possibility to be informed on law and policy-making for environmental NGOs, such as for the so-called “*Sozialpartner*”, which are the major organizations of the employers and employees (i.e. the federal economic chamber, the labor union umbrella organizations, or the Federation of Austrian Industries). Most of the NGOs become informed about new environmental legislation by public authorities and are voluntarily invited for comments to the drafts.

Methods of Dissemination

The standard methods of active provision of environmental information by state bodies are publications, media reports and, in specific

areas, information campaigns. The Austrian Environmental Agency publishes regular newsletters about the environment in Austria, statistical reports about environmental qualities, scientific projects, experiments etc., both as written documents and via the Internet. The environment ministry often works on information campaigns. Most of the ministries provide information electronically.

The UIG also plays an active role in persuading businesses to disseminate information. Under the UIG, as discussed above, any person has the right of access to environmental data held by government authorities. This right does not allow information to be requested directly from operators of industrial plants, however. The UIG does ensure that enterprises adhere to adopted measures and record emission data and also actively issues these environmental data to the public.

In other words, companies must publish their emissions data for the previous month or year, as the case may be, which they are obliged to measure and record. This information must be presented in an easily understandable form and provided in a location easily accessible by the public. In addition, the UIG requires companies to provide information about abnormal occurrences (comparable to the EU's so-called "Seveso Directive") according to which plants posing a risk of a serious industrial accident are obliged to inform all affected members of the public. This obligation applies to plants which on the basis of given characteristics such as size, location, or the use of hazardous methods carry the risk that an abnormal occurrence may take place.

The owner of such plants must inform the members of the affected public in advance, about:

- the possible risks of the occurrence of an abnormal incident;
- the existing safety measures;
- and the correct behavior in the event of an abnormal occurrence.

This information must also be issued in a suitable manner, in a form understandable to the general public.

Electronic Means of Dissemination

There are no specific obligations to spread environmental information electronically. But the Internet is obviously becoming more important as an information source.

Nongovernmental Centers

There are no comprehensive nongovernmental information centers or databases. But nearly all Austrian environmental NGOs maintain Web pages and libraries which are open to the public.

Access to Public Participation in Environmental Decisionmaking

Legislation on Public Participation

The Austrian Constitution does not include a regulation for public participation. Although Article 1 of the constitution states that all power comes from the people, no public participation rights are set out in the constitution. After massive protests in Hainburg, where in 1984 thousands of concerned citizens demonstrated for weeks in the Danube wetlands ("Hainburger Au") against its destruction by a hydroelectric plant, it became obvious that the normal proceedings to permit plants were not able to deal with the concerns of people. It took nearly ten years until Austria developed and adopted a law on public participation in anticipation of membership in the European Union.

The Federal Law on Environmental Impact Assessment and Public Participation¹¹ entered into force in 1993. It includes a list of projects (i.e. hydropower plants, waste incinerators, forest clearing, road construction, etc.), which have to be examined as to whether the environmental impact is tolerable or not. In the permission proceedings, anybody is allowed to get information about the project and to comment on it within six weeks. The results of the environmental impact assessment have to be published and discussed in a public hearing. Citizens living in or around the affected municipality have the right to form a citizen party after collection of 200 signatures. The citizen parties are formal parties in the permis-

sion proceedings. Their opinions have to be taken into account, but they do not have any right to veto. Citizen parties can oppose the permission even at the constitutional court.

The Law¹² on Genetic Engineering provides public participation in a specific case. So a public hearing has to be held when enterprises plan to set free a genetically modified organism. During a period of six weeks everybody is allowed to comment on the application, but nobody except the enterprise can oppose the permission or appeal to court.

Public Control of Decisionmaking

Referenda and Right to Initiative

In the Austrian juridical system, there are generally three different kinds of recognized referenda. They are not specifically focused on environmental matters, but apply to all political subjects. Two of them are part of the constitution. The third one is the only type that can be initiated by voters and is regulated by a federal law. The different possibilities are as follows:

- The so-called *Volksabstimmung*¹³ is initiated by the government or the majority of the parliament and announced by the president. The result to this “Yes” or “No” question is legally binding. The most famous example in the past was the referendum about the nuclear power plant at Zwentendorf. To the surprise of virtually everybody, the referendum on November 5, 1978 turned out a vote for “no” of 50.5 percent. This referendum was a major boost for the anti-nuclear movement in Austria. The last important decision was the EU referendum of June 12, 1994. 66 percent of the Austrians voted for the membership in the European Union. A *Volksabstimmung* is legally binding when major elements of the constitution have to be changed by a decision. In this case, the government is obliged to call a referendum.
- The second form is called *Volksbefragung*,¹⁴ which is a kind of formal poll. Again people only have the option of “yes” or “no.” The result is not legally, but politically binding. This kind of referendum can be initiated by the majority of parliament.

The nine states also have different laws on the two kinds of referenda outlined above. The last referendum in Vienna, for example, was a *Volksbefragung* about the hydropower plant Freudenau. The Viennese citizens voted for the construction of this plant in 1994.

- The third form is called *Volksbegehren*,¹⁵ which is a kind of legal initiative by voters. The signatures of 10,000 voters or eight members of parliament are necessary to start the procedure. If more than 100,000 voters sign the demands of the *Volksbegehren*, parliament has to discuss the text although it is under no obligation to adopt it. This instrument is always used for public campaigns against or for different interests. Examples in the past are the animal protection referendum and the genetic engineering referendum last year, which was the second most successful referendum in the Austrian history. More than one million Austrians signed the text with proposals against genetic engineering in agriculture. The implementation of the demands of these two referenda has not been very successful yet.

The *Volksbegehren* is the one and only legal instrument by which voters can launch a referendum. But besides NGOs who use this instrument as a democratic tool, it is also very often used in Austrian policy by political parties such as the FPÖ, a right wing party. In 1993, for example, the FPÖ started the “Austria first” referendum with xenophobic content.

Public Shares Power to Decide

Individuals can participate in decisionmaking bodies only when there is a formal procedure and individual rights are affected. NGOs in Austria have no right to participate in decisionmaking bodies as equal partners. Some authorities invite NGOs to comment on law initiatives or to participate in working groups, (i.e. the working groups involved in preparing a national environmental plan). But this is rarely used in practice. NGOs do not receive money for such work.

Individuals and NGOs cannot formally initiate law or rulemaking. This can only be

done by the parliamentarians and the government. Some NGOs make drafts for important laws — for example WWF Austria made drafts for landscape conservation for the federal states — and initiate the lawmaking process by a party or by parliamentarians.

Account of Public Comments

The comments of individuals will be taken seriously into account:

- when there is a formal procedure and individual rights are affected, or
- an environmental impact assessment is running.

Every Austrian citizen or group — whether as individuals or NGOs — is allowed to comment on such a project. The comments have to be taken into account, but there is no binding effect on the decisionmaking body. Comments on plans for setting free genetically modified organisms have to be taken into account, too.

Individuals and environmental NGOs do not have a legal claim to comment on law initiatives, but other NGOs have this right (i.e. the Federal Labor Union Umbrella Organization or the Federation of Austrian Industries). Austria has a long tradition of bargaining between different interest groups which are institutionally organized. This element of the Austrian political culture is called “social partnership” (*Sozialpartnerschaft*). The environmental movement, or feminist or other social movements, did not get access to this institution. The *Sozialpartnerschaft* should be seen as privileged groups in the decisionmaking process.

The effectiveness of this form of participation depends on lobbying and public pressure. For the time being, plans toward genetic engineering seem to be much more problematic in Austria than anti-nuclear sentiment has ever been. So the permission for setting free a genetically modified organism seems to be nearly impossible due to the political pressure. In 1997 environmental NGOs started successful campaigns on this issue and organized, for example, thousands of critical comments on different applications.

Adequate Notification of the Public

Individuals and environmental NGOs are often not adequately notified about the decision process because they do not have the formal right to be informed. The notification depends on the good will of the deciding body, except in cases where there is a formal procedure and individual rights are affected, or there is an environmental impact assessment. The members of the *Sozialpartnerschaft* (The Federal Economic Chamber and the Federal Labor Chamber, the agricultural chambers, the Federal Labor Union Umbrella Organization and the Federation of Austrian Industries) again are privileged.

Decisionmaking is Transparent

Possibilities to Influence Decisionmaking

There is nearly no governmental funding specifically focused on public participation projects and public participation training. The ministry of environment funded some special cooperation projects, i. e. an EIA workshop proposed and organized by the Okoburo which is the coordination office of Austrian environmental organizations.

The citizen parties in the EIA process have to fund their activities privately.

Openness of Parliamentary Committees

All plenary sessions of parliament are open to the public and media, but the environmental committee is — as with all other parliamentary committees — not accessible to citizens or NGOs.

Individuals and NGOs are allowed to attend plenary sessions in the parliament sessions that are open to the public. They do not have the right to speak, but can observe. Parliamentary committees are generally not accessible to citizens.

The Federal Economic Chamber and the Federal Labor Chamber, the agricultural chambers, the Federal Labor Union Umbrella Organization and the Federation of Austrian Industries are regularly consulted in law and policymaking.

There is training for the coordination of

EIA procedures; a general training on public participation does not exist. In contrast to North American political culture, for example, the Austrian administration does not have a real tradition of transparency and public participation.

Mechanisms to Influence Decisionmaking — Lobby Mechanisms

In Austria, there is no law regulating the activity of lobbyists. Environmental NGOs normally do not charge professional lobbyists, except their own experts. The spokespersons of the most important NGOs in Austria like Greenpeace, GLOBAL 2000 or WWF make lobbying themselves very effectively.

Capacity Building

There is no mechanism to provide expert advice for the public or NGOs, but there are experts in the permitting procedure, who are paid by the permitting body. Affected persons have the right to call for an expert to give a clear answer to questions, which is important for the permission.

There is financial support given by the government to some NGOs which undertake environmental education, for example the *umweltberatung*. The promotion of public participation is part of the education programs.

Access to Justice

General Rights and Sources of Law

As mentioned above, the Austrian Constitution does not set out environmental rights. The other environmental laws like the nature and landscape conservation laws in the states, the water law or the clean air regulations do not state the environmental standards as individual rights or right of the parties in the administrative decisionmaking procedure. Therefore the “rights” argument has not been used in any case the high courts.

Administrative Standing

The Austrian law system works with three high courts: the constitutional court (*Verfassungsgerichtshof*), the administrative court (*Verwaltungsgerichtshof*) and the highest court (*Oberster Gerichtshof*), which is responsible for civil law and criminal law. The administrative court deals especially with environmental matters, as most environmental laws in Austria are administrative regulations.

Therefore there is no legal term for “environmental case.” Of course, many of the several hundred cases tried by the administrative court each year have included relevant points for the protection of the environment. In public opinion the litigation about construction of a power plant or a road construction is often seen as an environmental case. But these litigations are ordinary administrative decision-making procedures.

Tables 1 and 2 summarize the right to legal standing in Austria.

Standing in Actions Against Government Agencies

If public officials fail to implement laws or act incorrectly, individuals can only appeal to the court or to the higher administrative body when their individual rights are affected. But as mentioned above, environmental standards are not defined as rights of individuals.

Any administrative decision can be appealed against within two weeks. The judicial appeal to the administrative court and the constitutional court has to be made within six weeks of the judgment. Any application for an administrative decision has to be answered (not decided) within six weeks. This effectively means within six months of the procedure starting. Otherwise, the higher administrative body has to do so. The EIA has to be completed within 18 months.

Remedies and Enforcement

Injunctive Relief

Temporary or permanent injunctive relief is specified in all procedures listed in Tables 1 and 2. In the administrative decisionmaking

TABLE 1: Administrative Standing

	<i>In the administrative decisionmaking process</i>	<i>In the administrative appeal of administrative decisionmaking process</i>
Individuals		
every person	—	—
interested/affected	x^1/x	x^1/x
NGOs		
everyone	—	—
interested/affected	—	—
1 citizen party/EIA		

TABLE 2: Legal Standing Against Government

	<i>Special administrative court</i>	<i>Civil court</i>	<i>Criminal court</i>	<i>Arbitration court or special economic courts</i>	<i>Constitutional court</i>
Individuals					
every person	—	—	—	x^1	—
interested/affected	x^2/x	$-/x$	$-/x$	—	$-/x$
NGOs					
everyone	—	x^3	—	x^1	—
interested/affected	—	—	—	—	—
1 voluntarily/treaty					
2 citizen party/EIA					
3 as a legal entity					

process and the appeal of administrative decisionmaking procedures nothing can be done until a decision has been taken. In the judicial appeal to the administrative court and the constitutional court, the party has the right to apply for interim injunctive relief until the court has decided the case.

The civil and criminal procedures includes interim and permanent injunctive relief, it is used mostly in media cases and commercial cases.

Enforcement of Judgements

Every judgment of the court has legal force and is legally binding. The enforcement is guaranteed and is actually carried out by the public authorities.

Court/Litigation Expenses

An appeal of denial of public information is free of charge and a plaintiff does not need a lawyer present to launch an appeal. A challenge to governmental development project does not exist in the Austrian law system. Organizing the challenge to EIA is much more expensive. Administrative decision-making procedures like the EIA and appeals are free of charge, but it is necessary to charge an advocate and ecological experts. The citizens party in the EIA procedure includes 200 people, so costs can be shared. Appeals to the constitutional court and the administrative court have to be carried out by professionals. It is not possible to bring an action to the highest court without an advo-

TABLE 3: International Decisionmaking

Phases of Decisionmaking	Initiation of DM (problem/proposal)	Defining the scope, issues and stakeholders (pre-decision scoping)	Defining the scope of DM (impacts and alternatives)	Evaluation of the alternatives	Selection of the alternative (DM about the selected alternative)	Execution of the selected alternative	Post-decision monitoring & enforcement (feedback/adjustment)
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	—	—	—	—	—	—	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	—	—	—	—	—	—	—
Adequate notification (right to be informed)	—	—	—	—	—	—	—
Access to information (right to access to information)	3	3	3	3	3	3	—

cate. The average income in Austria is ATS 14,000, estimated ECU 1,000. An advocate or expert costs around ATS 2,000 per hour.

The most important obstacle to access to justice in Austria is the fact that environmental standards are not individual rights and that the constitution does not state a right to environment protection or health. Other obstacles, especially civil laws, contain difficulties in providing causal relations in case of environmental damage and difficulties in placing responsibilities for the damage that occurred.

Legal Assistance

Public Interest Environmental Lawyers

There are no systematic legal advisory services provided by NGOs to the public. However, there are some environmental lawyers whose work is normally limited to consulting NGOs and citizens in legal matters.

Ombudsman

There is no real institution of an ombudsman, but some federal states have installed

environmental “attorneyships” (*Umweltanwaltschaften*). These institutions are a public authority, but are not subjected to directions and functions independently. They have legal standings in the EIA procedure and other administrative decisionmaking processes and are formally notified about legal drafts. They also have the right to have their comments seriously taken into account.

MAPPING AND EVALUATION OF OPPORTUNITIES

The charts included herein are an illustration of the opportunities that exist for public participation in key decisionmaking processes. In the charts, public participation opportunities are measured in the administrative standing of individuals and NGOs, the administrative appeals process, the international decisionmaking process, and law preparation and approval, according to the level of participation permitted.

TABLE 4: Preparation and Approval of National Laws and Regulations

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	—	—	—	—	—	—	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	—	—	—	—	—	—	—
Adequate notification (right to be informed)	—	—	—	—	—	—	—
Access to information (right to access to information)	3	3	3	3	3	3	3

TABLE 5: Preparation and Approval of National Policies, Strategies, Programs and Plans

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	—	—	—	—	—	—	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	—	—	—	—	—	—	—
Adequate notification (right to be informed)	—	—	—	—	—	—	—
Access to information (right to access to information)	3	3	3	3	3	3	3

TABLE 6: Preparation and Approval of Local Rules and Regulations

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	—	—	—	—	—	—	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	—	—	—	—	—	—	—
Adequate notification (right to be informed)	—	—	—	—	—	—	—
Access to information (right to access to information)	2	2	2	2	2	2	2

TABLE 7: Preparation and Approval of Regional/Local Policies (Strategies)

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	—	—	—	—	—	—	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	2	2	2	2	2	2	2
Adequate notification (right to be informed)	2	2	2	2	2	2	2
Access to information (right to access to information)	2	2	2	2	2	2	2

TABLE 8: Preparation and Approval of Territorial Plans
(Including Spatial/Local Land-Use Plans)

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF							
PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	—	—	—	—	—	—	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	—	—	—	—	—	—	—
Adequate notification (right to be informed)	—	—	—	—	—	—	—
Access to information (right to access to information)	3	2	2	2	2	3	2

TABLE 9: Environmental Impact Assessment

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF							
PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	—	—	—	—	—	—	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	3	3	3	3	3	3	3
Adequate notification (right to be informed)	3	3	3	3	3	3	3
Access to information (right to access to information)	3	3	3	3	3	3	3

TABLE 10: Siting and Permitting*

	<i>Initiation of DM (problem/proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	—	—	—	—	—	—	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	2	2	2	2	2	2	2
Adequate notification (right to be informed)	2	2	2	2	2	2	2
Access to information (right to access to information)	3	3	3	3	3	3	3
*only affected persons and GTG (Generic Engineering Law/Setting free plants)							

TABLE 11: Management of Environmental Funds

	<i>Initiation of DM (problem/proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	—	—	—	—	—	—	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	—	—	—	—	—	—	—
Adequate notification (right to be informed)	—	—	—	—	—	—	—
Access to information (right to access to information)	3	3	3	3	3	3	3

CONCLUSIONS

In Austria, public participation in environmental decisionmaking and access to environmental information have been changing since Austria joined the European Union in 1995. The most important laws in these fields have been adopted to implement EU directives. Austria has no great tradition of transparency and free access to information (such as the Scandinavian countries); the authorities, the public and also NGOs had to learn how to use instruments like a formal request to get environmental information. It is typical for Austria that these instruments are not used very often, even by NGOs. Information is requested in informal ways, generally via contact persons inside the authorities and ministries. Information is often requested about parliamentary instruments.

NOTES

1 Bundes-Verfassungsgesetz von 1920 idF v 1929 BGBl 1930/1.

2 Bundesverfassungsgesetz zum umfassenden Umweltschutz BGBl 1984/49.

3 ECE/25. 2. 1991, 30 ILM 8028 (1991) Convention on Environmental Impact Assessment.

4 Bundesgesetz über die Prüfung der Umweltverträglichkeit und die Bürgerbeteiligung BGBl 697/1993.

5 BGBl 1958/210.

6 BGBl 1983/372.

7 BGBl 1996/578.

8 The access to environmental information section is based on the Austrian chapter of: Hallo, Ralph E., *Access to Environmental Information in Europe, The Implementation and Implications of Directive 90/313/EEC, 1996*.

9 Bundesgesetz über den Zugang zu Informationen über die Umwelt, BGBl 1993/495.

10 The Federal States are Tyrol (LBGI T3/1993), Vorarlberg (LBGI -V 57/1994) and Upper Austria (LBGI 84/1996).

11 Bundesgesetz über die Prüfung der Umweltverträglichkeit und die Bürgerbeteiligung BGBl 1993/697.

12 Gentechnikgesetz BGBl 1994/274.

13 Volksabstimmungsgesetz BGBl 1972/79.

14 Volksbefragungsgesetz BGBl 1989/365.

15 Volksbegehrensgesetz BGBl 1973/344.

Chapter 2: Denmark

DINA HAFFAR ■ LONE JOHNSEN ■ KIRSTEN SLOTH

LEGAL AND INSTITUTIONAL FRAMEWORK AND PRACTICES FOR PUBLIC PARTICIPATION

General

Constitutional Rights

In Denmark, environmental rights are addressed under specific access to environmental information laws, the open files act or the administration act, and as such are not defined as constitutional. The main purpose of environmental regulation in Denmark is to ensure a healthy environment for all. This is internationally accepted as equivalent to a constitutional right.

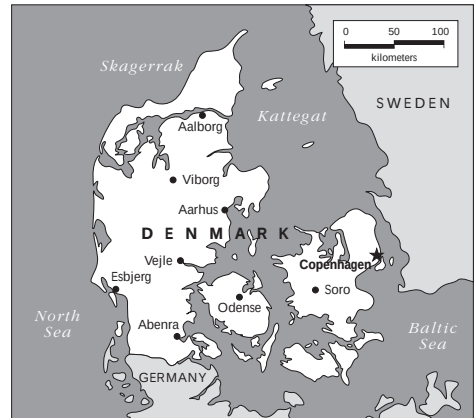
Implementation of International Nonbinding Instruments

One example of an international political commitment that Denmark has agreed to and which is in force is the Rio Declaration. Agenda 21 is an important part of this declaration and includes general guidelines on public participation.

There has been some criticism from the Danish NGOs that the Danish government's implementation of these guidelines has been for the most part on the local level rather than the national level. In particular, the expression "sustainable development" has yet to be defined, and indicators need to be designed so that it will be possible to measure improvements in smaller communities.

Sofia Guidelines

In Denmark, there has not been any governmental action on the Sofia Guidelines. This is



because the public authorities (i.e. the environmental protection agency) assessed that the implementation of the Sofia Guidelines did not imply any amendment to Danish legislation, nor changes in their interaction with the public and the NGOs. This position of the government has meant that there has been no public discussion about the content and consequences of the Sofia Guidelines.

Besides this report, no other initiatives to evaluate the Sofia Guidelines have been taken.

Role and Responsibilities of Local/Regional Governments Concerning Environment

Environmental legislation is basically divided into three major acts of law:

- The Planning Act,
- The Environmental Protection Act,
- The Nature Protection Act.

The responsibility of the administration for these acts is divided among the national authorities, the counties and the municipal level. In addition, as a member of the European Union, Denmark is subject to the environmental legislation from the EU.

The local governments have a right to adopt regulations independently from the central government. Environmental legislation at the national level is characterized as being framework legislation, which means that it is up to the regional and local administration to work out the details. This method is used in order to promote decentralization and thereby enhance public participation at the regional and local level. As early as 1974, the municipal councils became the foundation for the new environmental administration.

In addition, the counties were given new responsibilities when they were appointed to issue environmental consent to the enterprises in their region. As a result, the counties now supervise these enterprises.

Access to Environmental Information

The Danish Constitution, Section 65, Subsection 1 from 1953 "Guarantees that in the administration of justice all proceedings shall be public and oral to the widest possible extent." This guarantee refers to the Danish Courts' administration of justice.

Other acts include these three on administrative management:

- The Administration of Justice Act, Promulgation Order No. 752 of August 15, 1996, as amended by Act No. 414 of June 10, 1997.
- The Danish Public Administration Act, Act No. 571 of December 19, 1985, as amended by Act No. 347 of June 6, 1991.
- The Access to Public Files Act, Act No. 572 of December 19, 1985, as amended by Act No. 347 of June 6, 1991.

Legislation on Access to Information/Environmental Information

The concept of access to information was reintroduced in 1970 with the Danish Freedom of Information Act. This act has been revised and expanded through the 1980s, and most recently Denmark implemented EU Directive 90/313/EEC as of April 19, 1994, which specifically deals with access to environmental information. The directive was implemented through Law No. 292 that went into force on July 1, 1994. The directive is mainly based on rules as mentioned in the Act on Public Access to Documents in Administrative Files (also called the Open Files Act) and the Administration of Justice Act.

The directive differs from the original Danish laws in two ways: 1) it defines an absolute time limit of two months for replies; and 2) it gives access to information that enterprises with a public responsibility for the environment have in their holding.

Passive Provision of Information

Definition of Environmental information

Environmental information is defined in directive 90/313/EEC as information concerning the state of:

- water,
- air,
- soil,
- land,
- nature.

This includes information on activities or measures affecting the above, or designed to protect them. Also included are administrative measures and environmental management programs.

The following is a listing of some of the types of information that a person or organization can request from the public authorities at any level:

- land-use plans,
- applications for building permits,
- road construction plans,

- emissions to the air,
- discharges to the water (surface or ground),
- waste use or disposal,
- ground water withdrawal,
- soil contamination,
- transports of hazardous substances,
- existing contaminated sites (soil),
- the application of fertilizers,
- the application of pesticides.

These indicators are classical environmental statistics of the so-called “end-of-pipe” environmental strategy, which is related to a sector approach. The question today is how to develop these indicators to include the cross-sectoral aspects of sustainable development. Sustainable development also implies other dimensions such as social and economic conditions that are not measured with end-of-pipe indicators. Consequently there is a need for developing new indicators which are based on this way of thinking. One example of a new indicator could be on the air quality. Instead of only measuring the emissions it could be related to the public health condition.

Conditions for Obtaining the Information

Both the directive on access to environmental information and the open files act define public authorities as being any public body at the national, regional or local level that has responsibility for or obtains information related to the environment. The directive also includes semi-public enterprises. Examples of these might include an electricity company that produces, transmits or distributes electricity over a certain number of volts; institutions that are running a natural gas network, etc.

In general, the directive applies to all companies partly owned and controlled by the public authorities. Other examples might be the A/S Great Belt Connection and the A/S Sound Connection, as they are not in competition with other companies.

The time frame for the public bodies to

respond to a request is determined in both the open files act and the administrative act and demands that the authorities react 10 days, should it be possible to respond to the request immediately. All requests should under normal circumstances be addressed within 10 days. The absolute time limit for providing information or sending out a final refusal is two months. In case of a refusal, one is always entitled to get a substantiated reason from the authorities addressed.

Any natural or legal person may make a request. This means that not only private persons, but also organizations and companies have the right to access to environmental information.

It is up to the authority in question to decide in which particular form the information will be provided. That means whether the information will be provided in oral form, written form, in software — or if it is possible to inspect the actual documents.

Refusal to Provide Information

The public authorities can decide to refuse a request if one of the following situations is relevant:

- the confidentiality of the proceedings of the public authorities, international relations and national defense;
- public security;
- matters which are or have been subjudice or under inquiry, including disciplinary inquiries, or are the subject of preliminary investigation proceedings;
- commercial and industrial confidentiality, including intellectual property;
- confidentiality of personal data and/or files;
- material supplied by a third party without that party being under legal obligation to do so;
- material disclosure that would make it likely that the environment to which such material related would be damaged;
- unfinished documents, data or internal communications;

- manifestly unreasonable requests;
- requests formulated in unspecific terms.

These exemptions to the rule on access to information are formulated in fairly broad terms. This means that in theory it would be fairly easy for the authorities to find a reason why the information could not be provided, but in reality this is fortunately not the case in Denmark.

Informal Guidelines for Agencies and the Public

General and rather detailed guidelines exist on how the public should request environmental information from the authorities. For present purposes, we will only describe the ones that are most essential. First, it is not necessary to give a reason for the request. Secondly, there does not exist any specific condition for the form of the request, which means that the request can be a written letter as well as an oral request over the phone.

Generally speaking it is a good idea to make the request as concrete as possible and to direct it to the specific public authority holding of the information needed. This means that it is necessary to do some research before the request is elaborated. It is also recommended to specify in which form (written or on computer disk, etc.) you wish to receive the information. In most cases the public authorities provide the information by sending a copy of the requested material, or simply over the telephone. The authorities can charge payment for this information to cover costs.

Specific Institutions/Officials to Provide Information

A wide range of the institutions placed under The Danish Ministry for Environment and Energy are responsible for providing environmental information to the public. They include:

- The Danish Environmental Protection Agency (EPA),
- The National Forest and Nature Agency,
- The Spatial Planning Department,
- Danish Energy Agency,
- National Environmental Research Institute,
- Danish Forest and Landscape Research Institute.

The following also provide information related to the environment:

- The Ministry of Transport,
- The Ministry of Agriculture and Fisheries,
- Denmark Statistics,
- The European Environmental Agency.

These institutions have traditionally assisted the public with getting the environmental information needed. Information concerning the environment is published by these institutions and is available at a publicly owned Environmental Shop in downtown Copenhagen. The information is either free of charge or (in the case of reports, etc.) provided at cost.

If an Authority Does Not Possess the Information

If the public authorities do not possess the information requested, they are obliged to forward the request to other agencies (The Guide to the Open Files Act, p.14, Paragraph 19). On the other hand, they are not obliged to provide information from a different agency, and it is therefore important to do some research before the request is made. In most cases the authorities addressed will be helpful and suggest which other institutions might be relevant to the specific request.

Information Held in Public Registers

Environmental information in the form of raw data, so to speak, is not held in public registers in Denmark. But information in the form of published reports is held in a database, which is accessible in the Environmental Shop mentioned previously.

In addition, the environmental protection agency has made all its publications available on the Internet.

Active Provision of Information

Obligation to Disseminate Information Actively

As mentioned above, some of the public authorities are obliged to actively disseminate information to the public. Active dissemination of information takes place in connection with spatial planning in general. The counties and the municipalities are responsible for the dissemination of information at the local and regional level prior to a decision on the future development of a specific area, or in connection with environmental impact assessments.

In case of an emergency there are several different institutions that are responsible for the active spreading of information including environmental information. For instance, in case of a nuclear disaster the main responsibility lies with the emergency agency. In other cases, for example where there has been a contamination of the groundwater the local authorities will have the responsibility to warn the local residential areas; and if the contamination spreads to other parts of the country, the Danish EPA would then step in.

Methods of Dissemination

Strategic environmental planning in Denmark is based partly on a report that describes the state of the environment and the impacts thereon and partly on another report that describes the follow-up policy initiatives. These reports are published every fourth year. The National Environmental Research Institute prepares the reports on the state of the environment. The first report was published in 1993, the second in 1997. The ministry for environment and energy prepares the report on Denmark's Nature and Environment Policy. The first report was published in 1995; the second shall be published in 1999. Both reports are very useful tools for the public and the NGOs in monitoring the performance of the public authorities. Furthermore, the ministry every year prepares a publication of statistics on environmental indicators.

Electronic Means of Dissemination

The Danish authorities are under no obligation to spread information electronically. However, the ministry for environment and energy has a Web site where the public has access to a wide range of documents, legislation and so forth published by its institutions.

Nongovernmental Centers

Green Information is the name of an information center on the environment and consumption, which was founded by five NGOs in November 1993. The center is independent but is 100 percent subsidized by the government. Its main purpose is to assist the Danish population in minimizing negative environmental impacts and also to give concrete advice on how each individual person can help these processes. In an evaluation of Green Information in May 1996, many of the users of the information center agreed that the information they got had a positive impact on their behavior in an environmental perspective. In 1996 Green Information had about 8000 inquiries and 5000 subscribers to their magazine, Environmental Facts/Green Advice.

It is also common practice among the Danish NGOs to provide environmental information or other information to any citizen who approaches them with a request.

Informing the Nongovernmental Organizations

One of the things that characterizes the relationship between the nongovernmental organizations and the governmental bodies is the long tradition of formal and informal meetings and collaboration between NGOs and the public authorities.

These meetings are an established part of the decisionmaking process and many of the larger NGOs in Denmark attend hearings and participate in working committees several times a month, thereby having an opportunity to comment on the proposed legislation and to keep up to date with the authorities' environmental efforts.

All the sessions of the Danish Parliament are open to the public. The chairman, some

of the members or a minister do have the right to request that a session be closed but this right is practically never used. The meetings of the committee on the environment and regional planning are closed to the public, but it does receive delegations and as such this makes it possible for different interest groups to present their views. In addition, all the documents sent to or from the committee are accessible to the public.

Another committee related to environmental policy is the EU Special Committee on Environmental Issues. This committee is placed under the environmental protection agency and allows a wide range of commercial as well as non-commercial NGOs to attend and comment on drafts from the European Commission four times a year. These comments are taken into account by the authorities when the final negotiating paper is drawn up.

The committee is an example of a well-functioning exchange of opinions between the NGOs and the government. But on the other hand it is far from enough to actually influence the EU policy process. Based on experience, to gain influence it is necessary to be involved earlier in the process, preferably already while the commission is still working on the draft proposals. Those kinds of activities, however, demand a lot of resources, which the NGOs only hold to a very limited extent.

Mechanisms to Ensure Flow of Information from the Private Sector to the Public Authorities or the Public

The Danish State tries to ensure through different mechanisms that there is a flow of information from the private sector to the responsible public authorities. One of the mechanisms is the Chapter 5 Approval (named after its placing in the environmental legislation), which is mandatory for the "particular polluting enterprises" as defined in the legislation. This implies that the establishment needs to make available a wide range of information concerning the water supply, waste disposal, emissions to the air, soil or

water etc., to the local authorities before an approval can be made.

In Denmark there is also so-called Green Accounts, a concept which obligates certain enterprises to present an account of relevant environmental information to the authorities. In the future this could be an area where it would be possible to measure the environmental impact of these enterprises.

Another example is the Register of Products, which contains information about all the products on the Danish market defined as dangerous substances, products or materials. The information is confidential and is accessible to the Danish EPA and the Occupational Organization. However, it is possible for an NGO or an individual to obtain information, for example if one wishes to inquire if a certain substance is contained in a specific product, but one needs to know what one is looking for.

The policymaking in relation to the labeling, marketing and distribution of chemical substances is one of the most complicated and important areas, and has a tremendous influence on the future protection of the environment. But the fact is that it takes a lot of resources to keep up to date with the development of chemical research. This means that it is very difficult for NGOs, especially those with smaller budgets, to "compete" with the knowledge in the possession of the chemical industry. This makes participating on equal terms difficult.

Another problem is that it can be difficult for the Danish citizen to fully understand the labeling of the products and in some cases this could cause serious threats to the health and safety of the users and consumers of various products. Similar problems arise in connection with some aspects of the environmental policy of the European Union. Today the policymaking in relation to standardization of products is without any public participation, influence or control. The standardizations are elaborated in committees which are dominated by the industry, and it is impossible for the NGOs to keep up with their resources.

Public Participation

In relation to the existing procedures between the nongovernmental organizations and the decisionmaking bodies, the findings are based on interviews with, besides the Danish Society for the Conservation of Nature (DSCN), different NGOs in Denmark such as The World Wildlife Foundation, The Danish Ornithological Society and The Danish Outdoor Council. Specific paragraphs in the *Public Shares Power to Decide* and *Adequate Notifications of the Public* sections are also based on these interviews.

Legislation on Public Participation

With the Act on Land and Regional Planning in 1973, more direct focus was put on public participation in the decisionmaking process at the regional and local levels. However, today no formal provisions exist for public participation in the decisionmaking process for administrative acts in general.

Of the three major environmental acts, the Planning Act (Promulgation Order No. 563 of June 30, 1997) includes the most detailed procedures for public participation in the decisionmaking process. The Environmental Protection Act (Promulgation Order No. 625 of June 10, 1997) as well as the Nature Protection Act (Act No. 9 of January 3, 1992 as amended by Act No. 439 of June 1, 1994 and Act No. 19 of January 13, 1997) are both lagging behind in this respect.

The procedure laid down in the Planning Act declares that 1) proposals should be presented at an early stage; 2) it must ensure that the plans are debated among the public; and 3) it is possible for the public and other groups to comment on these plans.

The environmental protection act makes use of the well-established cooperation that exists between the NGOs commercial, non-commercial and decisionmaking bodies. In the administration of the nature protection act, there are provisions stating that the notification of plans is restricted to persons and organizations that have the right to appeal (see under "Access to Justice").

Other more recent examples of laws dealing specifically with the subject is Directive 85/337/EEC (since updated by Directive 97/11/EEC) on Environmental Impact Assessment (EIA) which to a large extent deals with the involvement and participation in decisionmaking processes related to larger projects.

However, many of the NGOs agree that in some cases the EIA in practice has become a formalized and "empty" procedure without any concrete influence on the final decisions made. The EIA was initially meant as a very cogent procedure, but Danish authorities have been criticized that the implementation of the procedures has not been satisfactory and that the procedures are not followed as cogently as they were meant. The Nature Protection Board of Appeal has agreed with the criticism of the NGOs and has pointed out to the authorities that the EIA procedure has to be followed according to the provisions of the Directive.

In an attempt to sharpen the EIA procedure the authorities have elaborated a new proposal on this procedure, but at present time it is still waiting to be discussed in the Danish Parliament.

Public Control of Decisionmaking (Direct Democracy)

Referenda

The right to a referendum on the environment and related issues in Denmark does not exist. This is due to the fact that we have a tradition of consensus, and referendums are therefore primarily used in connection with issues that have major political consequences, such as Denmark's membership of the European Union and the various treaties ratified by it.

Right to Initiative

The Danish Society for the Conservation of Nature (DSCN), with approximately 210,000 members, has a very unique position as an NGO in Denmark. Since 1937 it is the only NGO in Denmark that has the right to initiative in cases related to the conservation of areas.

The conservation of nature can have many different purposes:

- to conserve and manage larger landscapes and nature;
- to conserve and manage endangered plants and animals and their habitats;
- to conserve and manage geological formations;
- to conserve recreational areas;
- to restore nature.

When the DSCN decides to request the conservation of an area, it begins by drafting a conservation proposal, often in collaboration with the authorities and in some cases with the plot owners. The proposal is sent to the nature conservancy board and the plot owners affected. Afterwards the nature conservancy board has public hearings on the proposal. After a period (of many years, as is often the case) the board makes a decision. However, this decision is not final and can be appealed to the nature protection board of appeal, which is quite common practice. This is especially the case when the question of larger financial compensation is raised as a result of the conservation of an area. Today approximately four percent of Denmark's total area is conserved and more than 50 cases are under consideration.

The many local branches of the DSCN play an important part in conservation cases because they have the advantage of being "on site." As such they collect detailed information about the area in question, which is essential to the work of the organization as a whole.

Public Shares Power to Decide

Most of the official committees that the NGOs are members of have only an advisory function, and individuals and NGOs in general do not participate in decisionmaking bodies as equal partners. But there is one exception to the rule, which concerns the board of environmental product labeling. The purpose of this board is to make recommendations on which products should be labeled "green" with the Nordic Swan label or not.

Two NGOs, The World Wildlife Foundation and the Danish Society for the Conservation of

Nature are members of this board as equal partners, as they have one vote like the other members of the board, representatives of the council on consumers, industry, etc. At first this would seem to be a great opportunity for the NGOs to have direct influence on the decisions made. But on the other hand this is a potentially dangerous situation for the NGOs.

This is due to the fact that the decisions made by the board presuppose a detailed knowledge of each and every one of the products, a process which costs the NGOs both time and money. The fact that at least 20 percent of the products in each product group must be labeled green puts additional pressure on the NGOs. In the worst case this could mean that the NGOs might be pressured into a situation where they label a product as green which later on may turn out to have a contaminating effect on the environment. Such a case could cause a lot of problems for the NGOs and weaken their credibility in the public eye.

