

Differences in access to information cultures and regulations in EU Member States:

A problem for transparency in the EU?

The exercise of the right of 'access to information' enables EU citizens to keep their governments and public bodies in the EU member states and at the EU level accountable. This can hinder corrupt practices that benefit from opaque or obscure regimes. Access to information is essential for EU citizen and civil society empowerment. Citizens entrust their governments and ultimately the EU with power through elections, and with resources through the payment of taxes. Those who are entrusted with this power bear a responsibility not only to serve, but also to **inform citizens and encourage the public to participate** in their decisions and actions. - It is citizens, after all, who should ultimately be the source of power, as they bear the consequences of its abuse.

Access to documents regulations and their practical implementation, regarding both pro-active publication of information and the right to request access to not-yet-public documents, differ considerably between EU member states. This can be explained to a large extent by **cultural differences** and **divergent understandings of the role of government** and public administration. The impact of cultural factors is particularly visible where the introduction of better laws is only slowly followed-up by governmental and administrative actions.

In the **Council of the European Union**, the second legislative chamber of the EU, these cultures meet and mix, and the balance of power between countries advocating secretive, diplomacy-style policy-making and those supporting 21st century democratic transparency standards is decisive for more or less transparency and openness of the Union. If a majority of member states was in favour of more transparency and a wider access to documents, this would not only allow to open up the Council's largely **opaque decision-making** but it would also be the basis for a positive **reform of Regulation 1049/2001 on access to EU documents**, a reform that cannot happen without the consent of the Council.

It is thus indispensable to keep an eye on developments in access to documents legislation and implementation in the EU member states; **EU-level advocacy for more transparency** has to push for higher standards on the national level while holding member states' officials and politicians responsible for also applying these higher standards when representing their countries in all Council configurations and structures, including the **Working Party on Information** that deals with access to documents requests and the 1049/2001 recast process.

The **impact of different cultures** is most visible in the reactions by member states when they decide on appeals ('confirmatory applications') to freedom of information requests for Council documents. Denmark, Finland and Sweden are the countries that vote most frequently against restrictive disclosure decisions by the majority in the Council, sometimes joined by the Netherlands, Slovenia or Estonia. In one of the rare cases when a minority voted against more disclosure in a confirmatory application, those countries voting against the majority were Germany, Ireland and Italy¹.

¹ See, as examples, Council documents 6449/08, 7710/09, 8735/09, 15144/09, 8498/10 and 8738/1/09 REV 1.

The situation in EU member states: Different rules, cultures, and practices

On the next two pages, we will take **a look at the state of play and recent developments within certain EU member states**, some of which have made steps forward while others show more ambiguous signs or even steps backwards with regard to freedom of information (FOI).

Some EU member states like **Spain, Cyprus and Luxembourg** still do not have a specific Freedom of Information Law. The **Spanish** press announced this summer that a draft law would be put forward by the government, which proved wrong. Recently, Access Info has leaked the draft and asked the public to participate in a consultation process².

In 2003, the FOI Act of **Ireland** was amended to make the refusal of access to government records and advice given to the government the standard. In addition, fees were raised and the number of requests dropped from 18,443 in 2003 to 12,597 in 2004³. In 2009, a total of 14,290 requests were made⁴.

The **German** Data Protection Officer (also responsible for FOI) complained in his report for 2008-09 that contrary to law-makers' intention, government actions were regarded as not covered by the FOI law⁵. This restrictive interpretation which also covers government actions at the EU level has been criticised by Transparency International (TI) Germany⁶.

In **Greece**, several laws govern access to documents since 1986 - the latest from 2006 - but according to Transparency International Greece the general impression is that the practical implementation of these provisions are not as expected. As a consequence of the financial crisis, a new law (3861/2010) has been passed in July requiring the online publication of all decisions involving commitments of funds in the general government sector.

In the **UK** where the FOI act was passed in 2005, the climate for government transparency is generally positive. However the MP expenses scandal was only possible after the data, which was rejected by a FOI request, was leaked. Publication of EU agricultural funds data was delayed for several months in 2010 (until after the elections).

Bulgaria's Freedom of Information Law is now 10 years and the country has the highest per-capita requests for access to documents in the EU. Observers note visible improvements but also identify problems such as "silent refusals, bureaucratism, unwillingness for prompt response, ungrounded refusals".⁷

Slovakia has a FOI law since 2000 which was slightly amended in 2010. Currently, further amendments regarding the requirement for public authorities to publish contracts on the internet are being discussed⁸.

² „Access Info launches public consultation on leaked transparency law“ (22 Sep10) <http://tinyurl.com/ES-FOI-leak>

³ Office of the Information Officer of Ireland (May 2008): Freedom of Information: The First Decade. Freedom of Information in Ireland; p. 14-15 (http://www.hiqa.ie/FOI/FOI_first_10_years.en.pdf).

⁴ Office of the Information Officer of Ireland (April 2009): Annual Report 2009; p. 10 (<http://oic.gov.ie/en/Publications/AnnualReports/AnnualReport2009/File,12066,en.pdf>).

