

Activity Report 2019

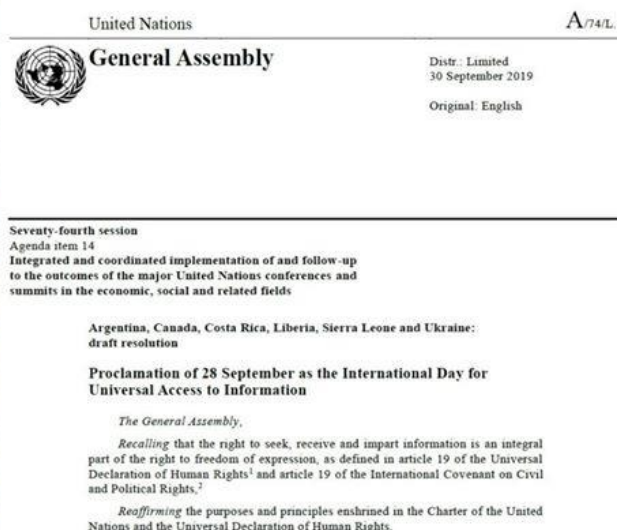


Photo: Civil society organisations found the Freedom of Information network, 28 September 2002 / In 2019, the UN declares 28 September Access to Information Day.

For defenders of human rights, change never seems to happen fast enough. So it may seem that the declaration of 28 September as the International Day for Universal Access to Information, coming 17 years after a group of activists made this proposal during a meeting in Sofia, Bulgaria, on 28 September 2002, has taken a long time.

That conclusion would be a mistake. First, because 17 years is but the blink of an eye in historical terms. Second, because so much has happened in the meantime to advance this right. For a start, the number of countries in the world with access to information laws has jumped from 40 to over 130.

In parallel with this, the right to information has been recognised as a fundamental right by all major international human rights bodies, including the UN Human Rights Committee, the Inter-American Court of Human Rights, and the European Court of Human Rights.

Access to information is also part of the Sustainable Development Goals, being a specific indicator under Goal 16 which aims to promote peaceful and inclusive societies, provide access to justice for all, and build effective, accountable and inclusive institutions at all levels.

Furthermore, the Open Government Partnership, founded in 2011, has transparency as one of its core pillars, and requires that participating countries have an access to information law in order to join and that they take concrete measures to advance with respect for the right in practice as part of their OGP commitments.

During 2019, Access Info continued contributing to high level debate about the right. We do this through the Open Government Partnership, where Helen Darbishire sits on the Steering Committee. We also do this at all international events we attend. For example, in March 2019 the Council of Europe and the Finnish government organised an event with judges from the European Court of Human Rights to discuss the global standards on the right of access to information, with Access Info as one of the invited speakers.

Access Info's Strategy: Constant Steps Towards Transparency

The construction of a right, and its integration into the democratic, human rights, and rule of law frameworks at the national and international level, takes time. Access Info recognises this, and, as per our 2018-2020 strategy, we work on the legal framework for access to information as well as supporting users of this essential democratic tool.

Many of our projects carried out in 2019 involve providing support to civil society organisations, journalists, academics, and other members of the public to obtain the information they need. And when users of the right encounter obstacles we support legal challenges, bringing in our pro bono lawyers. Examples include the successful case taken by a journalist in France to obtain data on EU funds for migration, and the litigation against the government of Malta to challenge the precondition of residence, so that we can submit a request seeking data about migrant returns.

In prioritising which projects to undertake and which cases to take, Access Info applies the criteria set out in our 2018-2020 strategy. These include ensuring that we use the tool of access to information to help address pressing issues of the day. These included in 2019 our work on corruption – in particular corruption in public procurement and at the city government level – and our work to open up data on migration.