Account of Public Comments

The NGOs addressed on the issues of this report agreed overall that they have the right to have their comments and proposals seriously taken into account by government officials. Within some areas, however, there is a gap between having the right to be heard and actually gaining influence on the final outcome.

In 1997 for example, DSCN participated in approximately 10 hearings concerning genetically modified organisms, but in none of these cases did the comments of the organization change any of the decisions made by the authorities.

Another example where NGOs see a problem in getting through to some of the decisionmaking bodies concerns the Green Councils.

The counties have over the years attained technical skills in the environmental field, and as a consequence have gained a central position in the Danish environmental administration. It therefore became more important for the NGOs to monitor and influence deci-

sions at this level, which lead to the formation of the so-called Green Councils.

Some of the NGOs express concern that in reality it can be difficult to get through to the officials at the county level in these Green Councils. This might be one of the areas where there is a need to insert some new mechanisms which can improve collaboration between NGOs and the county officials.

To understand the importance of these Councils one needs to keep in mind that at the same time the "Municipal Councils became the foundation for the new environmental administration" in 1974, the Counties also gained an important role, as they became responsible for "issuing consents to particularly complex and environmentally troublesome enterprises." The counties supervise the enterprises to which they have issued environmental consents, and as such continue to play an important role in the decisionmaking process in this field.

The provisions of the planning act and the EIA specifically mention the participation of the public in the decisionmaking process and as such supports the individual's and the NGO's right to have their comments taken into account by the authorities.

Adequate Notification of the Public

The NGOs receive a wide range of information from the Danish authorities at the national level. It is common practice that resumes, draft proposals etc. are sent out to hearings amongst NGOs who have a potential interest in the material in question. The EPA has a mailing list which contains many NGOs, industry and trade associations.

The nature protection act states specifically that the Danish Society for the Conservation of Nature is to be notified of any exemptions that are issued in connection with the conservation of an area, or any case which is protected by the general provisions of the act.

It is not uncommon for some of the larger NGOs to receive several draft proposals a month. This gives the NGOs a chance to keep up to date with the activities of the official authorities. It is also fairly common

that the NGOs have personal contacts with in the public bodies, which can provide them with information.

Decisionmaking is Transparent

Compared to other countries, Denmark is known for its transparent decisionmaking process. Openness and decentralization characterize the Danish administrative procedure in the environmental area. Another aspect of the Danish administrative procedures is that besides the official decisionmaking processes there exist some informal practices and procedures between the Danish authorities and the NGOs in connection with environmental policymaking.

Having said this, there are still many areas where progressive changes are needed, and especially where factors such as participation and information available to the public need to be recognized as important parts of policymaking in general.

Possibility to Influence

The lobbying of the NGOs can be characterized as being an established part of the decisionmaking process in the sense that the existing collaboration such as the hearings and meetings between the official bodies and the NGOs follows substantiated procedures as described earlier. These procedures are defined by being more open, and as a result the public has the possibility to monitor which groups participate in the different committees.

In connection with this collaboration the authorities expect the NGOs to provide expert knowledge on a wide range of subjects. But there is an inconsistency between these expectations and the resources that are available to the NGOs from the authorities. In many situations the reality is that the NGOs are just barely able to sustain the role as the qualified opponent that is so important for the environmental decisions made.

Openness of Parliamentary Committees

Any person has the right to approach parliament with a statement. Even though this right has been used by some of the NGOs

(DSCN/WWF), it is not one of the most common procedures. When the NGOs want to influence the decisions made at this level, they often use an indirect approach through members of parliament.

During the recent years more and more of the environmental legislation originates from the institutions of the European Union. In terms of influence on the policymaking of the EU, the Danish NGOs have a very weak position in comparison with decisions made at the national level.

Mechanisms to Influence Decisionmaking — Lobby Mechanisms

The larger NGOs are regularly consulted on law and policymaking in Denmark as formally described.

In relation to some specific issues the minister has set up advisory committees, as for example the advisory committee related to environmental investments in, and assistance to, Central and Eastern European countries. In these committees the NGOs participate on equal terms.

Some interest groups are in possession of many more resources than environmental NGOs and thereby gain more influence. The most powerful of these organizations is the Confederation of Danish Industries and the National Association of Local Authorities in Denmark.

As an effort to strengthen the position of the environmental organizations in Denmark, these organizations choose to work together and prepare common statements on certain issues. The so-called Green Contact Committee and the 92 Group (refers to the Rio Conference in 1992) are both examples of cooperation between the Danish NGOs. For instance, the Green Contact Committee meets once or twice a year with the minister of environment and energy and thereby gets a chance to set the agenda and present its opinions on various subjects.

Capacity Building

The government officials of the ministry for the environment and energy are provided with some training on how they should relate to the public in general. It is one of the subjects included in the introductory course, which is compulsory for all new employees, but it is hard to determine exactly how efficient these courses are.

In Denmark, there exists a public funded board of technology whose main purpose is to initiate public discussions on different issues related to the implementation of new technology and in some cases, the environmental consequences of these technologies.

As mentioned, Agenda 21 is another example of how the authorities try to promote public participation at the local level, although the original intent has not been fulfilled.

The Green Foundation is, as the name implies, a fund that supports projects on environmental issues and in some cases projects that deal with public participation in relation to environmental policymaking.

One of the projects that The Green Foundation partly finances is the Green Guide project. At the moment there are around 60 Green Guides all over the country. A Green Guide is a person with a connection to a small local area who helps the population to live in an environmentally friendly way. They are thereby contributing to sustainable development.

Access to Justice

General Rights and Sources of Law

Table 1 illustrates the right to legal standing in Denmark. In Denmark the right to legal standing includes the court system as well as the administrative system. It is also important to keep in mind that this table is a very simplified illustration of to whom and in which situations the right to legal standing exists and as such should be interpreted with some reservation. This is due to the fact that the right to legal standing is defined differently from case to case since no general statutory

TABLE 1: Administrative Standing

	<i>In the administrative decisionmaking process</i>	<i>In the administrative appeal of administrative decisionmaking process</i>	<i>In the judicial appeal of administrative decisionmaking process</i>
Individuals			
every person	—	—	—
interested	—	x	—
affected	x	x	x
NGOs			
everyone	—	—	—
interested	(x)	x	(x)*
affected	—	x	x

*This was demonstrated in the case of Greenpeace versus the Ministry of Transport.

rules on objections and appeals has been laid down. Instead the rules are placed under the specific acts. However, anybody with a substantial individual interest can appeal to the Danish courts.

In the case of territorial plans, for instance, the possibilities of appeal are rather limited. Another example is the nature protection act, which explicitly delimits the right of administrative appeal to 1) the addressee of the decision, 2) public authorities, 3) the Danish Society for the Conservation of Nature, and 4) local associations and others that have a substantial interest in the decision. As a result, this means that in such cases individual neighbors do not have the right to appeal. This is just to show the complexity of the Danish legislation in this field.

It should also be noted that in relation to cases on environmental liability and compensation for restoration, the NGOs do not have access to justice in the administrative appeal system although it is possible to appeal to the Danish Courts. This is a concrete example of an area where there is a need for clear statutory rules, which would strengthen the position of the NGOs and thereby ensure a legal foundation for their future work for sustainable development.

Administrative Standing

Since 1987, approximately 1,500 cases on environmental issues have been brought before the courts as criminal cases. Most of these cases concern issues such as waste disposal, agricultural matters, use of pesticides and so forth. This means that few of the environmental cases brought before the courts of law are in fact taking a stand on the more legal aspects of environmental law.

In addition, many of the environmental cases are not brought before the Danish courts. This is due to the fact that Denmark has a well-established administrative appeal system in connection with the environmental law system. The appeal system consists of two independent appeal boards, the environmental appeal board and the nature protection board of appeal.

Standing in Actions Against Government Agencies and Polluters

The first time an environmental NGO in Denmark tried to bring a case to court was in 1994 when the Danish Ornithological Society took legal action against the Ministry of Transport. But the case was dismissed on the grounds that the claim was too general in its formulation.

At the same time, Greenpeace also took action against the ministry of transport on EIA rules in relation to the A/S Sound Connection. For the first time in Denmark an environmental organization was “found to have a right of action — without legal support and without being entitled to invoke its members’ economic interest as being affected.” Thereby, the court acknowledged their right to legal standing and the case is going to the supreme court in November 1998.

A general and simplified description of the procedure in which an NGO, such as the Danish Society for the Conservation of Nature (DSCN), can appeal to the decisions made by the administrative authorities:

1. A county approves a polluting enterprise.
2. The local NGO chapter is concerned that the pollution will harm the nature.
3. The DSCN decides that the concern is legitimate and submits a complaint to the environmental protection agency.
4. The EPA examines the sanction and the complaint and makes a final decision.
5. In some cases the DSCN is not reassured by the EPAs decision and it files a new complaint to the Environmental Appeal Board.
6. The Environmental Appeal Board, which acts as an independent administrative appeal board with certain judicial elements, examines the approval, the EPA decision and the complaint. Afterward the board makes a final decision and this decision is respected by the DSCN. In order to support value of the board’s decisions they are normally not brought to an ordinary court by the DSCN.

Remedies and Enforcement

Injunctive Relief

In environmental injunction cases there exists the possibility that the environmental authorities issue a deadline extension. The deadline extension is a sort of interim injunctive relief in cases where the authorities accept the explanation from the enterprise in question and as a result does not report them to the

TABLE 2: Statistics on Number of Administrative Appeals

The Danish Society for the Conservation of Nature statistics on the number of administrative appeals in relation to:

A the Environmental Protection Act, the Marine Environmental Protection Act, the Act on Watercourses and the Act on Water Supply and

B the Nature Protection Act, the Act on Forests, the Act on Raw Materials and the Planning Act.

Year	A	B
1983	48	53
1984	40	53
1985	50	50
1986	72	40
1987	115	63
1988	62	85
1989	87	73
1990	66	48
1991	52	64
1992	68	84
1993	71	75
1994	65	81
1995	50	94
1996	45	76
1997	55	112

police. It is also a built-in practice that when an injunction is issued to an enterprise there automatically follows a guidance of appeal.

Enforcement of Judgements

In cases where public authorities at the municipal or county level fail to enforce environmental laws or where public authorities are wrongdoers themselves, the penalty is (in the two existing cases) a fine.

The county prefect and four members of the county council will be in charge of cases concerning the municipal politicians. If the cases involve the politicians at county level the ministry of interior will act as the supervisory body.

As mentioned above most environmental court cases are criminal cases, where the

penalty consists of fines. In 1992, the total amount of fines peaked to about DKK 3 million, but seen in a larger perspective this is not a great amount. This could be a result of the following: 1) that the authorities were not yet fully capable of exposing all the environmental crimes; or 2) that the fines were too small.

The general understanding in Denmark has been that the penalties for environmental crimes were too mild. In some cases it could actually be worthwhile and economically more attractive to pay the fine than follow the environmental protection act. Because of this, the Danish Parliament passed on a new legislation, as late as 1997, to encourage more severe penalties. At this occasion the environmental protection act, the chemicals act and the criminal code were changed in what was called the enforcement package.

The average time for appealing an administrative decision in civil court cases is rather long — it can take up to 3–4 years in the high courts (as first instance) and 2–3 years if the case goes on to high courts as a second instance. With criminal cases the average duration is much shorter, city courts use a couple of months and three to seven months in high courts as a second instance.

If a case is submitted to the nature protection board of appeal, the average duration for a final decision to be made is six months, and at the environmental appeal board an average case can take from six months to several years.

Court Expenses/Litigation Expenses

In cases on non-business matters it is possible to obtain legal aid. If a person wishes to obtain “free process” it is a condition that the applicant is of modest means — which covers about 69 percent of the Danish population. Administrative appeal cases are generally free of charge.

If a citizen loses a court case he/she is not always ordered to pay the legal costs of the opposing party. But in cases where the citizen has chosen to contest the decision of the courts, he/she may end up having to pay all the costs in connection with the case.

Legal Assistance

Public Interest Environmental Lawyers

Danish NGOs do not officially offer the public legal advisory services. But in general the NGOs perform many services for the public such as providing information and to some extent legal advice, although it is all done on a voluntary and informal basis.

Ombudsman

The institution of ombudsman was established in Denmark in 1954 in connection with a revision of the Constitution in 1953. In Denmark there are two separate institutions of ombudsman. The ombudsman of the parliament deals with complaints on administrative decisions by the authorities while the ombudsman for the consumers deals with complaints on commercial issues.

From 1994 to 1996, the ombudsman of the parliament had 24 to 30 cases a year, which were defined as being under the responsibility of Denmark’s Ministry of Environment and Energy. Environmental cases account for around one percent of the total number of cases dealt with by the ombudsman of the parliament. An average of 15 percent of these cases was acted upon. It should also be noted that many of the cases dealt by the ombudsman of the parliament concern access to information.

MAPPING AND EVALUATION OF OPPORTUNITIES

Tables 3–5 are an illustration of the opportunities that exist for public participation in key decisionmaking processes in Denmark. In the case of management of environmental funds there does not exist any right for the public to participate. In Denmark the right to participate in the approval and preparation of local and regional plans is primarily existing in connection with the spatial planning and this deal with in Table 5.

TABLE 3: International Decisionmaking

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	1	1	1	1	1	1	1
Decisionmaking power is shared (right to joint decisionmaking)	1	1	1	1	1	1	1
Comments are seriously taken into account (right to be heard)	1	1	1	1	1	1	3
Adequate notification (right to be informed)	1	1	3	3	3	5	5
Access to information (right to access to information)	1	5	5	5	5	5	5

TABLE 4: Preparation and Approval of National Laws, Regulations, Strategies and Policies

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	1	1	1	1	1	1	1
Decisionmaking power is shared (right to joint decisionmaking)	1	1	1	1	1	1	1
Comments are seriously taken into account (right to be heard)	5	5	5	5	5	5	5
Adequate notification (right to be informed)	5	5	5	5	5	5	5
Access to information (right to access to information)	5	5	5	5	5	5	5

TABLE 5: Preparation and Approval of Territorial Plans (Spatial/Local Land-Use Plans), Environmental Impact Assessment, Siting and Permitting

	<i>Initiation of DM (problem/proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	1	1	1	1	1	1	1
Decisionmaking power is shared (right to joint decisionmaking)	1	1	1	1	1	1	1
Comments are seriously taken into account (right to be heard)	4	4	4	4	3	4	4
Adequate notification (right to be informed)	5	5	5	5	5	5	5
Access to information (right to access to information)	5	5	5	5	5	5	5

CONCLUSIONS AND RECOMMENDATIONS

This conclusion shall first address the questionnaire on which this report is based, secondly the current environmental instruments and thirdly the future challenges in developing new ways of public participation.

Conclusions Regarding the Questionnaire

This report is a condensed survey of the situation in Denmark concerning access to information, public participation and access to justice. One of the main conclusions is that the Danish administrative decisionmaking process is characterized by a high degree of openness in the decisionmaking process. This is underlined by the informal but well-established procedures between the authorities and the nongovernmental organizations.

In connection with the decisionmaking process on environmental matters, access to information for individuals and NGOs is acceptable. It is common practice that pro-

posals on policy, laws and plans are sent out to a wide range of interested NGOs.

The NGOs have the right to submit comments and proposals to the government officials, and this right is widely used. Within some areas however there is a gap between having a right to be heard and actually gaining influence on the final outcome. Today the comments and proposals of the NGOs affect the authorities' final decisions only to a small extent.

Access to information is a primary condition for the involvement of the public and the NGOs. Another important premise for the strengthening of the NGOs' participation is the NGOs' organizational and technical ability. With its many local chapters, the Danish Society for the Conservation of Nature is a good example of how a relatively well organized NGO can take a strong position in policymaking in general. But even a well-established local and national NGO still lacks resources to cover all the activities expected by the authorities and the members of the organization.

Policymaking on chemical substances and materials is one of the most time- and

resource-consuming fields of interest. Access to considerable resources is necessary if one wishes to stay updated on the development of chemicals and their consequences on the environment in the future. The fact is that it is a very uneven race between industry and the NGOs, which means that even if the right to participate does exist, the reality is that most of the NGOs are not able to use this right fully. This makes it even more important that the NGOs have access to any information that the public authorities hold.

With the implementation in 1994 of the EU directive on freedom of access to information on the environment, there ensued some improvements regarding the rights of the public. In particular, they concern the right to request information on the environment from semi-public enterprises. The directive stated that enterprises under governmental control were obligated to provide information on the environment if they were approached. But the reality is that in some situations it has proven difficult to get the information requested, as is the case with extensive infrastructure projects where the government establishes a joint-stock company to control the project.

In connection with Danish rules on access to justice, there is a need to implement some statutory rules in the administrative appeal system that would substantiate the NGOs' right to legal standing. Similar actions need to be taken in relation to the NGOs' appeal rights in the Danish Courts.

Since the European Single Market went into force 1987, an increasing number of directives on environmental issues have derived from the European Union. Due to the fact that it is more difficult for the Danish NGOs to influence the decisionmaking process inside the EU system, it has become increasingly harder for them to affect the elaboration of the environmental legislation.

Looking at the environmental decision-making procedures from an international perspective, the challenge lies in identifying mechanisms and opportunities that enable people in general to participate in the process of designing environmental policies.

Some of these mechanisms might include the well-established hearing processes that exist in Denmark, whereby the interested NGOs are approached with proposals on environmental issues and thereby have a chance to participate or at least comment on them. The EU Special Committee on Environmental Issues is a step towards strengthening the role of the NGOs in the EU policymaking process, though it is far from enough.

From Regulation to Market-based Instruments

In recent years the environmental strategies have changed focus. To achieve environmental improvements it is necessary to make use of a broad range of instruments from prohibition and regulation to taxation, environmental impact assessments and eco-labeling of products. Today more emphasis is also put on voluntary agreements and market-based instruments such as standardization, than on regulation. Viewed from the perspective of transparency, access to information and public participation, this development raises some implications.

An example is the standardization process in the international standardization organizations, which has a significant influence. But at the same time the process is without any public participation, influence or control. The committees in which the standardizations are elaborated are dominated by the industries, and it is impossible for the NGOs to keep up with their resources. The result is that industry can implement standards without taking public opinion into account. This is not an acceptable development because it is going to weaken the public participation in environmental decisionmaking.

From End-of-pipe to Sustainable Development

The present survey has very much concentrated on access to information, public participation and access to justice related to so-called end-of-pipe environmental administra-

tion. According to this approach environmental issues are primarily a question of managing the resources.

However, this approach is not adequate for the environmental challenges facing us now and in the years to come. A cross-sectoral approach as outlined in the conception of sustainable development is needed. To obtain sustainable development, an integration of the environment into all other policy areas is required. Focus also has to be shifted from information to active participation.

This survey only addresses public participation in relation to decisionmaking. But in relation to sustainable development, new modes of public participation must be developed. In fact public participation is just as crucial in the implementation process as in the decisionmaking process.

Individuals, NGOs, industry and trade associations must cooperate in mutual projects to carry out sustainable solutions. To change production and consumption patterns in a sustainable direction, there is need for active participation of the population as well as industry and agriculture.

One of the recent attempts to improve public participation at the local level is the introduction of Agenda 21 in 1992. The objective of Agenda 21 is sustainable development. In Denmark the municipalities have the responsibility for implementation without any national guidelines.

The consequence is a lack of an overall direction and established indicators for what sustainable development implies. This means that the efforts of the municipalities are scattered and without any measurable effect. Out of all the municipalities in Denmark, 50 percent (in 1997) were active in connection with Agenda 21, and out of these only very few chose to focus on public participation and thereby the involvement of local citizens.

The national authorities have been criticized for their work in connection with Agenda 21 as being too "academic" and less concrete, and that there is a need for a plan of action which can guide the future work of the municipalities.

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Kim Carstensen, World Wildlife Foundation

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Bo Haakanson, DSCN

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Chapter 3: Germany

BETTY GEBERS ■ PETRA BUCHBERGER

LEGAL AND INSTITUTIONAL FRAMEWORK AND PRACTICES FOR PUBLIC PARTICIPATION

General

Constitutional Rights

There are no environmental rights in the constitution that offer further rights to the individual than addressed under the specific laws. The German Constitution was recently amended in order to stress the importance of environmental protection as a specific objective of the state. The new Article 20 (a) of the federal constitution came into force on October 27, 1994. It fixes environmental protection as an objective of the state, especially the protection of nature as a basis of human life now and for the future, but it offers no rights for the individual subject. As a consequence it is not possible for citizens to take legal action against the state or public administration on the grounds of Article 20 (a).

Implementation of International Legal Instruments

- Universal Declaration of Human Rights, adopted by the UN General Assembly at New York, U.S.A. on December 10, 1948 (Article 25).

Related EEC Directives implemented:

- Directive 90/313 EEC of the European Community Council on the freedom of access to information on the environment, adopted on June 7, 1990.
- Directive 85/337 EEC of the European Community Council on the assessment of



the effects of certain public and private projects on the environment, adopted on June 27, 1985 (Articles 5 and 6).

Implementation of International Nonbinding Instruments: Sofia Guidelines

The following nonbinding instruments have been signed and/or endorsed by Germany:

- Sofia Guidelines.
- Agenda 21, adopted by the United Nations Conference on Environment and Development at Rio De Janeiro, Brazil, on June 14, 1992.
- Rio Declaration on Environment and Development, adopted by the United Nations Conference on Environment and

Development at Rio De Janeiro, Brazil, on June 14, 1992 (Article 10).

Powers and Responsibilities of Local/Regional Governments Concerning Environment

The German Constitution guarantees in Article 28.2 the autonomy of cities and municipalities to self-regulate their own matters of local interest. The local governments can thus adopt regulations independently from the federal government and set statutes as far as the autonomy reaches. Beyond this point they are able to set by-laws within the bounds of legal competence according to duties after directions of the federal or state legislator. For example, local governments can specify their own spatial planning if it is in compliance with planning laws and with the state planning decisions.

In practice, the federal legislator has increasingly confined the scope of adopting regulations by local authorities. A generalization concerning progressiveness of local government is not possible. A great number of communities have been very active in the environmental sector, for example in the Local Agenda 21 processes. However, all activities in the environmental sector on the local level are increasingly threatened by economic constraints.

Access to Environmental Information

Legislation on Access to Information/Environmental Information

No constitutional right on access to environmental information exists at the federal level. The newly established East German States of Brandenburg (Article 21.IV) and Mecklenburg-Vorpommern (Article 6.II) offer a general right of access to information in their constitutions. The access is not limited to environmental information. The provisions have not become effective, because the law that is needed for implementation has not been passed yet. The

states of Saxony and Saxony-Anhalt as well as Thuringia guarantee access to environmental information in their constitutions.

There is no specific law on access to information or a provision on access to information in general. The Federal Administrative Procedure Act provides access to administrative information only for persons that take part in administrative procedures or that might be affected by administrative decisions. The Federal Freedom of Access to Environmental Information Act provides access to environmental information. It came into force on July 15, 1994.

Passive Provision of Information

Definition of Environmental Information

Environmental information is defined as being all information available in the form of writing, pictures or other media on the state of the environment, (e.g. state of water, air, soil, fauna and flora), or on activities or measures that might have harmful effects (e.g. noise), and on environmental protection activities or on measures of the administration for the protection of the environment. The act applies to all information about the environment that is available at the public authorities at local, state or federal level as well as all other bodies enforcing public administrative environmental law (Article 2.3).

Conditions for Obtaining Information

- Public Authorities

All public authorities at local, state or federal level fulfilling tasks in the field of environmental protection, and all other bodies enforcing public administrative environmental law, are obliged to provide information. Excluded are legislative bodies, government administrations when they are exercising legislative power, and authorities that are only generally obliged to take environmental matters into account under laws that are directed to all citizens and the courts (Article 3). Public authorities can provide information about business except business secrets (8.I.2).

- Private Bodies

A number of private businesses or organizations provide public services with environmental impact or related to the environment. These are regarded as bodies with public responsibilities in the sense of Article 6 of Directive 90/313/EEC, under the condition that they fulfill their duties on the basis of a sovereign act. They are in this case obliged to provide information under the same terms and conditions as those set out for authorities.¹

- Businesses

Businesses are in general not obliged to provide environmental information to the public on private requests.

Time Frame for Providing Information

The agencies shall provide information within two months, but there is no strict obligation for this. The Federal Administrative Court Act (Article 75) generally provides for the possibility of forcing the administration to take action. The court action is admissible after three months from the date of the first letter of request if a decision has not been made.

Those Having Right to Receive Information

Any person has the right to receive access to information on the environment upon request (Article 4).

The right on access to information is limited:

- where it might affect international relations, national defense interests, or the confidentiality of the administration's decisionmaking process;
- during ongoing court proceedings, criminal investigations and administrative procedures, concerning the information that the public authority has obtained during the proceeding; or
- where it bears the danger that its public knowledge will have a significant or persistent negative affect on the environment or endangers the success of administrative action.

Rights of Public to Specify the Form in Which Information and/or Environmental Information is Provided

Public authorities have the choice to provide oral information or access to the original files or other means of information (Article 4.D).

The wording of the federal act gives the public no right to specify the form in which information and/or environmental information has to be provided. This applies to both access to information and access to documents. However it is discussed whether the authorities are nevertheless obliged to hand out information in the most effective way in order to fulfill the obligation of the European directive. The federal administrative court ruled in 1996 that the authority is generally obliged to provide information in the form that has been requested by the applicant. It can only choose a different form when significant reasons can be given.²

Refusal to Provide Information

The scope of the right to gain access to information is limited in Article 7 of the Federal Act. The Act generally excludes information

- where it might affect international relations, national defense interests, or the confidentiality of the administration's decisionmaking process;
- during ongoing court proceedings, criminal investigations and administrative procedures, concerning the information that the public authority has obtained during the proceeding; or
- which bears the danger that its public knowledge will have a significant or persistent negative affect on the environment or endangers the success of administrative action.

The information is to be refused if the request concerns unprocessed data or documents that are still in the stage of preparation. The possibility of refusal also applies to internal communications of the public authority. Information which has been submitted by third persons without a legal obligation can

only be made accessible with the authorization of the person.

Further exemptions are laid down in Article 8:

Information cannot be revealed if

- it contains confidential personal data, where the publication of which will have a negative effect on protected interests of the person; or
- it concerns commercial and industrial confidential information and intellectual property.

Informal Guidelines for Agencies and the Public

There are no official general guidelines for public authorities on how to provide information, although states have issued guidelines for the internal use of authorities.

Specific Institutions/Officials for Providing Information

There are no general official guidelines issued to the public on how to request information. However, a version of the federal act has been published by a civil servant of the federal ministry of the environment in the Federal Gazette.³ Other authors have published versions as well.⁴

If an Authority Does Not Possess the Information

If the public authority does not possess the requested information, it is not obliged to collect information. On demand it forwards the request to the responsible authority.

Information Held in Public Registers

Public registers in the sense of Pollutant Release and Transfer Register (PRTR) or Toxins Release Inventory (TRI) do not exist in Germany. For this reason no free access is possible.

Costs of Obtaining Information

Charges are in fact very often an obstacle to the general access to information because a number of authorities charge high administrative fees, ranging up to several thousand marks. For example, the "federal ordinances

for fees for the works of federal authorities performed under the Federal Access to Environmental Information Act" of December 7, 1997 allows a range of DEM 50 to 1,000 for a written answer to a request, depending on the effort. If the collection of material causes exceptional effort fees as high as DEM 2,000 and up to DEM 10,000 are allowed.

Active Provision of Information

Obligation to Disseminate

Information Actively

According to the Federal Access to Environmental Information Act (Article 11) a report on the state of the environment has to be published every four years.

The federal environmental agency is obliged to plan and support scientific studies of the federal ministry of the environment, to measure air pollution, to take care of the documentation of environmental issues and the informing of other authorities and the public. The federal environmental agency publishes regular reports on the state of the environment.

Generally all kinds of information directly affecting environmental quality such as pollution of water, air and soil, and general information of every kind is provided.

Two federal ordinances provide active dissemination of information in cases of emergency:

- According to Article 12, the Federal Emissions Control Act on Major Incidents, plant operators have to elaborate plans to inform the authorities, neighbors and the public in adequate ways about what kinds of substances they produce and which substances could be released in the case of a hazardous incident and how to behave in these cases.
- According to the radiological protection ordinance, permits and variations in the conditions of an authorization of plants generating ionizing radiation have to be published in the Federal Law Gazette. In cases of hazardous incidents the competent authorities have to be informed.

Methods of Dissemination

The measurement of pollution in the air or other medium is conducted by the federal environmental agency and by special authorities or institutes of the single states. Regularly updated brochures containing general information and lists of further literature can be ordered, usually free of charge, at the environmental authorities. Reports about air quality are published as summaries, often including information about water and soil quality as well. The so-called reports on emission control are regularly published.

Reports containing only the results of measurements of the air are published weekly, monthly and annually as a booklet and by videotext. Information is also accessible by mail, audiotext and phone. Information is also accessible via the Internet.

Some sources which provide regularly updated information are:

- for Germany in general: <http://www.geowiss.uni-hamburg.de/geo/umwelt/gindex.html>, Federal Environmental Ministry: <http://www.bmu.de>
- for the various states: <http://www.bayern.de/Bayerninfo/umweltschutz.html>; <http://www.sensut.berlin.de/sensut/umwelt/umwelt.htm>; <http://www.murl.nrw.de/service/title.htm>

Electronic Means of Dissemination

There is no obligation to spread information electronically.

Nongovernmental Centers

The public can obtain information from environmental organizations or groups. German nongovernmental organizations provide and process information to the public, but also undertake lobbying and conceptual work and environmental projects on their own.

No specific NGO information center exists. This might be due to a lack of governmental funding. Access to information concerning the quality of the environment is already rather good in Germany (e.g. through the reports of the environmental agency). For

this reason there might not be an urgent need for a center that provides information. A need does however seem to exist concerning the assessment and interpretation of the information and concerning specific regional or project related information and expertise.

Mechanisms to Ensure Flow of Information from the Private Sector to Public Authorities or the Public

German environmental laws contain a number of reporting obligations. Information is not collected in the framework of a comprehensive, integrated system like PRTR. The obligations differ depending on their legal basis. According to Article 12 of the the Federal Emissions Control Act, certain plant operators have to elaborate regularly updated reports about the components they deal with. The hazardous potential of the components and the safety precautions as part of a safety analysis have to be reported to the competent authorities regularly and in cases of hazardous incidents. Emissions reports have to be sent to the authorities every four years (Article 27). According to the Waste Management Act, the producers of waste that exceed a certain amount of waste have to produce a waste management concept. This concept has to be presented to the authorities on request. The Water Resources Management Act enables the authorities to oblige operators to monitor and report water quality (Article 19.i.III).

Public Participation

Legislation on Public Participation

Public Control of Decisionmaking (Direct Democracy)

In the constitution no provision explicitly provides a right to public participation in environmental decisionmaking. However, it is generally accepted that fair and adequate administrative procedures are necessary to defend and protect constitutional rights. Within the bounds of administrative authorization procedures there are some regulations concerning public participation in different environmental laws.

TABLE 1: Conditions for Referenda in Different German States

	Bavaria	Baden- Württemberg	Berlin	Bremen	FNL (5 New States)	Hamburg	Hesse	Lower Saxony	North- Rhine- West- phalia	Rhine- land Palati- nate	Saar- land	Schleswig- Holstein
Bürgerantrag	No	Yes			Yes		Yes	Yes	No	Yes	Yes	Yes
Signatures		5%			10%		10-20%	2.5-5%		4-10%	15%	5%
Bürgerentscheid	No	Yes			Yes		No	No	No	No	No	Yes
Bürgerbegehren	No	Yes			Yes		No	No	No	No	No	Yes
Signatures		15%			10%							10%
Quorum		30%			25%							25%

- Conditions are a written request, argumentation and the naming of the matter of request. The demand for referendum has to be signed by a certain number of people of the state or the local community, varying from 10 to 15 percent of the inhabitants. The decision has to be made by at least 25 to 30 percent of the citizens (Quorum).
- There are no referenda specifically focused on environmental or related issues. Subjects can be changes of the constitution, drafts, enactments, amendments or cancellation of laws. Often excluded are matters of budget, internal affairs, development planning and formal public planning procedure.
- The state of Bavaria has the highest amount of referenda of all German states; the scope ranges from one per nine years for Bavaria up to one per 2.123 years in Thuringia.

The possibility of the public to be actively involved in permitting procedures has however decreased during the past years. Government and legislators have attempted to de-regulate and simplify environmental law in order to speed up permitting procedures. The number of permitting procedures for industry that require public notification and public participation has decreased. In most cases changes of existing facilities are not subject to public procedure any more, even though the dimension of the change can be rather big. Notifications without any procedures have replaced permitting procedures in many cases.

The participation rights provided by the transportation planning laws have been cut down as well. A simplified permitting procedure has been introduced that excludes the public as well as the legally recognized environmental organizations from the procedures. The genetic engineering legislation has also faced some changes. The public hearing in permitting procedures has been abolished.

The public procedure in the framework of the Environmental Impact Assessment (EIA)

Law has not been changed. However, the federal administrative court has ruled in several cases that non-compliance with EIA laws will — except in very rare exemptions — not have any consequences for the legality of the permitting decision.

Referenda

In principle, referenda are possible in some states and at the local level. There are often three possible instruments. Their distinction varies in the different states.

The first instrument, a kind of request of citizens (*Bürgerantrag*), is the weakest one. It contains the right to suggest the consultation of a specific affair to the municipal authorities. The second instrument, a kind of citizens demand (*Bürgerbegehren*), contains the right of the citizens to demand a referendum at their municipal authority. The third instrument is the referendum in its legal meaning, i.e. the municipal authorities submit a specific issue to the decision of the citizens.

A short overview of the different conditions in some states of Germany is shown in Table 1.

Right to Initiative

There is no right to initiate lawmaking or rulemaking on environment and related issues other than that of the government and of the first and second chamber of the legislator. Citizens can only write a petition to the petition committee of parliament which might take up the proposal.

Public Shares Power to Decide

Individuals/NGOs cannot participate in decisionmaking bodies as equal partners.

Account of Public Comments

In some procedures preceding administrative decisions, individuals have the right to have their comments seriously taken into account. The authorities have to publish authorization procedures, to display documents and to fix a day for a hearing. During that discussion citizens can bring forward their objections and suggestions. In the final decision the authority will have to explain why it has not taken up points made by the citizens.

Public participation is regulated (e.g. in the Federal Emissions Control Act, the Atomic Energy Act), in formal public planning procedures, in development planning and in general in the federal and state administrative procedure acts.

However, as stated above, this procedure is very often not applied any more. In non-public procedures it will be possible to participate as well (e.g. have access to the files and to write comments). These procedural rights are then limited to those that might be affected in their own subjective rights.

The procedural rights apply to everybody, the interests of all groups concerned have to be weighed and the decision remains with the authorities. The recognized nature protection groups have to be notified by the authorities prior to some decisions that will have an impact on nature protection. The groups can have themselves recognized by the authorities on request according to Article 29 of the Nature Protection Act.

Total numbers about procedures are not published by the authorities. Probably most

TABLE 2: Referenda in Bavaria until August 1996

<i>Scope</i>	<i>Number</i>	<i>%</i>
Development planning and unitary development plans	100	31.5
Traffic projects	82	25.9
Public institutions for infrastructure and supply	71	22.4
Disposal projects	32	10.1
Miscellaneous	19	6.0
Charges	13	4.1
Total	317	100.00

- Referenda about drafts or enactments, amendments or cancellation of laws are binding, but there are also solely consultative ones.
- Referenda are explicitly stated in the constitutions of some states if the constitution of a state or single laws are to be changed; in these cases authorities are bound to referenda.

procedures are conducted without public participation. An indication is given by a survey that are based on the report on the authorities in the state of North Rhine Westphalia between 1989 and 1992. It showed that of 1,017 permitting procedures for chemical production installations only 82 were conducted in public procedures (8.2 percent). In general 12.7 percent of the permits for all industrial installations were conducted under the participation of the public. After the recent de-regulation approaches less public procedures will be found.

There is no requirement to formally take public input into account in decisionmaking but the authorities have to show that they have considered it.

Public participation is only effective in cases where the citizens want to modify or change a project, but it cannot be successful in case the zero option is wanted. Citizens' groups had in the past very often contributed to an improvement of an authorization deci-

sion; we therefore consider it as a very effective environmental protection tool.

Citizens and NGOs will only participate if they have a sufficient political or private interest.

As regards the authorities time pressure is a limitation of the relevant procedure.

Adequate Notification of the Public

According to Article 29 of the Federal Nature Protection Act, legally recognized groups and associations with legal status have the right of observation and inspection of expert reports in connection with the preparation of by-laws by authorities competent for environmental affairs, the preparation of district and regional landscape plans and formal public planning procedures or exemptions with harmful impacts on the environment.

Only individuals who are directly affected in their rights by application procedures are normally notified about the decision process directly. In the case of a public procedure the public are informed as well (by advertisements on display, in newspapers and official gazettes). The notification usually contains information about the project, the place where files are on display and the deadline for complaints.

In some procedures a notification of the recognized nature protection groups is necessary. They will receive on request a full set of files in the individual case.

Decisionmaking is Transparent

Possibility to Influence Decisionmaking

The partnership approach has not been introduced to German law yet. Decisions are taken by the competent authorities. Some procedural laws provide for a right to be heard. For example, the Federal Emissions Control Act provides for a public hearing in the framework of the permitting procedure for certain industrial installations. However, the public is only heard and cannot participate as a partner. On the policy level NGOs are sometimes included in roundtable talks, but the decisions are usually taken by the competent bodies.

Decisionmaking processes usually follow binding procedural rules. They are transparent for this reason. Citizens can only influence any governmental or administrative decisions if these decisions will have an effect on their personal rights (property, health, liberty rights). It is, however, possible to influence decisions informally, through political channels or through public relations work.

Openness of Parliamentary Committees

The sessions of parliament and the environmental committee are accessible to citizens/NGOs according to the standing orders of the house of parliament. According to these orders visitors can get a visitor's license at the gate if they show their passport. With this license they have access to the gallery of the *Bundestag*, or House of Parliament. Manifestations of approval or displeasure or contributions to the discussion are not possible.