⁵ Office of the Data Protection Officer of Germany, Work report on Freedom of Information for 2008 and 2009; http://www.bfdi.bund.de/SharedDocs/Publikationen/Taetigkeitsberichte/TB_IFG/2TB08_09.pdf?__blob=publicationFile.

⁶ Transparency kritisiert restriktive Umsetzung des Informationsfreiheitsgesetzes durch Bundesverwaltung; <http://transparency.de/2010-05-04-Taetigkeitsbericht.1611.0.html?&contUId=3294> (4 May 2010).

⁷ Access to Information Programme Annual Report 2009; http://www.aip-bg.org/pdf/report_2009_eng.pdf.

⁸ See <http://tinyurl.com/SK-FOI-Amend>.

Sweden has the longest history of freedom of information and pro-active publication of data ("The Principle of Public Access" exists since 1766). For example, Swedish Commissioner Cecilia Malmström is the only Commissioner that publishes her external correspondence in a publicly accessible register⁹.

Denmark's access to information law was first adopted in 1964 and the present Access to Public Administration Files Act was put in place in 1985. Freedom of Information was extended in 2005 with an Act on the re-use of public sector information. Despite generally favourable rules, there are still cases where journalists have to fight for years to get certain information that are in the public interest¹⁰.

The **Slovenian** Act on Access to Public Information exists since 2003. A public interest test was introduced in 2005 in order to enhance transparency and prevent misconduct¹¹.

Conclusion

Access to documents regulation and implementation is usually very complex and often contradictory, both between countries but sometimes even within a country or between different bodies of public officials. This overview is therefore meant to offer a quick glance at some cases, timeframes and existing problems without pretending to be comprehensive.¹²

The analysis nevertheless demonstrates that in some cases new or better access to information laws need to be adopted and that more often **existing laws need to be better implemented** to secure transparency and to allow public scrutiny. More work has to be done to secure recognition of the right of access to information as a fundamental human right in the EU, creating a strong and coherent culture for the right to information, both within EU governments, its societies and at the EU level, throughout all its bodies and institutions. A full range of **concrete activities** is necessary in this regard, such as technical assistance in the drafting and implementation of access to information laws by the civil society, monitoring compliance with existing laws including through better statistics on how different public bodies handle Freedom of Information requests, continued advocacy and awareness-raising campaigns, filing appeals and engaging in litigation to defend the right to information. All these activities will promote recognition of access to information as a fundamental human right and strengthen its value as a tool in the fight against corruption.

About Transparency International

The Transparency International Liaison Office to the EU is part of the global Transparency International (TI) movement, the leading civil society organisation in the fight against corruption. The mission of the EU Office is to prevent and address corruption and promote integrity, transparency and accountability in the EU institutions and in EU internal and external policies, programmes and legislation.

⁹ See <http://bit.ly/9H8ib8>.

¹⁰ "DENMARK Hidden danger: No overview over risk factories" (10 Sep 2010): <http://tinyurl.com/wob-DK>.

¹¹ <http://www.epractice.eu/en/document/288361>.

¹² We would like to thank all national chapters of Transparency International which have contributed to the gathering and interpretation of information for this short summary. Our chapters can be contacted for more in-depth comments regarding their assessment of the concrete situation in their respective countries.

Relevant further reading

- Transparency International, Global Priorities - Access to Information
http://www.transparency.org/global_priorities/other_thematic_issues/access_information
- Statewatch, covering EU freedom of information for almost two decades
<http://www.statewatch.org/foi/foi.htm>
- Overview on Freedom of Information Laws & FOIA request statistics from 90 countries by Roger Vleugels (September 2009): <http://tinyurl.com/FOIA-2009>
- Access to documents: Links to Internal Rules of some EU Institutions and Bodies (June 2010): <http://tinyurl.com/linklist-AtD>
- Access Info: “Questions to Brussels” (Study on Access to Documents in different Commission DGs, 2009): <http://tinyurl.com/q-to-bxl>
- Some EU Court cases from 2008-10 regarding Access to Documents (June 2010)
<http://tinyurl.com/EU-Court-AtD>
- Report from the Commission on the application in 2009 of Regulation (EC) No 1049/2001 (including statistics by member state): <http://tinyurl.com/COM2010-351>
- Eight annual report of the Council on the implementation of Regulation No 1049/2001:
<http://tinyurl.com/Council8486-10>
- European Parliament Study on “Classified Information in light of the Lisbon Treaty” (May 2010): <http://tinyurl.com/EU-classified-info>
- Access Info: Comparative information on openness of Cabinet Meetings (Sept 2010):
http://www.access-info.org/documents/comparative_secrecy_of_Cabinet_agendas.pdf
- DG Trade memo leaked by Wikileaks on how to hide certain information from the public (2008): <http://tinyurl.com/wikileaks-dgtrade>

See also:

- <http://www.wobbing.eu>
- <http://www.foiadvocates.net/en>
- <http://Right2INFO.org>