Access Info's work to strengthen implementation of the right can be seen in our EU level advocacy and legal appeals, and in recommendations to governments, for example, Spain and Montenegro, as well as our work with the city governments of Athens, Madrid, Milan. We also brought light the very real problems that citizens have in obtaining information about participation opportunities in our work across five countries in the You4EU project, found in the Participation section of this report

On The Road: Partnerships

Access Info's work continues to be carried out in partnership with other **civil society organisations**, as will be seen in various mentions throughout this 2019 Annual Report, including our projects on public procurement transparency (in Hungary, Poland, Romania and Spain), on local government transparency (in Italy, Greece, and Spain), on participation (in Croatia, Montenegro, Serbia, Slovenia, and Spain), not to mention our large network of journalists across Spain.

Our support to **journalists** increased during 2019, greatly helped by our expanding network of **pro bono lawyers**, who permit us to offer and provide legal assistance to a larger number of requesters. Wherever we can, we also collaborate closely with **governments**, be they national or at the regional or local levels. At the international level, we collaborate with various **inter-governmental organisations**, including the Council of Europe, UNESCO, the OECD, the OSCE and others.

Last but not least, none of this work could be done without the support of our **funders**, to whom we are grateful for understanding how the right of access to information is essential for defending other human rights, for protecting democracy and for fighting corruption. Special thanks for support in 2019 to the European Commission, the Adessium Foundation, and the Open Society Foundations.



Helen Darbishire
Executive Director

Post Scriptum: Demonstrating Impact Beyond Funding Cycles

A significant challenge for CSOs is how to demonstrate impact beyond the life cycle of a project and well after all funding has been finalised. At Access Info we do however get feedback and even get called to provide our expertise on past projects, and this happened regularly in 2019.

Here are two strong examples of how our work has a lasting impact, and also of how change takes time.

The Transparency of Media Ownership project which we carried out between 2011 and 2015 is a good example of this: the recommendations developed continue to have an impact, having influenced for example, the Council of Europe's 2018 Recommendation to Member States on Media Pluralism and Transparency of Ownership.

This would not have happened without the Access Info team continuing to engage in events and discussions, to participate in meetings, including those organised by the European Union and Council of Europe, where we presented our research findings and set out the rationale for our recommendations.

In 2019, Access Info participated in a high level panel on Transparency of Media Ownership at the Perugia International Journalism Festival. This was an opportunity to inform leading investigative journalists about the Council of Europe's recommendations and all of Access Info's work that helped secure it.

The Rendition on Record Project carried out between 2010 and 2011 involved submitting information requests for information about the CIA extraordinary rendition programme that took place between 2002 and 2006 as part of the "war on terror".

Working with legal action charity Reprieve, Access Info obtained data from eight countries (Denmark, Finland, Germany, Ireland, Lithuania, Norway, Portugal, and the USA). The documents included copies of original flight logs showing when CIA flights had arrived and left certain countries. In response to Access Info's requests, the USA's Federal Aviation Authority released 27,128 flight records on 29 November 2011 – a trove of data for the researchers and lawyers working to get to the bottom of human rights abuses committed during that period.

The data obtained was used in legal actions in various countries, prompting prosecutors to reopen investigations (Lithuania) and helping a court win in a case taken by victims at the European Court of Human Rights (Al Nashiri and Abu Zubaydah cases, 24 July 2014). References to Access Info's project and its valuable findings still appear in human rights, legal, and academic pieces, such as the 2019 report "CIA Torture Unredacted" by the Bureau of Investigative Journalism, the universities of Sheffield and Westminster, and the Rendition Project.

Access Info continues to monitor how our work contributes to advancing and defending human rights, to take media enquiries on it, and to use in training to inspire others.

Migration: Investigative Journalism & Data Difficulties

The Issue: The debate on migration across Europe is often made more difficult by a lack of accurate data on the exact situation. The amount of money promised and the quantities actually disbursed differ. Politicians across the spectrum speak of policies of granting asylum and integration, or of returns to countries of origin, and the real numbers are quite out of line in both cases. In the EU, even policies that claim to be coordinated are delegated to national authorities, and reporting is done in different ways at different times. Without clarity on the situation, public debate is undermined, facilitating skewed political perspectives and misinformation (“fake news”).