Individuals/NGOs are not allowed to participate actively in the sessions of parliament and parliamentary committees, unless they have been invited to present a view at a committee hearing by a member of parliament. There are only some councils such as the SRU (German Council of Environmental Advisors) or the WBGU (German Advisory Council on Global Change) that consist of experts of some domains (mainly professors) which are neither members of parliament nor of the government. They elaborate experts reports once a year which are discussed publicly.

Mechanisms to Influence Decisionmaking — Lobby Mechanisms

There are a lot of environmental organizations on federal, state and local levels, connected through informal and formal networks, influencing policies by informing the public and conducting a change in public opinion.

There is no law regulating the activity of lobbyists.

Capacity Building

Civil servants who lead public hearings have received training on public participation. However, not much publicity is made about this, so it is difficult to assess their effectiveness from an external position.

During the 1990s the German government has not put an emphasis on public participation. It was rather the aim of executive and legislative branches to limit or reduce public participation in decisions that can have an effect on the environment. A number of amendments to environmental laws cut participation rights. There are no mechanisms that provide for expert advice. In court cases or in administrative procedures, experts can be integrated and heard. If NGOs name the expert they will be responsible for the coverage of costs. However, a budget at the environmental agency is earmarked for NGO work. This budget has in fact been used to hold seminars about public participation, particularly in the eastern states.

Access to Justice

General Rights and Sources of Law

The constitution provides only a common right on access to court, not a specific one confined to special or environmental issues. In the sense of the common rule all administrative acting must be executed in accordance with existing law. If the administration does not act according to law and if individual rights (e.g. property) can be affected

through this breach of the law, a court action is admissible.

On the other hand there are limitations concerning which right provides protection to the individual. According to the so-called theory of protective law of the federal constitutional court, it is not sufficient to claim that an environmental law provision has been infringed. Furthermore, the provision in doubt has not only to serve public interests, but has to aim at the protection of single individuals. In other words it has to give a public right to the subject. Only then is a violation of a personal right regarded as legally valid.

Because everybody can demand access to environmental information, everybody has the right to appeal or go to court if his/her request for access to environmental information is denied unlawfully.

Public participation can be challenged at the administrative court, but without much chance of success. The administrative decision will usually not be discounted.

Only under the precondition of a breach of the law and if through this an individual right is harmed, can a court case be successful (annulment or [in most cases] modification of the administrative decision). Recognized nature protection groups have access to court review under some preconditions when Nature Protection Law has been infringed.

Out of the rights set out in the constitution several have been used in cases brought before court, especially the right of general freedom of action (Article 2.I), of life and physical integrity (Article 2.II), the right to choose and practice

TABLE 3: Administrative Standing

	<i>In the administrative decisionmaking process</i>	<i>In the administrative appeal of administrative decisionmaking process</i>
Individuals		
every person	—	—
interested/affected	—/x	—/x
NGOs		
everyone	—	—
interested/affected	—/x	—/x

TABLE 4: Average of Formal (Public) and Simplified Procedures of Authorization from 1991-95 in the State of Brandenburg

	1991	1992	1993	1994	1995
Formal procedures of authorization	5	116	145	124	131
Simplified procedures of authorization	7	90	23	11	0
Less than 3 months	3	56	9	57	51
4-7 months	5	111	86	64	58
8-10 months	2	29	50	5	16
More than 10 months	2	13	23	9	6

TABLE 5: Average Duration of Simplified Procedure of Authorization from 1993-95 in the State of Brandenburg*

	1993	1994	1995
Simplified procedure of authorization	205	299	328
Less than 3 months	44	72	118
3-6 months	103	155	144
6-9 months	39	51	40
More than 9 months	19	21	26

*After reorganization the only competent authority for simplified procedures of authorization

an occupation (Article 12), the right to possess and use a property (Article 14.I.1) and the right of equality (Article 3).

Administrative Standing

In the administrative decisionmaking process, individuals generally have an administrative standing according to Article 28.1 of the Administrative Procedures Act (VwVfG) if they are personally affected by an administrative act or measure.

Approved environmental NGOs have an administrative standing according to Article 29.1 Federal Nature Conservation Act (BNatSchG) if nature conservation issues are affected.

If the legal standing exists in the administrative decisionmaking process basically it also exists in the administrative appeal of these

decisions (according to Article 69 of the Administrative Court Law, VwGO) and in the judicial appeal of administrative decisions (according to Article 42, VwGO) to the administrative court.

The option to apply to the civil court exists if civil rights of a natural or a legal entity are possibly violated

As concerns environmental information, no data has been collected. According to our experience refusals arrive within the first week, relevant information within three weeks.

Regarding other decisions, no data has been officially collected or published. With respect to the implementation of the Federal Emissions Control Act that regulates permits for industrial installations some figures are known. The majority of permits are granted within three to six months. Complicated projects might take well over a year (See Tables 4 and 5).

TABLE 6: Legal Standing Against Government

	<i>Special administrative court</i>	<i>Civil court</i>	<i>Criminal court</i>	<i>Arbitration court or special economic courts</i>	<i>Constitutional court</i>
Individuals					
every person	—	—	—	—	—
interested/affected	—/x	—/x	—/x	—/x	—/x
NGOs					
everyone	—	—	—	—	—
interested/affected	—/x	—	—	—	—

Standing in Actions Against Government

There are different ways to ensure the enforcement and correct transposition of laws by public officials.

There is a difference in internal control of execution of laws depending which material is concerned.

If laws are applied by the states as matter of charge, which means legislation is constricted to the federal legislator, they are controlled in respect of functional or legal transposition by federal administration.

If laws are applied by the states as a matter of their own, that means the states have the right for legislation of their own, federal control is constricted to legality of transposition.

Internal control of correct transposition is also to be provided by procedures of complaints.

For the citizens, enforcement of a law is only possible if they are concerned with rights of their own. There is no popular court review in German law. There is one exception, the group action in environmental protection according to Article 29 of the Federal Nature Conservation Act. Procedural errors concerning the participation of the groups in authorization procedures give them a right to take court action.

In case of illegal actions of the authorities which cause material loss or harms health there is obligatory liability of the state.

Standing in Actions Against Polluters

- In the special administrative court: (see Standing in Actions Against Government).
- In civil court: e.g. action for injunction according to Article 1004.I.2 or 862.I.2 civil code, or liability for endangering action or condition, e.g. Liability Obligation Act, Atomic Act, Product Liability Act, Federal Water Act.
- In criminal court: e.g. according to Penal Code Article 324-330 (a): contamination of water, air, environmentally endangering waste disposal, illegal running of an installation, illegal treatment with nuclear fuel, endangering protected areas. Furthermore, there are provisions about offenses against life and physical integrity or the Administrative Offense Act.
- In arbitration courts or special economic courts: e.g. according to labor code, violation of provisions serving the protection of the workers.
- In constitutional court: This is debatable. On principle, debates between citizens have to be decided by regular jurisdiction. The rights set out in the constitution were originally determined to protect citizens against the state, because it was assumed, that state and citizens find themselves in a relation of subordination. Between citizens there is a relation of equals where rules of the civil code and related rules are applicable. The only possibility to apply constitutional rights to

TABLE 7: Legal Standing Against Polluters

	<i>Special administrative court</i>	<i>Civil court</i>	<i>Criminal court</i>	<i>Arbitration court or special economic courts</i>	<i>Constitutional court</i>
Individuals					
every person	—	—	—	—	—
interested/affected	—/x	—/x	—/x	—/x	—/x
NGOs					
everyone	—	—	—	—	—
interested/affected	—/x	—	—	—	—

TABLE 8: Court/Litigation Expenses (DEM)

<i>Value of matter debatable</i>	<i>Steps of charges raising</i>	<i>Raising amount</i>	<i>Raising of lawyer costs</i>
3,000	600	20	40
10,000	1,000	15	55
20,000	2,000	30	70
50,000	5,000	45	80
100,000	10,000	60	140
400,000	30,000	200	160
1,000,000	60,000	295	250
more than 1,000,000	100,000	300	300

relations between citizens is through the so called third-protective effect. This means that some expressions of the civil code, for example, act as a gate through which constitutional provisions can be applied on civil debates.

The constitutional rights are the same as mentioned above, e.g. the right on life and physical integrity (Article 2).

Remedies and Enforcement

Injunctive Relief

In civil and constitutional procedures interim injunctive relief is possible, but not in criminal courts.

Enforcement of Judgments

The judgment summons provides for a consistent and meaningful enforcement of court judgments.

Court Expenses/Litigation Expenses

Court charges according to the civil action regulation which is applicable to penal and administrative offense material too, relate to the value of the matter debatable (DM). Tables 9 and 10 show the estimated costs (in DEM) of going to an administrative court. (See Table 8)

Legal Assistance

Public Interest Environmental Lawyers

Environmental legal advisory service for the public is provided by one NGO, IDUR e.V. (information service for environmental law). IDUR offers free advice and legal representation in court to associated groups only. The service is mainly run by trainee lawyers. Non-associated groups and private persons are forwarded to specialized commercial lawyers, whose costs the persons themselves have to carry.

Other NGOs offer technical or procedural help in the authorization procedures such as KGV (point of coordination of information on procedures of authorization) of the *Oeko-Institut, Darmstadt*. KGV distributes information about authorization procedures and helps with technical expertise in the assessment of permitting files free of charge.

**TABLE 9: Administrative Court
— with Evidence**

<i>Value of claim (DEM)</i>	<i>Charges for adverse lawyer (w/o tax)</i>	<i>Charges total (w/o tax). Court charges incl.</i>
8,000	1,455	3,096
10,000	1,785	3,792
20,000	2,835	6,012

**TABLE 10: Higher Administrative
Court — No Evidence**

<i>Value of claim (DEM)</i>	<i>Charges for adverse lawyer (w/o tax)</i>	<i>Charges total (w/o tax) Court charges incl.</i>
8,000	1,261	2,801
10,000	1,547	3,427
20,000	2,457	5,427

In the federal administrative court, the charges are about 125 % of these charges

**TABLE 11: Federal Administrative
Court****Further charges:**

- expert costs (ordered by council) DEM 1.000, per day
- charges for own lawyer, own expert
- expert report ordered by court

There is no possibility to get a waiver of one's own costs. The charges of court normally have to be paid by the losing party, but the judge can set a different partition of costs.

Commercial Lawyers

There are no commercial lawyers offering free legal services, except for some who have specialized in administrative law. The Association for Environmental Law is run by a team of lawyers who charge normal fees but are considered environmentally conscious and progressive. A number of other private lawyers offer legal advice as well on a commercial basis.

Ombudsman

There is no institution of an ombudsman.

NOTES:

- 1 See: Schomerus/Schrader/Wegener: Umweltinformationsgesetz, Baden-Baden 1995, Article 3 No. 7, 8.
- 2 Bundesverwaltungsgericht (Federal Administrative Court), No. 7 C 64.95.
- 3 Meyer-Rutz, Eckart, Das neue Umweltinformationsgesetz-UIG, Bonn 1995, Bundesanzeiger 13/a.
- 4 Schomerus/Schrader/Wegener: Umweltinformationsgesetz, Baden-Baden 1995, Kummer/Schumacher, Umweltinformationsgesetz, Weinheim 1997.

Chapter 4: Greece

VASSILIS DOROVINIS ■ ELLINIKI ETAIRIA

LEGAL AND INSTITUTIONAL FRAMEWORK AND PRACTICES FOR PUBLIC PARTICIPATION

General

Constitutional Rights

The Greek Constitution guarantees the right of access to administrative documents and the right of citizens to obtain information. Article 10.3 of the constitution stipulates that “the competent authority is obliged to reply to requests for information, if this is provided by law.” This right is found in that part of the constitution (part two) which deals with the individual and social rights of citizens. The first law to provide for access to information as called by the constitution of 1975 was the law No. 1599/10-6-1986 (O.G. No. 75), regulating relations between the state, its ministries and services, on the one hand, and citizens, on the other.

Implementation of International Legal Instruments

According to jurisprudence of the Greek courts the Declarations of the UN General Assembly (of Human Rights, 1948) and of the Conference on Environment and Development (Rio de Janeiro, 1992) have a direct effect and need not be implemented.

The Convention on the Conservation of European Wildlife and Natural Habitats (Council of Europe, Bern, September 19, 1979) has been ratified by the law N.1335/1983 (O.G.No 32, A, March 14, 1983).

The Convention on Environmental Impact Assessment in a Transboundary Context



(Espoo, Finland, February 2, 1991) has been ratified by law No. 2540/1997 (O.G. No. 249, A, 1997).

The Convention on the Transboundary Effects of Industrial Accidents (Helsinki March 17, 1992) has been ratified by the law No. 2546/1997 (O.G. No. 256, A, 1997).

The Convention on the Protection and Use of the Transboundary Watercourses and International Lakes (Helsinki, March 17, 1992) has been ratified by the law No. 2425/1996 (O.G. No. 148, A, 1996).

The Convention on Civil Liability for Damage Resulting from Activities dangerous to the Environment (Lugano, June 21, 1993) has not yet been ratified by law.

The Directive 90/313/EEC of the European Community Council on the Freedom of Access to Environmental Information has been implemented by a joint ministerial decision, No. 77921/1440 September 6, 1995 (O.G. No 795, B, 1995).

The Directive 85/337/EEC of the European Community Council on the assessment of the effects of certain public and private projects on the environment has been implemented by a joint ministerial decision, No 69269/5387/24-10-1990 (O.G. No. 678, B, 1990), which has since been modified on several points.

Implementation of International Nonbinding Instruments: Sofia Guidelines

There has been no initiative either by the government or by any NGO to evaluate the Sofia Guidelines on public participation and access to environmental information. According to our information, no Greek NGO participated in the procedures and preparation of Sofia Guidelines.

Responsibilities of Local/Regional Governments Concerning Environment

Greece is not a federal state and local/provincial/peripheric authorities cannot promote independent legislation or particular regulations.

Access to Environmental Information

Legislation on Access to Information/Environmental Information

As mentioned above, the Greek 1975 Constitution guarantees a general right to obtain information.

The specific Law 1599/1986 (Articles 24 and 16) provides the right to examine administrative documents and preview its application methods.

The Joint Ministerial Decision of 1995, implementing the Directive 90/313/EEC, regulates the terms under which the right to access environmental information can be exercised.

Passive Provision of Information

Definition of Environmental Information

In Article 2.2 of the Decision (1995), the following definition is given of information related to the environment: Any element kept by public authorities, in any form (written, visual, audio, computerized), concerning the state of water, air, sun, flora and fauna, biotopes or ecotopes; any activities or measures which influence, favorably or unfavorably, the above natural factors, as well as activities or measures providing their protection. Special reference is made to the categories of public documents as defined in article 16.1 of the Law 1599/1986, which are public sector documents, in particular reports, studies, files, statistical elements circulars, directives, responses of the administration, opinions and decisions. Final reference is made to administrative measures and programs for the protection of the environment.

Conditions for Obtaining the Information

The obligation to provide environmental information applies to any administration service in the public sector, on a national, regional, prefectural or local level, including the supervised bodies of public or private law. The administration service acts competently and possesses information on environmental issues, with the exception of administrative bodies acting in a judicial or legislative capacity.

The Law 1599/1986 and the joint Ministerial Decision of 1995 do not include any obligation for private organization not supervised by a public authority.

The public authority must respond, in writing, to any application for environmental information as soon as possible and at the latest within one month after submission of the application (Article 4.6 of the 1995 Decision). Reasons must be given for a refusal to provide information. The response period is shorter than that provided by Article 3.4 of the Directive 90/313/EEC. The one month period is the same as that under Article 16.6 of Law 1599/1986.

Article 24 of the Law 1599/86 stipulates that

any citizen, even foreigners, as well as legal persons or associations, has the right to ask for information. It is not required of them to prove any legal interest in it (the same under Article 3.1 of the Directive 90/313/EEC) although Article 3.3 of the 1995 Decision seems to require the latter, as it refers to the right to ask from the public authorities “information of legal interest.”

There is no obstacle for the public to specify the form in which information and/or environmental information must be provided.

In the case of charges and costs, Article 3.3 of the 1995 Decision authorizes the reproduction of documents to be carried out, if these are in written form, in paper provided by the requester (the same regulation applies to any material in non-written form, which can be transcribed onto paper sheets). If information exists in another form, the public authority is obliged to indicate the form of the reproduction material to be used.

Refusal to Provide Information

Article 2 of the 1995 Decision lists the grounds for refusal of the access to environmental information. The list of the exceptions is a mix of the exceptions found in the Directive 90/313/EEC with the exceptions stipulated by art.16.3 of Law 1599/86.

Article 2.1 provides the following exceptions:

- a) Information that could jeopardize the confidentiality and secrecy of
 - the proceedings of the council of ministers and other governmental bodies
 - national defense and foreign relations;
 - the security of the state and the public order;
 - commercial and industrial confidentiality, including intellectual property;
 - privacy and medical secrecy.
- b) Information that can cause difficulties in investigations by judicial, police, military or administrative authorities, in matters

which are (but not “have been”) *sub judice* or under inquiry (including disciplinary inquiries) or undergoing preliminary investigation proceedings.

c) Information that:

- comes from material supplied by a third party without that party being under a legal obligation to do so;
- concerns material which if disclosed would make it more likely that the environment related to the material would be damaged.

Article 2.2 stipulates that public authorities cannot refuse to provide information on the basis grounds of protecting privacy, medical, industrial or commercial confidentiality, if this information is related exclusively to the person who is requesting it.

Article 3.3 requires, in accordance with Article 3.2 of the Directive, that information be supplied in part, where it is possible to separate it from information which falls under one of the exceptions.

Article 3.4 repeats the text of Article 3.3 of the Directive, concerning unfinished documents or data.

Article 3.5 provides that a competent public authority cannot legally refuse to supply copies of documents or material on the grounds that it is not the service that drafted the document or that it is not the service that is primarily responsible for the material requested.

Informal Guidelines for Agencies and the Public

There are no general guidelines for the public on how to request information and/or environmental information.

Specific Institutions/Officials to Provide Information

No specialized public authority exists for providing requested information and/or environmental information to the public.

Public Participation

Public Control of Decisionmaking (Direct Democracy)

Referenda

There is no such right. Referenda can be organized only by decision of the president of the republic, after a parliamentary decision by a reinforced majority of the deputies. Referenda can only be organized on “critical national items” and on voted projects of laws that “regulate a serious social item” (Article 44 of the constitution). There has not been a referendum organized in Greece for 23 years.

Right to Initiative

There is no possibility for the public to take the initiative in lawmaking. Only parliamentary groups and parties can do this.

Account of Public Comments

There is not an official, institutionalized way to take account of public comments. Individuals and NGOs have only the right to address parties, member of parliament or the parliament with petitions and applications. As for the public authorities, we have already made reference to Article 10.3 of the constitution. The same article, Paragraph I, recognizes the right of any citizen to make petitions or reports to the authorities, who are obliged to act in a short time and according to the laws, and to give a response, properly based, to any petition or report.

This constitutional disposition has been activated by a special Law for the Public Administration (Law No. 1943/1991, O.G. No. 50, A, 1991, Article 5).

We must also mention that proceedings like the “public hearings” are not constitutionally recognized as an obligation for parliament and the public administration.

Adequate Notification of the Public

In general questions we mentioned the ratification laws of international conventions, which include special clauses for the environmental information. There is also a joint ministerial decision (No 75308/5512/ October 26, 1990, O.C. No. 691, B, November 2, 1990)

providing the procedure by which citizens and their organizations have to be informed on the matters of environmental assessment studies. If such a study is submitted to the ministry of environment and public works, it has to be sent into 15 days to the competent regional prefectural council, which invites the public to have knowledge of the study within 15 days after the publication of the official invitation. The official invitation defines a term during which the citizens have to submit or express their own remarks or proposals, which are transmitted to the ministry. It is understood that the public's remarks are not compulsory for the administration.

In practice, public awareness cannot be stimulated by these proceedings and only individuals directly involved in a case have the real possibility to participate to the procedure from the moment that official notification is not previewed.

Possibility to Influence Decisionmaking

Laws, presidential decrees and ministerial decisions on environment can be prepared and published without any obligation of the authorities to consult the public.

Openness of Parliamentary Committees

Individuals/NGOs are allowed to participate in sessions of parliamentary committees if they are invited to, whether they request it or not. No official form of participation exists.

Access to Justice

General Rights and Sources of Law

Article 8 of the constitution provides the right to go to court. This right has a general application and includes the right to access or to appeal for environmental issues. This constitutional provision has often been used in cases brought before courts, usually the council of state (supreme administrative court).

Administrative Standing

The time limit to appeal an administrative decision is 60 days after the publication of an

TABLE 1: Legal Standing Against Government

	<i>Special administrative court</i>	<i>Civil court</i>	<i>Criminal court</i>	<i>Arbitration court or special economic courts</i>	<i>Constitutional court</i>
Individuals					
every person	—	—	—	—	—
interested/affected	x	x	x	—	—
NGOs					
everyone	—	—	—	—	—
interested/affected	x	x	—	—	—

act for a general regulation or 60 days after the official knowledge of an individual act. The council of state is the main court for environmental cases.

Standing in Actions Against Government Agencies

For the council of state, an individual must prove his legal interest, while an NGO must prove through its statute that it has direct interest in the matter.

In civil courts both of them must prove a legal interest.

In criminal courts — which until now only individuals are permitted to participate in — legal interest (damages, etc.) must be proven.

If a public official is a wrongdoer, one can ask for indemnities before a civil court or sue him/her before a criminal court.

Standing in Actions Against Polluters

Individuals or NGOs must prove a legal interest at any case and also prove that they have been affected.

Remedies and Enforcement

Injunctive Relief

There is a possibility for individuals or NGOs to obtain an interim or permanent injunctive relief against governmental bodies.

Enforcement of Judgments

There is no consistent and meaningful enforcement of court judgments.

Court Expenses/Litigation Expenses

We cannot make a general estimation of the total expenses and fees, including the expert costs. The situation is constantly fluctuating, particularly in the case of fees and expert costs.

Legal Assistance

No NGOs have permanent legal advisory services at their disposal. Only freelance lawyers, specialized in environmental matters, exist. They offer commercial or non-commercial services to individuals and NGOs.

Ombudsman

Because the ombudsman institution in Greece has only just started functioning, it is impossible to make an assessment at this stage.

MAPPING AND EVALUATION OF OPPORTUNITIES

Table 2 illustrates the following:

- International decisionmaking;
- Preparation and approval of national laws and regulations;
- Preparation and approval of national policies, strategies, programs and plans;

TABLE 2: Decisionmaking

Phases of Decisionmaking	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	1	1	1	1	1	1	1
Decisionmaking power is shared (right to joint decisionmaking)	1	1	1	2	1	1	2
Comments are seriously taken into account (right to be heard)	1	1	1	2	1	1	2
Adequate notification (right to be informed)	3	3	3	3	3	3	3
Access to information (right to access to information)	3	2	2	1	2	2	3

- Preparation and approval of local rules and regulations;
- Preparation and approval of regional/local policies (strategies);
- Preparation and approval of territorial plans (spatial/ local land use plans);
- Environmental impact assessment, siting, permitting;
- Management of environmental funds.

CONCLUSIONS AND
RECOMMENDATIONS

In Greece there exists a legal general framework for provision of environmental information and the question of the cost does not yet constitute a real problem. International conventions, including special clauses on environmental information as well as relevant EU directives, have already been ratified by laws or implemented by joint ministerial decisions. Only one exception exists: this of the Lugano Convention on Civil Liability.

What is mainly lacking is a system of dis-

semination of environmental information. NGOs do not have the economic possibilities to organize such a system.

On the other hand another important lack comes from the nonexistence of any legal obligation of the administration to consult officially and seriously the citizens and the NGO's on the preparation of any new legislation, regulation or method concerning environmental matters.

We consider that it would be positive to promote and encourage, through international agreements, the possibility to improve the existing framework on the national level.

Experience up to these days proves that the administration's unwillingness on a national level can be, sooner or later, overcome by such agreements.

Chapter 5: Ireland

DAVID MEEHAN

LEGAL AND INSTITUTIONAL FRAMEWORK AND PRACTICES FOR PUBLIC PARTICIPATION

General

Constitutional Rights

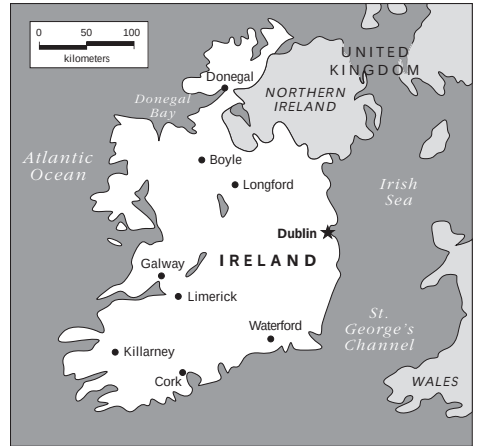
The Irish Constitution (*Bunreacht na hÉireann*) does not make any explicit provision for specifically environmental rights. The only potential constitutional avenue open for consideration on this point is a possible interpretation of the right to bodily integrity, which itself is unspecified in the constitution, established in *Ryan v. Attorney-General* ([1965] Irish Reports 294) in a general environmental light. However, this perspective does not appear to have been argued in the Irish courts.

Implementation of International Nonbinding Instruments: Sofia Guidelines

With particular respect to the Sofia Guidelines, no initiative has yet been taken to implement them or to evaluate their implementation. The department of the environment will be looking in more detail at the finalized Convention before responding to developments of the type signposted in the guidelines. Neither are NGOs taking any formalized action in this regard.

Powers and Responsibilities of Local/Regional Governments Concerning Environment

Environmental protection legislation and policy in Ireland emanates primarily from the *Oireachtas* (parliament) and from the European



Union. Local government plays an implementing role in relation to environmental law and policy, one which due to its statutory nature is directly subordinate to the will of the *Oireachtas*. Local government cannot adopt environmental regulations independent from the central government.

Access to Environmental Information

Legislation on Access to Information/Environmental Information

As concerns environmental information, there is no constitutional right of access as such. The Irish Constitution does recognize the special position of EU law, and binding legal measures emanating from the EU rank alongside constitutional provisions in terms of legal status. In this light, rights that could be discerned in Directive 90/313/EEC could

be upheld in the Irish courts. As matters stand, Directive 90/313/EEC is implemented by a ministerial regulation which in turn is enabled by specific provision in an Act of the *Oireachtas* (see below). Procedures for access are laid down in various planning and environmental statutes.

Irish legislation specifically provides for access to and provision of environmental information. There are a number of statutes and statutory instruments which provide for varying degrees of access to the following types of information (for relevant legislation see Box 1): (i) private records; (ii) records held by public authorities; (iii) planning registers, files and development plans; (iv) pollution registers,¹ files, databases and management plans; (v) waste registers, files, records and management plans and (vi) environmental information.

General Information Versus Environmental Information under Irish Law

With respect to information in general, records held by public authorities are governed by the Freedom of Information Act, 1997. However, where records are available for copy or inspection by virtue of an enactment or otherwise, the 1997 Act does not apply (see section 46[2]). This would appear to exclude information relating to the relevant procedures under iii-v in the above box.

Moreover, it is the view of the department of the environment that “environmental information which is available under the Access to Information on the Environment Regulations, will not be covered by the Freedom of Information legislation” (see Department of the Environment Review of the implementation of Council Directive [90/313/EEC] of June 7, 1990 on freedom of access to information on the environment: report to the Commission of the European Union [undated], p. 17). This is the department’s interpretation of the law. It should be pointed out that there are other possible interpretations which would suggest that section 46(2) does not exclude 1998 Regulations as “environmental information.” However, as this is a matter of legal speculation, this report will proceed on

BOX 1: Main Legislation Regarding Information

- i. Data Protection Act, 1988; Freedom of Information Act, 1997
- ii. Freedom of Information Act, 1997
- iii. Local Government (Planning and Development) Acts, 1963-1994; Environmental Impact Assessment regulations
- iv. Local Government (Water Pollution) Acts, 1977 and 1990; Air Pollution Act, 1987; Environmental Protection Agency Act, 1992
- v. Waste Management Act, 1996
- vi. European Communities Act, 1972 (Access to Information on the Environment) Regulations, 1998 (Statutory Instrument No. 125/1998)²

the basis that the procedure for access to environmental information is to be effected, from the official standpoint, through the 1998 Regulations and the various procedures in the legislation specified at iii-v in Box 1.

The Specific Case of Environmental Information

The principal piece of legislation relating to environmental information is the European Communities Act, 1972 (Access to Information on the Environment) Regulations, 1998. Other limited environment-related procedure-specific provisions on planning, pollution and waste in the statutes are mentioned at iii-v in the above table. Under Irish law there is a legal distinction made between information available under the 1998 Regulations and information available under other planning and environmental legislation. In particular, Article 5(1) provides that the 1998 Regulations do not apply to “information which, under any statutory provision apart from these regulations, is required to be made available, whether for inspection or otherwise, to persons generally.” However, with respect to specified planning

and environmental information access provisions³, both these and the 1998 Regulations are deemed to be operable [see article 5(2)]. By way of clarification, the department of the environment in its access to information on the environment: guidance notes (undated) asserts that planning and environmental registers and the like are “consistent and readily understood” by the public and “practical and easy to administer” (see p. 2). The department indicates that “existing arrangements will continue to operate as before,” for example those for inspection of planning applications and files (see pp. 2 and 3). The impact of article 5(2) of the 1998 Regulation is addressed in a department circular in the following terms: “the effect of the new provision will be to ensure that, while those provisions concerning immediate access/public inspection remain in force, the general provisions on access to information will also apply.” (Department of Environment and Local Government, Circular Letter EPS 6/98 of May 1, 1998, European Communities Act, 1972 [Access to Information on the Environment] Regulations, 1998).

Passive Provision of Information

Definition of Environmental Information

“Environmental information” is not defined in the 1998 Regulations, nor do these regulations refer to a definition in other legislation, as was the case with previous access to environmental information regulations. Section 110(3) of the Environmental Protection Act, 1992, which was the substantive statutory basis for the since revoked Access to Information on the Environment Regulations, of 1993 and 1996, defines “information relating to the environment” as any available information in written, visual, aural or database form on the state of water, atmosphere, soil, fauna, flora, land and natural sites, and on actions (including those which give rise to nuisances such as noise) or measures adversely affecting, or likely to so affect, these and on actions or measures designed to protect these, including administrative measures and environmental management programs.

As can be seen from the text, this definition includes information about state and activities related to nature (i.e. fauna, flora, landscape, natural sites, etc.), air and atmosphere, water, soil, and noise as a nuisance.

There is no reference, however, to energy and radiation. Coverage does not extend to conditions of human life (health, safety, toxicological data, etc.); cultural sites, constructions and built structures; and financial and economical analysis and assumptions relating to the above. Neither is there an explicit mention of agreements, policies, legislation, plans and programs, though it is difficult to see many, if any, of the above not falling within the meaning of “measure.” It should be noted however, that this definition is of academic interest with specific regard to the 1998 Regulations.

Conditions for Obtaining the Information

Conditions for obtaining information through public bodies is as follows:

- 1) 1998 Regulations: any of the following are to provide environmental information, provided they exercise public administration functions and responsibilities and possess information relating to the environment, i.e. (i) any minister of government; (ii) the Commissioners of Public Works in Ireland; (iii) local government; (iv) harbor authorities; (v) health boards; (vi) a board or other body established by or under statute; (vii) state-owned and state-controlled/semi-state companies; and (viii) any person or body under the control of (i)-(vii) (see Article 4.2).
- 2) Specific planning and environmental legislation: the Environmental Protection Agency (EPA) is required to provide information in accordance with relevant provisions under the EPA Act, 1992, and in relation to hazardous waste management plans and the licensing of waste recovery and disposal facilities. Indeed, one of the principal functions of the EPA is to set up environmental information databases and to make “arrangements for the dissemination of such information and for public access” (section 52[1][b]). The EPA must provide public access to the

Section 107 register of notices with respect to noise prevention or limitation. Local government in its various guises (e.g. local, planning and sanitary authorities) is responsible for the provision of information in relation to planning procedures, and the pollution and waste procedures not governed by the EPA. Under planning legislation, *An Bord Pleanála* (the planning appeals board) is responsible for information to be made available in the instance of an appeal made to it relating to planning and certain pollution applications.

Private bodies perform some of the public services:

- 1996 Regulations: any private person or body under the control of a public authority must provide environmental information. The Department of the Environment's Access to Information on the Environment Guidance Notes consider that entities under the control of public authorities would include an organization acting on an "agency, contractual or other basis" on behalf of that authority so long as it performs a public function relating to the environment (see p. 4). Controlling authorities are given the option of providing the requested information in the controlled body's stead (article 4[3]).
- Specific planning and environmental legislation: no private bodies are mentioned.

Business Provisions of Environmental Information to the Public

With the exception of the circumstances outlined in the previous point, and in one limited instance under major accident hazard legislation, business is not required to directly provide environmental information to the public under Irish legislation. Under the European Communities (Major Accident Hazards of Certain Industrial Activities) Regulations, 1986-1992, manufacturers covered by the regulations are required to inform persons "likely to be in a specified area," and those who specifically ask, of the nature of

any hazard covered by the regulations and what to do in the event of an accident.

Business is required to provide information to public authorities in accordance with specific statutory procedures. This information becomes available to the public either in accordance with specific procedures, or in accordance with the 1998 Regulations subject, as appropriate, to exceptions such as considerations of commercial or industrial confidentiality, and intellectual property.

The timeframe for the provision of environmental information is as follows:

- 1998 Regulations: public authorities are to respond as soon as possible to a request for environmental information and, in the normal course of events, no later than one month from the date of receipt of the request. Where a public authority is unable to respond within one month because of the nature or extent of the request, it must specify a date for its response not later than two months from the date of receipt. Responses providing information or refusing requests must be made within the above timescales.
- Specific planning and environmental legislation: requests in this context normally relates to files that are available for inspection on site. EPA and local authority files will normally be available on request for the duration of an application, and for decisions made. Draft plans are on public display in accordance with the specific provisions of the appropriate planning and environmental legislation. In these instances, the legal issue is not normally one of access within a certain timeframe, but more one of the length of time for which a specific category of document is available for inspection.

Most planning and environmental registers and files may not be copied. However, the EPA Act provides for the copying of certain items. For instance, entries in the EPA's Section 89 Register of Licenses shall be copied on request. Unfortunately, Subsection 3 does not provide for a time frame. Similarly, entries from EPA or local authority Section 107 Registers of Notices on Noise Prevention may

be copied, but not subject to any mandatory requirements with respect to time frames.

Who has the Right to Receive Environmental Information

Under the 1998 Regulations, any person has a right to environmental information. There are no limitations placed on the person. Specific planning and environmental legislation, access to planning and environmental registers, files and draft plans are as a rule open to the public and consequently no limitations are placed on individual persons or classes of person. Even where certain types of access are unspecified or left open to discretion, again the formula refers to "public" access (see for example EPA Act Section 67 monitoring records and Section 69 environmental quality data bases). Although "public" is not defined, it is clear that where a method of access is decided on, limitations cannot be placed on individual persons or classes of persons.

The form in which environmental information is to be made available is not specified. The term "make available" in the Article 5(1) duty to provide information is neither defined nor clarified. Local authority planning and environmental registers, files, and draft plans may only be inspected. However, copies of environmental impact statements attached to planning applications may be purchased. *An Bord Pleanála* files on planning appeals and files on waste license applications and decisions may be inspected and copied.

Certain EPA registers, such as those for the register of licenses (Section 89) may be inspected and copied. Potentially more open provisions on access are to be found in Section 69 on EPA environmental quality data: open in the sense that access is not necessarily limited to inspection or copying, though in the event it may be.

Refusal to Provide Information

Public authorities are obliged to refuse access to environmental information in three instances: (i) for personal information where consent for disclosure has not been given; (ii) for material supplied by a third party where

that party "was not, or is not capable of being put under a legal obligation to supply the material," and (iii) where disclosure of information "would make it more likely that the environment to which such information relates will be damaged" (Article 7).

Public authorities have the discretion to refuse information in five other distinct instances, i.e. those where information requested (i) affects international relations, national defense or public security; (ii) affects matters which are *sub judice*, under inquiry or the subject of preliminary investigation proceedings; (iii) affects commercial or industrial confidentiality, or intellectual property; (iv) relates to internal communications of the public authority or material which is still in the course of completion; (v) is "manifestly unreasonable having regard to the volume or range of information sought" (Article 8).

There is no public interest test applied to the exceptions under the 1998 Regulations.

There are no provisions per se in planning and environmental legislation for the refusal of information. Such legislation sets out, or provides for the setting out, of the instances in which and the procedures by which information is to be made available. As there are no request procedures as such, neither are there provisions for refusal. In practice, a request for a copy of, say, a planning file could be refused as inspection only is permitted, but this refusal would be in the nature of a procedural decision, not of substantive public or private interest category.

Informal Guidelines for Agencies and the Public

The department of the environment produced its access to information on the environment guidance notes in tandem with the original 1993 regulations. Being largely a more readable paraphrasing of the regulations, these notes are for the most part general in content and nonbinding in nature. They are far from being comprehensive, providing as they do only a few practiced indicators of use to public authorities. The most significant of these include (i) interpretations of "histori-

cal” environmental information and its destruction (p. 3); (ii) the issue of accuracy of information held (p.4); (iii) the issue of availability of information that has not been generated (p. 5); (iv) guidelines on response to requests (p. 5) and (v) the production of information policy statements (p. 8). No conditions are specified.

The department of the environment has committed itself through its 1997 document, *Sustainable Development: a Strategy for Ireland*, to prepare a code of good practice on issuing environmental information aimed specifically at public authorities. However, little progress has been made on this initiative to date.

According to the 1998 Regulations, there are no general public guidelines other than what can be gleaned from the department of the environment’s guidance notes discussed at above for the public to request environmental information. These primarily include (i) background information on active dissemination of information (p. 2); (ii) clarification of the extent of persons who may make requests (pp.4-5); (iii) general information on the processing of requests (p. 5); (iv) guidance of charges (p. 7); and (v) advice to public authorities with respect to producing information policy statements (p. 8).

The department of the environment has produced a series of general leaflets on public engagement in the planning process, namely those entitled “Commenting on a Planning Application, Environmental Impact Assessment, Making a Planning Appeal and The Development Plan.”

