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**Submission by Access Info Europe to Greens/EFA Group's "Transparency and Democracy" priorities**

This submission sets out Access Info Europe’s contribution to the consultation session on the development of the work programme for the Green/EFA Group in the European Parliament in 2016.

Access Info Europe is a human rights organisation dedicated to promoting and protecting the right of access to information in Europe as a tool for defending civil liberties and human rights, for facilitating public participation in decision making, and for holding governments accountable.

The contribution is based on years of analysis and activism by Access Info to improve transparency in the European Union, as well as via monitoring of requests, in particular those filed across AsktheEU.org, Access Info’s online request platform which facilitates citizen access to EU documents by channelling requests directly to the EU institutions.

As part of this contribution, Access Info Europe also attaches (Annex 1) for consideration its “Key Recommendations on Strengthening EU Transparency” published in 2015 and submitted to the public consultation for Rapporteur Giegold’s Report on Transparency, accountability and integrity in the EU institutions.

**1. Fight against corruption**

Transparency, and in particular the right of access to information, is an essential tool in the fight against corruption as it helps to uncover corrupt practices, prevent corruption from occurring, and therefore ensure the public is able to hold public officials to account.

It is important that public representatives such as members of the Green/EFA Group in the European Parliament promote measures that reduce the space for corruption and that they actively challenge corrupt practices, particularly when these are brought to light by public watchdogs and journalists.

Access Info makes the following recommendations to some of the proposed goals (“political tasks”) outlined by the Green/EFA Group:

* *A Europe-wide ban on corrupt organisations participating in procurement procedures*

Rather than focusing on banning corrupt organisations from participating in procurement procedures – something that is hard to achieve assess without establishing court processes to impose such a prohibition – Access Info recommends that the Green/EFA Group should focus their work in this area on promoting transparency of procurement processes. Such transparency would enable watchdog groups to challenge questionable decisions, and enable wider public scrutiny to ensure that decisions are taken in the public interest and not private interest of certain actors involved in such processes.

Access Info has found it [difficult to obtain documentation on procurement processes](http://www.access-info.org/eut/14448) funded by the EU (in particular, relating to evaluation-of-bids documentation) which, if made accessible to the public, would help to highlight potential conflicts of interest or even space for corruption.

The Green/EFA group should therefore refocus their workplan for 2016 on pushing for greater transparency at all stages of procurement processes.

* *Better protection for whistle-blowers*

Access Info supports action to improve protection for whistle-blowers that includes solid legislation, which meets the highest international standards.

* *Transparency and clarity on additional sources of income of MEPs*

Access Info supports action to promote greater transparency and clarity of additional sources of income of MEPs.

The Parliament should collect and publish the expenses and expenditure of MEPs to ensure appropriate use of public funds. Citizens have a right to know how public money is spent by elected representatives, particularly given that just over a quarter of the Parliament’s budget is dedicated to MEPs' expenses, including salaries, costs for travel, offices and the pay of personal assistants. This information should be easily available online, searchable, and in open format.

***Recommended Campaign Actions:***

In addition to the actions already proposed (which includes whistleblower protections), the Green/EFA Group in the European Parliament could undertake the following possible campaigning actions in order to achieve these political aims to fight against corruption:

* Push for transparency around public procurement processes by proactively publishing information compiled during the process, such as bids, evaluation-of-bids documentation, panel members, justification of decision made, and tender contracts.
* The Green/EFA Group should set an objective to ensure that MEPs and their offices/staff fall under the scope of the right of access to documents, as set out in the EU treaties and Regulation 1049/2001.

**2. Lobby control**

For a member of the public to be able to follow how a particular decision is being or was taken, it is essential that there be full transparency about the influences which shaped that decision.

Access Info Europe asserts that regulation of lobbyists is necessary but not sufficient for the public to have a full picture of private influence on decision making. What is also needed is for the public to be able to track the influence of lobbyists on the decision-making process, which requires for a range of other information to be made available by the public bodies themselves.

Access Info supports the goals (“political tasks”) of promoting a mandatory lobby register for Parliament, Commission and Council, and mandatory Legislative footprints (which would include documents submitted by lobbyists, meetings with lobbyists, and justifications for decisions made).

Information about contacts and meetings between MEPs, public officials and lobbyists should be collected and published proactively by EU institutions, including information on the names of people present, the date, time, place and duration of the meeting, the topics discussed and any conclusions or actions points agreed upon. Institutions should also proactively publish the names of all those involved in work on legislative files as well as engaged in all other key decision-making processes. These actions will help to ensure that decision making is as open as possible 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.

Access Info Europe has published a briefing on the classes of information that should be published in order to get a full picture of the influence of interest groups, particularly lobbyists, on governmental and legislative decision making, here: <http://www.access-info.org/pub-and-toolkits/17237>

There are International Standards on Lobbying Regulation that can be adopted and used, available here: <http://lobbyingtransparency.net/>

Access Info also works on lobbying transparency as part of ALTER EU which has made numerous demands and recommendations to improving transparency in this area, see <http://alter-eu.org/full-lobby-transparency-now>

***Recommended Campaign Actions:***

The Greens/EFA Group in the European Parliament could undertake the following possible campaigning actions in order to achieve these political aims on lobby control:

* Endorse and promote the adoption of the [International Standards on Lobbying Regulation](http://lobbyingtransparency.net/) as the basis for EU rules on lobbying regulation and transparency.
* Promote a detailed legislative footprint that includes proactive publication of information about lobbying meetings, and documents submitted by lobbyists. In the meantime, the adoption of this practice on a voluntary basis by the Green/EFA Group MEPs is a welcome first step. Campaign actions should be directed at making this mandatory for all other Members of the European Parliament.