The Approach: Access Info has addressed this in two ways. One is working with journalists and civil society, supporting with requests and appeals so that they get the information they need in order to report on the situation. The second is conducting our own investigations into the data, such as data on returns of migrants, and into the spending of EU funds.

The Partners: Access Info has been coordinating with Returns Network, a pan-European network of journalists investigating migration stories, including stories about returns to harm. The Returns Network also reports on the externalisation of EU borders, on the increasing role of Frontex in Europe, and on the violations of migrants’ rights and freedoms. We have also been in touch with a series of civil society organisations in Spain and Italy, and are liaising with the Amsterdam-based research organisation Profundo.

Our Research into Returns Data: In 2019, we submitted access to information requests in 32 European Economic Area countries seeking data on the number of returns of migrants and the countries to which they had been returned. We also sought lists of agreements with third countries on return of migrants. Further requests for data were sent to the European Commission (DG Home), Eurostat, the Fundamental Rights Agency (FRA), and the European Border and Coast Guard Agency (FRONTEX).

The data received from 20 of the 32 countries was still being analysed at year end with the help of data journalists, but showed that it is nigh-on impossible to get a clear and accurate picture of the numbers of migrants actually returned from Europe in any given time period. Some countries have different ways of counting returns decisions and actual returns, numbers are not disaggregated, and where lists of countries to which returns take place are available there is no link to actual returns operations. Countries carry out joint return operations, but provide the data differently so that cross-checking is frustrated. The analysis of this data is being shared with journalists and CSOs working on migration, while Access Info formulates recommendations on data management and transparency. The report will include recommendations to the EU as well as to Member States and it will provide an overview of the information on migrant returns collected at national and European level.

For the remaining 12 countries, the obstacle was a failure to respond to the request or replies that, in spite of follow-up, provided no clear information, as was the case of France. Access Info is planning further requests and appeals against failures to respond.

Litigation against refusal to process a request: In one instance, that of Malta, the government refused to process the request on migrant return data – a highly controversial issue in Malta – on grounds of needing to be a citizen of Malta to submit information requests. Access Info has appealed to the Maltese Information Commissioner and the appeal is pending at year end.

Migration: Follow the Money Transparency Litigation

The Issue: It is not known how much European Union countries spend in total on migration. The European Commission itself spends €3 billion through the Asylum, Migration and Integration Fund (AMIF). It is not known how much is spent by EU countries. It is also not known how much each EU Member State adds into the mix and spends on either co-funding projects or funding their own migration-related activities.

Access Info is in touch with many journalists and CSOs across Europe trying to get a clear picture of this. Here are two litigation actions we took in 2019 in order to obtain information. In both cases, in France and Spain respectively, the goal of the litigation is to seek to obtain more information about the spending of funds, how decisions have been justified, how money has been used, and whether it was legitimate on human rights grounds. The cases have been taken in collaboration with journalists and migrant rights organisations respectively.

The fact that litigation was needed in each of these cases underscores the difficulties of obtaining even basic data about how funds are being spent, thus significantly frustrating the work of civil society and making it very difficult to have a fact-based debate on migration in Europe.

France: Litigation success on access to EU funds data

Working the Returns Network and with Pro Bono support from the Good Lobby and the law firm White Case, Access Info supported an appeal to the French Commission on Access to Documents (CADA) to challenge the failure to provide to a French journalist documents relating to the spending of funds from the EU's AMIF.

Specifically, the journalist had sought from the French Ministry of Interior the interim report on the implementation of 14 projects co-financed by AMIF funds, with a breakdown of the percentages of monies coming from France and the EU respectively. He had also asked for copies of the reports and other documents sent by the Ministry to the European Commission.