Specific Institutions/Officials to Provide Information

The 1998 Regulations do not make any specific institution or authority or designated official responsible for central provision of environmental information. The regulations make each public authority or category of public authority covered responsible for providing access to information held. From an overall perspective, the minister for the environment and local government are responsible, pursuant

to section 110 of the EPA Act, 1992⁴ for making regulations on access to information on the environment, and the department of the environment monitors and reviews the general application of the regulations. Neither, however, are responsible for providing access to environmental information in general.

Similarly, there is no single institution or official for providing central access to information under planning and environmental legislation. For instance, individual planning authorities are charged with the responsibility of maintaining registers and files, and for arranging access to them in accordance with statutory criteria. Local authorities and the EPA are responsible for access to specified pollution and other environmental information sources as set out in the relevant legislation. Of all authorities, the EPA comes closest to being a public authority with responsibility for providing environmental information to the public. For instance, the EPA is required to maintain environmental quality databases and to provide for public access to them. However, the EPA Act identifies the information types to be provided by the EPA, and, as the agency has limited, specified competence in the fields of environmental pollution and waste management, it takes its place alongside other public authorities subject to access to information obligations.

The department of the environment has set up an environmental information service, known as ENFO, which is open to the public. Staff at ENFO respond to public enquiries and assist the public in using the service’s library resources. Over the period September 1990 to December 1996, ENFO received over 345,000 visitors and answered 45,415 written inquiries. An ENFO database is connected on-line to 36 public libraries (see the department’s report to the commission on the implementation of Directive 90/313/EEC, pp. 16-17).

If an Authority Does Not Possess the Information

Under the 1998 Regulations, public authorities are required to provide information in their possession. According to the Department of the Environment’s Nonbinding Guidance

Notes, a public authority is not obliged to “generate, gather or otherwise obtain information it does not have” (p. 5). Information includes “historical” information. However, historical information ceases to be held where it is “destroyed in accordance with standard and reasonable office procedures” (p. 3).

The department’s guidance notes suggest that “reasonable assistance should be offered” to members of the public in order to help the proper formulation of requests. This would imply that a public authority should provide contacts if aware of them.

There is no obligation on a public authority to forward the request. However, in light of b) above, it might be considered good practice to provide a member of the public with appropriate contacts held by the authority.

Active Provision of Information

Obligation to Disseminate Information Actively

Active dissemination is not obligatory under the regulations (1998).

There is no statutory obligation on either local authorities or *An Bord Pleanála* to disseminate information.

In contrast, the EPA is required by the EPA Act, 1992 to disseminate the following specific classes of information:

- publication of reports on the monitoring of drinking water quality (Section 58), sanitary authority effluents (Section 61) and local authority landfill sites (Section 62);
- publication of hydrometric data in the context of a national program (Section 64);
- publication of environmental monitoring programs (Section 65);
- publication, as appropriate, of monitoring results (Section 67);
- publication of state of the environment reports (Section 70);
- issue of guidelines on the content of environmental impact statements, at the request of the minister of the environment (Section 72);
- publication of environmental quality objectives (Section 75);
- publication of records on emissions of prescribed substances from activities licensed under integrated pollution control provisions (Section 96); and
- publication of information on the use, consumption and release to environmental media of specified substances (Section 96A, as amended by the Waste Management Act, 1996).

The department of the environment and local government publish a wide range of studies, reports and other publications relating to environmental protection and sustainable development. These tend, for the most part, to be of a policy-formulating or strategic nature, for example, Ireland, Climate Change: CO₂ Abatement Strategy (1993); Recycling for Ireland: A Strategy for Recycling Domestic and Commercial Waste (1994); Local Authorities and Sustainable Development (1995); Better Local Government: A Program for Change (1996); Wind Farm Development: Guidelines for Planning Authorities (1996) and Sustainable Development: A Strategy for Ireland (1997).

The department also publishes a quarterly Environment Bulletin which features selected environmental data, usually from local authorities, and updates on planning and environmental developments. However, as a rule, the department does not engage in dissemination of data on monitoring and environmental quality, leaving it to other public authorities to discharge this function.

An Bord Pleanála produces annual reports on its activities, and these provide an overview of planning appeals for the year concerned.

The EPA has produced documents disseminating information including the following:

- Draft guidelines on the content of environmental impact statements (1995);
- National waste database report, 1995;
- State of the environment report (1996);
- Waste catalogue & hazardous waste list (1996);

- The quality of drinking water in Ireland: a report for the year 1994 and a review of the period 1992-1994 (1996); and
- Dioxins in the Irish environment: an assessment based on levels in cows' milk (1996).

The office of the ombudsman produces an annual report which includes a section on access to environmental cases which are brought to its attention. These reports provide useful, if limited, case studies on problems of access to information.

No institution is specifically responsible for the active spreading of environmental information in case of emergency. Competent authorities, i.e. local authorities, health boards and the *Gardai* (police), are required by Regulation 16 of the European Communities (Major Accident Hazards of Certain Industrial Activities) Regulations, (1986-1992) to draw up emergency plans to anticipate and deal with the outside effects of hazardous accidents on the local population and environment. These plans are to be coordinated with appropriate manufacturers who have to prepare their own on-site emergency plans (Regulation 15). The only requirement for the mandatory provision of information is placed on manufacturers who are to inform (i) persons "likely to be in a specified area" and (ii) those who specifically ask on certain specified items, including the nature of the relevant hazard and what to do in the event of an accident (Regulation 18). Dissemination of the results of any examinations or investigations of accidents conducted by a local authority, health board or the *Gardai* is at the discretion of the relevant competent authority or authorities.

There is no regularized process for involving or informing environmental organizations in or on policy and legislative issues. Information on initiatives is forthcoming on an informal basis, usually where an organization is closely monitoring a development on its own initiative. Input into policy and legislative formulation is possible, but usually on a case-by-case basis pursuant to direct contact with the relevant officials. Environmental organizations such as *An Taisce* — The

National Trust for Ireland and VOICE have made presentations and taken questions at parliamentary committees. In certain instances, individual government ministers or public officials will invite submissions from certain environmental organizations or organize meetings with them, but this will be on an irregular basis.

Methods of Dissemination

The typical methods used are as follows:

- public inspection of registers and files, and in certain instances the provision of copies of entries in registers, files and environmental impact statements;
- publication of documentation, particularly by the department of the environment, local government and the EPA; and
- written and oral replies from the ENFO environmental information service.

Electronic Means of Dissemination

There is no obligation to spread the information and/or environmental information electronically.

Nongovernmental Centers

Outside governmental facilities such as the department of the environment and local government's ENFO service and publicly-funded facilities such as public libraries, there are no centers which specifically provide environmental information in a comprehensive and organized manner. There are community groups which give advice to persons, and such advice could relate to environmental information issues, but these are more in the nature of case-related service providers.

Mechanisms to Ensure Flow of Information from the Private Sector to the Public Authorities or the Public

The flow of environmental information from the private sector to public authorities is conducted through two mechanisms: (i) statutory permission and licensing and (ii) voluntary provision. Only the former mechanism is mandatory.

Public Participation

Legislation on Public Participation

There are no public participation rights in the Irish Constitution. Public participation is provided for in legislation through processes for drafting planning authority development plans, local authority water quality, air quality and waste management plans, and the EPA's national hazardous waste management plan, as well as through the various planning and environmental licensing procedures. The relevant legislation is listed in items iii-v in Table 1 in the section on "Access to Environmental Information."

(1) Development and environmental plans: under the planning law, planning authorities are required to produce a development plan every five years. Draft plans are put on public display for at least three months. Any person may comment on a draft. If changes are made to the draft, the amendments must be displayed for at least another month.

Proposed local authority waste management plans and EPA hazardous waste management plans are put on public display for two months, and written representations on the proposal are to be taken into consideration by the authority.

Proposed water quality management plans are available for public inspection for not less than three months. Any person may make written representations on the proposed plan. Proposed air quality management plans may be inspected by the public during a stated but unspecified period. Any representations made on the proposed plan must be taken into account by the local authority.

(2) Licensing application procedures: any person may inspect an application for planning permission and submit a written comment which must be taken into consideration by the planning authority when making its decision.

Applications for integrated pollution control licenses are available for public inspection for two months. Submissions may be made in the early stages of an IPC application assessment. All submissions are open to public inspection. The EPA issues a proposed

determination on the application. Individuals may lodge "third party" objections to proposed determinations in writing.

Copies of waste license applications may be inspected or purchased by the public pursuant to regulations made by the minister for the environment. Written objections may be made by any person, and an oral hearing requested. With respect to waste collection permits, the minister for the environment may make regulations laying down conditions for public inspection of permit applications and the making of submissions.

Applications for licenses for direct discharges into waters (but not for discharges to sewers) and for air pollution licenses may be inspected by the public.

(3) Licensing appeals: any person may appeal a decision on a planning application, and on applications for direct discharge into waters and emissions to the atmosphere to *An Bord Pleanála* (the Planning Appeals Board). Any appellant may apply for an oral hearing in the course of an appeal, and make submissions.

Public Control of Decisionmaking

Referenda and Right to Initiative

There is no specific right to a referendum on environmental issues. Neither is there a right of initiative on this or other issues. Initiatives are taken by the government and legislation is enacted by the *Oireachtas*. Decisionmaking takes place within this format, and participation by individuals and organizations will normally take place through the lobbying process.

There is one limited mechanism through which selected individuals and NGOs can have an input at the public authority level. Section 27 of the EPA Act, 1992, provides for the setting up of an Advisory Committee whose purpose, according to Section 28, is to make recommendations to the EPA or the minister for the environment relating to the functions of the EPA. The minister is empowered to draw up a list of organizations from which certain members of the advisory committee may be appointed. These organizations include those concerned

with environmental protection, and those which are representative of persons professionally and educationally concerned with environmental protection. The EPA or the minister "shall have regard" to any recommendations made by the committee.

This arrangement falls short of a right insofar as from the outset, the environmental status of an NGO is a matter of the minister's opinion. Once on the committee, the individual or NGO only has a right to contribute to the committee's deliberations and not necessarily to determine the outcome of a recommendation. However, in this limited context an individual has the potential to have comment taken into account.

Outside of this arrangement, there are no other statutory mechanisms or rights for influencing public authority functions.

Public Shares Power to Decide

Individuals/NGOs can not participate in decisionmaking bodies as equal partners.

Adequate Notification of the Public

The planning acts designate *An Taisce* — The National Trust for Ireland as a prescribed body. This legally entitles *An Taisce* to

- copies of draft development plans and notices of planning applications (Local Government Planning and Development) Act, 1963, sections 21(1)(a) and 32 respectively);
- copies of environmental impact statements (EISs) accompanying planning applications and submitted to ministers, local government (Article 32, planning and development) regulations, 1994 and European Communities (Environmental Impact Assessment) regulations, 1989 respectively); and
- notice of decisions on all planning applications accompanied by EISs and of certain local authority applications to the minister of the environment (and the local government (planning and development) regulations, 1994, Articles 43 and 122 respectively).

Apart from this instance, there are no formal arrangements in this regard. It is general-

ly a matter of initiative to successfully follow an item through the decision process.

Decisionmaking is Transparent

Possibility to Influence Decisionmaking

There is a proposal for a National Environmental Partnership Forum which has not yet been established (see Department of the Environment and Local Government, National Environment Partnership Forum [undated]). The functions of this proposed forum have not yet been clarified, but it is expected to deal generally with environmental policy, quality and public awareness. The composition of the forum is far from clear, but it is hoped to be broadly representative with approximate parity across the interests to be represented as well as independent and capable of advising the government on environmental issues and policies. It is envisaged that the secretariat will be provided by the department, assisted by external consultancy. It is hoped that the forum will be in a position to meet in June 1998, but this is not certain. A consultative conference was held on March 25, 1998, and the department hopes to set up a forum at an early stage.

Openness of Parliamentary Committees

Sittings of the *Dail* (lower house) are open to the public through a limited number of seats available in the public gallery. *Oireachtas* sittings are covered regularly on television and in the *Irish Times*. Environmental affairs are dealt with in parliamentary committees of which there are two types: Select *Dail* Committees (lower house of parliament) and joint committees. Joint committees are composed of members of both houses of parliament who sit on counterpart Select *Dail* and Select *Seanad* (Senate) Committees. Joint committees deal with policies and work programs for the individual department each tracks. Select *Dail* Committees deal with budgetary estimates and legislation emanating from the department each of these tracks. Environmental matters are addressed by the joint committee on environment and local government and by the Select *Dail* Committee on Environment and

Local Government, which in turn becomes a smaller select committee when considering legislation. The joint committee may take evidence from third parties, but this happens on rare occasions. Attendance at a committee meeting is by invitation of that committee and at its discretion.

Individuals and NGOs may, by invitation or in response to advertisement, make written and oral presentations at parliamentary committees and to be subject to questioning by committee members. The arrangements are at the discretion of the committee. There is no procedure for participating in parliamentary sessions.

Mechanisms to Influence Decisionmaking — Lobby Mechanisms

There are no formally established environmental NGO lobbyists. Lobbying tends to be performed on an issue-by-issue basis by environmental NGOs of some standing, and by groups set up for specific purposes. However, in general NGOs have a wider remit than political lobbying, focusing for the most part on campaigning and public awareness.

Capacity Building

There is no formal training of public officials on public participation as such. However, there is a program for training public officials to apply the Freedom of Information Act, 1997. This concentrates on the access to information aspect rather than the issue of public participation. There does not appear to be any government funding specifically targeted at public participation projects or training.

The department of the environment and local government does administer an environmental partnership fund whose objective is to support partnership between local authorities, community groups and NGOs with the purpose of raising environmental awareness in local communities. The project types supported are in the main direct envi-

ronmental projects such as recycling schemes, environmental education and environment improvement, rather than those that would assist groups in participation in official decision-making. In 1997, the overall fund was IEP 100,000.

A very small number of grants were, nevertheless, allocated in 1997 to projects with a public participation aspect. An allocation of IEP 2,000 was made to a project aimed at identifying local resources to identify development problems in a certain area, and to encourage community participation in the development process. Two grants of IEP 1,000 were awarded to two separate projects, one relating to the promotion of a draft management plan for a specific area, the other supporting a forum in the dissemination of a report on the state of the environment in Dublin City (Department of the Environment Environment Bulletin: developments in the area of environmental protection, Issue 36, November 1997, pp. 5 and 38 et seq.).

Access to Justice

General Rights and Sources of Law

As stated above, there are no environmental rights *per se* in the Irish Constitution, although it would not be impossible to develop certain rights to a clean environment as an extension to the right to bodily integrity. This would, however, require a considerable shift in the higher court's approach to environmental matters.

As regards environmental legislation, cases taken are constructed around strictly delineated procedures and proofs set out in provisions of the relevant statute.

There is a very limited number of environmental cases taken in Irish courts. There are more cases taken on planning issues, though many of these are on technical matters. In one instance, *Hanrahan v. Merck, Sharpe, Dohme*, (1988) Irish Law Reports Monthly 629, the supreme court held that emissions from an incinerator constituted in this case a nuisance, and one which caused the applicant loss. This case was taken using the common law and

not provisions in environmental statutes.

So far there have been no Irish court cases on access to environmental information, although *An Taisce* — The National Trust for Ireland was involved in the Court of First Instance of the European Communities in the *WWF U.K. (World Wide Fund for Nature) v. EU Commission* (Case T-105/95). In this case, the applicant sought information held by the Commission relating to a proposed EU-funded visitors centre in Mullaghmore, Ireland.

Administrative Standing

The average duration for processing requests on access to information on the environment over the period 1993-96 was 23.55 days (department of the environment's report to the commission on the implementation of Directive 90/313/EEC, p. 11). The goal for other planning and environmental administrative decisions in the licensing process is to comply with a time limit of two months.

The main type of action taken in the high court relating to environmental and information cases is judicial review of a decision of an public authority. The length of time it takes for the conduct of a judicial review procedure varies over time. At present, a less complicated case may well be disposed of by the high court in under a year, with a more complicated ongoing well into a second year. However, factors such as the availability of judges, for example where a number of judges may find

themselves presiding over a particularly lengthy case or assigned to tribunals, may come into play extending the length of time a pending case may be on a list.

In instances of particular urgency, it is possible to have a case brought forward.

Standing in Actions Against Government Agencies

There are a number of steps which may be taken under the planning and environmental law by individuals independent of public authority action. Under planning law, any member of the public may apply to the circuit court or the high court for an order to discontinue a development where permission has not been sought, or to restore land to its original condition where unauthorized use has occurred (Section 27, Local Government (Planning and Development) Act, 1976 as substituted by Section 19, Local Government (Planning and Development) Act, 1992).

Standing in Actions Against Polluters

With respect to pollution of the environment, any person may apply for a high court order concerning water pollution or discharges to water (Section 11, Local Government [Water Pollution] Act, 1977 as amended by Section 8 of the Local Government [Water Pollution] [Amendment] Act, 1990). Furthermore, any person may apply for a high court order pro-

TABLE 1: Administrative Standing

	<i>In the administrative decisionmaking process</i>	<i>In the administrative appeal of administrative decisionmaking process</i>
Individuals		
every person	1,2	1,2
interested/affected	3	3
NGOs		
everyone	1,2	1,2
interested/affected	3	3
1 In the case of decisions on planning applications, air pollution and section 4 water pollution licenses.		
2 In the case of integrated pollution control and waste license applications.		
3 In the case of Access to Information on the Environment Regulations.		

TABLE 2: Legal Standing Against Government

	<i>Special administrative court</i>	<i>Civil court</i>	<i>Criminal court</i>	<i>Arbitration court or special economic courts</i>	<i>Constitutional court</i>
Individuals					
every person	1,2	—	—	—	—
interested/affected	3	—	—	—	1,3
NGOs					
everyone	1,2	—	—	—	—
interested/affected	3	—	—	—	1,3

1 In the case of decisions on planning applications, air pollution and section 4 water pollution licenses.

2 In the case of integrated pollution control and waste license applications.

3 In the case of Access to Information on the Environment Regulations.

hibiting or restricting emissions to the atmosphere (Section 28, Air Pollution Act, 1987) or for a high court order for the remedies outlined in section 28A of the Air Pollution Act, 1987 (as inserted by Section 4 of the Third Schedule to the Environmental Protection Agency Act, 1992).

Under the Waste Management Act, 1996, it is open to any person to seek in the high court interim or interlocutory injunctions (Section 57) or remedies (Section 58) concerning the improper holding, recovery or disposal of waste. Both of these avenues are open regardless of the taking or not of a prosecution by the relevant public authority. The Section 58 remedy comprises an order from the relevant court (district court, circuit court or high court) relating to past and present waste management activities and environmental pollution.

Remedies and Enforcement

Injunctive Relief

In the case of civil procedures there is a possibility for interim or permanent injunctive relief in any of procedures.

Enforcement of Judgements

There is nothing to suggest that enforcement of court judgments on environmental matters is inconsistent or meaningless, or at

variance with enforcement in other fields of law in the jurisdiction.

Any problems with enforcement of legal provisions generally will usually find their roots either in laws that are not particularly stringent or in underresourced enforcement departments in public authorities. However, once a case reaches the courts, as a general proposition, enforcement of judgments is more rigorous and effective.

Court Expenses/Litigation Expenses

Challenges in all the above-mentioned instances must be taken in the high court by means of judicial review an administrative decision. This is potentially a very costly course of action, principally on account of lawyers' fees. Solicitors' fees in litigation cases range between IEP 100 and IEP 250 per hour for a partner and between IEP 50 and IEP 120 per hour for an assistant. Advocacy fees for barristers also vary greatly, depending on the legal complexity of the case. For instance, a senior counsel's brief fee (for preparing a case and appearing in court for one day) could range from IEP 1,000 to IEP 4,000, with a refresher fee (for each additional day in court) of IEP 500 to IEP 2,500 per day. Fees for junior counsel will be two-thirds of the amount agreed with senior counsel. In a high court case, one senior and one junior

counsel will be retained. The level of the fee is very much a matter for negotiation with counsel. In some instances, counsel will take a case on a no-win, no-fee basis, and in the past, NGOs have not experienced difficulties in finding counsel prepared to work to this arrangement. All fees are subject to value added tax, which at present is 21 percent.

Experts' fees are a little more difficult to establish as they vary greatly between individuals and disciplines.

In cases where lawyers do not charge fees unless they win a case for a client, that client will still be liable for the other side's costs should the case be lost should the court so order. Where a party wins its case, it is possible to recover court costs including lawyers' and experts' fees.

An average gross monthly salary, based on the average industrial wage, is approximately IEP 1,200 per month.

Legal Assistance

Public Interest Environmental Lawyers

There are no formalized or organized legal advisory services provided for members of the public by NGOs on the subject of the environment or public participation. One organization, the Free Legal Advice Centre, runs an advice service providing initial general legal guidance. The service is dependent on volunteer lawyers, and accordingly the service provided is limited at any given time to the legal fields available lawyers are competent in.

Commercial Lawyers

To the best of this correspondent's knowledge, there are no private lawyers specifically providing a legal advisory service on an NGO basis for the public, although many will do an equivalent on an occasional, informal basis.

Ombudsman

The office of the ombudsman was set up in 1984 in accordance with the Ombudsman Act, 1980. The ombudsman is empowered to deal with complaints relating to the central government's civil service, local government,

health boards, Telecom Eireann and An Post. Over the period 1994-96, the ombudsman received 9,175 complaints. A very small proportion of these relate to environmental issues within the meaning of this study. Over the 1994-1996 period, 86 complaints related to the Access to the Information on the Environment Regulations, 1996, were received by the ombudsman. In 1996, 105 complaints were received in relation to planning matters and 29 in relation to other local government environment-related matters. Accordingly, the average percentage of environment-related complaints received over the three year period was 2.4 percent. Statistics on the number of environmental complaints dealt with are not all to hand. However, with respect to the 86 complaints on access to information on the environment, 83 were dealt with and completed by the ombudsman.

The figures for environmental complaints are limited to some extent by the fact that the ombudsman is not empowered to deal with complaints in relation to the environmental protection agency, *An Bord Pleanála*, and semi-state organizations whose activities impact in some form or other on the environment such as the electricity supply board, Aer Lingus, Bus Eireann, Dublin Bus and Irish Rail.

CONCLUSIONS AND RECOMMENDATIONS

Evaluation of Progress Made in the Last Three Years in Legal and Non-legal Fields

Some Preliminary Observations

Access to information in Ireland is a complex subject with a number of procedures and rights spread across a range of legislation. In European terms, Ireland is, if not necessarily a leader, then at least to the fore of the continent's proponents on general freedom of information. The Freedom of Information Act, 1997, represents a major step forward in legal, political and administrative terms. By the end of 1997, the act was not yet in force,⁵ and actu-

al progress in its general application will be difficult to evaluate much before the end of the decade. However, it is a comprehensive piece of legislation providing opportunities for achieving significant freedom of information.

On the specific matter of access to information on the environment, the picture is more confusing. The text of the Access to Information on the Environment Regulations, 1996 and the 1998 Regulations which replaced them⁶ is vague on many important issues and consequently difficult to interpret. The regulations still have a complex interaction with other environment-related legislation featuring specific provision for, mainly, inspection of records. Aspects of these other items of legislation have been subject to minor adjustments in recent years, and these are treated below. However, these incremental steps have not succeeded in addressing fundamental problems associated with a tiered system of inconsistent information access.

Major Achievements

Legal Achievements

Access to Information on the Environment

There have been few legal changes made to access to information on the environment over the period January 1, 1995 to December 31, 1997, and even fewer, if any, can be termed "major achievements." The 1993 Access to Information on the Environment Regulations were revoked and replaced by the eponymous 1998 Regulations (Statutory Instrument No. 185/1996).

The most significant improvement flowing from this development was the reduction of the time limit for responding to requests for information. Article 9 of the 1998 Regulations now provides that a response must be issued no later than one month from the date of receipt of the request, but that this period can be extended to no more than two months where an authority cannot respond within the one-month limit on account of the nature or extent of the request. The time limit in the

1993 regulations was the two months provided for in Directive 90/313/EEC.

A series of further, modest improvements were made to the domestic regime, namely the following:

- the definition of public authority is tightened by importing the text of the, albeit limited, definition of public authority in section 3(1) of the Environmental Protection Agency Act, 1992 into Article 4(2) of the 1998 Regulations;
- one discretionary ground for refusal provided for in Directive 90/313/EEC is removed, namely that ground concerning the confidentiality of the deliberations or proceedings of public authorities, which was achieved by the deletion of Article 6(1)(c) of the 1993 regulations;
- under the 1998 Regulations, concluded inquiries are no longer covered by the discretionary exemption of Article 7(1)(b); and
- the discretionary ground in Article 7(2) of the regulations on manifestly unreasonable requests is tightened up by permitting its invocation only with respect to the volume or range of information sought.

Planning and Development

Article 2 of the Local Government (Planning and Development) (No. 2) Regulations, 1995 (Statutory Instrument No. 95/1995) now permits members of the public to inspect and copy from files on appeals to *An Bord Pleanála* (the planning appeals board) for a period of five years after the conclusion of an appeal.

Integrated Pollution Control (IPC)

The Environmental Protection Agency (Licensing) (Amendment No. 2) Regulations, 1995 now require the EPA to make (i) license application documentation and (ii) all its reports on determinations or decisions on IPC license applications publicly available for three years after decisions are made.

Waste Management

Significant progress in limited circumstances has been made in other recent legislation. The Waste Management Act was enacted

in 1996, and this statute introduced information procedures that are considerably more liberal than those provided for in other environmental and planning legislation. Most notably, members of the public have a right to inspect and copy material from files relating to waste license applications and decisions, both during the course of the application and after the decision is made by the EPA. In counterpart legislation on planning and pollution, there is only a right to inspect registers and files, and no right to make copies.

There is a public right of participation in the drafting process for waste management plans at two stages, i.e. the pre-draft and draft stages.

Freedom of Information

The most prominent development in the field of access to information relates to the general right provided for in the Freedom of Information Act, 1997. It has been argued that this statute does not apply to access to information on the environment on account of the Act's Section 46(2). The formulation of Section 46(2) is not entirely clear, and, while its application to planning files and pollution registers is clearly arguable, there are greater doubts as to whether these provisions can exclude the application of the Freedom of Information Act to the Access to Information on the Environment Regulations. Future trends, including possible judicial review in the higher courts, may throw light on this problem. If it transpires in law that Section 46(2) does not apply to the 1998 Regulations, the Freedom of Information Act will have a fundamental impact, probably rendering the regulations inoperable. For its part, the department of the environment and local government intends to closely monitor the operation of environmental information regulations and the freedom of information act respectively.

Non-legal Achievements

It is difficult to isolate substantial non-formal achievements over the past three years. The department of the environment's 1997 review of the implementation of Directive

90/313 (report to the EU Commission) provided some interesting data on the use and operation of the access to information on the environment regulations. The review reported the heavy use of the department of the environment-sponsored library and information service (ENFO) which has disseminated information to a very large number of users.

The implementation of the Freedom of Information Act, 1997, will be expected to result in public authorities adopting more citizen-oriented practices, and this may to some extent have an impact on officials dealing with environmental information. The office of the ombudsman has played a very positive role in this respect. Annual reports of the ombudsman have highlighted both the extent and types of problems experienced by members of the public in dealing with public authorities under the access to information on the environment regulations. These reports have played a significant role in drawing attention to certain public authority practices and continued difficulties with official cultures of secrecy.

The department of the environment and local government's plan for a National Environmental Partnership Forum, planned to be in operation in June 1998, is a development which may significantly improve NGO participation in the discussion of environmental policy. However, the composition of the forum and its work program will have to be closely examined before the extent of its impact can be assessed.

Problems

The last three years have witnessed continued difficulties in the achievement of access to information on the environment. One of the most significant, continuing legal drawbacks is the inadequacy of the remedies open to requesters running into difficulties with public authority decisions under the Access to Information on the Environment Regulations, 1996. This problem was accepted in the depart-

ment of the environment review referred to above, and the department proposes to examine this particular problem by considering an administrative appeals system specifically for environmental information.

For the present however, and unlike the Freedom of Information Act, 1997, there are no specific procedures set down for dealing with disputes under the regulations. The only recourse is to the ombudsman under other legislation (Ombudsman Act, 1980). This option is subject to severe limitations, one of the most unattractive being the lack of binding quality of the ombudsman's review procedure. Furthermore, the Ombudsman Act does not apply to all public authorities within the meaning of the 1996 Regulations. The nature of this problem is highlighted by the more extensive remedies provided for in the freedom of information act and overseen by that act's information commissioner, a function discharged, ironically, by the ombudsman.

Deficiencies in review procedures have a direct impact on access to justice. With the absence of an adequate intermediate review procedure, disgruntled applicants are frequently left with no authoritative recourse other than judicial review in the high court. However, the dearth of cases taken in the high court concerning access to information on the environment is testimony to the delays and expense of this procedure, and its inherent unsuitability as a working means of providing justice.

Future Needs

In terms of law on access to environmental information, the following problems need to be addressed:

- the lack of clarity and detail in the access to information on the environment regulations, as most of the important terms in the regulations are not defined; procedures for access, and exemptions and limitations on exemptions are not laid out in detail;
- the absence of an adequate form of redress of an independent, relatively informal and inexpensive nature; and
- divergence in the means of access to information held on planning and environmental registers and files, e.g. right to copy versus right to inspect.

It is argued here that in terms of access to information and access to justice, legal arrangements need to be clear and consistent. The most effective and suitable means of achieving such goals are arguably to regulate all rights and duties in an act of the *Oireachtas* (parliament) as opposed to ministerial regulations. For instance, access to information to environmental information and administrative and judicial remedies would be better secured through statute. The most appropriate and transparent mechanism in this respect would be to extend the application of the freedom of information act to environmental information, rather than to produce a separate piece of legislation.

With respect to restrictions on copying from registers and documentation, two possible alternatives could be resorted to:

- to repeal or amend Section 46(2) of the Freedom of Information Act and allow the act to regulate in the first instance planning and environmental registers and files;
- to simply amend the appropriate provisions in planning and pollution statutes to provide for copying from the relevant sources.

The second alternative is a minimalist solution and does not facilitate possible future developments such as planning and environmental items being held and accessible, in electronic form. The freedom of information act route would be more favorable insofar as it would encourage public authorities to take initiatives in providing access to information in response to technological and managerial developments without necessarily requiring them to do so.

NOTES

- 1 Including the EPA Act's section 111 register for genetically modified organisms.
- 2 These regulations revoke the 1996 regulations (SI No. 185/1996) and the 1993 regulations (SI No. 133/1993).
- 3 Section 5 of the local Government (Planning and Development) Act, 1992, Sections 10 and 31 of the Air Pollution Act, 1987 and Sections 6 and 87 of the Environmental Protection Agency Act, 1992.
- 4 Although the 1998 Regulations were made pursuant to the European Communities Act, 1972.
- 5 The act came into operation on April 21, 1998 for most public bodies, and will come into effect for outstanding bodies such as local authorities on October 21, 1998.
- 6 European Communities Act, 1972 (Access to Information on the Environment) Regulations, 1998 (Statutory Instrument No. 125/1998).

Chapter 6: The Netherlands

RALPH HALLO ■ VICTOR JURGENS

LEGAL AND INSTITUTIONAL FRAMEWORK AND PRACTICES FOR PUBLIC PARTICIPATION

General

Constitutional Rights

There are no specific rights pertaining to the environment set forth in the constitution.

Powers and Responsibilities of Local/Regional Governments Concerning Environment

The provinces have their own environmental regulations, but these have only limited applications. These regulations are primarily concerned with planning for waste collection, processing policy and the definition of special protection areas, e.g. for the supply of drinking water. Provincial authorities may also supplement the national list of activities which may be subject to environmental impact assessment. This rarely occurs in practice.

Implementation of International Legal Instruments

Binding international instruments signed and/or ratified by the Netherlands: Universal Declaration of Human Rights, adopted by the UN General Assembly at New York, U.S.A. on December 10, 1948 (Article 25).

Related EEC Directives implemented by the Netherlands:

- Directive 90/313 EEC of the European Community Council on the freedom of access to information on the environment, adopted on June 7, 1990.



- Directive 85/337 EEC of the European Community Council on the assessment of the effects of certain public and private projects on the environment, adopted on June 27, 1985 (Articles 5 and 6).

Implementation of International Nonbinding Instruments: Sofia Guidelines

- Agenda 21, adopted by the United Nations Conference on Environment and Development at Rio De Janeiro, Brazil, on June 14, 1992.
- Rio Declaration on Environment and Development, adopted by the United Nations Conference on Environment and

Development at Rio De Janeiro, Brazil, on June 14, 1992 (Article 10).

To our knowledge there has been no initiative by the government or environmental organizations to implement or evaluate implementation of the Sofia Guidelines.

Access to Environmental Information

Legislation on Access to Information/Environmental Information

There is a constitutional basis for access to information legislation in Article 110 of the constitution which provides that "In the execution of its tasks, the government shall practice openness pursuant to rules established by law."

There is a general law on access to information, the Open Government Act (*Wet openbaarheid van bestuur*). This general law (*lex generalis*) yields to the provisions of a particular law (*lex specialis*). Several important categories of environmental information fall within the scope of a number of specific environmental laws.

Passive Provision of Information

Definition of Environmental Information

The Open Government Act contains no definition of "information." Until recently, it also contained no definition of "environmental information." However, the act is currently being amended to complete the transposition into the Dutch legislation of Directive 90/313/EEC, on the freedom of access to environmental information. As part of this amendment, the directive's definition of environmental information will be introduced into the Open Government Act. This is a technical amendment; the scope of information accessible under Dutch legislation is broad. Nevertheless, financial and economic analysis and information related to environmental agreements can be difficult to obtain in practice.

Conditions for Obtaining the Information

The Open Government Act applies to public bodies at all levels of government. Legislative bodies can under some circumstances fall within the scope of the Act, although the Act's definition of public bodies does not list legislative or judicial bodies.

Private bodies which have a public function can also be required to provide access to information. In addition, special regulations designate a large number of authorities which also fall within the scope of the law. These regulations are regularly updated to add new bodies to the list.

The Open Government Act requires that an answer to a request for access to information be made as soon as possible, and within two weeks. This deadline may be extended once for an additional two weeks provided notice is given to the applicant. No express time limit exists for supply of the information.

The Environmental Management Act (*Wet milieubeheer*), the principal environmental law governing licensing among other things, requires that a decision on a request for confidentiality must be made within one month. Note that under this act, it is the supplier of the information who must take affirmative steps to cause the information to be kept secret. Unless confidential treatment has been requested, the information forms part of the publicly accessible portion of the file.

Under the Open Government Act, any person may request information held by a public authority without having to prove an interest.

Both oral and written requests may be made. A person receiving an oral refusal of their request must be informed as to how they can obtain the refusal in writing. The Open Government Act also explicitly provides that whenever possible, the requested information will be provided in the form preferred by the person making the request.

Refusal to Provide Information

The Open Government Act contains three absolute and seven relative exceptions to the general rule in favor of freedom of access to information. In addition, there are further exceptions, called "limitations," concerning

internal documents.

A request for information which falls under one of the absolute exceptions must be denied. If the requested information falls under a relative exception, an assessment must take place whereby the interest protected by the exception is weighed against the interests of open government. Note that it is the public interest in open government which is in the balance, not the interest of the individual making the request.

The absolute exceptions under the Open Government Act prohibit the release of information which could endanger the unity of the crown; harm the security of the state; or concerns company or manufacturing data that have been provided to public authorities on a confidential basis.

The relative exceptions cover international relations; the investigation and prosecution of criminal acts; inspection, monitoring and oversight by or on behalf of public authorities; personal privacy; the interest of the person concerned to be the first to obtain the information; the economic and financial interests of the state; and the prevention of disproportionate advantage or harm to persons concerned or to third parties. These last two exceptions do not appear in the EU Directive on freedom of access to environmental information. Accordingly, the Open Government Act has been amended to make clear that these exceptions do not apply to requests for environmental information.

Further, there is a "limitation" on disclosure of information in internal communications, in particular where the views of individual officials may be concerned.

The Environmental Management Act specifies only three exceptions: for confidential business information; the security of the state; and compliance with international agreements. Where confidential business information is treated as such, a so-called "second text" must be disclosed. The second text must provide the public with a good basis for arriving at an informed view of the underlying questions (e.g. regarding a licensing procedure). The second text rule also applies to the other two exceptions under this act.

Informal Guidelines for Agencies and the Public

The Open Government Act includes a general provision on the duty of the authorities to provide information on their policy, in understandable form. More important are a number of specific provisions in the environmental laws under which information in connection with licensing applications or environmental impact assessments are made public. In addition, there is the requirement that a state of the environment report be issued every four years.

Specific Institutions/Officials to Provide Information

A system of information points and information officials exists within the national ministries to handle requests under the Open Government Act. Each ministry has a specified intake point for information requests and an official designated to oversee information requests, and in particular to advise on requests which may be refused. In addition, the Ministry of Environment maintains an extensive public information service program.

If an Authority Does Not Possess the Information

The Open Government Act expressly provides that if a public authority receives a request for information it does not have, it must pass the request on to the appropriate authority or authorities for reply.

Costs of Obtaining Information

Costs of obtaining information seldom form a barrier to access.

A published schedule of charges exists for the ministries of the national government. Local authorities are free to establish their own charging provisions.

Active Provision of Information *Obligation to Disseminate Information Actively*

Emergency information is provided by responsible authorities at all levels of government.

Since information on parliamentary proceedings is publicly accessible, it is assumed

that groups interested in a particular issue can obtain the necessary information concerning the parliamentary handling of a particular draft law or policy themselves.

Methods of Dissemination

The policy is a two-track one, combining active information supply to the public in general (reports on the state of the environment, etc.), and targeted members of the public (notice of draft environmental licenses, etc.) with passive information supply in response to individual requests for access to information. There is a general climate of openness and consultation. This attitude is, of course, strained in controversial or significant cases.

Electronic Means of Dissemination

There is no obligation to spread the information and/or environmental information electronically

Nongovernmental Centers

Environmental information centers run by NGOs do not exist as such, although the various environmental organizations at all levels function informally as information centers on the matters in which they have special knowledge and expertise.

Mechanisms to Ensure Flow of Information from the Private Sector to the Public Authorities or the Public

There is a voluntary system of emissions reporting which involves nearly a thousand of the largest industrial companies. In addition, there is extensive mandatory reporting under the terms of environmental licenses. Furthermore, there is an intermediate system of monitoring being developed in connection with the emerging system of environmental agreements. The accessibility of the data generated under environmental agreements can be problematic.

