

Access Info Europe

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Mr Frans Timmermans,
Vice President European Commission
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Belgium

Sent by e-mail to Deputy Head of Cabinet Michelle Sutton: michelle.sutton@ec.europa.eu

Madrid, 10 December 2014

Dear Mr Timmermans,

I am writing on behalf of Access Info Europe, a civil society organisation which works to defend and promote the right of access to information in law and in practice across Europe, including within the EU institutions.

As you finalise the Commission work programme, I write to bring to your attention some important issues which require action in the area of transparency.

1. Transparency in Law: Essential Reforms to Regulation 1049/2001

During the previous legislative term, discussions to reform the EU's access to documents Regulation 1049/2001 stalled, and there is currently a lack of clarity as to the status of the Commission's two reform proposals.

Access Info suggests that it would be pragmatic to withdraw the Commission's 2008 proposal, and to focus instead on a narrower modification that addresses only the most pressing reforms, which are:

- » Expansion of the scope of Regulation 1049/2001 in line with the Treaty of Lisbon so that it covers all institutions, offices, bodies and agencies.
- » Bring the exceptions on access to documents into line with international standards such as the Council of Europe Convention on Access to Official Documents, which requires a public interest test for all exceptions. Currently under Regulation 1049/2001, EU institutions are not required to take into account the public interest when applying exceptions on: public security, defence and military matters, international relations, and the financial, monetary or economic policy of the Community or a Member State; there should always be a possible public interest override which can be applied on a case-by-case basis.
- » Harmonise the exceptions with those in the Aarhus Convention and its implementing Regulation 1367/2006 on environmental information.
- » Clarify the relationship between the right of access to documents and the right to privacy, both of which are now firmly established as fundamental human rights in the EU treaties.

2. Transparency in Practice

Access Info Europe's monitoring of EU transparency over the past few years, in particular via the online request platform AsktheEU.org which we launched in 2011, has revealed a number of practical barriers to public access to EU documents which we call on you to address.

a) Postal addresses policy

The postal addresses policy, adopted on 1 April 2014, and being applied across the Commission, is resulting in a refusal to register requests from citizens if they fail to provide a personal, "valid" postal address.

In Access Info Europe's analysis this policy runs counter to the principles of openness in the Treaty of Lisbon. It is also inconsistent with international standards, with the universal nature of the right to information which in most countries does not require identification of the requester, and out of line with the information era in which it should be possible to communicate with public administrations by electronic means.

We call on you to reverse this policy, and to seek alternative methods for ensuring the delivery of documents by electronic means, in line with a modern, efficient, and transparent 21st-century administration.

b) End the artificial distinction between documents and information

EU bodies regularly distinguish between "documents" and "information" requests, answering the latter only under the Code of Good Administrative Practice, which means that citizens do not have legal recourse if the information is not provided.

Regulation 1049/2001 already contains a sufficiently wide definition of document as "any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording)". This should permit the public to request information without having to ask for specific documents.

We urge the Commission to adopt a comprehensive transparency policy whereby requests which seek information are processed in the same way as requests which seek particular documents, thereby enabling citizens to appeal when information is not (fully) disclosed.

c) End excessive and inappropriate use of exceptions

Access Info identified a number of problematic applications of exceptions to the right of access to EU documents, which are particularly important to address if the EU is to ensure that it enjoys greater democratic legitimacy in the eyes of the citizens by acting openly and transparently.

A particular concern is the **overreliance on the personal privacy exception**, which recently has been used to deny, inter alia, information about how much Commissioners earn or spend on official travel [www.asktheeu.org/en/request/commissioners_expenses_2012_and_2]. There remain problems with access to information about EU spending (such as the distribution of agricultural subsidies) and the names of government officials and lobbyists participating in meetings in Brussels.

Whilst the European Court of Justice has upheld the right of private individuals to protect their personal data, we strongly believe that a proactive approach by the European Commission could avoid this limiting transparency in a way that prevents public scrutiny of public decision-making or spending. This can be done simply by requiring that participants in meetings and recipients of EU funds agree in advance to provide their basic data in order that there be true accountability of decision making and the expenditure of taxpayer's funds.

Other areas in which greater transparency is needed include that of **infringement proceedings**, about which it is particularly hard to obtain information, and **legal advice**. There is a pressing need to replace the general presumptions of secrecy with a greater culture of openness, and to give greater weight to the public interest in legal advice or information about infringement proceedings.

Last but not least, Access Info Europe notes with great concern the broad use of the **international relations exception**, which has a particular impact on information about relations with non-EU Member States including in crucial areas of negotiations on a wide range of issues of public interest. In addition to a reform to Regulation 1049/2001 which

provides a public interest override, Access Info Europe urges that the Commission adopt a policy of only refusing documents where there is a demonstrable harm to international relations, and not simply because third countries, which may be less transparent than the EU, are reluctant for the information to be disclosed.

d) Improve Record Keeping

Good record keeping is essential for good administration, and in order to allow citizens to understand and form an opinion on how a decision was reached or how a piece of legislation was drafted. The Lisbon treaty requires that "Union institutions, bodies, offices and agencies shall conduct their work as openly as possible," and yet in spite of this, many meetings at which legal advice is given and at which legislation is discussed are not recorded and minutes are often not taken.

We therefore urge the Commission to develop standards on which information should be recorded. We recommend that the level of record keeping is sufficient to permit genuine public engagement in, and full accountability of, Commission decision-making.

e) Transparency of Trialogues

A full 85% of EU laws are agreed in first reading, during which trialogues play an important part of the decision-making process. Triologue meetings between the Council, Commission, and Parliament, are informal and are attended by a limited number of people. The timing of the meetings is not known, and formal minutes are not taken.

We urge you to support a policy of proactively publishing information about trialogues, including by providing agendas in advance of meetings and publishing minutes, with details of agreements reached and the next steps to be taken. Documents used as the basis for trialogues should be available to the public.

f) Improve Proactive Transparency

There is still much information emanating from the Commission which is not made public proactively. The EU Open Data Portal does not contain much information needed for accountability and participation; information is scattered across multiple websites and the Commission's register is incomplete.

We call on you to strengthen the policy of proactive publication of key information, in particular that related to: expenditure, procurement, subsidies, decision making, infringement proceedings, policy and law-making. This information should be published in a timely manner, in accessible formats, that are non-proprietary, and without restrictions such as copyright on re-use.

There should be a particular emphasis on **proactive lobby transparency** in line with your commitment to increase the availability of information on the influence of interest groups in Brussels.

Information and documents which are frequently requested by the public should be published proactively and should be easily findable.

The Access Info Europe team thanks you for your attention. We would be happy to discuss further any of these proposals, including by providing more a detailed briefing based on best practices and comparative analysis of international standards.

Yours sincerely,



Helen Darbishire
Executive Director
Access Info Europe