This is an example of the vital importance of being able to obtain data about the spending of EU funds at the national level, where they are often mixed with national funding to finance projects, meaning that any data that the European Commission does hold will not be complete.

On 28 November, the CADA ruled in the journalist's favour, pointing out that a series of French laws required transparency around the spending of public funds. At year end, the journalist was still waiting to receive the documents.

Spain: Challenging the use of contingency funds for repelling migration

On 19 July 2019 the Spanish Committee of Ministers approved use of the Contingency Fund to support activities by the Moroccan government to control irregular migration, followed on 23 August 2019 by a decision on cooperation with the Moroccan police.

Access Info presented a series of requests to the government, which included copies of the decisions themselves, as well as any legal advice taken before making the decisions. We also asked for various items of budget information in order to understand whether such decisions have ever been taken in the past.

Through our pro bono contacts with the Fundación Pro Bono in Spain and the law firm DLA Piper we commissioned a report into the legal framework surrounding the use of the Contingency Fund. Our concern was two-fold: that this funding line should be used for eventual emergencies within Spain, such as natural disasters, and so this use of it could be illegal. The other is the more serious concern that there are reports of human rights abuses by the Moroccan police, and that these funds could be used in ways that contribute to such violations of rights, without any oversight in place.

On 22 October 2019, together with Spanish NGO Andalucía Acoge, and in coordination with human rights lawyers Gentium, along with a Spanish citizen representing taxpayers, Access Info presented a case to the Spanish Supreme Court challenging the use of the contingency fund and seeking further documentation and transparency.

The case was admitted on 21 November 2019, and at the year's end the Supreme Court was waiting on further documentation to be supplied by the Ministry of Interior. A ruling is expected in first semester of 2020.

What Migration taught us about EU Funds Transparency

Access Info's work on migration and our support for journalists trying to follow the money in terms of the spending of the EU's Asylum, Migration and Integration Fund (AMIF), led us to start examining the overall structure of the funds, and to analyse the legal requirements to provide information to the public, as well as to report back to the Commission.

This research uncovered a series of problems with the current system. The biggest is issue that for the spending of around 80% of all EU funds, which are disbursed via the Member States, there is not proactive publication of information on how the money is used at the EU level, nor is there even full reporting back to the European Commission. Access Info has been told in response to multiple information requests and direct enquiries that the Commission does not hold the full data on spending, beneficiaries, and the nature of the projects.

To compound this, there are almost no requirements to publish data on the use of the funds at the national level. There are some rare exceptions, such as the Common Agricultural Policy spending, where a list of beneficiaries must be published, but in general across 19 funds, the transparency requirements are, at best rather general, and in some cases non-existent.

At the national level, to the extent that overview information should be published, it is often out of date, not always meeting the requirement to update annually. For any investigative journalist carrying out cross-border reporting, the tendency to publish data only in national language complicates the matter, but even worse is the huge range of formats for publication, which make it impossible to download and then compare data.

Access Info will continue to work on the issue of transparency of funds in 2020, developing concrete recommendations for reform of law and practice.

Anti-Corruption 1: Transparency of Public Procurement

The Issue: Every year public authorities in the EU spend around 14% of GDP on public procurement, making it a major component of the economy. It is also an area where money is transferred from the public to the private sector, making it a vulnerable hotspot for corruption: it is estimated that corruption within public procurement costs the EU countries a full €5 billion per year. With corruption estimated to increase the cost of government contracts by 4 - 15%, it is also a drain on public funds that could be spent on other services.

Transparency is known to be essential in both combatting and preventing corruption. The Council of Europe has stated that the key principle for reducing the risks of corruption is maximum transparency in all stages of the procurement cycle. In spite of this, there is no clear standard and there are no rules on how this transparency should be achieved.