In general, businesses provide information to public bodies and are not required to provide access to information directly to the public. There is legislation on environmental reporting which applies only to a modest number of the largest companies. Expansion

of the coverage of this legislation to a larger number of companies in the future is possible.

Public Participation

Legislation on Public Participation

There is no right to public participation set forth in the constitution. A number of laws do include provisions on public participation. The most important laws in the environmental area are the Environmental Management Act (*Wet milieubeheer*) and the Spatial Planning Act (*Wet op de Ruimtelijke Ordening*).

Public Control of Decisionmaking

Referenda

There is no provision for a national referendum. However, legislation to provide for a referendum to allow popular nullification of legislation is now in preparation. It is doubtful whether such legislation will be adopted. If it were, then it would in principle apply to laws adopted by parliament and the national government. National projects, such as airports and highways, would not be covered since legislation is not required for such projects. According to the current proposal, the signatures of 600,000 eligible voters would be necessary in order to demand a nullifying referendum. Thirty percent of the eligible voters would then be required to vote against a law in order to nullify it. The threshold is thus quite high, reflecting the political compromises being worked out between proponents and opponents of referendum legislation within the government.

The provinces and municipalities already have the power to organize referenda concerning their own ordinances. Some municipalities have their own referendum ordinance, of which the best known is the City of Amsterdam. A referendum there once resulted in the blocking of a plan to build 150 housing units on open space at the edge of the city. Thereafter the threshold requirements in the referendum ordinance were raised, with the result that in a subsequent referendum, the opponents of the city's plans to build a new large-scale housing develop-

ment on IJssel Lake bordering the city to the north (*IJsselmeer*) failed to block the project.

Public Shares Power to Decide

The Netherlands is well known as a consensus-oriented society. The preparation of decisions is therefore accompanied by a great deal of consultation with the representatives of concerned groups. In many cases, these include environmental organizations. In the end, however, it is the government that decides.

Account of Public Comments

In general, a distinction should be made between:

- the right of any person to contribute comments (but to little avail) on draft plans such as provincial and national environmental policy plans; and
- public participation as the first step in legal proceedings. Public participation in this context must be taken more seriously by the competent authorities since the courts can rule on shortcomings by these authorities. The most important environmental proceedings concern: environmental and emissions licenses for industrial, energy-producing and waste-processing installations under the Environmental Management Act; municipal zoning plans under the Spatial Planning Act; proceedings to establish the routes of highways and rail lines; and the construction or expansion of airports under the Aviation Act (*Luchtvaartwet*). The most important law which fails to provide for public participation is the Land Division Act (*Landinrichtingswet*). The new law concerning the re-division of the areas of intensive pig-farming is however expected to include a provision for appeal of the land division plans.

Many of these proceedings are open to the public. Although some proceedings are formally restricted to interested parties, this notion is given such a broad interpretation that citizens' organizations active in the region concerned have access to the proceedings on the basis of the objectives estab-

lished in their statutes.

One may say that not a day goes by without there being use made of these possibilities for public participation, recently in particular. In previous years, the courts blocked a significant number of poorly justified projects. The environment was then also seen more as a problem for society in general. These days projects are better prepared (including EIAs) and the courts are giving more weight to other interests (e.g. the need for expanded road capacity to deal with increases in traffic volumes). This tendency is illustrated also by the example of a special law enacted several years ago to ensure that all livestock farms then operating illegally (i.e. without the necessary permit) received an environmental permit after all. This law was enacted once it became clear that the highest administrative court would no longer go along with the legalization of these farming operations (at issue was the question of air pollution due to acidification from ammonia emissions). An additional recent development to note is the intensive negotiation which now occurs between government and industry (collectively and individually) concerning the terms of the environmental licenses. These terms are frequently not brought up-to-date. Instead, environmental agreements (*convenanten*) are made.

Adequate Notification of the Public

Notice of draft licenses and plans is given via advertisements in local or national newspapers. In some cases, organizations may be informally involved in the preparation of decisions. Such consultation occurs upon the invitation of the authorities.

Decisionmaking is Transparent

Possibility to Influence

There is a lobbyist in the Hague (the government center) who represents environmental organizations. This is a full-time position and is fulfilled on behalf of the most important national environmental organizations. In addition, various national environmental organizations see it as part of their task to

undertake lobbying activities themselves. There is no law specifically regulating environmental lobbying.

Openness of Parliamentary Committees

The sessions of parliament and its committees are public with the exception of meetings of the presidium and meetings concerned with internal organizational affairs. The agendas are also made public in advance of the sessions. Written submissions may be made at all times. In certain cases, parliament will expressly request written submissions from interested citizens or organizations. Parliamentary committees also hold hearings and other meetings to which environmental organizations are regularly invited. The decisionmaking is, of course, exclusively a matter for the members of parliament.

The Council of State advises parliament on all proposed legislation. The members of this venerable institution, which is nominally chaired by the Queen, is composed principally of former officeholders who are appointed by the government. The composition of the council is, in keeping with the Dutch tradition of consensus and proportional representation, a reflection of the Dutch political spectrum; in other words, it is to be expected that, should a socialist member of the council need to be replaced, a Liberal or Christian Democratic minister would nevertheless nominate a Socialist to fill the vacancy.

Capacity Building

In general, newly elected members of parliament, the provincial assemblies and the municipal councils receive training in their new functions. Presumably, “public participation” is an element of such training. The degree of emphasis to be placed on this element is uncertain, since the fundamental notions of public participation are well-known and accepted throughout society.

All levels of government regard the making available of opportunities for public participation (public sessions, hearings, etc.) as part of

the ordinary functioning of public authorities. The costs of public participation are regarded as part of the normal costs of administration.

Access to Justice

General Rights and Sources of Law

There are no specific rights pertaining to the environment set forth in the constitution.

Administrative Standing

It is difficult to know precisely how environmental rights have been used in the arguments in cases brought before any court. An estimate may be given, however, that there are 2,000-3,000 such cases per year of which some 500 reach the highest administrative court. This is a very rough estimate which includes minor as well as more significant cases. It is not possible to provide an estimate of the percentage of cases in which the decision was favorable for the environmental interests. Procedural errors are what often lead to a partial or complete invalidation of a decision.

It is important to realize that:

- A number of environmentally-relevant proceedings are open only to “affected individuals and NGOs.” The general rule is, however, one of access for “any person.”
- In the Netherlands there is no opportunity for active participation in criminal cases; in Belgium, in contrast, there is such a possibility for NGOs.
- There are no arbitration courts in the environmental area. However, the establishment of such courts is being considered within the framework of the policy on environmental agreements.
- There is also no constitutional court; unlike Germany, in the Netherlands there is no opportunity for this form of judicial review of laws for their constitutionality. This examination is one of the functions played by the Council of State (discussed above) as part of its parliamentary advisory role.

The duration of an appeal to the courts is approximately two years. The period within which an appeal must be filed is generally six weeks.

Standing in Actions Against Government Agencies

Public authorities which are themselves in violation of the law are difficult to pursue. An action in the civil courts is the most promising course to follow. Until very recently, it was assumed that public authorities enjoyed immunity from criminal prosecution. But in a decision in January 1998, the Supreme Court (*de Hoge Raad*) ruled that provinces, municipalities and water boards may have criminal liability in connection with functions that are specifically government functions, such as the collection and disposal of waste. Nonetheless, one must resort generally to bringing the matter to public attention via the media, or to seeking action from elected officials or the national government.

Corruption of the judiciary is not considered to have any significant impact on citizens or organizations pursuing environmental claims. Suspicion of corruption among public officials arises most frequently in connection with waste disposal matters. Lax enforcement of environmental standards is a general problem.

Standing in Actions Against Polluters

There are three possible routes which may be followed if the authorities fail to enforce the environmental laws (against companies, for example):

- Interested parties may apply under the administrative law system to force the responsible authority to act. If the authority continues to refuse to act, then an appeal is possible. This route is a long and difficult one.
- A complaint may be made to the prosecutor (*Officier van Justitie*) requesting that a criminal prosecution be undertaken. Finally, after many years, the prosecutors' offices are beginning to take a little more interest in pursuing such cases. It is a problem however that the prosecutors generally need to obtain the necessary technical information from the same authority which is the subject of the complaint. If the prosecutor refuses to proceed, appeal is possible.
- Interested citizens and organizations can initiate civil court proceedings directly against the company concerned. This is a very effective mechanism, although not without its own problems. For instance, citizens or organizations are required, as plaintiffs in these civil cases, to assemble themselves the entire body of evidence needed to demonstrate the violation of the environmental law. Moreover, representation by a lawyer is required, which adds to the costs of proceeding.

Remedies and Enforcement

Injunctive Relief

It is possible to seek suspension of decisions which are being appealed. Such suspension must be requested; the mere fact of there being an appeal does not automatically lead to suspension of the decision pending a judgement on the appeal.

Enforcement of Judgements

In general, judgements are executed. Problems may arise in administrative law cases where the matter is referred back to the competent public authority. Judgement can be effectively negated by a delay; this has occurred with spatial planning cases in particular.

Court Expenses/Litigation Expenses

The most important financial barrier to the bringing of an appeal before the courts are the court costs. For individuals, these costs have recently been raised to approximately NLG 300, and for organizations NLG 600. These costs can be recovered in the event of the appeal being successful. It is not necessary to employ a lawyer in these kinds of appeals; an important potential barrier to appeals is thereby lifted.

Securing the necessary specialized or technical knowledge or expertise (e.g. concerning manufacturing processes or the effects of air pollution) in order to pursue an appeal is a barrier for many individuals.

Costs start at several hundred guilders for court fees and travel costs for an uncomplicated proceeding (concerning access to information) without the aid of a lawyer. They may range up to NLG 100,000 for the proceedings case in connection with the expansion of the Amsterdam airport (*Schiphol*). The latter case involved several legal actions in both administrative and civil courts with representation by attorneys, as well as several studies carried out by independent experts.

Cost recovery in court cases is limited to several thousand guilders for court fees and attorneys' costs. The advantage of this limitation is that it also represents the maximum a losing party would have to pay the other side. The financial risk of a court case is thus — in contrast to the UK for instance — within reason.

Legal Assistance

Public Interest Environmental Lawyers

As part of their normal course of work, organizations at the provincial level in particular offer assistance to citizens and local organizations in connection with legal proceedings.

Legal assistance in particular cases may be obtained from legal aid offices (*Bureaus voor Rechstulp*). The legal aid offices have no organizational links with the environmental organizations. The legal aid offices are an independent structure supported by the national government in order to provide legal assistance to those who do not have the means to pay for an attorney. For some years now, the Legal Aid offices have employed roughly 15 environmental lawyers who have primarily assisted environmental organizations.

Commercial Lawyers

A firm specialized in environmental law which frequently represents environmental organizations (for a fee) is Van den Biesen, Prakken, Bohler, Nieuwe Herengracht 51,

NL-1011 RN Amsterdam, Tel: (31-20) 623-2605, Fax: (31-20) 620-3559.

Ombudsman

There is a national ombudsman. Under the current system, the ombudsman can examine the conduct of the authorities at the national level but not those of the provinces, municipalities and water boards. This may soon change, however. Environmental complaints to the ombudsman are rare. This may be a function of the broad scope that exists to bring environmental cases to the courts.

CONCLUSIONS AND RECOMMENDATIONS

Dutch law and jurisprudence provides for a considerable degree of access to information, public participation in decisionmaking and access to the administrative and judicial proceedings. Improvements are certainly possible, and access to information could be improved. The most urgent need for improvement is in the area of business information which enjoys an unnecessary degree of protection. Public participation rights have been increasingly criticized as ineffectual. At the same time there have been calls to streamline decisionmaking procedures by eliminating some public participation rights and even to roll-back the rights of citizens and environmental organizations to take matters to courts. This latter trend is a disturbing one which indicates that even those environmental rights of citizens which seem secure require vigilant protection.

Chapter 7: Norway

NYONGA RUGUMAYO AMUNDSEN

LEGAL AND INSTITUTIONAL FRAMEWORK AND PRACTICES FOR PUBLIC PARTICIPATION¹

General

Constitutional Rights

The constitutional right of access to information and environmental information comes under the freedom of information act. Paragraph 110 of the constitution focuses on the environmental right to health, reproductive ability and diversity, with consideration for future generations, and the right to information.

In Norway, the main source of environmental information is the Environmental Library, which is one of four nationwide libraries in this field. The three other libraries are the European Library, the North-South Library and the Multi-Lingual Library. The Environmental Library is on the World Wide Web.

Implementation of International Legal Instruments

The Convention on Biological Diversity and the Convention for Climatic Change are examples of the major international treaties having provision on access to environmental information, public participation and access to justice that are signed, ratified and in force, by Norway.

Other international conventions and non-binding legal instruments are as follows:

- Universal Declaration of Human Rights, adopted by the UN General Assembly at New York, USA, on December 10, 1948, Article 25. Status: signed and ratified.



- Convention on the Conservation of European Wildlife and Natural Habitats, adopted by the Council of Europe at Bern (Switzerland) on September 19, 1979, Article 3.3. Status: signed and ratified.
- Convention on the Environmental Impact Assessment in a Transboundary Context, adopted at Espoo, Finland, on February 25, 1991, Article 2.2, Article 2.6, Article 4.2. Status: signed and ratified.
- Convention on Transboundary Effects of Industrial Accidents, adopted at Helsinki (Finland) on March 17, 1992. Article 9. Status: signed and ratified.
- Convention on the Protection and Use of the Transboundary Watercourses and International Lakes, adopted at Helsinki,

Finland, on March 17, 1992, Article 16. Status: signed and ratified.

- Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, adopted at Lugano, Switzerland, on June 21, 1993, Article 14, 15, 16, 18. Status: not signed or ratified.
- Directive 90/313/EEC of the European Community Council on Freedom of Access to Information on the Environment, adopted on June 7, 1990. Status: signed as part of EEA agreement.
- Directive 85/337/EEC of the European Community Council on the effects of certain public and private projects on the environment, adopted on June 27, 1985, Article 5, 6. Status: signed as part of EEA Agreement.

Implementation of International Nonbinding Instruments: Sofia Guidelines

When the initial draft guidelines (1995) were assessed within the context of relevant national and international instruments promoting public participation and access to information, they were found to be limited in their effectiveness. Among the specific elements that were limited are the following:

- excessive time limits for responding to requests for information, and a lack of clarity about what constitutes a response;
- exclusion of information on human health from the guidelines;
- exclusion of legislative bodies from the requirement to supply information;
- lack of provision for a waiver of charges for information;
- the broad range of exempt categories of information;
- lack of clarity regarding the minimum requirements for public participation.

It was recommended that the ministers should amend the draft Sofia Guidelines by:

- including information on human health in the definition of environmental information;
- including legislative bodies in the range of bodies required to respond to requests for information;
- reducing the time limits on responses to requests for information and clarifying what constitutes a response.

Nonbinding Instruments

1. Status of Sophia Guidelines: approved.
2. Agenda 21, adopted by the United Nations Conference on Environment and Development at Rio de Janeiro (Brazil) on 14 June, 1992. Status: signed.
3. Rio Declaration on Environment and Development, adopted by the United Nations Conference on Environment and Development at Rio de Janeiro, Brazil, on June 14, 1992, Article 10. Status: signed.

Interviews conducted within Norway to assess the implementation of the Sofia Guidelines found that although everyone at the conference could receive copies of the guidelines, there was no known translation of them into Norwegian or discussion of them in the national newspapers. One source asks: "If such a publication (external) of the Sofia Guidelines exists, then where is it found?"

However, the ministry of environment has acknowledged the Sofia Guidelines and has been in some consultations with NGOs.

Powers and Responsibilities of Local/Regional Governments Concerning Environment

Local governments in Norway cannot adopt their own laws/regulations for their own territory. Only the central government that can do that.

However, in order for local governments to adopt their own by-laws, they have to obtain the authority to do so from the central government.

Access to Environmental Information

Legislation on Access to Information/Environmental Information

Norway has a particularly good tradition of public participation in the decisionmaking of local and national authorities. This also applies to access of information.

A freedom of information act was adopted in 1970 to cover rules about access to information. The freedom of information act applies to information in all areas including the environment. It also covers all the provisions of the Directive on Freedom of Access to Information (Directive 90/313/EEC).

There is no formal definition of environmental information in the constitution and there is no specific law on the environment. However, there is the Administration Procedure Act (February 10, 1967) which covers access to all information. Nordic countries also have the equivalent of this act. In addition, there is the Government Information Policy, which is described in Report No. 35 (1991-92) to parliament (Storting). This is an information policy document for the civil service. The ministry of government administration decided to give information a higher profile and make it a separate policy area. The principle objectives of the information policy are¹:

- to ensure that each citizen and each operation has real access to information concerning activities in the public domain;
- to provide every person with information on his/her rights, duties and opportunities;
- to secure general and equal access to active participation in the democratic process.

A 1992 amendment to the Norwegian Constitution gives any person access to environmental information. The provision establishes a right to an environment that secures health and to natural surroundings in which productive capacity and diversity are conserved. This amendment is limited by the absence of supplementary regulations to implement these new rights.

On the whole, general information about the state of the Norwegian environment is fairly good and readily available to anyone through annual publications and press releases from the ministry of environment and its agencies.

The Norwegian government has evaluated the EU Directive (Directive 90/313/EEC) and concluded that it does not require any change or amendment of the country's laws. The EEA (European Environmental Area) surveillance authority has not challenged this view.

Passive Provision of Information

Definition of Environmental Information

The freedom of information act applies to all information in all areas including the environment. The act is characterized by the following points.

1. The Act establishes the general rule that a document in the authorities' possession shall be public unless it falls under an exception by law (Section 2). Any person may request access to a document.
2. The act applies to documents that have been drawn up by an administrative agency as well as documents which have been submitted to an agency.
3. The act applies to all central and local government bodies unless exempted from the act by statute or decree. It applies to a private legal person making decisions or issuing a regulation on behalf of central or local government bodies. The act does not apply to the Norwegian Parliament (*Storting*), the office of the auditor general, the ombudsman or other institutions of the Norwegian Parliament.
4. If a document is requested it should be made available "without undue delay" (Section 9).
5. The act states that documents (transcripts, print-out or copies) shall "within reasonable limits" be provided free of charge. However, the government is authorized to issue charging regulations, of which there

are two. One provides which ministry may decide the excise rate and the other deals exclusively with tax polls.

6. Access to documents is subject to statutory duty of secrecy (Section 5/a). Exceptions are that a document may be made available in part if it is possible to remove the secret information without creating a misleading picture of the contents or if the secret information is not the main part of the contents of the document.

The categories subject to the statutory duty of secrecy include:

- Documents which would jeopardize the security of the realm, national defense or relations with foreign powers or international organizations.
- Minutes from the Council of State.
- Documents concerning appointments or promotions in the civil service, although this does not apply to lists of applicants.
- Notifications, reports and other documents concerning statutory offenses.
- Examination papers or test papers and entries submitted in connection with competitions, etc.
- Documents prepared by a ministry in connection with the annual national budgets or long-term budgets. If a request is refused, then the act requires the authority to refer to the provision of the law upon which the refusal is based and to provide information on the right of appeal and the time limit for making an appeal (Section 9).
- Appeals are made to the administrative agency which is immediately superior to the one which has denied the request. The appeal must be decided without "undue delay" (section 9).

There is no second right of appeal but the ombudsman can take up the matter, with some conditions, and free of charge. The ombudsman's interpretation of the law is generally seen as a judicial decision or as an amendment to the actual regulation published in a booklet

by the Norwegian Government Information Board (*Statens Informasjonstilsynet*).

Conditions for Obtaining the Information

According to interviewees, there are no conditions stipulated when obtaining information and/or environmental information.

Businesses are obliged to provide information to the public authorities about their environmental impact assessments in accordance with the Pollution Control Act (No. 6, 1981). Other laws relevant to EIA include the Gene Technology Act (No. 38, April 1993).

In addition, businesses are obliged to provide environmental information to the public, although that does not extend to sensitive issues, such as the use of hazardous and potentially hazardous substances.

Information should be provided "without unnecessary delay," which would mean within two to three days of receiving a request for information, if the information were available. The time limits for providing the information are two weeks if the requested information is extensive.

Refusal to Provide Information

Refusal to provide the requested information should be sent out within 2 weeks along with an explanation. There are no limitations as to who can receive information in general, according to the freedom of information act.

Informal Guidelines for Agencies and the Public

There are no particular guidelines for the public on how to request information and/or environmental information. Other sources suggest that the members of public should "know" what sort of information they are looking for.

However, with regard to information relating to environmental toxins, in practice the situation can be quite different. One of the subjects interviewed, experienced that whenever requests were made for specific information regarding environmental toxins from the state pollution control, the information was not provided. It would appear that the person's request for information was inter-

preted as a request for information on “commercial secrets.”

As long as one does not request information that is under the exemption category, it should be possible to obtain information and/or environmental information (Freedom for Information Act, Paragraphs 5[a] and 6).

The “public interest test” possibility is not practiced in Norway. This term refers to the idea that any public authority intending to withhold information under one or other of the exemptions must first take account of the public interest in withholding or disclosing information.

Specific Institutions/Officials to Provide Information

All public authorities except for parliamentary organs (ombudsman and auditor general) are obliged to provide information (including environmental information) in accordance with the administration procedure act. Private bodies that provide public services are also under obligation to provide information according to the administration procedure act.

Ministers are obliged to provide the public with information regarding the work of their ministry, specific plans or government views. Information services have been established in recent years to assist ministers, state secretaries and other ministry personnel in maintaining good contacts with the press and broadcasting media. The ministry of information must disseminate general and specific information to the press and the diplomatic community and keep the minister and senior administration up-to-date with current issues.

The ministry of government administration has established the Central Information Service to assist the central administration with its information needs and to inform the public of new legislations and regulations. It also has a telephone information service in order to assist the public in maneuvering their way around the complex structure of government offices.

Ministry regulations contain provisions which specify how the ministry is to deal with the media.

If an Authority Does Not Possess the Information

If the authority denies access to the information requested, a written explanation is usually given for the denial, with reasons such as “national security” or “commercial secrets.” By law, the authority denying the information is not obliged to forward the request to another authority who has the information.

Information Held in Public Registers and Costs of Obtaining Information

Information held in public registers is free of charge and there are adequate facilities for obtaining copies of information for payment of the costs of its reproduction and dissemination.

Active Provision of Information

Obligation to Disseminate Information Actively

Public authorities are generally obliged to actively disseminate information. The dissemination of information is decentralized.

In practice this means that the various ministries are responsible for dissemination of information within their domain. For instance, the ministry of environment is responsible for all issues pertaining to the environment and environmental policies.

The Pollution Control Act (No. 6, 1981), which deals with environmental licensing and impact analysis, also contains information requirements and references to the provisions of the freedom of information act. The Gene Technology Act (No. 38, April 1993) is generally the same as the Pollution Control Act. It is the most important law in Norway used to regulate the use of genetically modified organisms (GMOs). This act is in accordance with the rules in EU countries, but has a few exceptions — these being that the production of genetically modified organisms shall be carried out in an ethical manner, be of use to the society and in accordance with the principle of sustainable development. It has special provisions on the type of information to be made public.

Methods of Dissemination

Typical methods used by the public authorities for provision of information and/or environmental information are newspapers, advertising spots and television.

Archives are also open to the media and journalists have access to them. The information department in each ministry determines whether or not the information in the archives can be made public.

Information is usually provided in written form although telephone, fax and e-mail are also accepted. Other sources suggest that it is the public authorities themselves who decide the form in which the information should be provided.

Electronic Means of Dissemination

Information and/or environmental information does not have to be accessible electronically, but this is often the case. For instance, the Environmental Library has the following website: <http://www.steinkjer.folkebibl.no/miljobib.htm>

Nongovernmental Centers

Nongovernmental information centers do exist, for instance, the Norwegian ForUM for Environmental Development.

Mechanisms to Ensure Flow of Information from the Private Sector to the Public Authorities or the Public

Mechanisms that ensure flow of information from the private sector to responsible public authorities are in the form of surveys and annual reports, for instance from the ministry of environment on NO_x and CO₂ emissions to the atmosphere. Some of these, like environmental impact assessment reports are mandatory.

Public Participation

Legislation on Public Participation

There is no direct public participation right set out in the constitution. However, there are provisions in the constitution such as the freedom of information act, freedom of speech act, the public administration act and the ombudsman.

Public Control of Decisionmaking (Direct Democracy)

Referenda

There has never been a referendum on the environment and related issues, although there is a general right to referendum. There are no privileged groups.

The right to a referendum is decided by the government or parliament. The local government can also decide to exercise the right to a referendum. However, this right is not in the constitution. There are no privileged groups in this context.

Norway has had four national referenda this century, two of which had to do with Norway's membership in the EU (1972 and 1995).

No environmental issues are bound to referenda. Referenda are seldom used and they are nonbinding in the formal sense, although Norwegian politics has usually implemented the results of a referendum. Referenda are usually reserved for cases of utmost importance. There is no case in which authorities are bound to call referendum.

Right to Initiative

Initiating law or rulemaking is limited to parliamentary members and members of the cabinet. Individuals do not have this right. This applies to all issues including environmental ones.

Public Shares Power to Decide

Individuals/NGOs cannot participate in decisionmaking as partners. However NGOs can play advisory roles and can be invited to sit on committees and form reports. This subject was one of the topics of discussion at the Regional Conference on Sustainable Development in 1998. There are privileged groups to whom this right applies; however, anyone who is appointed to participate may do so. These privileged groups are the Formal Committee — the National Committee for International Environmental Issues, headed by the minister of environment, and the Commission on Sustainable Development Committee. Informal contacts include NGOs such as ForUM and var-

ious interest groups defined by Agenda 21.

The right for individuals'/NGOs' input to be taken seriously is exercised all the time, as meetings, debates and conferences in parliament are continuous.

Account of Public Comments

Individuals/NGOs do not formally have a right to have their comments seriously taken into account, unless they are invited to participate in the role of advisor. The situation is too politically complex to give a concrete answer.

However, there is a requirement to take account of public input in decisionmaking and this is dependent on the nature of the arguments. In the case of a hearing relating to a new law proposal, the involved parties are expected to send in their comments or objections to the proposal within three months. These comments are then sent to the ministry in question and are read by the minister. Information on the results of such discussion is published in a magazine called *Norsk Offentlig Utdredning* (Norwegian Official Publication). This form of participation can be very effective in influencing the content of the decision and exposing the different players involved.

According to one official, "There can be limitations on the procedure. The hearings deadline of three months may be too short in cases where one has to go through a large amount of material or decisionmaking may be too slow in the case of a shorter law proposal."

Adequate Notification of the Public

Individuals/NGOs involved in the hearing process for a new law proposal can be put on the list of groups regularly informed on law and policymaking. They are generally adequately informed about the progress being made. The information is usually contained in the *Norsk Offentlig Utdredning* (Norwegian Official Publication), with an enclosed letter. The content of the notification is the law proposal in question and *Stortings Meldinger* (parliamentary reports).

Decisionmaking is Transparent

Possibility to Influence Decisionmaking and Openness of Parliamentary Committees

The decisionmaking process is transparent and the public can influence the decision. Individuals/NGOs are allowed to participate in the parliamentary sessions on invitation, such as during a hearing or to make presentations on certain issues or just observe. However, neither group is allowed to participate in parliamentary committees.

Mechanisms to Influence Decisionmaking — Lobby Mechanisms

On issues of climate, food security, toxic chemicals and biotechnology, there is a form of lobby mechanism provided by NGOs. In Norway, there is no professional lobbyists' association.

Capacity Building

There is training on public participation, which is provided for government officials, although it is not known how effective it is. The government cooperates with NGOs, trade unions, industry and various research institutions. However, there is no government funding specially earmarked for public participation. There is government support for NGOs such as Norwegian ForUM for Environment and Development and various information campaigns on issues concerning Norwegian society, for the purpose of promoting public participation.

One example of a mechanism to provide expert advice to the public is the initiative taken by the Drobak Municipality to inform and educate the public about the plan and building act. This initiative is financed out of the municipality's budget.

Access to Justice

General Rights and Sources of Law

In the constitution, there is no particular right to justice except if a criminal offense has been committed. The Access to Justice Act

TABLE 1: Administrative Standing

	<i>In the administrative decisionmaking process</i>	<i>In the administrative appeal of administrative decisionmaking process</i>
Individuals		
every person	x	—
interested/affected	x	x
NGOs		
everyone	x	—
interested/affected	x	x

(No. 6, August 13, 1915) states that one has the right to go to court if refused access to something one is entitled to. The constitution does not provide a right to go to court, or to file an appeal inside agencies or governmental bodies on issues concerning denial to access of information, failure to allow public participation and environmental issues.

The above-mentioned constitutional provisions have not, to the author's knowledge, been used as arguments in cases brought before any court.

NGOs can go to court even if they are not affected players, provided they have a legal interest.

Administrative Standing

The above table illustrates administrative standing. For participation in the administrative decisionmaking process, laws dealing with EIA are applicable. These laws are: The Pollution Control Act (No. 6 1981), The Gene Technology Act (No. 38, April 1993) and The Plan and Building Act. The Administrative Procedure Act is applicable (February 10, 1967) for the appeal of administrative decisionmaking. The average duration taken to obtain a final administrative decision varies from case to case.

Provided they have a legal interest, individuals or NGOs have the right to go to court (Access to Justice Act). Thus, NGOs will have to prove having a legal interest, that is to say, that there is a question of public and/or environmental interest.

Standing in Actions Against Government Agencies

Where there is a legal standing against the government, the affected citizens can go to court themselves when the public official fails to enforce laws, or if the public official is the wrong-doer. This situation would apply to all types of court.

NGOs can go to court even if only the environment is affected, and in this case, public interest litigation applies. However, there are some practical constraints. For instance, if NGOs/individuals do not have the funding to take the government to court, then the case cannot go any further. In situations where the NGOs/individuals lose the case, they might have to pay the costs and/or damages to the government.

Standing in Actions Against Polluters

The same situation as described above would apply in the case of affected individuals or NGOs who go to court to take legal action against business enterprises, other economic entities or individuals (objecting to past, present or future actions).

The two examples provided below are taken from an interview. According to the interview subject, "a concrete example of where there is a legal standing taken against polluters is seen in a case where the Norwegian Friends of the Earth were involved in an appeal against a Stone-crushing project in the Kvam Municipality planned by a rock excavation company and

the local authorities. This project was planned in the area of the famous Hardanger Plateau which is a significant tourism area, valuable to the local population and boat enthusiasts. It was argued that the stones would be used in road construction and would provide employment to the local population. The Norwegian Friends of the Earth's local members wrote letters to the local press in which they argued against the project. These arguments included the fact that the move would cause visual pollution, it would break the law against construction of any building within 100 meters of the beach and the value of jobs created could not match the destruction caused. They also brought the case to the National Board of Norwegian Friends of the Earth, where a resolution was passed against the project. A complaint was sent to the Ministry of Environment who spoke on television against the project.

"Another example is seen in the case where Kragero Municipality proposed the building of a bridge and cabin area on an island that was previously uninhabited and used as a recreational place for the local population. The local branch of the Norwegian Friends of the Earth wrote a letter of protest to the local press, where they argued that such a move would destroy and pollute a natural area, thus drawing a lot of media attention. In addition, the case was taken up by the National Board of Norwegian Friends of the Earth, who protested to the ministry of environment. The Norwegian Friends of the Earth won the first appeal against the project. However, to date, the Kragero Municipality and local authorities are still trying to get the project approved."

Remedies and Enforcement

Injunctive Relief

Individuals and NGOs can obtain an interim or permanent injunctive relief against the government and polluters.

Enforcement of Judgments

The enforcement of court judgements is generally meaningful and consistent. However, this is largely dependent on the nature of the case. If it is a criminal case, the outcome is usually prison. In the case of environmental polluters, liabilities are paid to the affected party.

Court Expenses/Litigation Expenses

Information regarding estimated expenses following types of action such as environmental cases was not readily available.

Legal Assistance

Public Interest Environmental Lawyers

There are no environmental legal advisory services provided by NGOs for the public. Although NGOs provide advisory services to individuals and local groups in the community free of charge.

JUSBUSS is a voluntary organization run by 30 law students (second to fifth year) from the University of Oslo, on a full-time basis. Their services are free of charge. They deal with social welfare issues, work-related environment issues, housing, immigration and imprisonment. However, they cannot appear in court.

Commercial Lawyers

There are commercial lawyers providing environmental legal advisory services for a fee. For a party in litigation, it is possible to get a waiver of any costs provided one wins the case. Free legal aid is also available for people in certain income brackets (those individuals earning NKR 100,000 per annum or below).

Ombudsman

There is an ombudsman, who must ensure that the public administration does not commit mistakes or injustices towards the individual person. One can also lodge an appeal about a public office refusing to answer queries related to a case. The deadline for an

TABLE 2: International Decisionmaking

Phases of Decisionmaking	Initiation of DM (problem/ proposal)	Defining the scope, issues and stakeholders (pre-decision scoping)	Defining the scope of DM (impacts and alternatives)	Evaluation of the alternatives	Selection of the alternative (DM about the selected alternative)	Execution of the selected alternative	Post-decision monitoring & enforcement (feedback/ adjustment)
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	2	2	3	3	3	3	3
Decisionmaking power is shared (right to joint decisionmaking)	1	1	1	3	3	3	3
Comments are seriously taken into account (right to be heard)	4	4	4	4	4	4	4
Adequate notification (right to be informed)	4	4	4	4	4	4	4
Access to information (right to access to information)	4	4	4	4	4	4	4

appeal is one year and the process of appeal is free of charge.

The ombudsman exercises his/her role first and foremost on the basis of appeals from members of the public. Appeals can be lodged with both administrative organs and civil servants or others in the administrative sector. Private disagreements lie outside the ombudsman's jurisdiction, for instance disagreements between private individuals who are neighbors, complaints about private organizations.

The office of the ombudsman receives one out of eight complaints annually that are related to environmental issues.

MAPPING AND EVALUATION OF OPPORTUNITIES

The charts included herein are an illustration of the opportunities that exist for public participation in key decisionmaking processes. In the charts, public participation opportunities are measured in the administrative standing of individuals and NGOs, the administrative appeals process, the international

decisionmaking process, and law preparation and approval, according to the level of participation permitted.

CONCLUSIONS AND RECOMMENDATIONS

Many NGOs find that an increasing number of documents are restricted. This was obvious during the EU debate. Participation was often restricted. In addition, with problems related to chemical substances, there is no access to information. With regard to radioactive pollution, there is a lack of information when the responsible party believes that it is important "not to panic" the citizens.

While Norway has an enviable position with regard to legislation and public participation in key decisions relating to environmental issues, it should be remembered that, as such there is no foolproof system. For instance, information on access to justice remains scant and not readily available in Norway.

While public participation in Norway has come a long way and Norway enjoys a high

TABLE 3: Preparation and Approval of National Laws Strategies, Programs and Plans

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	2	2	3	3	3	3	3
Decisionmaking power is shared (right to joint decisionmaking)	1	1	1	3	3	3	3
Comments are seriously taken into account (right to be heard)	4	4	4	4	4	4	4
Adequate notification (right to be informed)	4	4	4	4	4	4	4
Access to information (right to access to information)	4	4	4	4	5	5	5

TABLE 4: Preparation and Approval of Local Rules and Regulations

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	2	2	3	3	3	3	3
Decisionmaking power is shared (right to joint decisionmaking)	4	4	4	4	3	3	3
Comments are seriously taken into account (right to be heard)	4	4	4	4	4	4	4
Adequate notification (right to be informed)	4	4	4	4	4	4	4
Access to information (right to access to information)	4	4	4	4	5	5	5

TABLE 5: Preparation and Approval of Regional/Local Policies

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	3	3	3	3	3	3	3
Decisionmaking power is shared (right to joint decisionmaking)	4	4	4	4	3	3	3
Comments are seriously taken into account (right to be heard)	4	4	4	4	4	4	4
Adequate notification (right to be informed)	4	4	4	4	4	4	4
Access to information (right to access to information)	4	4	4	4	5	5	5

TABLE 6: Preparation and Approval of Territorial Plans
(including Spatial/Local Land-Use Plans)*

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	3	3	3	3	3	3	3
Decisionmaking power is shared (right to joint decisionmaking)	4	4	4	4	3	3	3
Comments are seriously taken into account (right to be heard)	3	3	3	4	4	3	3
Adequate notification (right to be informed)	4	4	4	4	4	4	4
Access to information (right to access to information)	4	4	4	4	5	5	5
*The Plan and Building Act is applicable							

TABLE 7: Environmental Impact Assessment, Siting and Permitting

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	3	3	3	3	3	3	3
Decisionmaking power is shared (right to joint decisionmaking)	4	4	4	4	4	4	4
Comments are seriously taken into account (right to be heard)	4	4	4	4	4	4	4
Adequate notification (right to be informed)	4	4	4	4	4	4	4
Access to information (right to access to information)	4	4	4	4	5	5	5

environmental profile, there are still cases where public participation was not included at the initial stages of a project.

One example is the railway tunnel which was under construction at Romerike. Proper procedures had not been followed and public participation was lacking in the initial stages. The issue at hand was that chemicals used to seal the cracks in the tunnel were hazardous to workers' health and to the environment — a subject which had been documented earlier in Sweden, where the chemical compound was banned. Nevertheless, the chemical compound was still used. As a result, efforts to seal the cracks in the tunnel were too slow, which resulted in leakage of water containing the chemical toxins, thus posing a threat to the drinking water in the vicinity, and to the health of the construction workers.

The project planners were aware that the water-table levels would also drop as a result of the tunnel construction. However, since then it has dropped lower than they had anticipated.

As a result of this incident the water level has decreased drastically in the lakes nearby,

which is a popular recreation ground, and it will take decades before the ecosystem is back to normal.

Through public initiative this threat to the environment was exposed and the project was reassessed and delayed until these problems had been resolved by the relevant authorities. Now cement is being used to seal the tunnel. Several environmental groups, including Bellona, were involved in protesting against this project.

A vigilant civil society combined with legislative tools is vital to averting environmental catastrophes.

Future Prospects

One of Norway's major achievements is the Stort. Meld. No. 58 (1996-97) on the Conservation Policy for a Sustainable Development. The long-term program for 1998-2001, outlined by the government, is that "sustainable development must be built from a welfare perspective, an ecological perspective and a future-generation perspective."

