Access Info Europe

Cava de San Miguel 8, 4C

28005,

Madrid

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## Submission to CDDG and Conference of INGOs on draft guidelines for meaningful civil participation in political decision-making

This document sets out recommendations by Access Info Europe to the Council of Europe’s Committee on Democracy and Governance (CDDG) and Conference of INGOs on *draft guidelines for meaningful civil participation in political decision-making*.

We welcome these draft guidelines and their recognition that the right of access to information is an indispensable precondition for genuine civil participation in decision making. We note that the Conference of INGOs Code of Good Practice on Civil Participation in the Decision-Making Process recognises that, “*Information is relevant for all steps in the decision-making process*”, particularly as “*the basis for all subsequent steps in the involvement of NGOs in the political decision-making process.” [[1]](#footnote-1)*

Access Info Europe, as an organisation dedicated to defending and promoting the right of access to information, has focussed our submission to the consultation on four specific recommendations drawn from our recent research into transparency of decision-making processes, conducted with partners around Europe.

These recommendations, which are designed to strengthen the Draft Guidelines, are:

 - Ensure the creation of records (‘Duty to Document’)

 - Ensure proactive publication of key information related to decision-making

 - Timely provision of information is also needed in response to requests

 - Ensure exceptions to access are applied narrowly

In addition to these detailed comments below, we welcome the broad scope of the Draft Guidelines to cover all processes where public authorities, “adopt a policy document, strategy, law, regulation, or in any process where a decision that affects the public or a segment of it is made” and the essential emphasis on opening up all phases of decision-making such as agenda-setting, drafting, adoption, implementation, monitoring and reformulation.

We also note the particular importance of the section on the enabling environment for participation, the need to respect freedom of expression and to ensure protection of whistleblowers. In an era where there is pressure on – or even closing of – civic space in a number of countries across Europe, these Guidelines will come as timely reminder of the principles to which Council of Europe member states should adhere.

A further very positive aspect of the Guidelines is their emphasis on ensuring participation in practice, through a series of measures, including training of public officials, ensuring sufficient funding available to support participative processes, proactive measures to engage NGOs and the media as well as to ensure widespread dissemination of information about participatory opportunities.

Our research has exposed a severe lack of access to key information necessary for timely and meaningful participation in decision making. We have also found that in many cases the lack of transparency is caused by the failure to keep an adequate record of ongoing and finished processes, by not creating, for example, minutes of meetings or justifications as to why decisions have been taken.

Access Info considers the following recommendations to be essential for ensuring the availability of information in order to have meaningful participation in decision making, and urges the Council of Europe to ensure that they are explicitly addressed in these guidelines. In addition to the text below we submit an annotated version of the Draft Guidelines with our suggestions in track changes.

**1. Ensure the creation of records (‘Duty to Document’)**

Access Info recommends that the Council of Europe ***place special attention in its guidelines on the “duty to document”, in other words, on the creation of records related to decision-making processes that are necessary for citizens to participate and hold public officials to account.***

Our research into 21 decision-making processes around Europe has revealed that in practice, for half (10) no minutes of meetings had been created.

The lack of such records makes it impossible for the public to participate meaningfully in a decision-making process. The lack of records also means that the public is unable to follow the process and hold decision makers accountable after a decision is taken.

Key information related to decision making should include: institutional contact information, information related to meetings, minutes of meetings, lists of participants in meetings, documents received from third parties (including during meetings), legal advice, and justifications of decisions taken. See also Point 2 below.

Access Info therefore recommends the following paragraph be added in the section on Access to Information (we have proposed that this be inserted after Paragraph 23 and become a new Paragraph 24):

*“Public authorities should ensure the recording of key information which is necessary for meaningful participation in decision-making processes.*

**2. Ensure proactive publication of key information related to decision-making**

Access Info welcomes the requirement in the Draft Guidelines that timely and accurate disclosure of all key documents at all stages of decision making, in accessible and open formats, proactively disseminated through multiple channels (current Paragraphs 24, 25, and 26).

Research by Access Info and our partners has found that levels of proactive publication in practice tend to be low. Indeed, of 34 decision-making processes we evaluated, in no case were minutes of meetings published proactively, nor were ministers’ agendas (diaries). Furthermore, just one third of the processes (10 out of 34) had justifications of decisions published, and for only four of the 34 processes were documents submitted by lobbyists and external interest groups proactively published online.

This lack of key information is a severe weakness in Europe that will hinder meaningful participation if not addressed.