There are EU directives on procurement, but the rules on precisely what should be published and how are limited. Furthermore, the rules apply primarily to procurement above certain thresholds, with insufficient guidance on how to reduce corruption risks where spending is lower, particularly at the regional and local level. In addition, there are also no rules on formats for publishing, thus creating barriers for data analysis and anti-corruption monitoring by civil society watchdogs and investigative journalists.

The Strategy: Access Info's strategy is to work with other civil society organisations that are specialists in public procurement to develop a series of concrete recommendations as to how greater transparency can be achieved, and hence how measures to prevent and expose corruption can be strengthened. In order to be able to develop compelling recommendations, we are combining in-country research into the current levels of transparency of public procurement with the development of policy and legislative recommendations.

The Partners: Civio (Spain), ePaństwo Foundation (Poland), Funky Citizens (Romania) and K-Monitor (Hungary), and in coordination with the Open Contracting Partnership.

The Project: During 2019 and 2020, Access Info is working on a pan-European project entitled Reducing Corruption Risks with Data, RECORD. The project focuses on how to ensure greater integrity in the management of funds disbursed at local level.

Working with partners in Hungary, Poland, Romania and Spain in this European Commission funded project, Access Info is developing a series of recommendations for policy makers and legislators in local and national governments and for the EU on the legal framework for public procurement. In addition to specific recommendations on the openness of public procurement procedures, there will also be detailed recommendations on beneficial ownership transparency, reform of access to information laws, transparency of EU funds, and protection of whistleblowers.

The practical experience of project partners who are developing and implementing a procurement-monitoring toolkit for local governments, civil society, and journalists will feed into these recommendations. The toolkit will be made available for use in other Member States, providing EU members with a free, open source tool to support legal and practical measures as well as advocacy to combat corruption.

Recommendations: A series of high-level recommendations that will be presented to European Union decision makers, to national governments and to bodies such as the OECD and the Council of Europe's Group of States against Corruption (GRECO).

Micro-Learning: Demystifying Procurement for Journalists: If journalists are to be able to investigate corruption in procurement they often have to navigate a series of technical and legal terms in which they may well not have been trained. To address this, in December 2019, Access Info produced a guide that explains all the terminology typically encountered in a handy reference format. This will be used in trainings of journalists and local civil society during 2020.

Montenegro: For Transparency / Against Corruption

Access Info is working in Montenegro with the NGO MANS to support its work to use the access to information law to expose and combat corruption.

Montenegro has had since 2003 a strong legal framework for access to information, which has been used by civil society to expose corruption. In 2017 the law was weakened, and during 2018 and 2019 the government repeatedly threatened to do the same, going even further to limit the right.

The proposed changes have included:

- ✗ Further blanket exclusions of information from the scope of the right of access to information, such as all information in fields of security and intelligence, all information emanating from or shared with international organisations or other states, and all classified information;
- ✗ Limit to requesting information "of public importance", a very dangerous definition of which information may be requested;
- ✗ Prohibition on "abusive" or "unreasonable" requests;
- ✗ Deference to other laws, given any law the right to override the law on access to information.

Access Info's engagement has been to help defend the law from regressive amendments and to support civil society with comparative law and practice, as well as conducting international level advocacy.

Access Info conducted two missions to Montenegro in 2019, holding events with civil society and experts, meeting with government representatives and with the Agency for Protection of Personal Data and Free Access to Information.

We made detailed recommendations, which were discussed in public events. We submitted these recommendations to the European Union and the Open Government Partnership.

To date these actions have been successful in staving off any reform of the law. We will continue to campaign on this during 2020 to ensure that Montenegro does not weaken a law so vital for fighting corruption and advancing democracy.

Anti-Corruption 2: Protecting Whistleblowers

The Issue: Until appropriate levels of transparency are achieved for all activities of public bodies, as well as for private bodies acting in the public sphere, there will always be a role for whistleblowers who bring to light fraud, corruption, malpractice, and other breaches of the law. As well as reporting on wrongdoing, whistleblowers also help identify where there are failings in the transparency system, which can then be the focus of campaigns for reform and stronger access to information laws, which in turn will make whistleblowing less necessary.