The Global Environmental Fund (GEF) has been formed to cover additional costs incurred as a result of pursuing activities that result in global environmental advantages. The four areas that can receive funding are: climate protection, biodiversity, protection of the ozone layer and the international water problem.

The Norwegian Government is in the process of developing a national monitoring system to secure the implementation of EIAs. This is to ensure that environmental concerns are integrated in sector policies and decisionmaking both at the municipal and regional level planning stages. Results will be published on an annual basis in the reports, "The Environmental Profile of the Government," and "The Environmental State of the Nation."

NOTES

1 Pamphlet from the Ministry of Government Administration, 1994.

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Chapter 8: Portugal

JOSE CUNHAL SENDIM

LEGAL AND INSTITUTIONAL FRAMEWORK AND PRACTICES FOR PUBLIC PARTICIPATION

General

Constitutional Rights

The right to a healthy and ecologically balanced environment is established by the Constitution of the Portuguese Republic (1976) as a fundamental right (Article 66). This article is part of the chapter devoted to economic, social and cultural rights and obligations. These rights are considered by the constitution to deserve similar protection to other fundamental rights, such as the right to life and the right to freedom.

Implementation of International Legal Instruments

- Universal Declaration of Human Rights, adopted by the UN General Assembly at New York, U.S.A. on December 10, 1948.
- Directive 90/313/EEC was transposed into Portuguese law as part of a general law regulating access to administrative documents, Law 65/93 of August 26, 1993. We can conclude that this law is in general terms more protective of the right to access environmental information than the Directive.

It has however the following essential problems:

- Access to information relating to the environment should be timely and rapid, which is not in accord with the current long process which often renders the information useless and ineffective.



- The new restriction adopted in Law 8/1995 permits the blocking of access to essential information. On these grounds, information concerning the public financing of the new bridge over the Tagus river was refused.
- The law does not apply to private parties holding relevant environmental information.

Access to Environmental Information

Legislation on Access to Information/Environmental Information

In Portugal there is no specific law concerning access to environmental information.

Access to environmental information is ruled in constitutional law, administrative law,

and environmental law.

The fundamental right of access to administrative documents — including environmental information — is regulated in the following statutes:

- a) Law No. 65/93, August 31, 1993 — which transposed the Directive into Portuguese law — regulates the right of any person to access administrative information.
- b) Code of Administrative Procedure — regulates the right of access to administrative information based on a specific interest relative to the document.

The law was prepared and approved by parliament without relevant participation of citizens or the consultation of environmental organizations.

It was published in August 1993, well after the expiry of the deadline imposed for transposition of the directive. It should nevertheless be stressed that the Portuguese law is the result of a profound comparative investigation that contributed decisively to guaranteeing access to information.

Passive Provision of Information

Definition of Environmental Information

There is no definition of what is considered information related to the environment, but in its final chapter Article 22 states: "Access to documents in environmental matters is provided within the terms of the present law, with the specific limits and scope derived from Directive 90/313/EEC of June 7."

Even if no community directive on access to environmental information existed, the Portuguese government would nevertheless be required by constitutional imperatives to regulate and ensure access to information on the environment.

In addition to the right to a healthy and ecologically balanced environment, the Portuguese Constitution establishes the fundamental right of access to administrative documents (V. Article 268/2).

As a consequence, the constitutional principles concerning access to information and the right to information, as well as the right to participate or have access to law and the courts,

are applicable in matters concerning the environment. The right of access to information concerning the environment is therefore established constitutionally in the Portuguese judicial system.

Administrative documents are considered to be those that have been prepared, or are held by: state bodies or autonomous regions exercising administrative functions; public institutions and public associations; authorities responsible for local administration, its associations and federations; other bodies that exercise the powers of administration (Article 3).

The definition of an administrative document is broad and includes information in graphic, audio or visual form, computerized information or information registered in any other way, prepared or held by the public administration, including reports, studies, opinions, records, actions, circulars, service rules, internal dispatches, instruction and guidance of legal interpretation or other informative elements (Article 4).

Conditions for Obtaining the Information

The fundamental principle is that the right of access to information is assured to every citizen regardless of a personal or direct interest, with the exception of documents containing personal information (Article 7).

With respect to specific access to information, the Code of Administrative Procedure establishes, in Article 61:

1. Members of the public have the right to be informed by the administration when they so desire about the course of proceedings in which they are directly interested as well as the right to know the decisions that have been taken.
2. The information must indicate the public service that deals with the procedure, the performance of acts and proceedings, deficiencies in the supply of information by the interested parties, the decisions adopted and any other required elements.
3. The information requested pursuant to this article shall be provided within a term of 10 days.

This above mentioned right is extended to any person who is able to demonstrate a legitimate interest in such information.

The right of access can be recognized by an administrative resolution (Article 62), or as stated in Article 63 without an administrative resolution.

In Article 62:

1. Interested persons have the right to consult the records of a proceeding that does not contain classified documents and to obtain certificates or authenticated reproduction of the documents that are part of the record, through the payment of the amounts required.
2. The right referred to in the preceding paragraph limits access to documents containing personal data to neutral third-party mediators, since the personal data that is not public is excluded in legal terms.

In Article 63: The officials are compelled to deliver to the interested parties within 10 days of the presentation of the requirement, certified reproductions or authenticated declaration on non-classified documents, independently of any resolution, according to the request, containing all or some of the following elements:

- the date of presentation of applications, petitions, complaints, appeals or similar documents;
- the contents of these documents or their claims;
- its course or present situation;
- its resolution or absence of a resolution.

The right of access includes the right to obtain a reproduction of the document and the right to be informed of its existence (Article 7, No. 3).

Access to documents can be made through:

- free consultation in the services that hold the documents;
- reproduction by photocopy or any other technical means, mainly visual or audio, under certification by the service (Article 12).

A request for information must be presented in writing, and include the name, address and signature (Article 13) of the person requesting it.

Refusal to Provide Information

In its original version the law only restricted access to information concerning:

- matters related to internal and external state security;
- matters of judicial secrecy;
- documents related to an ongoing proceeding or a draft document of a decision, whose access can be deferred until the ruling on the decision, or one year after its preparation.

The right of access to personal data and documents that include personal data is limited to the person who this data concerns, and to mediators that show a direct or personal interest (Article 8).

Notarial and recordable documents, civilian and criminal identification, documents referring to personal data with computerized treatment and documents in historical files which are separately regulated (Article 7, No. 7).

An appeal to an administrative decision can be made to the courts using a special process called "Injunction to grant access to documents" regulated in administrative law.

This injunction permits the court to order the administration to permit access to the document very quickly (within 20 to 40 days).

Specific Institutions/Officials to Provide Information

Citizen access to administrative documents is ensured by the public administration according to the principles of openness and transparency, equality, justice and impartiality (Article 1). Each ministerial department, regional secretary, autarchy, institute and public association is responsible for designating an entity responsible for the carrying out of the provisions of the law.

The Commission on Access to Administrative Documents (CADA) was created by law to administer its application.

This commission is an independent public

body which functions in cooperation with the Assembly of the Republic and which is presided over by an advisory judge of the Supreme Administrative Tribunal. It is composed of: one judge designated by professional peers, two members of parliament, one law professor designated by parliament, two appointees designated by the government, one lawyer designated by the Bar Association, and several representatives of the autonomous regions.

CADA has the competence to give an opinion when it is requested by the individual or by the administration. It cannot review complaints or give binding judgements (Articles 15 and 16). Therefore — after receiving the opinion of CADA — the administration is free to decide.

If an Authority Does Not Possess the Information

After receiving the request, the administration must respond in ten days. This response includes notification the place and time of the consultation. It must also inform as to where the document is held, transmit the request to the Commission on Access to Administrative Documents (CADA), or deny access on the grounds permitted by Law 65/93.

Costs of Obtaining Information

Payment may be required, but is strictly limited to the cost of the material or services used, as set by complementary legislation (Article 12, No. 2).

The Portuguese NGOs have been requesting environmental information efficiently using the legal tools described above. When the administration has not responded, the NGOs have appealed successfully to the courts using the “injunction to grant access to documents.”

After a significant number of injunctions during 1994, 1995 and 1996, a very positive change of attitude in the Portuguese administration can be observed.

Despite these positive signs, however, the Portuguese public administration has not yet been able to escape from its habit of being a traditionally closed administration.

Active Provision of Information

Obligation to Disseminate

Information Actively

Concerning active information, the public administration is required to publish at least once every six months, in ways that make regular access possible: all documents containing the framing of administrative activity; the enunciation of all documents that contain positive law interpretations or descriptions of administrative procedure. It lists the title, matter, date, origin and places where the documents can be consulted (Article 11).

The Framework Law on the Environment also requires the preparation of an annual report on the state of the environment and land-use, as well as the presentation, every three years, of a White Paper on the Environment to the Parliament.

The Framework Law on the Environment (Law 11/1987 of April 7) sets forth the establishment of continuing exchanges of information among the competent agents of the administration and the citizens to whom it is directed. It proclaims that such measures are needed for the existence of an environment favorable to the health and welfare of the people, and the social and cultural development of the community.

This law created the Instituto Nacional para a Protecção do Ambiente (National Institute for the Environment, presently known as the Institute of Environmental Promotion — IPAMB), an entity with legal personality, integrated into the Ministry of Environment and Natural Resources. It has responsibility for the promotion of actions in the area of environmental quality, with a special emphasis on the development and transmittal of information, environmental education and support of environmental NGOs.

IPAMB's competencies exist mainly in terms of its organic law (Law Decree No. 194/1993 of May 24):

- to develop information actions, inform and educate citizens concerning the environment;

- to organize, promote and support publications or other means of directing attention to environmental problems;
- to promote the participation of citizens in decisionmaking procedures.

Mechanisms to Ensure Flow of Information from the Private Sector to the Public Authorities or the Public

By mid-1995, Law 8/1995, July 29 — which regulates some aspects of Law 65/1993 — introduced a new and very significant restriction blocking the access to documents concerning the “internal life of firms.”

Public Participation

Legislation on Public Participation

The Portuguese Constitution establishes a fundamental right to public participation in administrative decisions (Article 268).

This right is enumerated in the Code of Administrative Procedure, approved by Law Decree No. 442/1991 of November 15, which establishes rules for conduct of public administration in its relationship with citizens and other private persons.

The code applies to the administrative activities of all agents of the public administration. Administrative activities are defined as the sequence of acts and formalities leading to the formation and manifestation of a decision of the public administration, or its accomplishment.

In general terms, the principle of the administration's cooperation with the public is stated in Article 7 as follows: “1. Public administration officials must act in strict cooperation with the public in order to ensure adequate public participation in the performance of the administrative function. To this end, public authorities are:

- a) to provide the public with all information and explanations they lack; and
- b) to support and stimulate the initiatives of the public and receive their suggestions and information.”

Public Control of Decisionmaking (Direct Democracy)

Referenda

At the present time there is no right to a referendum on environmental and other related issues. However a law concerning the referendum organized by citizens is being prepared.

Public Shares Power to Decide

Some environmental projects — i.e. those subjected to an EIS, major projects (worth over PTE 2 billion), urban plans, *inter alia* — have a right to participate in the decision-making process.

Generally, the law provides a right to participate when the project is already defined and structured. Therefore the process is normally ineffective and functions as a form of social legitimation of the political decision, rather than ensuring real participation by the public.

Account of Public Comments

Law 10/1987 of April 4, the Law of Environmental Defense Associations, gives these organizations a specific right of consultation and information concerning plans, proposals and studies of the central, regional and local administrations.

This right applies primarily to: regional land-use plans, municipal plans of general urbanization and other urban studies and projects; integrated plans of regional development; plans and projects for hunting, forest or agricultural development or protection; environmental impact studies; creation and management of protected areas; studies and projects for landscape restoration, revitalization of historical centers and urban rehabilitation and renewal; results of laboratory tests of environmental quality.

Mechanisms to Influence Decisionmaking — Lobby Mechanisms

NGOs are also represented in a policy decision body (*Conselho Económico e Social*) but they do not have a right to veto the decisions adopted. The CES functions as a forum debating general issues concerning economic and

TABLE 1: Administrative Standing

	<i>In the administrative decisionmaking process</i>	<i>In the administrative appeal of administrative decisionmaking process</i>
Individuals		
every person	x	x
interested/affected	—	—
NGOs		
everyone	x	—
interested/affected	—	—

TABLE 2: Legal Standing Against Government

	<i>Special administrative court</i>	<i>Civil court</i>	<i>Criminal court</i>	<i>Arbitration court or special economic courts</i>	<i>Constitutional court</i>
Individuals					
every person	x	x	—	—	—
interested/affected	—	—	x	—	—
NGOs					
everyone	x	x	x	—	—
interested/affected	—	—	—	—	—

social policies and has no regulatory power.

Even though environmental NGOs do not have a constitutional right to be heard on national lawmaking, the government consults them often.

Access to Justice

General Rights and Sources of Law

NGOs and citizens have a constitutional right of access to justice on environmental matters (Article 52). This right is specified by Law 85/1995 of August 31.

During the last few years NGOs have tried to use their right of access to justice to prevent or to repair environmental damages.

Administrative Standing

An interest supporting initiation or inter-

vention in an administrative proceeding is considered legitimate for:

- the holders of subjective rights or legally protected interests in decisions that have been or can be taken;
- non-political or non-trade union associations that have as their purpose the defense of these interests;
- citizens for whom the administrative actions has caused or may cause relevant harm in fundamental interests such as public health, housing, education, cultural patrimony, environment, land disposition and quality of life;
- the residents of any area whose fundamental interest may be affected by the administrative action.

TABLE 3: International Decisionmaking, Preparation and Approval of National Laws and Regulations, Strategies, Programs and Plans

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	1	1	1	1	1	1	1
Decisionmaking power is shared (right to joint decisionmaking)	1	1	1	1	1	1	1
Comments are seriously taken into account (right to be heard)	3	3	3	3	3	3	3
Adequate notification (right to be informed)	3	3	3	3	3	3	3
Access to information (right to access to information)	4	4	4	4	4	4	4

NGO's have a general right to participate in the definition of environmental policies and fundamental legislation (Article 4^o Law 10/87, April 4)

NGO's have the right to be notified and to comment the following projects: urban plans; regional plans of development; EIA, creation and management of protected areas, renewal and rehabilitation of urban areas; agricultural management plans (art. 5^o Law 10/87, April 4)

Standing in Actions Against Government Agencies

The percentage of environmental cases — i.e. cases involving public assets — brought to court is very low. However NGOs have succeeded in some cases involving urban development in the River Tagus Conservation Zone.

Legal Assistance

Public Interest Environmental Lawyers

Some NGOs (for instance, GEOTA – Grupo de Estudos do Ordenamento do Território e Ambiente) have voluntary groups of lawyers helping to enforce environmental rights.

Presently the National NGOs have a project to create a NGO specialized in juridical matters.

Ombudsman

In Portugal there is an ombudsman (*Provedor de Justiça*) who often takes care of environmental cases.

MAPPING AND EVALUATION OF OPPORTUNITIES

The charts included herein are an illustration of the opportunities that exist for public participation in key decisionmaking processes. In the charts, public participation opportunities are measured in the administrative standing of individuals and NGOs, the administrative appeals process, the international decisionmaking process, and law preparation and approval, according to the level of participation permitted.

CONCLUSIONS

The Portuguese Constitution establishes a fundamental right of access to administrative information. This right is regulated by the Law 65/1993. In general terms this law is more protective of the right of access to environmental information than the Directive or the Sofia Guidelines. It has however the following essential problems:

- The process established is long which often renders the information useless and ineffective.
- The new restriction adopted in Law 8/1995 permits the denial of information regarding “internal live of firms.” This imprecise and broad definition — considered unconstitutional — permits the denial of relevant environmental information;
- The Law does not apply to private bodies, even if pursuing public interests (public water maintenance; recycling of dangerous wastes, enterprises legally required to measure and record emission data, *inter alia*) This restriction, specially when considered in the context of general privatization of public services, prevents access to essential environmental information.

The Portuguese Constitution also establishes a fundamental right to public participation in administrative decisions

This right is regulated for some environmental projects — i.e. those subjected to an EIS, major projects (worth over PTE 2 billion), urban plans, *inter alia*. Generally, these statutes only provide a participation right when the project is already defined and structured. Therefore the process is normally ineffective and functions as a form of social legitimization of the political decision, rather than ensuring real participation by the public.

NGOs and citizens have a constitutional right of access to justice on environmental matters. This right is specified by Law 85/1995 of August 31. Some NGOs have tried to use their right of access to justice to prevent or to repair environmental damages.

Chapter 9: Spain

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LEGAL AND INSTITUTIONAL FRAMEWORK AND PRACTICES FOR PUBLIC PARTICIPATION

General

Constitutional Rights

The Spanish Constitution of 1978 recognizes that all persons have the right to an environment which is adequate for their development and the duty to conserve it (Article 45.1). The constitution sets out that public authorities will oversee the rational use of all natural resources with the aim of protecting and improving quality of life, and will protect and restore the environment, with the indispensable support of collective solidarity (Article 45.2). It provides for the legal imposition of penal or administrative sanctions for those who violate the above and the obligation to repair any damage caused (Article 45.3). The constitution recognizes the right to the protection of health (Article 43.1), closely linked with the right to enjoy an adequate environment. Neither of these two rights are categorized as fundamental rights, as constitutionally they are guiding principles for economic and social policy. For this reason they are afforded a lesser degree of protection, with legislation being necessary for them to be invocable and applicable.

Implementation of International Legal Instruments.

Binding international instruments signed and/or ratified by Spain:

- Universal Declaration of Human Rights, adopted by the UN General Assembly at



New York, U.S.A. on December 10, 1948 (Article 25), ratified by Spain.

- Convention on the Conservation of European Wildlife and Natural Habitats, adopted by the Council of Europe at Bern, Switzerland on September 19, 1979 (Article 3.3); signed and ratified by Spain; came into force on September 1, 1986; the mandate contained in its articles has been implemented in Spain by the Law on the Conservation of Natural Areas and Wild flora and Fauna, and in regional regulations for the protection of natural sites.
- Convention on Environmental Impact Assessment in a Transboundary Context, adopted at Espoo, Finland, on February 25, 1991 (Articles 2.2, 2.6 and 4.2); ratified by Spain on September 10, 1992.
- Convention on the Transboundary Effects of Industrial Accidents, adopted at Helsinki, Finland, on March 17, 1992 (Article 9); ratified by Spain on May 16, 1997.

- Convention on the Protection and Use of Transboundary Watercourses and International Lakes, adopted at Helsinki, Finland, on March 17, 1992, (Article 16); not yet ratified by Spain.
- Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, adopted at Lugano, Switzerland, on June 21, 1993 (Articles 14, 15, 16, 18).

Related EEC Directives implemented by Spain:

- Directive 90/313 EEC of the European Community Council on the freedom of access to information on the environment, adopted on June 7, 1990; transposition to Spanish law has been implemented by means of Law 38/1995 on the right to access to information on the environment.
- Directive 85/337 EEC of the European Community Council on the assessment of the effects of certain public and private projects on the environment, adopted on June 27, 1985 (Articles 5 and 6); transposed to Spanish law by means of the Legislative Royal Decree 1302/1986 of June 28, on environmental impact assessment, which has been executed by Royal Decree 1131/1988 of September 30.

Implementation of International Nonbinding Instruments: Sofia Guidelines

There has been no implementation of the Sofia Guidelines as such. Nevertheless, most of the recommendations regarding access to environmental information have been followed with the approval of the aforementioned Law 38/1995 on access to information on the environment. Some of the recommendations regarding public participation in the decisionmaking process already existed in Spanish legislation. There has been no initiative to implement or evaluate implementation of the Sofia Guidelines, which were not translated into Spanish, and so the provision of

information regarding the existence of such guidelines has been very poor.

Other nonbinding instruments endorsed by Spain:

- Agenda 21, adopted by the United Nations Conference on Environment and Development at Rio De Janeiro, Brazil, on June 14, 1992.
- Rio Declaration on Environment and Development, adopted by the United Nations Conference on Environment and Development at Rio De Janeiro, Brazil, on June 14, 1992 (Article 10).

Powers and Responsibilities of Local/Regional Governments Concerning Environment

The constitutional framework of environmental competencies distributed between the central and regional governments means a complex administrative situation for environment matters. Since 1978, central government has held the responsibility for providing basic environmental legislation and establishing minimum levels of environmental protection. The existing 17 autonomous regions are able to set high standards of legal protection and are also competent within their own territories for hunting and fishing, public works, transport, non-commercial ports and aerodromes, agriculture and livestock, farming, forestry management, etc. Finally, local councils also have strong competencies on some environmental issues, e.g. urban waste management, town planning, parks, siting and permitting of certain activities, etc.

Access to Environmental Information

Legislation on Access to Information/Environmental Information

With the approval of the democratic constitution of 1978, Spain recognized the right of citizens to access information contained in public registers and files¹. Nevertheless, this right is not established as a fundamental right

and therefore does not receive direct constitutional protection. The right of access to information contained in public registers and files is complemented by the right to participate in public affairs, either directly or through representatives elected periodically by universal suffrage. In this respect it is important to note the constitutional obligation of the authorities to provide the conditions which facilitate and encourage such involvement.

Law 30/1992 governs the "right to access to files and registers²," allowing citizens access to the information available in registers and files.

Furthermore, due to the implementation of Directive 90/313/EEC of the European Community Council on the Freedom of Access to Information on the Environment, adopted on June 7, 1990, Law 38/1995 on the Right to Access Information on the Environment was approved. This law was adopted nearly three years after the deadline set out by the Directive, and aims specifically to regulate access to environmental information in the hands of the authorities, it is only applicable fully to central authorities, autonomous regions should develop their own specific legislation.

The European Commission has considered that Law 38/1995 does not fully and correctly implement the provisions set out in Directive 90/313/EEC, and has therefore urged the Spanish government to amend it in order to correctly and fully implement the Directive. A draft law proposal is currently under development to solve this lack of compliance.

Passive Provision of Information

Definition of Environmental Information

When defining what it considers to be information relating to the environment, Law 38/1995 includes all the data available from the public administrations which make reference to:

- the state of water, air, soil and land, fauna, flora and natural sites, including their reciprocal interactions;
- activities and measures which have affected or may affect the state of these elements of the environment;
- environmental management plans or programs and environmental protection actions or measures.

In short, the following are included:

- nature (fauna, flora, landscape, natural sites, etc.);
- air and atmosphere, water, soil;
- energy, noise, radiation;
- conditions of human lives (health, safety, toxicological data, etc.);
- cultural sites, constructions and built structures;
- financial and economic analysis and assumptions relating to the above administrative measures, environmental agreements, policies, legislation, plans and programs;
- other relevant types of information.

Conditions for Obtaining the Information

"Available information" is considered to be the information which is or which should be in the possession of public authorities. All public bodies of the central, regional or local administrations with responsibilities and possession of information about the environment (i.e. the central administration, regional administration, bodies integrating the local administration and agencies dependent on any of the public administrations) have the obligation to make this information available to the public when they exercise their administrative powers.

Individual entrepreneurs or companies who manage public services (private bodies) are obliged to make the environmental information they possess available to the administration responsible for the service when so requested, and to the authority by which they are supervised or upon which the public service they are providing depends.

A two month time limit is set for deciding whether access will or will not be provided to the information requested. If no answer has been given and this time limit has elapsed (i.e. if there is administrative silence), this will be considered to be negative silence and the

request will be considered to have been refused. While positive answers may be given within the two month time limit, actual access may in practice be postponed until a later date, fixed arbitrarily by the public body to whom the request is addressed. This means that it is possible to receive a positive response within the two month period but the requester will have to wait until a later date to visit, by appointment, the register to see the documents or to be informed that at some time in the future the photocopies will be ready for collection. Whether by notification or by implication through negative silence the administrative procedure ends, and then the review of administrative decisions is judicial and not administrative.

In practice the lack of response to requests has been detected to be one of the main obstacles to exercising good access to environmental information. Some surveys carried out by NGOs³ indicate a concerning level of lack of response, i.e. a negative administrative silence which means refusal of access without specifying the reasons why. This, together with the fact that the established type of appeal procedure is judicial, slow and costly, creates a situation of lack of access to information. This fails to comply with what is set out by Directive 90/313/EEC, which requires a reply and explanation of the reasons for refusing access to environmental information.

All individuals or companies, nationals of one of the member states which make up the European Economic Area or resident in one of these states, or the nationals of any other country not included in the above but whose states grant reciprocity with Spain, have the right to receive environmental information.

It is possible to choose the format in which the requested information will be provided. If the information is available in different formats, the person formulating the request has the right to choose the format in which the information will be provided.

Refusal to Provide Information

The public authorities can refuse to provide environmental information. The law ruling on access to environmental information includes

many exceptions, as set out in the Directive, and it does not include definitions or limitations which help in the interpretation of those exemptions. Authorities may turn down a request for such information when it affects:

- the confidentiality of the proceedings of public authorities, international relations and national defense;
- public security;
- matters which are, or have been, *sub judice* or under enquiry (including disciplinary enquiries) or which are the subject of preliminary investigation proceedings;
- commercial and industrial confidentiality, including intellectual property;
- the confidentiality of personal data and/or files;
- material supplied by a third party without that party being under any legal obligation to do so;
- material whose disclosure would make it more likely that the affected environment would be damaged.

A request for information may also be refused if it involves the releasing of unfinished documents or data or internal communications, or where the request is manifestly unreasonable or formulated in too general a manner.

Problems inevitably arise in the interpretation of these exceptions, especially with regard to terms such as “unfinished data or documents,” “requests manifestly unreasonable or formulated in too general a manner,” “national defense” and “international relations.” However, concerning exceptions based on commercial and industrial confidentiality, Law 38/1995 places restrictions on arbitrary interpretation in several specific cases. The failure to define exceptions leaves a great deal of scope for arbitrary interpretation. Although arbitrariness can be broad or restrictive, in practice the interpretation of which environmental information is open to the right to access has, to date, been restrictive.

The public interest test is not recognized in the legislation, though it may be defend-

ed before the courts on the basis that the legislation recognizes the general principle of freedom of access to environmental information which can only be reasonably denied when a cause from the list of exemptions is totally applicable.

Informal Guidelines for Agencies and the Public

Each authority has the right to set out specific guidelines on how environmental information is provided, and can establish conditions regarding how the public is to request information. For example, using a particular request format, etc. Guidelines of this type are currently being developed by many authorities.

Specific Institutions/Officials to Provide Information

The existence of a specific institution or specific officials responsible for providing information depends on the administrative organization of every authority responsible for providing information on the environment. At a national level, the recent Decree 208/1996 sets out the organizational framework for providing information to the citizens at the different departments of the central administration. Every ministry should have an administrative information unit responsible for answering the requests made by the public.

If an Authority Does Not Possess the Information

If public authorities do not possess the requested environmental information they are not obliged to provide any information whatsoever. Nevertheless, some departments often help the applicant find which body is responsible for possessing such information, even though they are not legally obliged to do this.

Costs of Obtaining Information.

Authorities may establish a price for the requested information. The Directive sets out that this price must be reasonable and cannot be an obstacle to the exercising of the right to free access to environmental information. However, Law 38/1995 does not establish the need for the price to be reasonable. Each level

of the administration (central, regional and local) may establish a cost in accordance with its respective laws of public rates and charges.

Law 38/1995 allows authorities to make a charge for supplying the requested information, but fails to incorporate the provision set out by the Directive whereby such charges should not exceed a reasonable cost. The law does not make allowances for reduced charges for requests submitted by environmental organizations. Each authority is free to decide the charges it will make. Authorities are not obliged to inform people in advance of the charges that will be made in relation to requested environmental information. The regulation makes it possible to require a deposit in advance or to apply a compulsory procedure for payment. Currently, an infringement procedure is being opened against Spain for making unreasonable charges to an NGO upon which a compulsory procedure was applied. After more than one year of seeking information, the NGO was obliged to pay around ESP 600,000 for information regarding coastal management in a region of Spain.

There are not always adequate facilities for obtaining copies of information, even when payment is made for reproduction and dissemination costs. There are major differences between the authorities or departments at central, regional or local level which are politically committed to allowing access to information on the environment. There are also major differences from one body to another. In some regions, for instance, great efforts have been made to guarantee better access to environmental information while in others there is very little or no interest in providing this type of access. The same is true of municipalities.

Active Provision of Information

Obligation to Disseminate Information Actively

Authorities are obliged to have up-to-date information about the state and environmental effect of certain sectors, such as water, atmosphere, toxic and hazardous waste management, although this information is not always made available to the public⁴. It is not

common practice for authorities to inform citizens of the possibility of informing international bodies about Spain's degree of compliance with international agreements.

Under certain circumstances public authorities are legally obliged to provide citizens with information. Some such cases include the following:

- In cases of emergency, the Law on Civil Protection (1985)⁵ establishes the obligatory existence of civil protection plans. Their purpose is to ensure the protection of persons and property in situations of serious collective risk, public calamity or extraordinary catastrophe. Citizens have the right to be informed about the risks to which they are exposed. The government, as the supreme body for management and coordination, may delegate its duties in regional governments.
- Royal Decree 886/1988 of July 25 on the prevention of major accidents in certain industrial activities⁶, has the aim of preventing serious accidents which could arise as a result of certain industrial activities. It establishes the obligation of the competent authorities to inform the population⁷ and to actively disseminate information, without the public requesting this, and to repeat the information or communication each six months.
- There is also an independent body known as the Nuclear Safety Council (CSN — *Consejo de Seguridad Nuclear*), whose aim is to oversee nuclear safety and radiological protection. It reports to parliament about its actions and the reports which it issues are mandatory and binding for the executive.

Methods of Dissemination

Public authorities responsible for environmental matters are obliged to periodically inform the public about the state of the environment. It is common practice to publish reports about the state of the environment, the frequency of which varies from one administration to another and from one

department to another. It should be said that in numerous cases the frequency chosen by some authorities to issue reports about the environment is an indication of the lack of systematic compilation and processing of data about the state of the environment. However, it can also be said that in recent years there has been greater interest in putting into operation action plans to update existing databases and to create new ones, though this is still insufficient in the opinion of the different bodies responsible for these services.

Electronic Means of Dissemination

In the Spanish legal system there is no obligation to provide environmental information in an electronic format. However, the use of this type of technique is so obvious that there is a gradual evolution towards greater use of this method. There are environmental information networks in the following areas:

- network of protected natural sites and nature parks and centers;
- water quality network;
- national environmental radioactivity control network in surface waters.

Nongovernmental Centers

The role of nongovernmental information centers has been very important, particularly where the responsible administrations did not have departments, offices, centers or places for consulting environmental information and bibliographies. In recent years many NGOs have organized small offices or libraries to centralize information, to the extent that some of these projects have turned into important environmental information centers, which are now used even by authorities with environmental competencies. Some of these centers have received governmental assistance, whilst others, on a more modest scale, have survived with the limited means available to the organizations maintaining them.

Mechanisms to Ensure Flow of Information from the Private Sector to the Public Authorities or the Public

In order to carry out some activities it is necessary to comply with certain obligations. The regulations on unhealthy, annoying, harmful and dangerous activities, approved by Royal Decree 2414/1961 of November 30, together with the Order of March 15, 1963 which approves the instruction for the application of the regulations, establish the obligations for activities with this classification, as well as those which require a license in order to be undertaken. This competency has been transferred and now corresponds to the regional governments and mayors' offices.

The same is applicable to the private promoters of certain projects who, under EIA legislation, are obliged to provide information on the impact that their project will have on the environment.

In turn, Law 20/1986⁸, which establishes the basic legal framework for toxic and hazardous wastes, imposes the obligation on all producers of such wastes, on persons or bodies treating, storing, recycling or disposing such wastes, to keep a log of all relevant activities.

When land management plans are carried out it is necessary to respect some administrative procedures, including that of submitting the management plan for public information, as regulated by Royal Decree 1346/1976 of April 9, which approves the revised text of the Law on Land Regime and Urban Planning.

Public Participation

Legislation on Public Participation

The Spanish Constitution of 1978 recognizes the fundamental right of citizens to participate in public matters, directly or through representatives, it being the obligation of all public authorities to facilitate the participation of all citizens in public, economic, cultural and social life. In addition to these constitutional precepts, there are many regulations at local, regional and state levels which

expressly recognize public participation. Among others, the following can be mentioned at State level:

- Organic Law/1984 of March 26, regulating legislative initiatives;
- Law 7/1985 of April 2, regulating the basic legal framework for local government, which sets out the competencies and responsibilities of municipalities;
- Law 30/1992 of November 26, on the legal framework of public administrations and the common administrative procedure, which defines the participation of interested parties in administrative procedures;
- the Legislative Royal Decree 1302/1986, on the assessment of environmental impact and more specifically the environmental impact assessment regulation, which establishes the mechanism for public participation in the environmental impact assessment procedure;
- Decree 2414/1961 of November 30, which approves the Regulation of Annoying, Unhealthy, Harmful and Dangerous Activities, foreseeing the opening of a period of public information prior to the granting of administrative licenses for certain types of activities;
- Law 20/1986 of May 14, the basic law on toxic and hazardous wastes, which contemplates the possibility of public participation in the processing of authorizations for toxic and hazardous waste managers;
- Law on civil protection, which attempts to achieve the participation of all the population in the tasks corresponding to civil protection, of which citizens are the active subjects and beneficiaries;
- Royal Decree 13/1996, which created the Waters Council;
- Royal Decree 2488/1994, on the functioning of the National Nature Protection Commission, which can engage public participation through nongovernmental organizations;

- Royal Decree 224/1994 of February 14, which creates the Environmental Advisory Council, modified by Royal Decree 1720/1996 of July 12.

Public Control of Decisionmaking

Referenda

The right to referendum is established in the constitution and developed by an Organic Law.⁹ This is the exclusive competency of the state and is of a consultative character. Authorization for the calling of popular consultations by referendum must be granted by the central government, at the proposal of its president, by means of Royal Decree. The matters to be subjected to referendum are those which have the consideration of a political decision of particular significance in the opinion of the congress of deputies, the body which represents national sovereignty. Not all matters can be subjected to referendum, but the environment is not among those which are excluded and therefore would be applicable. There are no privileged groups in the exercising of referenda. The referendum procedure is governed by the same regulations as the general electoral regime, and is presided by the principles of free, direct and secret universal suffrage in the area corresponding to the consultation. Ratification of the regional autonomy process by referendum has been the way in which this instrument has been most used, there having been no referenda to date in relation with an environmental issue.

The authorities only have the obligation to call a referendum in the event of constitutional reform, and not in any other case.

Right to Initiative.

The Spanish political framework is constituted by a parliamentary monarchy and representative democracy in which the participation of citizens is constitutionally recognized. All Spanish citizens of legal age can exercise the right to legislative initiative, which at state level has been developed by an Organic Law (March 26, 1984) regulating legislative initiatives. There are similar regulations at a regional level.

By way of example we can mention the procedure established at central level. For the launching of such an initiative the promoting commission is required to present an articulated text, which will not be accepted if there is a draft law proposal in relation with a similar object or a legislative mandate in force. Once the proposal has been accepted it is necessary to compile 500,000 signatures in a maximum period of six months. The central electoral council is the body responsible for checking regularity in the collection of these signatures. Once the required number of signatures has been collected in the indicated period the parliamentary phase begins and state compensation is established for the expenses incurred, provided the number of signatures necessary for the initiative to prosper has been reached.

Not all matters can be subject to legislative initiative. The environment, however, is not among those excluded and can be the object of this instrument for direct public participation in regulatory production. Since 1978, when it became possible to exercise this right, no legislative initiative at a national level and relating to the environment has been successful, due to the difficulty involved in obtaining the required number of signatures in such a short space of time with all the formal requirements correctly completed. The law foresees the possibility of extending this period by three months when it can be demonstrated that causes not attributable to the promoters have made it impossible to deliver the collected signatures. For example, in April 1991 a legislative initiative was presented which, whilst not ultimately successful, had the aim of proposing a law ordering the abandonment of the production and use of nuclear energy.

Public Shares Power to Decide

In Spain both individuals and NGOs can participate in some consultative bodies, expressing their opinions and stating their positions, though these are not binding for the executive and legislative authorities. There are agencies which expressly recognize the atten-

dance of sessions by representatives of associations and nongovernmental organizations interested in environmental problems. Some of these consultative bodies are as follows:

- The Environment Advisory Council is a body at central level, set-up for consultation and participation of organizations which represent social interests. It was established by Royal Decree 224/1994. Its functions include that of proposing measures which encourage citizens' participation in the solution of environmental problems, and to foster coordination between public and private initiative. The composition of the council includes representatives of NGOs whose aim is the protection of the environment, the most important trade union organizations at state level, organizations of consumers and users, and neighborhood associations of Spain.
- The National Water Council is comprised of representatives appointed by the environment minister. Some of these representatives are chosen on the basis of proposals from environmental, citizen and trade union organizations.
- The Law on the Conservation of Natural Sites and Wild Flora and Fauna (March 27, 1989), envisages the creation of boards of trustees for each national park, including the participation of involved interested parties. At present there are national parks in which public action is expressly recognized, under the common wording, "the action of demanding from the administrative bodies and contentious-administrative courts the strict observance of the rules of protection of the national park will be public."

Although there is no specific regulation in this respect, priority is usually given to NGOs with the greatest representation or presence. In general they have the right to a voice but not to a vote in executive bodies, and the right to both a voice and a vote in consultative bodies. This type of participation is still something of a novelty in Spain, and is not yet provided with budgetary means to sup-

port its development, both in regard to institutional support and support to the participating NGOs. Furthermore, there are no regulations which require this participation to be reflected in a real way in subsequent environmental decisionmaking. The most negative example of this can be seen in the situation of the Environment Advisory Council, where the majority of the participating NGOs decided to leave because it failed to live up to the expectations which had been created.

Account of Public Comments

It is necessary to present the current regulations in four specific sectors, as these are where the public are given an opportunity for comments to be taken into account:

- Environmental Impact Assessment

The Legislative Royal Decree 1302/1986 of June 28 on Environmental Impact Assessment (developed by Royal Decree 1131/88), standardized the administrative procedure for EIA, incorporating public participation through institutional consultation and public information of impact evaluations. The environmental impact study is subjected to public information which is carried out in conjunction with the project and within the procedure required for its authorization. The participation system is guaranteed by means of the process of consultations which allow individuals and NGOs the right for their comments to be taken into account. There are also regulations at local level, such as the 1996 regulations of the Jaen region, which regulate the figure of the environmental report.