In order to address this, Access Info Europe recommends that the Council of Europe ***specifically define the key information needed for participation***. This can be done in a new Paragraph (that can be inserted after the new Paragraph 24, proposed in Point 1 above):

*“Key information for all decision-making processes, whether or not a formal consultation will be held, should include: contact information, ministerial agendas, minutes of meetings, documents received from third parties, legal advice, policy advice, and justifications of decisions taken.”*

In addition, we recommend that it be specified that such information always be available free of charge and to this end have proposed an additional paragraph after current Paragraph 24:

*“Information should be provided in an appropriate and accessible format, should be organised so as to make it easily findable, and should always be free of charge.”*

**3. Timely provision of information is also needed in response to requests**

Access Info welcomes the requirement in Paragraph 24 of the Draft Guidelines that the public receive timely information.

Our research has revealed, however, that information related to decision making is often not disclosed in a timely manner. Across the nine European countries in our investigation, it took on average 61 days to answer requests for information.

In our study, only in Finland were requests answered in what could be considered a sufficiently timely fashion to facilitate participation in a decision making – 4.5 days. For the other countries, the range was between 20 days (Croatia) and 76 days (UK).[[2]](#footnote-2)

It is essential that information be made available in a timely manner to allow interested stakeholders sufficient time to learn about a participatory process, to review materials, and to prepare quality and considered input. Civil society is also then able to appropriately prepare input and communicate with wider networks to amplify the pool of potential participants. This timeliness is crucial both when governments proactively publish information, as well as in response to access to information requests.

Access Info Europe therefore recommends that the Council of Europe ***further elaborate on the need for information to be made available in a timely manner, both proactively and in response to requests for information***.

We suggest the following addition to current Paragraph 24 so that it now reads in full:

*“Public authorities should ensure that at all stages of decision-making the public receives timely and accurate information presented in clear and understandable language. Requests for information needed for participation should be answered as promptly as possible and certainly in a sufficiently timely manner to permit such participation.”*

**4. Ensure exceptions to access are applied narrowly**

Some information relating to decision-making processes will, potentially and quite legitimately, fall under the scope of the permissible exceptions to the right of access to information.

The narrow application of exceptions enables citizens and civil society the widest access to information that will be necessary for them to meaningfully participate in decision-making processes.

International standards on access to information, in particular the Council of Europe Convention on Access to Official Documents, are clear that information can be withheld only if its disclosure would cause demonstrable harm to legitimate interests as permitted by law and only after consideration of the public interest in disclosure. These protected interests must be clearly and specifically defined in national law and must be applied on a case-by-case basis.

Given the high public importance in transparency of decision making, often this balance will come down in favour of publication of the information. Hence, although protection of decision making or of legal advice are legitimate exceptions, when it comes to the majority of processes, the importance of the public knowing what is being done and what the legal options are, will weigh in favour of disclosure of the information. Indeed, often disclosure helps improve the quality of participation and hence of the final decision. In no cases should exceptions be applied to cover up what might be politically awkward situations in which there is, however, no demonstrable potential harm to a protected interest.

We have identified through our research that, in practice, information related to decision making processes is often not released because public officials have failed to take the necessary steps to ensure that it can be made public. For example, this means that all participants in meetings, expert groups, and consultative processes, be asked to confirm that they give consent for their names to published (or indeed that such consent is a precondition for participating in some meetings) in order that lists of participants and names of contributors may subsequently be made public.

Record keeping, as noted above, should always be done in a sufficiently comprehensive way that permits full accountability after a decision has been taken.

Access Info recommends the Council of Europe ***confirm in the guidelines that exceptions to access should be applied narrowly and justified, be limited to those contained in the Convention on Access to Official Documents, and should always give full consideration to the public interest in participation.*** This applies to both proactive publication and responses to access to information requests.

In the Access to Information section of the Draft Guidelines, Access Info recommends the following paragraphs be added:

*“When taking decisions on publication on information related to a decision-making process, either proactively or in response to requests, public authorities should ensure that the widest possible access is granted to the requester. Any exceptions must be limited to those permitted by the Convention on Access to Official Documents, applied narrowly and be fully justified.”*

“*There should be mechanisms to train public officials on how to record information in a comprehensive way that also permits maximum disclosure, and on how to apply the exceptions appropriately and narrowly.”*

***Document Prepared by:***

Andreas Pavlou, RTI Research & Campaigner

Helen Darbishire, Executive Director

Access Info Europe

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For more information, please contact Luisa Izuzquiza, luisa <at> access-info.org.

1. https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802eed5c [↑](#footnote-ref-1)
2. Data based on 68 requests, full information available here LINK [↑](#footnote-ref-2)