Our engagement: Through our projects we work to encourage the establishment of a legal framework for protecting whistleblowers so that those who denounce wrongdoing can be confident that they will not suffer negative consequences such as losing their jobs or even facing criminal prosecution. We supported the campaign for the adoption of the 2019 EU Whistleblowing Directive and are promoting its transposition to national law. The Whistleblowing Directive should bring about a significant change. According to a Eurobarometer survey, three out of four Europeans who witnessed corruption did not report it. A survey by Transparency International showed that fear of retaliation is the most common reason for not reporting instances of corruption. With enhanced protections, this should change.

Our Projects: During 2019, Access Info integrated work on whistleblower protection into various projects. These include our work on public procurement transparency, on local government transparency, and our campaign in Spain. We also work on advancement of whistleblower protection in our collaboration with the Open Government Partnership.

Whistleblowing in Public Procurement: In the sphere of public procurement, there is also an economic value to ensuring that whistleblowers come forward: for the EU as a whole, it is estimated that effective whistleblower protection could result in savings of as much as €9.6 billion a year.

In order to promote protection of whistleblowing in the field of procurement, Access Info has developed a “The Guide on the EU Directive on Whistleblower Protection”, which lays out the common minimum standards for a national whistleblowing law in the form of 15 key principles. There are recommendations on how national laws can extend the level of protection to close loopholes and ensure comprehensive protection for anyone who exposes corruption or other wrongdoing.

The guide is designed on the one hand for public officials so that they have a clear overview of the requirements of the EU Whistleblower Directive and the standards recommended for the national level. It is also an essential handbook for civil society organisations and journalists working on the issue of corruption, who want to understand the recommended legal framework for whistleblower protection.

Participation: Citizens Need Information!

The Issue: A constant question that arises when talking about the right of access to information is how useful it is for the majority of citizens. Do people know how to ask for information? Do they know where to find it? When the public tries to ask politicians and legislators without using the formal channel of access to information laws, do they get an answer? What about when those questions relate to the European Union? How do citizens go about finding out how the EU really functions?

Questions such as these were at the heart of a project called “YOU4EU” carried out by Access Info in Spain and with partners in four other countries, in Croatia and Slovenia, which are EU members and in Montenegro and Serbia which are candidate countries.

Where do citizens look for information and what do they want to know? In this project we mapped how members of the public seek information, reaching out, in particular, via social media, using different social media according to what is popular in the country, for example, Twitter in Spain and Facebook in Serbia.

50 Questions for policy makers: Based on the social media outreach, we collected 367 questions from 288 citizens. We grouped these into 50 key questions on topics that include good governance, use of EU funds, personal data protection, environmental protection, media freedom, fake news, the European Parliament elections and the EU accession process.

Finding #1: Great questions! We found that the public has very relevant questions but does not always know where to ask them. So people are much more likely to use informal channels to seek information, looking on websites, asking questions via social media, or sending an email to the public email address of the relevant body or the individual, such as a member of parliament or MEP.

Finding #2: It's really hard to get answers! So we took the questions and sent them via formal letters to a range of public bodies, parliamentarians, public officials and MEPs. Even with diligent follow up, it was hard to get information: The questionnaires were sent to 647 decision-makers and the answers were received from 181.

Just 181 out of 647 questionnaires received answers!

Discussing the problem: The project findings were discussed at public events in each country (Croatia, Montenegro, Serbia, and Slovenia) held with civil society groups, including local grass root organisations, about their information needs as well as about participation mechanisms.

Problem Identification: The lack of a culture of transparency, and the lack of a culture of responding to enquiries from the public, is accompanied by an over-reliance on the formalities of access to information laws. There is not a readiness to respond to more informal communications from citizens. This is particularly true at the national level.