- The concession of authorizations for the installation and activity of annoying, unhealthy, harmful and dangerous activities

Royal Decree 2414/1961 of November 30, which approves the regulations for annoying, unhealthy, harmful and dangerous activities¹⁰, requires that when an application for a license is made the mayor's office must open the file for public information. The mayor's office must also personally notify the immediate neighbors of the proposed site about the

license request, and its decision as to whether to grant or refuse the license must be by reasoned resolution. Any incident is dealt with in accordance with Law 30/1992 on the legal framework of public administrations.

- The Waters Law

Law 29/1985 on waters, establishes that activities liable to cause the pollution or degradation of public waters, and in particular the discharge of waste waters and products, require administrative authorization. This must be requested from the competent body, through the opening of the administrative decisionmaking process, in which the opportunity will exist for the presentation of comments and claims by private individuals, in recognition of the right to public participation.

- Land legislation

The law on the land regime and urban planning establishes that certain actions which affect the land regime and its management require licenses and execution orders which must necessarily be granted by the competent administrative body, and in some cases must be subjected to public information.

The regulations are applied by the corresponding competent administrative body of the central, regional or local administration. The procedure which is followed is administrative, and if no rules are expressly issued to cover this procedure it is governed by those set out in Law 30/1992 on the legal framework of the public administrations.

There cannot be said to be privileged groups, as the public information process allows all citizens to present comments and claims and thus to participate in the administrative decisionmaking process.

In practice, the form of public participation most commonly used is the presentation of comments and claims in the decisionmaking process which must be accompanied by environmental impact studies and must be subject to a period of public information. This means they are accessible and therefore anyone who has an interest in making comments and claims can know at what moment of the pro-

cedure these can be presented.

The competent authorities must give the reasons for their decisions and clearly state how they have taken into account the matters raised by private persons exercising the right to public participation, though it is common practice to omit any such reference.

Comments and claims made by private persons are not given due consideration, and for authorities to comply with the requirements of the regulations it is sufficient for them to state in the administrative resolution that they have been taken into account. Therefore, this form of participation has little effect, though there are some good examples. For instance, the fact that the thousands of comments and claims received by the ministry of development in relation with the proposed route of the Madrid-Valladolid high speed train through the Lozoya valley, led the ministry to abandon its proposal.

The main limitations lie in the inability of private persons to bear the cost of the required technical assistance and exhaustive monitoring of the specific approval process.

Adequate Notification of the Public

There is no formal or informal precedent which provides interested groups with constant information about legislative and policy changes adopted by central government in relation with the environment. However, there are some regular journals which provide a certain amount of information, for example the Informative Journal of the Ministry of Environment. Access to information in this respect is easier for NGOs who are represented in any of the consultative bodies mentioned above.

Due to the fact that the possibilities for public participation in the decisionmaking process correspond to the approval process of registered administrative files, the regulation of how notifications must be made, to whom they must be made and their content is found in each one of the specific provisions which regulate the different cases. Otherwise, when the matter is not exhaustively regulated in sectoral regulations, it is necessary to refer

to Law 30/1992 on the legal framework of the public administrations and the common administrative procedure, which is applicable in such cases, as this contains the general rules which regulate relations between the administrations and the administrated.

Interested parties whose rights and interests are affected are informed about the decision taken. This is done by means of notification delivered by any means which permits the recording of reception by the interested party. When the notification is addressed to an indeterminate number of persons it is achieved by publication in the official journal of the state, autonomous region or province.

Interested parties may be informed, either orally or in writing, by any means which permits the recording of reception of the notification by the interested party or parties.

In practice, publication in the official journal of the state, autonomous region or province is used with great frequency, due to the fact that the addressees are usually an indeterminate number of persons.

Notifications must explain the reason for the decision with succinct reference to the facts and legal grounds, as well as the corresponding provisions of the rules which regulate the case, and the grounds of the resolution adopted must be accredited in the procedure.

Decisionmaking is Transparent

Possibility to Influence Decisionmaking

In the administrative procedure for EIA, the decisionmaking process is transparent, as in the case of a decision which authorizes an annoying, unhealthy, harmful or dangerous activity. In both cases, periods of public information are opened and the right to public participation is recognized, but this does not mean that the decisions taken in such processes seriously take into account the comments and claims of individual citizens, as the law requires that those presented be taken into account by the administrative authority taking the decision but not with binding character.

Openness of Parliamentary Committees

Neither individuals nor NGOs can participate in the parliamentary sessions of the congress of deputies, although they can attend without the right to a voice or a vote. NGOs can participate in consultative commissions and working groups when they are called to give their opinion about certain specific matters.

Mechanisms to Influence Decisionmaking — Lobby Mechanisms

In Spain the concept of a lobby is relatively new. In general lobbying is not carried out in an organized manner or with very well established channels and, except recently, actions involving coordinated pressure from different NGOs are not common. There are no regulations in this respect.

Capacity Building

There are training programs for governmental officials, although not specifically on public participation. There is also no specific funding for public participation projects, although some of the funds available can be used for this purpose. Generally speaking there are no specific funds or training programs or specific support to promote public participation on environmental issues.

Access to Justice

General Rights and Sources of Law

The Spanish Constitution does not contemplate any specific procedure for appealing in the case of refusal of access to environmental information; it only contemplates the ordinary procedures and methods which exist for any other matter.

Neither does the Spanish Constitution establish a specific procedure for cases of failure to obtain access to public participation. The constitution refers generically to the public participation of citizens, specifically regulated by means of the different sectoral regu-

lations, as one of the phases of the procedure (planning legislation, environmental impact assessment, industrial policy, approval of natural resource management plans, etc.).

Finally, the Spanish Constitution does not establish a right or specific procedure for access to justice in matters related to the environment, it being necessary to resort to ordinary jurisdictional procedures derived from generic law for effective judicial protection and the right to petition. However, the Spanish Constitution recognized in Article 125 the so called “popular action,” which grants citizens and, implicitly, organizations the right to go before courts and challenge an activity which affected a collective interest. The environment is included under this concept of collective interest. The use and scope of this “popular action” has been developed under sectoral laws.

Administrative Standing

There is a generic concept of legitimation for administrative procedures, which corresponds to those who promote the procedure as holders of rights or legitimate individual or collective interests — NGOs — and those who may be affected by the decision adopted, whether or not the procedure has been initiated.

In any case, there is no generic process for public participation as this is dealt with in detail in each one of the sectoral regulations. Legitimation operates in several areas.

In the administrative decisionmaking process:

- Private persons: In the administrative decisionmaking process, interested and affected parties can be said to be legitimated, in general terms, and in some particular cases related with some sectoral regulations, this can come to include any citizen. The applicable legislation is therefore that which corresponds to the different sectoral regulations.
- NGOs: They can be accorded collective rights in the terms in which these are recognized by law, specifically contemplated in sectoral legislation, and the level of participation varies from one sector to another. For instance, in planning matters legitimation is very broad, while in other sectors (environmental impact assessment, natural resource management plans, matters affecting public property) it is much more restrictive. The applicable legislation, which also determines the levels of legitimation, are the sectoral regulations.

In the administrative appeals in the administrative decisionmaking process:

- Legitimation corresponds to interested parties, considered as those who promote the administrative action as holders of legitimate individual or collective interests and rights, and those who may be affected by such an action.
- The average time for obtaining an administrative resolution is variable, although a generic period of three months is established by the regulatory law of the legal framework of the state administration and the common administrative procedure.

TABLE 1: Administrative Standing		
	<i>In the administrative decisionmaking process</i>	<i>In the administrative appeal of administrative decisionmaking process</i>
Individuals		
every person	—	—
interested/affected	x	x
NGOs		
everyone	—	—
interested/affected	x	x

- It is possible to lodge appeals against administrative decisions by means of the administrative procedure. The competent authority has the obligation to resolve the case, although it can reject the appeal through administrative silence. In this case, the interested party can appeal by means of a contentious-administrative procedure in the generic period of three months. The presentation of a contentious-administrative appeal does not interrupt the executability of resolutions, except in exceptional circumstances where it is considered that irreparable damage could be caused if such measures are not adopted. The authority is obliged to resolve the case. If it does not do so the case is understood to be rejected, and the affected party can appeal.

The average time limit for an appeal against an administrative resolution is as follows:

- Provision of information: a generic period of two months;
- Other administrative decisions about the environment: a generic period of three months, applicable when sectoral regulations do not specify any other period.

Standing in Actions Against Government Agencies

In Administrative Jurisdiction

- Private persons: They must have a direct and legitimate interest, though jurisprudence includes broad legitimization criteria.
- NGOs: They must be legalized and act in defense of legitimate interests related with the defense of the environment, though jurisprudence uses broad legitimization criteria for the sake of effective application of the constitutional principle of effective judicial protection.

In Civil Jurisdiction

Legitimation is much more restricted as it only corresponds to those who represent or have in play particular interests, reflecting the fact that this enters the sphere of private relations.

In Penal Jurisdiction

Penal legitimization is the maximum possible for most types of infractions, including those which affect the environment, i.e. public penal action to which all citizens and organizations that defend legitimate and legally recognized interests have access.

In Arbitration Courts

It is possible to take to arbitration matters of private law, i.e. excluding all matters which affect the public sphere. Legitimation in this case is therefore similar to the case of civil jurisdiction.

In Spanish law, access to the constitutional court is not contemplated for environmental infractions. Access can only be gained by cases which involve severe effects on public health, this being one of the considered fundamental rights.

Several laws are involved in the case of civil servants who do enforce compliance with laws or who are themselves in non-compliance. Responsibilities can be exacted of civil servants for their actions and omissions.

In the most serious cases there may be cause for penal responsibilities, for the perversion of the cause of justice or infractions related with planning and the environment (granting of illegal licenses, lack of control, etc.). The reference legislation would be the penal code and the criminal prosecution law.

Less serious cases would give rise to administrative responsibility which can be exacted through the generic procedure established by Law 30/1992 on the legal framework of the public administrations and the common administrative procedure.

Standing in Actions Against Polluters

In Administrative Jurisdiction

For both private persons and NGOs, legitimization would correspond to interested and affected parties, in general terms, without prejudice to what is set out by sectoral regulations. The reference legislation would be the Regulatory Law of contentious-administrative jurisdiction of December 27, 1956, and

TABLE 2: Legal Standing Against Government

	<i>Special administrative court</i>	<i>Civil court</i>	<i>Criminal court</i>	<i>Arbitration court or special economic courts</i>	<i>Constitutional court</i>
Individuals					
every person	—	—	x	—	—
interested/affected	x	x	—	x	—
NGOs					
everyone	—	—	x	—	—
interested/affected	x	x	—	x	—

appeals would concern deficient or non-existent control by the administration of the actions of companies, i.e. the neglect of responsibilities in relation to industrial policy or control over the activities of companies.

In Civil Jurisdiction

For both private persons and NGOs, legitimation only corresponds to affected parties. The reference legislation would be the civil code and the civil prosecution law. The application of this jurisdiction in relation to the environment would correspond to matters concerning civil liability not deriving from an infraction, or that deriving from an infraction about which the penal process has expressly made reservations.

In Penal Jurisdiction

The action is public, and therefore would correspond to all interested and affected parties. The reference legislation would be the criminal prosecution law and the penal code, as well as the hunting and fishing laws. It should be noted that all declared penal liability supposes a civil liability.

In Arbitration Courts

As has been seen above in section three, matters which can be taken to arbitration are of a civil character, i.e. the private relations between citizens, or between citizens and companies. Environmental matters would therefore remain outside of this scope, which in the immense majority of cases are usually

cases of public law. The reference legislation is Law 36/1988 on arbitration.

Environmental matters do not have access to the constitutional court. This is due to the constitutional consideration of the right to enjoy an appropriate environment as a guiding principle of general policy and not a fundamental right.

Remedies and Enforcement

Injunctive Relief

In general terms, the figure of the injunction cannot be used against public administrations in the administrative terrain. However, there is the possibility of requesting the adoption of precautionary measures in the sphere of administrative procedure and civil and penal contentious-administrative jurisdiction, which could be adopted when jurisdictional bodies consider this applicable.

Precautionary measures are aimed at impeding the continuation of a situation liable to produce prejudicial effects or to assure the effectiveness of a future resolution, anticipating its effects or adopting the measures which permit the putting into practice of its future determinations.

The possibility exists, for both private persons and NGOs, to use injunctions in the case of civil jurisdiction (cf. above, Section 5).

In the contentious-administrative and penal jurisdictions (cf. Section 5), it is possible to use the figure of precautionary measures already commented upon, which can be agreed at the request of one party or by official action.

TABLE 3: Legal Standing Against Polluters

	<i>Special administrative court</i>	<i>Civil court</i>	<i>Criminal court</i>	<i>Arbitration court or special economic courts</i>	<i>Constitutional court</i>
Individuals					
every person	—	—	x	—	—
interested/affected	x	x	—	x	—
NGOs					
everyone	—	—	x	—	—
interested/affected	x	x	—	x	—

Enforcement of Judgments

In judicial proceedings it is possible to adopt fast and effective measures which have the aim of protecting and defending environmental heritage. These measures are known as precautionary measures. Civil proceedings hardly apply to environmental matters, except tangentially or indirectly, but in penal and contentious-administrative proceedings they are of importance as they can lead to the cessation of illegal works, the adoption of precautionary measures in cases of forest fires or supposed polluting discharges, etc. These measures are agreed through official action by jurisdictional bodies or at the request of one party. Finally, when the judicial authority puts an end to the proceedings, issuing a firm sentence¹¹ (i.e. announcing its decision about the matter, and that it is not possible to appeal), it is executed by the competent judge or court.

If precautionary measures are adopted at the request of one party the judicial authority sets a bond which must be paid up in order for the measures to be implemented. The problem is that these bonds tend to be for millions of pesetas, which is impossible for associations, NGOs or private persons to pay — an example being the case of Itoiz dam in Navarre.

Nevertheless, it should be noted that in Spain there are environmental public prosecutors, who are responsible for promoting the action of justice in defense of legality, the rights of citizens and the public interests pro-

tected by law. These public prosecutors have highlighted the lack of collaboration between some public administrations and environmental competencies: on occasions, members of the judicial police, when requesting the handing over of documents and data relating to cases under investigation, have been told that they could acquire the documents in a bookshop.

Court Expenses/Litigation Expenses.

With regard to costs, rates depend on whether they are civil or contentious-administrative proceedings. On the whole, civil proceedings are more expensive than contentious-administrative proceedings, as the latter litigate against the state. In civil proceedings, costs (fees of solicitors, lawyers, experts) can be partially recovered by the party winning the suit, if all their pretensions have been met. Otherwise, each party meets its own expenses.

Actions against polluters can be administrative proceedings, in minor cases, or penal proceedings in more serious cases. In penal proceedings there is the option between denouncement and accusation. Denouncement is limited to informing the authority of the supposed infringement, and the action of the denouncer is limited to this, except where he or she is called to testify in the event that the public prosecutor or the administrative or jurisdictional authorities implement a penal procedure.

This procedure does not imply costs of any type. In the case of accusation, however, the accuser must formulate an accusation and request proof. Thus, there are costs to be met as the accuser acts as procurator and under the direction of a lawyer.

Justice in Spain tends generally to be rather slow, and in some cases can be extremely slow, making effective judicial protection impossible.

Within these parameters, the least agile jurisdictions are usually the civil and contentious-administrative jurisdictions. On the whole, and despite the fact that there are free-of-charge judicial proceedings, access to the courts is slow and costly, especially in environmental matters in which enormously expensive technical and expert reports are often required.

For a citizen whose income is in line with the monthly minimum wage, there is the possibility of access to free-of-charge judicial proceedings within civil jurisdiction, but even so it can be said that economic conditioners are an important limiting factor for effective access to justice. The law of free assistance is Law 1/1996 of January 10.

In the case of civil proceedings, all costs are imposed on the party which has totally lost the suit; in this way the winner of the suit can recover a large part of the costs incurred.

The main problem for access to justice is administrative neglect, generalized and chronic non-compliance of environmental laws, the length and expense of judicial proceedings and the lack of specialists in environmental law, both at judicial level and in relation to the rest of the professionals involved (public prosecutors, lawyers, experts, etc.).

Legal Assistance

Public Interest Environmental Lawyers

In Spain there is no real organized environmental legal advisory service which is provided with adequate means and with a stable structure, national coverage and

accessible to all citizens. Nevertheless there are some examples of a service of this type, such as the one provided by the Coordinating Committee of Environmental Defense Groups (CODA), which has a legal commission assisted by specialized lawyers who voluntarily provide legal advice services to the environmental NGOs belonging to the Coordinating Committee, and sporadically to citizens seeking information. However, this is far from being provided with the adequate means to allow it to be considered a stable service, with easy access for all citizens. Other NGOs have lawyers working or collaborating with them who can occasionally and voluntarily provide services of this type, but always with the restrictions of lack of continuity and stability.

Commercial Lawyers

There are some private legal practices specializing in environmental matters, though it is difficult for a professional legal office to be exclusively dedicated to environmental matters as well as economically viable. The major companies tend to have departments dedicated to the environment, fundamentally in relation to matters such as standardization, industry, consulting, etc.

Ombudsman

The ombudsman is responsible for the defense of fundamental rights. He can supervise the activity of the administration, initiating investigations, either at the request of a party or officially, aimed at clearing up the actions and resolutions of the administration in relation to citizens. There are ombudsmen at both national and regional levels. All private persons or companies with a legitimate interest have active legitimation to address claims to their ombudsman. The national ombudsman created an environmental department in 1995. As is provided for in Law 36/1985, relations between the national ombudsman and similar figures in the regions¹² are based on the principles of coor-

dination and cooperation.

The ombudsmen can suggest the modification of the criteria used to produce administrative resolutions, formulating recommendations, reminders, warnings and suggestions to the authorities about the needs for the participation of collectives and associations.

The regional ombudsman of the Canary Islands, in his 1996 report, complains of the passiveness and disinterest of the administration, which is manifested in the reiterated refusals to provide information about actions undertaken which can have notable repercussions on the environment.

Since 1995 environmental complaints have acquired their own substance. They are structured in two main groups: those concerning the degradation of the rural environment and those whose concern is focused on the urban environment, and refer preferentially to classified activities, especially noise and non-compliance with regulations. An increasing number of complaints are received as a result

of their swift processing and the fact that they are free-of-charge.

MAPPING AND EVALUATION OF OPPORTUNITIES

The following charts are an illustration of the opportunities that exist in practice for public participation in key decisionmaking processes in Spain. Public participation in international decisionmaking and on the management of environmental funds has not been included due to the non-existence of such opportunity. Regarding environmental funds coming from the Structural Funds, it has to be mentioned that the EU regulations at this regard, which provide for an invitation for the different countries to allow certain participation of NGOs in the Monitoring Committees, have not yet been implemented in Spain.

Scale of evaluation used: 1 never, 2 rarely, 3 sometimes, 4 usually, 5 always.

TABLE 4: Preparation and Approval of National, Regional and Local Laws and Regulations¹³

	<i>Initiation of DM (problem/proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	1	1	1	1	1	1	1
Decisionmaking power is shared (right to joint decisionmaking)	1	1	1	1	1	1	1
Comments are seriously taken into account (right to be heard)	1	1	1	1	1	1	1
Adequate notification (right to be informed)	1	1	1	1	1	1	1
Access to information (right to access to information)	5	5	5	5	5	5	5

TABLE 5: Preparation and Approval of National, Regional and Local Policies, Strategies, Programs and Plans

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	1	1	1	1	1	1	1
Decisionmaking power is shared (right to joint decisionmaking)	1	1	1	1	1	1	1
Comments are seriously taken into account (right to be heard)	1	1	1	1	1	1	1
Adequate notification (right to be informed)	1	1	1	1	1	1	1
Access to information (right to access to information)	2	2	2	2	2	2	4

TABLE 6: Preparation and Approval of Territorial Plans (Including Spatial/Local Land-Use Plans)

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	1	1	1	1	1	1	1
Decisionmaking power is shared (right to joint decisionmaking)	1	1	1	1	1	1	1
Comments are seriously taken into account (right to be heard)	1/3*	1	1/3*	1/3*	3	1/3*	1/4*
Adequate notification (right to be informed)	1/3*	1	1/3*	1	4	1/3*	1/4*
Access to information (right to access to information)	4/5**	1/5**	5	5	5	5	5
* local land-use.							
** the process is legally transparent because it has been included in a Law/decreet, nevertheless, sometimes in practice there are real obstacles to access to the information in an appropriate way, these obstacles include the following: no photocopy facilities available, timetables set out to consult the information, etc.							

TABLE 7: Environmental Impact Assessment, Siting and Permitting

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	1	1	1	1	1	1	1
Decisionmaking power is shared (right to joint decisionmaking)	1	1	1	1	1	1	1
Comments are seriously taken into account (right to be heard)	1	3	3	3	3	3	3
Adequate notification (right to be informed)	3	3	3	3	4	3	4
Access to information (right to access to information)	3	3	3	3	5	5	4

CONCLUSIONS AND RECOMMENDATIONS

Concern about environmental issues is a very recent phenomenon in our country. This fact, together with the relative newness of public participation processes (1978), means that while the last 15 years have seen great progress in relation with these aspects, largely thanks to our entry in the European Community (1986). There is still a long way to go and a large number of areas in which the situation of public participation in environmental issues could be improved.

With regard to access to information, there is a need to improve legal regulations in order to bring them into compliance with the requirements of Directive 90/313/EEC, especially in relation with the persons eligible to request information, negative silence, and the sole possibility of appealing through court action; as well as in terms of the price of information. Taking into account the recommendations of the Sofia Guidelines, it would be necessary to reduce the two month time limit established in our legislation and to include the public interest test when inter-

preting the list of exceptions. It would also be necessary to develop regulations at the level of the autonomous regions with broad environmental competencies, whose obligations are not always established by the existing national legislation applicable on access to environmental information. From a practical point of view, access to information would be fundamentally improved by the greater definition of exceptions, the adoption of practical arrangements to permit effective organization of the requesting and provision of information to petitioners, and the putting into practice of programs aimed at informing both citizens about their right to request environmental information and civil servants about their obligation to respond to such requests. Finally, there is a need for investments with regard to the compilation and computerized treatment of environmental information, in such a way that adequate information is available for environmental policymaking decisions with the due participation and knowledge of the public.

In terms of public participation, one of the aspects which requires the greatest attention is that of the provision of information about

the different decisionmaking procedures in which public participation may take place. There are a large number and wide variety of such procedures, and the public should receive adequate information in this respect. Participation in consultative bodies is also quite a recent phenomenon in Spain. The Environmental Advisory Committee, for instance, was created in 1994. This participatory body at national level has been a testing ground for modulating and exercising participation in environmental issues. Most of the environmental NGOs decided to leave the committee when it failed to live up to the expectations which had been created. Though it can be seen as a test, it has not fared well, and many policy lessons may be learnt in this respect on both sides, both by the administration and by NGOs. What does seem clear is the need for adequate budgetary provisions for supporting NGO participation on an equal footing, and adequate institutional political support to ensure that bodies of this type do not end up as empty shells.

Another aspect to be mentioned is the fact that though there is a legal obligation to take into account the claims presented during public information procedures, this obligation is formulated in such a way that in practice it does not occur. Non-fictitious participation demands that public participation be really reflected in final decisionmaking.

The need should also be stressed for public participation to take place at a stage where it is still possible to propose alternatives, and where there is certain room for the proposal of feasible alternatives to bring about changes in the decisionmaking.

With regard to access to justice, it must be said that in our country the impediments to access are not in general due to legal regulations. The legal standing of NGOs before the courts is recognized, and furthermore in many procedures the figure of popular action is recognized as a formula for promoting access to justice. The real impediments come in the form of the costs which such action supposes and the slowness of legal procedures. Access to justice is free of charge in our country, but the professional fees of

lawyers, attorneys, experts and other professional technical support necessary to bring a case before a court are such that on numerous occasions NGOs and individuals cannot afford them. In addition to this, the bonds imposed to prevent damage being caused to the company or administration supposedly guilty of an infraction can be astronomical sums which really impede the effective exercising of access to legal protection.

Thus, several aspects are improvable, particularly through the application of capacity building measures which would help to bring about a cultural change favorable to the adoption of public participation systems as a way of improving the application of environmental measures and policies.

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NOTES

- 1 Art. 105 (b) The Spanish Constitution of 1978.
- 2 The law came into force on 26th February 1993.
- 3 Herranz, D., Quinones, L. & Sanchis, F. 1996. *Freedom of Access to Environmental Information Update of the Users Guide*. Stichting Natuur en Milieu. Utrecht.

4 Law 38/1995, art. 6.1.

5 Developed by Royal Decree of 1992.

6 Which adapted to national law the SEVESO Directive (subsequently developed by Royal Decree 952/1990 of June 21).

7 Section referring to "Information to the population," must be general information, information on the effects on persons and on the environment, and information on the way of obtaining greater information, subject to the provisions relating to confidentiality set out in existing legislation (Annex VI letter K of Royal Decree 952/1990).

8 Recently modified by Law on Waste Management, Law 10/1998 of April 21.

9 Organic laws are those relating to the development of fundamental rights and public liberties, those which approve the statutes of autonomy and the general electoral regime and others foreseen in the constitution.

10 Order of March 15, 1963 which approves the Instructions for the application of the Regulations. Article 4 in provision 2 of the Order establishes that interested parties can present an application for consultation prior to the request for authorization of such activities and can demand a receipt for the application.

11 There is no possibility for appeal, neither ordinary nor extraordinary.

12 There are currently eight regional ombudsmen: Defensor del Pueblo Andaluz (Andalusia), Diputado del Comun de Canarias y Las Palmas (Canary Islands), Sindic de Greuges de Catalunya (Catalonia), Sindic de Greuges de Valencia (Valencia), Justicia de Aragon (Aragon), Ararteko (Basque Country), Valedor do Pobo Galego (Galicia) and Procurador del Comun (Castille and Leon).

13 The opportunity for the public to participate within this chart appears before the national parliament or regional parliament or the local council initiates the decisionmaking process regarding the adoption of a law or regulation. This participation happens through a public initiative, promoting at the national or regional level that the national or regional parliament takes a decision on whether initiate the legislative procedure or by making comments to a governmental draft proposal to the parliament just before submitted to the parliament within a nonbinding consultative process.

Chapter 10: Switzerland

KONRAD SAHLFELD ■ OTTO SIEBER

LEGAL AND INSTITUTIONAL FRAMEWORK AND PRACTICES FOR PUBLIC PARTICIPATION

General

Constitutional Rights

The Swiss constitution (Bundesverfassung, alt. BV) makes it quite clear that protection of natural life resources is of great importance, but this does not always take first priority in the system. Policies such as the expansion of traffic facilities indicate that the environment is not always on top of the list.

Such conflicting aims can be solved by carefully balancing interests. As a matter of principle the environmental protection article (Article 24, BV) is a binding executive body, but only so far as the realization of other equal-ranking duties are not being blocked or impeded excessively.

Compromise remains an essential part of Swiss politics and environmental policy. The Swiss High Court (Bundesgericht, alt. Bger) has repeatedly stated that where there are contradictions between environment protection and government duties, a balance must be found. The principle of cooperation is embodied in various articles of the Federal Law Relating to the Protection of the Environment (Bundesgesetz ueber den Umweltschutz, alt. USG) to clarify this characteristic.

The state government (Bundesrat) says that “all interested parties shall participate in the decisionmaking process and participate.” This is a very important statement, as the referendum threatens all executive body negotiations.

By forcing the executive body (Article 39, Paragraph 3 USG) to give cantons and inter-



ested parties a hearing before enactment of a decree or the preparation of conventions, the legislature voices the principle of cooperation. Similarly, in Article 6 (USG) the authorities are forced to appropriately inform the public about environmental protection and the extent of pollution.

Nevertheless, there remains a considerable information gap between the majority of citizens and the local authorities. Six months before the planned Aarhus convention for example, there were only approximately a dozen interested parties.

Implementation of International Legal Instruments

The following international treaties have been signed by Switzerland:

- Biodiversity Convention, June 5, 1992, SR 0/451/43
- Climate Change Convention, May 9, 1992, SR 0/814/01
- Basel Convention, March 22, 1989, SR 0/814/41

- Sofia Convention, October 31, 1988, 0/814/323
- Geneva Convention, EMEP, September, 28 1984, SR 0/814/322
- Bern Convention, September 19, SR 0/455.
- Washington Convention, March 3, 1973, SR 0/453
- Ramsar Convention, February, 2 1971, SR 0/451/45

Implementation of International Nonbinding Instruments: Sofia Guidelines

There has been no implementation of the Sofia Guidelines and no real initiatives.

Powers and Responsibilities of Local/Regional Governments Concerning the Environment

Cantons must execute the USG (Article 36, USG) as a matter of principle. The USG can be described as a law of delegation. It is the responsibility of cantons to ensure, in the broadest sense, the enactment of legislation, the organization of the executive system and the implementation of acts.

Significantly, the cantonal executive requires authorization from the government to introduce legally binding measures concerning the environmental test of compatibility (Article 9, USG), protection in the event of disaster (Article 10), rehabilitation or reconstruction (Articles 16-18), sound-protection of buildings (Articles 20-21) and waste (Article 30-32).

Cantons can make autonomous decisions, such as implementing speed restrictions on their cantonal section of the motorway but in doing so they must not violate federal law. Therefore when implementing legal remedies cantons have no right to make it impossible or excessively difficult for authorized organizations to accomplish their duties. In conclusion, it can still be maintained that cantonal environmental law is decreasingly important.

Access to Environmental Information

Legislation on Access to Information/Environmental Information

Freedom of opinion includes the ability to access general sources of information. In 1981 the High Court (BGer) stated (BGE 107, I/a 304) that "in Swiss law there is no general claim of the citizen and the mass media in particular, to be informed about any proceedings within the domain of public administration." To the extent that local authorities do inform they are bound by the principle of equality and prohibition of arbitrary behavior.

More recent cantonal constitutions often mention the method by which authorities should be forced to inform the public. Bern Canton adopted a public-oriented policy, whereas Appenzell Canton A.Rh. is more moderate. First steps towards a public-oriented administration were made in the past by Basel-Land and Aargau cantons.

Under the EUROLEX-legislation the EC Council Directive on Freedom of Access to Information on the Environment would have been transformed into Swiss law, but after the Economic European Area was rejected on December 6, 1992, the directive was not adopted.

Passive Provision of Information

Definition of Environmental Information

No such constitutional right exists, but the Federal Law Relating to the Protection of the Environment (USG) establishes in Article 46, (Paragraph 1) the general rule that everyone must provide the administration with information necessary to enforce the USG and to carry out or submit inquiries.

Article 46 (USG) is *lex specialis* in relation to the principles of general administrative law. Article 47 says that information received by the administration from individuals and entities may be published if it is of general interest. The concerned parties have to be consulted before publishing. Paragraph 2 of Article 47 cites the obligation to preserve trade and business secrecy. To obtain (envi-

ronmental) information the coordination principle (that everyone participates to reach a compromise [the Swiss system of evaluation/concordance]) must be respected.

Generally the number of regulations is not as high as in other European countries. However, the administration has a duty to cooperate and collaborate with affected, interested private entities (Article 41/a USG).

Conditions for Obtaining Information

Although the law mentions "every person," the duty to supply information is limited to those who are affected because of their activities or knowledge.

Refusal to Provide Information

In the Administration Procedure Act (Article 8 VwVG) it is stated that the government should inform the people. Article 6 (USG) forces authorities to appropriately inform the public about environmental protection. However there remains no free access to public information in the sense of that granted in the EC Directive 90/313/EEC.

Informal Guidelines for Agencies and the Public

There are no public guidelines concerning the provision or the request of information. There is only the right of access to publicly accessible information. Those directly concerned have a right to information.

Certain limitations on the duty to provide information are set down in the general administration principles, e.g. the principle of proportionality.

Specific Institutions/Officials to Provide Information

There is no governmental institution or public authority which is responsible for information. It is possible to contact the administration and try to get the information.

If an Authority Does Not Possess the Information

If the public authorities do not possess the requested information they are not obliged to get it from other agencies. Normally the

authorities would assist the requester by providing, for example, the contact information of the authority responsible for dealing with the information requested.

Active Provision of Information

Obligation to Disseminate

Information Actively

Article 46 (USG) states the duty to provide information in the case of a harmful substance which is produced or imported, as well as details concerning where it is sold, processed or disposed.

In cases of emergency the public authorities should not hesitate to disseminate information.

It is the government's responsibility to spread information in case of an emergency. There are several legal decrees concerning that: Article 10 (USG); *Stoerfallverordnung*, February 27, 1991, SR 814/012; *Verordnung ueber die Einsatzorganisation bei erhoehter Radioaktivitaet*, June 26, 1991, SR 732/32; *Notfallschutzverordnung*, November 28, 1983, SR 732/33; *Verordnung ueber die Nationale Alarmzentrale*, December 3, 1990; *Verordnung ueber den Koordinierten AC-Schutz*, February 24, 1990; SR 501/4.

Methods of Dissemination

It is possible for NGOs to be included on a list of groups regularly informed about law and policymaking but that list varies and it is compiled by the administration.

In the case of provision of information in Switzerland, there is mainly a system of evaluation and direct contacts from NGOs to the administration. However, mainly on the cantonal level, the administration often refuses to provide such information.

Electronic Means of Dissemination

There is no obligation to disseminate the information electronically. The Swiss administration is slowly making information available electronically, for example, via Websites.

Nongovernmental Centers

In Switzerland there are no nongovernmental information centers.

Mechanisms to Ensure Flow of Information from the Private Sector to the Public Authorities or the Public

There are only mechanisms to ensure the flow of information between private sector and responsible public authorities in emergency situations and where private sector activity is subject to public control.

Public Participation

Legislation on Public Participation

If there is a continuous thread in Swiss political history it is probably the desire to prevent the winners from taking all. Power-sharing has therefore become an important element in the country.

Legislation in Switzerland set down a basis for power-sharing. It is a cooperative process mainly involving economic interest groups in the pre-parliamentary phase and political parties in the government and parliamentary arena.

In this system of “concordance,” as it is called in Switzerland, no single winner takes all and everybody wins something from the negotiation. It is an idea that cannot be abandoned without changing the institutions: as long as the referendum tool exists that is a constraint on all political players. Swiss political parties and interest groups are obliged to look for compromises, even in cases of major conflict.

“Power-sharing” underlines the roles of constitutional cooperation and institutional mechanics. It prevents the exclusive exercise of power and leads to a political culture of cooperation.

The optional referendum has the greatest impact when all referendum threats are eliminated through successful pre-parliamentary and parliamentary negotiations.

Public Control of Decisionmaking (Direct Democracy)

Switzerland has a semi-direct democracy including referenda and initiatives.

Referenda

The types of referendum and popular initiative (at a federal level and in the 26 cantons) are as follows:

Constitutional referendum (obligatory): In cases of total revision of the constitution, amendments and, since 1977, in decisions concerning membership of supranational organizations, a referendum must be passed for the change to take effect. All constitutional referenda must win a double majority — more than 50 percent of the vote nationwide and a majority of voters in the majority of cantons.

Legislative referendum (Number of signatures required: 50,000 or the vote of eight cantons). Also known as a “facultative” referendum. Any law or decree of the Federal Assembly can be challenged. If a popular majority votes against it, the law is nullified. In cases which are deemed “urgent,” the law takes effect after passage, but loses force after one year if it is rejected in a subsequent referendum.

Treaty referendum (Number of signatures required: 50,000): The agreement must face a referendum if a petition with the required number of signatures is submitted. Only a popular majority is required for its passage.

Right to Initiative

Constitutional initiative (Number of signatures required: 100,000): Specifically-worded amendments go to the government and then to the Federal Assembly, which either endorses or rejects the change and is given the opportunity to offer a counter-proposal. The initiative (and counter-proposal, if there is one) is then presented for popular approval. A double majority is required for its passage.

Constitutional initiative (Number of signatures required: 100,000): The proposal is first submitted to the people. If a popular majority agrees, parliament is dissolved and an assembly is elected to draft a new constitution. The resulting document is then submitted to a referendum, in which it must gain a double majority.

All environmental issues can be subject to referenda or initiatives in this system. Referenda are binding. In Switzerland we have around 12 referenda and initiatives (at the federal level) per year.

The same system operates at the regional level (cantons) and on the communal level. At this level the possibilities are even bigger. People can suggest to change any law text or proposed projects etc. The requirements for signatures are much lower according to the number of inhabitants of the canton or the commune (in communes of several hundred e.g. 500 signatures, in larger cantons e.g. 3,000 signatures).

Public Shares Power to Decide

In Switzerland there are no circumstances in which individuals or NGOs can participate as equal partners in decisionmaking bodies. Otherwise there is the system of initiatives and referenda where NGOs and individuals are (relatively) equal partners in decision-making.

Account of Public Comments

Individuals/NGOs have the possibility and the right to petition. But there is no right to get an answer on the national level. There are various articles in cantonal constitutions which deal with this right: *Obwalden* (Article 21), *Glarus* (Article 60), *Solothurn* (Article 26), *Basel-Landschaft* (Article 10), *Aargau* (Article 19), *Thurgau* (Article 12) and *Jura* (Article 80), whereas the solution in *Graubuenden* (Article 3) is more moderate.

Adequate Notification of the Public

It depends on the subject of the decision-making process whether or not the public is notified. Normally it is possible to receive requested information, but only after struggling with the administration.

When a road is to be built close to private property, affected or interested parties will be notified.

Decisionmaking is Transparent

Possibility to Influence Decisionmaking

NGO groups are consulted regularly on

law and policymaking if the subject of the decisionmaking process is relevant to them.

Each new law proposal is sent to all interested groups and parties for written comments before the draft enters the parliament.

Openness of Parliamentary Committees

It is possible to participate in parliamentary committee meetings in different ways. Through the excellent system of evaluation in Switzerland it is possible to give oral or written commentaries.

Mechanisms to Influence Decisionmaking — Lobby Mechanisms

In Switzerland there is no official NGO lobbyist, as lobbyists already sit in parliament.

Capacity Building

There is no training on public participation for governmental officials provided by government.

It cannot be asserted that any Swiss government funding is specifically focused on public participation projects or public participation training.

Access to Justice

General Rights and Sources of Law

Articles 54-57 of the USG deals with legal protection. The appeal procedure is basically determined by the Administration Procedure Act (VwVG) and the Organization Act (OG), special measures defined by Article 41 (with the exception of Paragraph 2, USG).