**3. Transparency of the decision-making process**

Without transparency there can be no true public participation in decision making, accountability of public bodies is seriously undermined, and it’s impossible to track and counter the disproportionate influence of private lobbyists.

In spite of all the progress made with the right of access to information in recent years, it is still remarkably hard to obtain information about how decisions are taken, by whom and based on which evidence. Access Info Europe and our partners are working to change that with our campaigns on decision-making transparency, and would support the Green/EFA Group and others in the European Parliament to also work to achieve greater transparency in decision making.

Access Info recommends the following in order to improve some of the proposed goals (“political tasks”) outlined by the Greens/EFA Group:

* *Realising real access to documents for citizens (Open Data)*

Open Data, understood as the proactive publication of government data, is a useful and important mechanism in advancing the volume of information available to citizens.

The Green/EFA Group must ensure that key information which is in the public interest is proactively published and accessible to citizens such as information related to expenditure, procurement, subsidies, infringement proceedings, decision-making on policy and law-making, etc., which should be published in a timely manner, in accessible formats, that are non-proprietary, and without restrictions such as copyright on re-use.

Documents relating to legislative programmes, preliminary civil society consultations, impact assessments, as well as documents relating to the implementation of Union law and policies linked to a legislative procedure, should also be proactively published and easily accessible to citizens.

The EU institutions should make public preparatory documents relating to the legislative process reproducing the lifecycle of the procedure concerned. This is consistent with the TFEU requirement of transparent and open legislative procedures.

Proactive publication of information and documents also reduces the administrative burden for institutions to answer access to EU documents requests.

* *Defending freedom of information against policies that seek to lock down information (e.g. copyright, trade secrets)*

In addition to work being done to guarantee the free flow of information more widely on issues of copyright and trades secrets, it is important to ensure that questions of commercial interests, which could include intellectual property / copyright and trade secrets, are appropriately balanced against the right of access to EU documents and do not interfere with transparency of EU decision making.

As with all other exceptions, EU bodies should ensure that when refusing documents where there is a demonstrable harm to the relevant protected interest and that there is no overriding public interest in the publication of the information. Refusal letters should contain a thorough justification as to why the exception was applied. Every effort should be made to provide partial access when only part of a document contains information that falls under an exception.

The fact that a document carries a copyright notice, should not per se result in it being withheld from disclosure. For example, many lobby groups submit documents with copyright notices on them, but such documents are regularly made public in response to access to documents requests because there is a clear public interest in knowing the content of the information submitted by the lobbyists.

**Other Exceptions**

Access Info Europe notes that other exceptions are regularly invoked to deny access to documents. Areas of EU activity where there has been resistance to shifting to the paradigm of a presumption of openness include legal advice, infringement proceedings, the activity of working groups in the Council, and international negotiations (such as the TTIP) where third countries have influenced the decisions as to whether or not to make certain information public, in spite of the EU’s access rules.

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](http://www.asktheeu.org/en/request/commissioners_expenses_2012_and_2).

There remain problems with access to information about 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.

* *Making European Union Council meetings public*

We understand that this section refers to the Council of the European Union, where a challenge is accessing full information about working party meetings, even where these are related to legislative processes.

In 2013, [Access Info won a case against the Council](http://www.access-info.org/eut/12303) to access working party documents on the reform of Regulation 1049/2001, including access to the names of the countries putting forward amendments. Whilst we gained access to these documents, we note that one problem is that for many working parties, detailed minutes of meetings are not kept. There should be a requirement to keep a complete and detailed record of all meetings in the Council of the EU in order to ensure that the public can hold their governments to account over what is discussed, proposed, and agreed upon in their name.

Linked to this, Access Info Europe notes that in spite of the obligations in the EU treaties to ensure full transparency of the legislative process, there are areas where little or no information is available, particularly trialogues. 85% of EU laws are agreed in first reading, during which trialogues - negotiations between the Council, Commission, and Parliament - play an important part of the decision-making process. However, trialogue meetings remain the most important blind spot in decision-making lacking adequate levels of transparency. They happen behind closed doors often without any public record.

***Recommended Campaign Actions:***

Access Info Europe supports the campaign actions proposed by the Green/EFA group in this area to improve decision making transparency:

*On trialogue transparency*: As proposed by the Green/EFA Group, EU institutions should publish information about trialogues proactively – provide agendas in advance of the meeting, including the date, time and location of the meeting, expected attendees and topics to be discussed.

The minutes of trialogue meetings, including the duration of the meeting, the names of the people who were present, and a summary of the issues discussed, agreements reached, and next steps to be taken, as well information about the documents exchanged, should be published proactively.

*On reform of Regulation 1049/2001*: Access Info has analysed Regulation 1049/2001 against international standards as part of its campaigning to improve EU transparency and it scored [96/150 points in the internationally recognised Right to Information Rating](http://www.rti-rating.org/view_org?country_name=European%20Union). Any possible campaign actionundertaken by the Green/EFA Group to push for the review of Regulation 1049/2001 and ensure ‘real’ access to documents for citizens, must ensure that a new regulation:

- Recognises all persons are beneficiaries of the right
- Increases the scope to include all EU institutions, bodies and agencies
- Reforms the exceptions to access, for example, by introducing harm and public interest tests for all exceptions, balance privacy and personal data against the right to documents, and review the status of classified documents upon receipt of a request.
- Is aligned with the Aarhus Convention
- Reinforce limits of extensions
- Introduces information officers
- Ensures good administration in the legislative process
- Makes EU Ombudsman Decisions on transparency binding for EU institutions
- The procedures and exceptions for access to EU documents should be the same for all EU bodies

Other campaign actions the Greens/EFA Group may wish to consider as part of its workplan for 2016 may include:

* Requesting and pressuring for change in the Council of the EU for access to minutes of working group meetings.