The distant EU: For many citizens at the national level in EU countries, it is really not clear how to contact the EU. The proactive channels of communication used by the EU are either too technical (websites) or not detailed enough (social media). Finding out about participation opportunities is a particular problem.

The Main Findings & Recommendations: It is clear public bodies at the local, national, and EU level need to significantly improve their channels of communication and respond more rapidly and comprehensively to inquiries from the public.

- » Any request for information or question should be treated in the same way as a formal access to information request and processed in the same timeframes.
- » There needs to be significant increases in proactive publication, and genuine efforts to strengthen communication between citizens and public institutions, it is not enough to just do public relations.
- » In parallel a huge effort should be made to strengthen participation processes and ensure that they are inclusive and genuinely designed to contribute to problem solving.

Participation & Communication

Recommendations to the European Union

The You4EU project revealed some serious deficiencies in the way that the EU reaches out to Europe's 520 million citizens.

The project therefore developed a series of specific recommendations:

- » Improve proactive communication with citizens and ensure that social media platforms such as Facebook, Twitter, and Instagram are used not only for one-way communication, but to engage in substantive debate with the public;
- » Better inform citizens about what the European Union is, how it works, and what it actually does to benefit citizens;
- » Better inform the wider public about mechanisms for connecting with the EU and becoming involved in the activities of the various EU institutions, bodies and agencies.
- » Increase support for programmes run by civil society as well as by national and local governments that genuinely promote active European citizenship;
- » Develop programmes that proactively engage a broader spectrum of the public in discussions with decision makers. Do this by, inter alia, citizen assemblies involving a representative sample of members of the public.
- » To this end, ensure that notifications of opportunities to participate in decision making are not only sent to those registered in the EU's Transparency Register (lobby register) but are distributed more widely to all relevant stakeholders.
- » Ensure that in any participatory processes, engagements from all stakeholders, civil society organisations, and members of the public are taken seriously and are integrated into decision making, with clear justifications being given for inclusion or rejection of proposals.
- » **MEPs should be more active in their personal interactions with citizens**, respond to requests for information from citizens in a short period of time and in full, and be fully transparent about their meetings and schedules, including all meetings with lobbyists, and the use of funding received from the European Parliament.

City Governments: Integrity & Transparency Tools

The Issue: With three-quarters of Europe's population living in urban areas, transparency and accountability at the city level is increasingly recognised to be as important a target as national level transparency. Indeed, many cities in Europe are larger than some of its smaller countries.

The Focus: Transparency and integrity at the city government level are essential: this is the level at which decisions are taken that affect citizens in their daily lives. It's also where there is the greatest demand for participation, and for participation the public needs information.

City governments have not traditionally come under the same scrutiny from civil society, nor have they been supported in developing a culture of transparency and integrity. This in spite the fact that corruption, fraud, and nepotism can be rife at the local level.

Our Experience: For Access Info working at the local level is an increasing focus. We regularly collaborate with regional and local governments in Spain, monitoring how they handle requests, helping train public officials and developing guides. Spain's decentralised administration provides a testing ground for developing approaches that can be deployed elsewhere.

The Project: In 2019, Access Info started working with the cities of Athens, Milan, and Madrid on an innovative project to strengthen anti-corruption mechanisms, including access to information and open data. The project – known as the Anti-Corruption City Toolkit project (ACT) – also helps the city governments with tools on whistleblowing, transparency of public procurement, and corruption risk assessment.

Our Partners: This project brings together a very experienced open government and anti-corruption team of organisations, including Transparency International Italia, Avviso Pubblico, Ondata, and Openpolis in Italy, and Vouliwatch in Greece, together with the municipalities of Athens, Madrid, and Milan.

Partnering with City Governments: A particular feature of this project is that it is carried out hand-in-hand with public officials from the city governments. We have helped them with the initial diagnosis of the current situation, through a series of questionnaires completed by heads of transparency units as well as a wider questionnaire to all municipal staff. The project activities are developed and planned hand-in-hand with the city governments to ensure that the tools we develop meet their needs.