In the case of general environmental issues, this grants further protection in areas such as association appeal in the public appeal procedure, while reference to the OG and the VwVG gives added security.

The executive body has consistently stated that legitimacy primarily fails on parties which are concerned by a decree and which have a protection based interest in its can-

TABLE 1: Legal Standing Against Polluters

	<i>Special administrative court</i>	<i>Civil court</i>	<i>Criminal court</i>	<i>Arbitration court or special economic courts</i>	<i>Constitutional court</i>
Individuals					
every person	—	—	—	—	—
interested	—	—	—	—	—
affected	X	X	X	X	X
NGOs					
everyone	—	—	—	—	—
interested	NHG/USG	—	—	—	NHG/USG
affected	—	—	—	—	X*

*theoretically (one case)

USG = Umweltschutzgesetz, October 7, 1983, SR 814/01 (Federal Law Relating to the Protection of the Environment)

NHG = Bundesgesetz ueber den Natur- und Heimatschutz, July 1, 1966, SR 451 (Federal Law Relating to the Protection of Nature and the Countryside)

cellation or alteration. However, association appeal is permitted, which should allow the better enforcement of public interests. Legal standing is granted to environmental protection organizations which were established at least ten years before the appeal was submitted. A corresponding list is published by the government.

With regard to any authorized legal remedy on a cantonal or local level, Article 55 (Paragraph 3, USG) states clearly that environmental protection organizations can legally benefit from any of the legislation's measures.

Cantonal law has to guarantee legal associations at least the same rights as in national law. Thereby national legislation does not intervene unnecessarily in canton sovereignty, a doctrine which conforms to the constitution.

The average time for appealing an administrative decision about other environmental administrative decisions would be about one to three years.

There are no environmental cases in Switzerland concerning the provision of information.

Administrative Standing

The constitution (Bundesverfassung) does not provide a right to go to court (legal standing), or file an appeal to inside agencies or governmental bodies, on issues concerning:

- a) denial of access to environmental information,
- b) failure to allow public participation,
- c) environmental issues.

As noted previously, it is the USG which regulates such issues.

Against all larger projects which affect the environment and for which an EIA is obligatory (there is a list of types of projects in the law) the environmental protection organizations which have existed for 10 years have a legal right to appeal and to be a party in the legal procedure on the permission for construction. They can ask that the permission be rejected or that the project must be modified. They can appeal through all levels starting from the communal level, regional level and up to the final decision of the federal court if necessary. This legal right to appeal has been used very successfully by NGOs. The success rate is much greater than with other legal procedures.

TABLE 2: International Decisionmaking

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	2	2	2	2	2	2	3
Decisionmaking power is shared (right to joint decisionmaking)	–	–	–	–	–	–	–
Comments are seriously taken into account (right to be heard)	3	3	3	3	3	–	–
Adequate notification (right to be informed)	–	–	–	–	–	–	–
Access to information (right to access to information)	–	–	–	–	–	4	–

Standing in Actions Against Polluters

See Table 1.

Remedies and Enforcement

If a public official fails to enforce the law or a public official is in the wrong, citizens themselves can go to court to enforce the law. Furthermore, there is the possibility of a supervision complaint (Aufsichtsbeschwerde) and the possible liability of the official responsible. In Switzerland there is consistent and meaningful enforcement of court judgments. It is not a problem in principle.

Legal Assistance

Public Interest Environmental Lawyers

In Switzerland there are no legal advisory services provided by NGOs for the public.

Ombudsman

There are ombudsmen in some of the cantons. The ombudsmen deal with the administrative decisions, and therefore some envi-

ronmental complaints can be submitted to them. This figure does not exist at the national level.

MAPPING AND EVALUATION OF OPPORTUNITIES

The charts included herein are an illustration of the opportunities that exist for public participation in key decisionmaking processes. In the charts, public participation opportunities are measured in the administrative standing of individuals and NGOs, the administrative appeals process, the international decisionmaking process, and law preparation and approval, according to the level of participation permitted.

CONCLUSIONS AND RECOMMENDATIONS

In Switzerland we have no real right to access to information. But in practice there is the normal evaluation which gives, for example, NGOs the possibility to participate in legal

TABLE 3: Preparation and Approval of National Laws and Regulations

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	2/3	2/3	4	4	4	3	4
Decisionmaking power is shared (right to joint decisionmaking)	–	–	–	–	–	–	–
Comments are seriously taken into account (right to be heard)	–	–	4	4	4	–	–
Adequate notification (right to be informed)	2	2	2	2	2	–	–
Access to information (right to access to information)	2	2	2	2	2	–	–

TABLE 4: Preparation and Approval of National Policies, Strategies, Programs and Plans

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	3/4	3/4	3/4	3/	3/4	3/4	5
Decisionmaking power is shared (right to joint decisionmaking)	–	–	–	–	–	–	–
Comments are seriously taken into account (right to be heard)	–	–	–	–	–	–	–
Adequate notification (right to be informed)	–	–	–	–	–	–	–
Access to information (right to access to information)	–	–	–	–	–	–	–

TABLE 5: Preparation and Approval of Local Rules and Regulations

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	3/4	3/4	4	4	4	—	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	—	—	4	4	4	—	—
Adequate notification (right to be informed)	—	—	—	—	—	—	—
Access to information (right to access to information)	—	—	—	—	—	2	—

**TABLE 6: Preparation and Approval of Territorial Plans
(including Spatial/Local Land-Use Plans)**

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	1	1	1	1	1	1	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	—	2	2	2	2	—	—
Adequate notification (right to be informed)	—	—	—	3	3	3	—
Access to information (right to access to information)	—	—	—	—	—	3	3

TABLE 7: Environmental Impact Assessment

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	–	1	1	1	1	1	–
Decisionmaking power is shared (right to joint decisionmaking)	–	–	–	–	–	–	–
Comments are seriously taken into account (right to be heard)	–	–	–	2	2	–	–
Adequate notification (right to be informed)	–	–	–	–	–	–	–
Access to information (right to access to information)	–	5	5	5	5	5	–

TABLE 8: Preparation and Approval of Regional/Local Policies

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	4	1	1	1	1	1	4
Decisionmaking power is shared (right to joint decisionmaking)	–	1	1	1	1	–	–
Comments are seriously taken into account (right to be heard)	–	–	–	–	–	–	–
Adequate notification (right to be informed)	–	–	–	–	–	–	–
Access to information (right to access to information)	–	–	–	–	–	–	–

TABLE 9: Management of Environmental Funds

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	1	1	1	1	1	1	1
Decisionmaking power is shared (right to joint decisionmaking)	–	–	–	–	–	–	1
Comments are seriously taken into account (right to be heard)	–	–	–	–	–	–	1
Adequate notification (right to be informed)	–	–	–	–	–	–	1
Access to information (right to access to information)	–	–	–	–	–	–	1

decisionmaking. This and the two instruments of initiative and referendum can be seen as a very good control of public decisionmaking.

No doubt, public participation in Switzerland could be improved by the introduction of the principle of publicity. One step could be the introduction of the Directive on Freedom of Access to Information on the Environment. But this proposal ran aground already twice.

Recommendations: Introduction of the principle of publicity as, for example, in Sweden.

Best achievement in Switzerland is the Swiss System of Evaluation and the use of the right to initiative and referendum, that is to say, direct democracy instruments.

Recently there was a motion in parliament (with 62 signatures out of 200) which demands the government to change legislation so that the Swiss minister for the environment would be able to sign the Aarhus-convention, on March 10, 1998. And in December, 1997, a motion (17 signatures) was accepted by government to introduce by law the system of publicity in the administration.

Chapter 11: United Kingdom

United Kingdom refers to England and Wales in this report

JOHN DUNKLEY

LEGAL AND INSTITUTIONAL FRAMEWORK AND PRACTICES FOR PUBLIC PARTICIPATION

General

Constitutional Rights

The United Kingdom does not have a written constitution, and thus there is no constitutional provision for environmental rights.

Implementation of International Legal Instruments

The UK Government is party to a number of international treaties. However, the only one of any significance is the Treaty of Rome, which led to the passing of European Communities Act 1972. Under this Act, legislation of the European Union is transposed, either directly or indirectly, into UK law. Notable examples of such legislation are Directive 90/313/EEC on Freedom of Access to Environmental Information, and Directive 85/337/EEC on Environmental Impact Assessment.

Powers and Responsibilities of Local/Regional Governments Concerning Environment

Local government derives all its power from parliament. As such it may adopt by-laws to regulate the use of public space, etc., and draw up development plans for their area. It may not, however, legislate in any significant way on environmental, or other, matters.



Implementation of International Nonbinding Instruments: Sofia Guidelines

To the knowledge of the reporter, there has been no initiative to implement and/or evaluate implementation of Sofia Guidelines either by government or NGOs.

The reporter knows of no governmental action on the Sofia Guidelines.

Access to Environmental Information

Legislation on Access to Information/Environmental Information

There is no constitutional right of access to environmental information.

Instead, the right, such as it is, is provided by a combination of EU-derived regulations (The Environmental Information Regulations 1992), general legislation on local government (The Local Government, Access to Information Act, 1985) and provisions governing the keeping of public registers pursuant to pollution control regimes established by the Environmental Protection Act, 1990, and other lesser legislation.

It is anticipated that a freedom of information act (FOI Act) will be passed by parliament later in 1998. That is expected to cover environmental information but will only establish an information commissioner and possibly tighten up some of the exemptions contained in the above legislation. In the meantime, 1992 regulations remain the principal legislation on the subject.

Passive Provision of Information

Definition of Environmental Information

It is worth bearing in mind that the legislation is still relatively young and untested in the courts. As it is tried out, the precise scope of its definitions and the stringency of its exemptions will be clarified. In the meantime, allowances should be made for the uncertainty of the raw text.

It is also worth remembering that there are non-statutory means of accessing information, such as through a parliamentary question tendered by a citizen's member of parliament to the appropriate minister.

Environmental Information

The Environmental Information Regulations 1992 is the only piece of legislation to define environmental information. It does so, as follows:

"...Information relates to the environment

if, and only if, it relates to any of the following, that is to say:

- (a) the state of any water or air, the state of any flora or fauna, the state of any soil or the state of any natural site or other land;
- (b) any activities or measures (including activities giving rise to noise or any other nuisance) which adversely affect anything mentioned in sub-paragraph (a) above or are likely adversely to affect anything so measured;
- (c) any activities or administrative or other measures (including any environmental management programs) which are designed to protect anything so mentioned."

The precise coverage of the definition is yet to be tested in court. It could be argued that the definition covers all aspects of the environment. However, there is inevitable concern that, for example, some human health and safety matters may be missed, although government guidelines support their inclusion.

Conditions for Obtaining the Information

The regulations require that, subject to the provisions of the Regulations, "a relevant person," which is defined as

- a) all such Ministers of the Crown, government departments, local authorities and other persons carrying out functions of public administration at a national, regional or local level as...have responsibilities in relation to the environment; and
- b) any body with public responsibilities for the environment which does not fall within (a) above but is under the control of a person falling within (a), who holds environmental information (as defined) must make it available "to every person who requests it."

Thus, there is no eligibility test for citizens who wish to access the information. There are no limitations on who may receive the information. However, in the proposed FOI Act, charging of fees may be used to discriminate between commercial and non-commercial applicants.

All public authorities which have “responsibilities in relation to the environment” have a duty to disclose information.

This duty also extends to other bodies with public responsibilities for the environment, which are in turn controlled by a public authority with environmental responsibilities. Environmental lawyers think that this should encompass publicly regulated, privatized utilities, but this is a disputed, and as yet unsettled issue. The proposed FOI Act should settle the matter largely in the environmentalists’ favor.

Under the regulations, every request should be answered as soon as possible, within two months at the latest. If the request is to be refused, a reasoned, written notice of this must be given within the same period.

For the information to be disclosed it must simply be “in an accessible form.” Thus the form in which it is disclosed can take whatever form is practical.

Refusal to Provide Information

Public authorities may refuse to disclose requested information, and in some cases, must refuse.

In the first instance, an authority may refuse a request for practical reasons: the request is formulated in too general a manner or is simply unreasonable.

Secondly, an authority may treat as confidential and thus not disclose the following:

- information relating to matters affecting international relations, national defense or public security;
- information relating to, or to anything which is or has been the subject-matter of, any legal or other proceedings;
- information relating to the confidential deliberations of any authority or to the contents of any internal communications of a body corporate or other undertaking or organization;
- information contained in a document or other record which is still in the course of completion; or

- information relating to matters to which there is attached any commercial or industrial confidentiality, or affecting any intellectual property.

Finally, an authority must treat as confidential and thus not disclose the following:

- information which could be confidential if its disclosure would contravene any statutory provision or rule of law, or would involve a breach of any agreement;
- personal information of an individual without their consent;
- information voluntarily supplied in circumstances such that the authority is entitled to disclose it without consent;
- information whose disclosure would in the circumstances increase the likelihood of damage to the environment, affecting anything to which the information relates.

The regulations go on to state that a refusal will not be authorized where non-confidential information can be separated from confidential information and could be disclosed on its own. Furthermore, government guidelines state that “the presumption is that environmental information should be released unless there are compelling and substantive reasons to withhold it.”

However, as yet there is no obligation to explicitly disclose information for the sake of public interest, although it is expected that the public interest will be more robustly asserted in the proposed FOI Act.

Informal Guidelines for Agencies and the Public and Specific Institutions/Officials to Provide Information

The government has also issued a Code of Practice on Access to Government Information. This creates no identifiable rights, but amounts to a statement of intention to provide citizens with information they request within 20 days. The exemptions to disclosure of information are as above. A disappointed citizen may complain first to an internal review procedure and ultimately to the Office of the Parliamentary Commissioner for Administration (the ombudsman).

Supervision

Under the proposed FOI Act there will be an Information Commissioner to oversee the disclosure of information. At present there is the ombudsman and the courts.

If an Authority Does Not Possess the Information

If an authority does not possess the information sought, then under the regulations it is not required to do anything other than reply promptly that it does not have it. There is no duty to obtain the information on the citizen's behalf, nor to direct the citizen to the correct source.

Costs of Obtaining Information

Under the 1992 Regulations, a charge may be levied to reflect the administrative inconvenience of disclosing the information. Members of the public may inspect public registers free of charge. However, a charge may be made, and usually is, for any photocopying.

The facilities for obtaining photocopies are generally improving from a position which was very poor. The charge imposed for such copying remains a point of contention.

Active Provision of Information

Obligation to Disseminate Information Actively

Public authorities are duty bound in various circumstances to disseminate information, although not under the 1992 regulations.

Local planning authorities must give notice of draft development plans and proposed planning applications in accordance with the respective consultation procedures.

Emergency Alerts

The Control of Industrial Major Accident Hazards Regulations 1984, an implementation of the EU's "Seveso Directive," puts the primary responsibility on the manufacturer, who must inform the public in that area which would suffer the effects of a major accident. However, the local authority will also be instrumental in disseminating relevant information in order that the public is notified of proposed changes to legislation.

Methods of Dissemination

It is relatively easy for a group or organization to get on the mailing list of a government department in order to be notified of proposed changes to legislation.

The practical provision of environmental information varies widely between agencies both in type and quality. For example, the department of environment, transport and the regions runs a telephone hotline and Internet service on air quality. Some local authorities on the other hand, have barely developed their public information duties beyond allowing informal access to filing cabinets kept in non-public offices. More efficient local authorities have purpose-built offices in which members of the public may inspect and photocopy documents in comfort.

Obligation to Update

Apart from the requirement on the secretary of state to constantly monitor various aspects of air quality pursuant to EU derived air quality regulations, there is little obligation on government to collect and update environmental information. The EU Directives which gave rise to the air quality regulations require the UK Government to send information to the commission on implementation of the directives.

Public authorities do not in any significant way inform the public about the possibilities of submitting information to international bodies concerning non-compliance with international rules.

Electronic Means of Dissemination

There are no legal obligations on authorities to disseminate information electronically, although some progress has been made in this regard, notably by the department of the environment, transport and the regions' air quality information service.

Nongovernmental Centers

To the reporter's knowledge, there are no dedicated nongovernmental information centers. There is a wide network of public libraries, controlled by local authorities, which play a significant role in disseminating infor-

mation, especially on planning matters.

Otherwise, NGOs play an *ad hoc* role in providing information on environmental matters.

Mechanisms to Ensure Flow of Information from the Private Sector to the Public Authorities or the Public

The Control of Industrial Major Accident Hazard Regulations outlined above are an example of a mechanism for the flow of information from the private sector to a public authority. Companies and the local authority must collaborate both in the preparation of emergency plans and in the dissemination of information to the public. Similarly, a company must report all accidents to the health and safety executive.

In conducting its pollution regulation, the environment agency requires information from companies applying for consents. The companies are then by and large left to monitor their own compliance with the terms of their consent, subject to checking by the environment agency's inspectors.

In both these cases, and others, the effectiveness of the flow of information is dependent on the determination of the relevant authority to extract the relevant information and uphold the public's right to know.

Public Participation

Legislation on Public Participation

There are no public participation rights as such set out in any legislation. There are provisions for consultation to take place, in particular within the planning system. This consultation amounts to the invitation by the public authority for representations to be made by members of the public. At no time are citizens allowed to participate in the decisionmaking itself.

On occasion, where a planning authority has refused an application for planning permission, this consultation can develop into a public inquiry conducted by a planning inspector and following a quasi-judicial format. Effectively, it is the inspector who usually makes the decision, although technically it

is the secretary of state. In doing so the inspector will overrule the elected members of the planning authority.

In recent years the right to be consulted has come to be effectively recognized by the courts, arising from "a legitimate expectation" that one will be consulted. Such an expectation can arise from statements made by officers.

Public Control of Decisionmaking (Direct Democracy)

Referenda

There is no right to a referendum on environmental or other issues.

Right to Initiative

There is no right to initiate legislation or policy on environmental or other issues.

Public Shares Power to Decide

Neither NGOs nor individuals have any significant share in decisionmaking, other than through their elected representatives.

Account of Public Comments

There is no formal requirement for decisionmakers to take public opinion into account when making decisions.

Decisionmakers are however required by administrative case law to take all relevant matters into consideration when making a decision. If they fail in this, or their decisionmaking is flawed for a procedural reason or is simply "irrational," an affected citizen may challenge the decision in the high court and, in a successful case, can have the decision quashed.

Thus, there is a mechanism, albeit flawed, whereby the quality and openness of decisionmaking may be challenged.

Adequate Notification of the Public

Individuals and NGO's regularly complain about not being adequately informed about the decisionmaking process or notified about proposals. Local authorities are of particular concern, since that is the level of government most active citizens deal with. However, local authorities usually do adequately publicize issues to be considered at council meetings or new planning matters.

TABLE 1: Administrative Standing

	<i>In the administrative decisionmaking process</i>	<i>In the administrative appeal of administrative decisionmaking process</i>
Individuals		
every person	—	—
interested	—	—
affected	—	occasionally
NGOs		
everyone	—	—
interested/affected	—	—

Where they come under criticism is the degree of informal decisionmaking which campaigners fear takes place outside the formal public arena. For example, citizens have been excluded from negotiations over the management of local areas of environmental importance (Carmel Woods).

Decisionmaking is Transparent

Possibility to Influence Decisionmaking

While not being permitted to participate in parliamentary sessions, individuals and NGOs may be invited to give evidence to parliamentary committees, which are conducted on an inquisitorial basis.

Openness of Parliamentary Committees

Members of the public are free, subject to available space, to attend sittings of both houses of parliament, and parliamentary committees. The sittings are regularly broadcast on radio and television. A journal, *Hansard*, records the business and debates in parliament. However, committees do sit privately. They may conduct confidential business in private.

Citizens are similarly free to attend sessions of their local authorities and their committees. However, the public can be excluded from either on occasion.

Mechanisms to Influence Decisionmaking — Lobby Mechanisms

Several environmental NGOs employ professional lobbyists. However, there is no

accredited lobby system. It is not possible to identify a distinct lobbyist mechanism.

It is impossible to assess the true extent of the informal contact between NGOs and decisionmakers.

Capacity Building

There are two mechanisms whereby expert advice is provided for individuals and NGOs. First, through the resources of NGOs themselves. Second, through the funding by the legal aid scheme of expert reports in legal cases.

The reporter is not aware of any training of government officials in public participation, any funding of public participation projects or training, or any government support for the promotion of public participation in educational institutions or the media.

Access to Justice

General Rights and Sources of Law

The “legitimate expectation” to be consulted was secured through legal action. Only now are aspects of the right of access to information contained in the 1992 regulations coming before the courts.

It is very difficult to assess how many environmental cases are brought before the courts in any year. No statistics are available, and the diverse nature of the cases, ranging from local authority-instigated statutory nui-

TABLE 2: Legal Standing Against Government

	<i>Special administrative court</i>	<i>Civil court</i>	<i>Criminal court</i>	<i>Arbitration court or special economic courts</i>	<i>Constitutional court</i>
Individuals					
every person	X	—	X	*	*
interested	X	—	X	*	*
affected	X	X	X	*	*
NGOs					
every person	X	—	X	*	*
interested	X	—	X	*	*
affected	X	X	X	*	*

* There are no arbitration or constitutional courts.

sance prosecutions in the local magistrates courts, through neighbor disputes in county courts, to judicial reviews of government decisions in the high court, means that such an exercise would be unfeasible. This is further compounded by the fact that multi-party environmental cases are often made up of many individual cases.

Administrative Standing, Standing in Actions Against Government Agencies and Standing in Actions Against Polluters

Previously, the rules on standing in legal challenges to government decisions (judicial review) were interpreted restrictively. That meant an applicant was required to have substantial interest in the decision in question, rather than merely the concern of a motivated citizen.

However, the position appears to be improving on a legal standing. It has been held that NGOs with particular expertise in a relevant area may have standing in legal challenges to government decisions. More recently, it has been held that individuals may have a similar standing, as long as they are not deemed to be merely interfering “busybodies.” However, this apparent relaxation requires confirmation by further case law before being treated as a fixed feature of the legal landscape.

In civil proceedings, where the object of the proceedings is compensation and/or an injunction, standing is confined to those who are parties to the dispute. It is possible for third parties to appear in court as *amicus curiae*, “friends of the court,” to assist the court in bringing relevant facts to the its attention. However, this is rarely exercised.

In criminal proceedings, where the right or power to commence a prosecution is not limited by statute, any citizen may bring a prosecution. This is subject to the power of the director of public prosecutions, who can take the matter over from the citizen, and even abandon the prosecution.

However, neither individuals nor NGOs have any standing in decisionmaking processes, other than that allowed them by consultation procedures. Applicants for planning permission may appeal refusals within the administrative process.

The right to legal standing is summarized in Tables 1-2.

There has not been any research into the response time to requests for environmental information. However, as is outlined above, a response should be forthcoming as soon as possible and at the latest within two months.

The reporter is not aware of any data on the response time for other environmental administrative decisions

Remedies and Enforcement

Injunctive Relief

Interim and permanent injunctive relief is available in judicial review proceedings and civil proceedings. Similar relief may be available in criminal proceedings through the operation of orders and notices issued by the prosecuting authority.

Enforcement of Judgments

Failure to comply with a court order is contempt of court and is ultimately punishable with imprisonment. Awards of compensation can be enforced through a variety of means, ranging from seizure of goods and property, seizure of bank accounts, to attachment of earnings orders.

Such enforcement is generally effective, providing the enforcer has not managed to put their property beyond the reach of the court, either through complex financial arrangements or by sending it outside the court's jurisdiction.

Court Expenses/Litigation Expenses

A legal challenge by way of judicial review on any of the scenarios presented, which went to a substantive hearing of two days, could easily exceed one year's average industrial wage of GBP 20,000 (there is currently no monthly minimum). If the case were to take longer or to involve more lawyers, the sum would increase accordingly. If the case were to go to appeal, the expenses could jump towards GBP 100,000 — five years average industrial salary.

There are attempts being made to introduce a practice whereby in public interest cases, each side bears its own costs regardless of who wins. This has yet to be properly established although some progress has been made.

If a citizen is on a low income, and his/her case is deemed suitable, he/she may be granted legal aid. The legal aid fund then meets most if not all of the cost of conducting the case, subject to recovering its costs out of any subsequent award by the court. A major advantage of receiving legal aid, is that the

citizen is effectively protected against paying the costs of the other side if unsuccessful.

However, legal aid is often not available for environmental cases, as legal aid rules effectively block most cases of a collective or communal nature. But the situation is subject to change, since the legal aid system will shortly be reformed.

Legal Assistance

Public Interest Environmental Lawyers

In the UK, there are two legal advisory services provided by or through NGOs: EarthRights and the Environmental Law Foundation (ELF).

EarthRights

EarthRights has one full time lawyer. He is supported by a team of volunteers. EarthRights specializes in all aspects of environmental law, and indeed all aspects of the law pertaining to the environment. Thus assistance is provided on pollution control, planning law, the right to protest, the setting up of environmental organizations. EarthRights services are provided completely free of charge to the public. Its work is supported by donations and, where appropriate, legal aid.

The Environmental Law Foundation

The Environmental Law Foundation (ELF) is a network of private lawyers, who provide a discounted service on various aspects of environmental law. The ELF office is supported by donations, grants and income from publications.

Commercial Lawyers

In addition, there are a small number of private lawyers who specialize in innovative environmental work, including the firms of Leigh Day & Co. and Tyndallwoods, and individual lawyers such as Richard Buxton in Cambridge.

Ombudsman

The ombudsman does deal with environmental complaints. It is not known what per-

centage of complaints made to the ombudsman are environmental, but the reporter has yet to come upon an environmental complaint that has been upheld.

MAPPING AND EVALUATION OF OPPORTUNITIES

A brief word of warning is necessary for those reading the mapping charts. It is not possible to define or summarize the UK situation in terms of definitive rights, contrary to the terminology of the standardized sheets. The relevant UK legislation is so beset by exemptions and conditions that to describe the resulting dispensations as "rights" is misleading.

Access to information, public participation and access to justice in the UK rests chiefly on the ability and willingness of the high court to quash erroneous administrative decisions by court order. Such an order is discretionary and is considered not only in the light of legislation but on weighty case law. The result is that in real terms citizen's rights, such as they are, are elastic and often unenforceable concepts.

These charts are more a blunt instrument than surgeon's scalpel, and thus of limited value. Reference should where possible be made to the text of the report.

CONCLUSIONS AND RECOMMENDATIONS

In England and Wales, the three pillars of public involvement in environmental protection raised by the Sofia Guidelines: information, participation and access to justice, exist within what can only be described as a culture of containment.

The public's "right" to know is permitted, but only to the extent it does not interfere with economic, administrative or other interests. This is plainly unsatisfactory where effective public participation is impossible unless these interests give way.

Public participation is something which is invited or permitted by government, and is strictly limited by the requirements of centralized representative government to consultation. Active participation through citizen-initiated referenda in decisionmaking is not possible.

TABLE 3: International Decisionmaking

	<i>Initiation of DM (problem/proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	—	—	—	—	—	—	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	—	—	—	—	—	—	—
Adequate notification (right to be informed)	—	—	—	—	—	—	—
Access to information (right to access to information)	—	—	—	—	—	—	5

TABLE 4: Preparation and Approval of National Laws and Regulations

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF							
PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	—	—	—	—	—	—	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	—	—	—	—	—	—	—
Adequate notification (right to be informed)	—	—	—	—	—	—	—
Access to information (right to access to information)	—	—	—	—	—	5	5

TABLE 5: Preparation and Approval of National Strategies and Policies

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF							
PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	—	—	—	—	—	—	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	—	—	—	—	—	—	—
Adequate notification (right to be informed)	—	—	—	—	—	—	—
Access to information (right to access to information)	—	—	—	—	5	5	5

TABLE 6: Preparation and Approval of Local Rules and Regulations

	<i>Initiation of DM (problem/proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	—	—	—	—	—	—	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	—	—	—	—	—	—	—
Adequate notification (right to be informed)	—	—	—	—	—	—	—
Access to information (right to access to information)	—	—	—	—	5	5	5

TABLE 7: Preparation and Approval of Regional/Local Policies (Strategies)

	<i>Initiation of DM (problem/proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	—	—	—	—	—	—	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	—	—	—	—	—	—	—
Adequate notification (right to be informed)	—	—	—	—	—	—	—
Access to information (right to access to information)	—	—	—	5	5	5	5

TABLE 8: Preparation and Approval of Territorial Plans
(Spatial/Local Land-Use Plans)

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	—	—	—	—	—	—	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	—	—	—	5	5	—	—
Adequate notification (right to be informed)	—	—	5	5	5	5	—
Access to information (right to access to information)	—	—	5	5	5	5	5

TABLE 9: Environmental Impact Assessment

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	—	—	—	—	—	—	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	—	—	5	5	—	—	—
Adequate notification (right to be informed)	—	—	5	5	—	—	—
Access to information (right to access to information)	—	—	5	5	5	5	5

TABLE 10: Siting and Permitting

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	—	—	—	—	—	—	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	—	—	—	5	5	5	—
Adequate notification (right to be informed)	—	—	—	5	5	5	—
Access to information (right to access to information)	—	—	—	5	5	5	5

TABLE 11: Management of Environmental Funds

	<i>Initiation of DM (problem/ proposal)</i>	<i>Defining the scope, issues and stakeholders (pre-decision scoping)</i>	<i>Defining the scope of DM (impacts and alternatives)</i>	<i>Evaluation of the alternatives</i>	<i>Selection of the alternative (DM about the selected alternative)</i>	<i>Execution of the selected alternative</i>	<i>Post-decision monitoring & enforcement (feedback/ adjustment)</i>
Phases of Decisionmaking							
LEVELS OF PUBLIC PARTICIPATION							
Control of decisionmaking (right to decide)	—	—	—	—	—	—	—
Decisionmaking power is shared (right to joint decisionmaking)	—	—	—	—	—	—	—
Comments are seriously taken into account (right to be heard)	—	—	—	—	—	—	—
Adequate notification (right to be informed)	—	—	—	—	—	—	—
Access to information (right to access to information)	—	—	—	—	—	5	5

A lack of such positive participation can be seen as a cause for the growth in recent years in the number of campaigners willing to participate in direct action, often in breach of both the civil and criminal law. Such campaigners are marginalized. The authorities dismiss them as troublemakers and miscreants.

By some contrast, however, access to justice has opened up to individuals. While individual campaigners are still viewed with suspicion by the courts, NGOs and citizens with interests deemed legitimate are finding that the courts are allowing them standing in the primary process for challenging government decisions — judicial review. Unfortunately, such openness is restricted by the expense of going to court.

Recommendations

The proposed freedom of information act is promising. However, what is more important is a change of attitude to shift the balance towards the citizen's right away from competing interests, eg. commercial. Indeed, it may be time to ask whether if businesses wish to operate in the environmental sphere they should surrender the right to maintain any confidentiality over such operations. The citizen's right to know what is happening to his or her environment must be paramount.

Important steps forward for public participation in decisionmaking would be the introduction of citizen-initiated referenda, and the right of third parties to appeal against planning decisions.

Access to justice would be promoted radically by the public funding of public interest cases (as is proposed) and a more robust approach to litigants in public interest cases bearing their own costs.

But at the end of the day, what is needed is a cultural shift. The legislation is only as good as the people enforcing it. If the proposed commissioner for information is more business-minded than environment-minded, important information will continue to be withheld. Similarly, public participation will be lackluster and access to the courts fruitless.

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About the Reporters**AUSTRIA****Eva Glawischnig**

Professional activities: Worked from 1993-1996 for the Austrian environmental organization Global 2000, where she was responsible for EU activities and environmental law. She is now working for the Green Party in Vienna. She graduated as Magister after completing her legal studies at the University of Graz in 1993 and in 1998 completed her dissertation.

Publications: "*Das EU-Umweltbuch*"; "Options for the Austrian Position for the EU-Intergovernmental Conference," the Austrian contribution to "Free Access on Environmental Information in Europe."

Georg Gunsberg

Professional activities: Worked for GLOBAL 2000 from 1991-1995, primarily on issues related to ozone, climate change and atmosphere. Since 1995, as freelance project manager, he has coordinated different NGO-projects relating to international environmental policy, e.g. activities for Conferences of the Parties to the Framework Convention on Climate Change or the Montreal Protocol on Substances that deplete the ozone layer.

Publications: Different reports and articles on climate change, ozone and access to environmental information.

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Student of political science.

GERMANY**Betty Gebers**

Professional activities: Since January 1993, Coordinator of the Environmental Law Division of the Oeko-Institut, Darmstadt office, and since 1991 Coordinator of the Environmental Law Network International (ELNI). Participation in numerous publications.

Petra Buchberger

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GREECE**Vassilis Dorovinis**

Professional activities: Secretary General and legal advisor of "Elliniki Etairia." Has collaborated with other Greek NGOs in many campaigns for the protection of the environment and cultural heritage, and in particular was one of the lawyers who obtained the cancellation of the Acheloos Diversion from the Greek Council of State.

Studied law, political and economic sciences at the University of Athens (Diploma in Law). Followed post-graduate studies in law, political science and history (D.E.S. of Political Science) at the University of Paris I. Specialized in issues concerning city planning and the protection of the cultural heritage.

IRELAND**David L. Meehan**

Professional activities: Solicitor and consultant specializing in law and policy on freedom of information and environmental protection. Lectures regularly and has published widely in legal journals in these fields, including articles on Ireland's Freedom of Information Act, 1997, and others on the implementation in Ireland of Directive 90/313. Currently producing a Master's thesis at University College Dublin on the actual use of freedom of information rights and procedures. Has previously worked at the Free University, Berlin, and in a prominent law firm in Brussels.

THE NETHERLANDS**Ralph Hallo**

Professional activities: Coordinator of the international program at *Stichting Natuur en Milieu* (SNM), one of the major environmental organizations in the Netherlands.

Publications: Editor of "Access to Environmental Information in Europe: the Implementation and Implications of Directive 90/313/EEC" and numerous other publications on access to environmental information.

Victor Jurgens

Professional activities: SNM's specialist in legal policy matters.

Publications: Co-author of "*Actieboek Natuur en Milieu*," a volume on the possibilities, laws and procedures for the protection of nature and the environment in the Netherlands.

NORWAY

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Professional activities: Global Consultancy. Resident in Norway for several years. Holds university degrees in natural sciences and biotechnology, from the University of Trondheim (B.Sc.) and the University of Oslo (Cand. Scient.), respectively. At present, provides consultancy on issues related to health and environment, with particular emphasis on sustainable development and ecotourism in Africa. Currently associated with the Norwegian Forum for Environment and Development.

PORTUGAL

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Professional activities: Graduate in Law from the School of Law, Catholic University, Lisbon (1988). Master in Environmental Law from the School of Law, Catholic University (1997); subject of thesis "The Reparation of ecological damage" (17 val.). Visiting scholar at School of Law (Boat Hall), University of California at Berkeley (1992).

Lawyer, member of the Portuguese Bar Association since 1990. Assistant Professor of Law School, University of Lisbon, since 1991. Legal adviser to the Secretary of State for Local Administration and Land-Use Planning (1990-1995).

SPAIN

Fe Sanchis Moreno

Professional activities: Director of the Legal Department of TERRA, Environmental Policy Centre since 1996. Has worked in the environmental field since 1989 for different NGOs and environmental organizations. Main areas of work dealing with implementation of environmental policy and legislation in Spain. Has participated as coordinator or national correspondent in different networks and projects regarding access to information and public participation, structural funds, EIA, energy, and penal regulation of environmental damages.

Publications: Several contributions to publications on the field of European environmental policy and issues related to Access to Information.

Jose Luis Diaz Cuadrado

Professional activities: Correspondent with TERRA, Environmental Policy Centre since 1998. Graduate in Law from the Autonomous University of Madrid (1989). Member of the Legal Commission of the Coordinating Committee of Environmental Defence Organizations (CODA) for more than five years, participating in different projects, programs and campaigns related to the conservation of natural sites and wildlife, resources and claims in relation with environmental issues. Consultancy and collaboration with public administrations and institutions in the development of environmental regulations and legislative initiatives.

Maribel Fdez Fdez-Villarjubin

Professional activities: Graduate in Law from the Complutense University of Madrid (UCM, 1997). Since 1998, correspondent with TERRA, Environmental Policy Centre, in projects and studies related with access to environmental information and public participation. Currently undertaking further studies in environmental law.

UNITED KINGDOM

John Dunkley

Professional activities: Solicitor working for EarthRights, an environmental law and resource center which provides free legal assistance to individuals and groups involved in environmental campaigns. Recent work has centred on the UK's controversial roads program and access to information.

CHARITABLE FOUNDATION ECOPRAVO-LVIV is an independent nongovernmental organization registered by the Lviv regional branch of the Ministry of Justice of Ukraine in March 1994. The members of the Foundation are qualified specialists in environmental protection and law. The Foundation provides legal services and education in the sphere of environmental protection for citizens and NGOs. Moreover, it conducts various projects related to the area of legal environmental protection, consults on legal aspects of environmental issues as well as NGO institutional building and represents citizen and NGO interests which relate to environmental problems in state and prosecutor bodies as well as in courts.

THE EUROPEAN ENVIRONMENTAL BUREAU (EEB) is a federation of approximately 130 European environmental and nature protection organizations, mainly from EU and EFTA countries.

The main focus of EEB activities is the EU's role in the field of environment, both within and beyond its borders. The EEB aims to bring together environmental NGOs in the EU member states in order to strengthen their impact on EU policies and projects. It is committed to promoting the protection and conservation of the environment, the restoration and better use of natural resources, and an equitable and sustainable lifestyle.

Founded in 1974, the EEB has its headquarters in Brussels, staffed by eight full-time and four part-time staff.

THE REGIONAL ENVIRONMENTAL CENTER FOR CENTRAL AND EASTERN EUROPE (REC) is a non-partisan, non-advocacy, not-for-profit organization with a mission to assist in solving environmental problems in Central and Eastern Europe (CEE). The Center fulfills this mission by encouraging cooperation among nongovernmental organizations, governments, businesses and other environmental stakeholders, by supporting the free exchange of information and by promoting public participation in environmental decisionmaking.

The REC was established in 1990 by the United States, the European Commission and Hungary. Today, the REC is legally based on a Charter signed by the governments of 26 countries and the European Commission, and on an International Agreement with the Government of Hungary. The REC has its headquarters in Szentendre, Hungary and Local Offices in each of its 15 beneficiary CEE countries which are: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, FYR Macedonia, Poland, Romania, Slovakia, Slovenia and Yugoslavia.