Access to Information Diagnostic: Our research revealed numerous issues related to the way requests are received and processed. In Milan a copy of an ID must be provided, and timeframes are long for providing acknowledgements, which are not even issued in Athens, where there is no dedicated transparency team processing requests. On the other hand, Madrid has done away with any identification requirement and issues immediate acknowledgments and tracking numbers.

These findings have provided the basis for an exchange of ideas on how to streamline receipt of requests and an exchange of best practices between the municipalities. There is clearly a need to strengthen both systems and training to ensure efficient processing of requests.

In-depth Attitudes Research: Really understanding how internal systems function or what the level of training or the attitudes of public officials are, requires developing a certain level of confidence with the city governments. Under the ACT project, we were able to carry out an in-depth research into the attitudes of the public officials in each municipality to a series of integrity instruments.

The questionnaire was completed by 1214 public officials, of which 603 in Madrid, representing 12% of all officials, 480 officials in Milan and 131 officials in Athens.

Low level of awareness of transparency rules – an average of 28% didn't know about the access to information rules, and 16% didn't know about the system on proactive publication.

On a more positive note, 44% of public officials surveyed felt that access to information rules had had a positive impact on transparency in recent years, which rose to 54% positive impact on transparency of proactive publication.

These findings, coupled with the facts gathered about the infrastructure for transparency, the systems in place, and the training carried out, provide a basis for work to continue in 2020 on having a positive impact on levels of transparency in the three city governments.

CORRUPTION ATTITUDES SURVEY

What is corruption? In response to questions about what constitutes corruption, there were some striking findings. Whilst in Madrid, 83% of public officials were clear that any breach of the rules to obtain a benefit is corruption, and in Milan 76% agreed, in Athens only 40% of surveyed public officials thought that this is unacceptable. When it came to accepting money, 95% or more of public officials were sure that this is corruption, but around 25% were more tolerant of gifts and favours, with results similar in all three municipalities. In spite of this, around 30% felt that corruption involving money occurs, and 40-50% felt that other favours are a problem.

Risk Assessments: One important finding was that the vast majority of public officials in all three municipalities said that they felt that the current level of risk analysis has little or no impact (37% Athens, 34% Madrid, 32% Milan). They further reported that they had not been involved in assessments of risks of corruption (55% Milan, 71% Athens, and 83% Madrid). In fact, there are no systematic risk assessments in Athens and Madrid. This points to the need both to do risk assessments and also to inform the public about them, and it also goes along with findings that around half of the public officials felt that there had been no change in corruption in recent years.

Reporting Corruption: Milan has done good work on setting up internal reporting and whistleblower mechanisms, and as a result 77% of officials know where to report corruption, compared with only 33% in Madrid. Nevertheless, three quarters (75%) of officials surveyed asserted that fear of negative consequences is a major disincentive to actually reporting wrongdoing.

The work to be carried out in 2020 will link promoting transparency and protecting whistleblowers to having an impact on corruption risks.

Spain: Transparency on the Electoral Agenda

The Track Record: Access Info's work in Spain has had a considerable positive impact over the years, moving the country from one where administrative documents were only available to those with a direct interest, to a country in the process of a dynamic cultural change towards greater openness, and the only country in the world that is a **member of the Open Government Partnership** and also has two subnational entities (Madrid City and the Basque Country) as members of the OGP Local Programme.

Priorities in a double-election year: The two priorities for 2019 were to keep working on the **implementation of the access to information law**, while continuing **advocacy for a stronger law**. The multi-faceted strategy included pressing for election manifesto commitments in Spain's two general elections. Actions included providing support for journalists and civil society using the law, as well as mobilising input to a public consultation on the implementing regulation.

The Networks: Access Info continued in 2019 to coordinate the *Coalición ProAcceso*, which we launched in 2006 and has nearly 100 members. During the elections we also were a leading player in the *Polétika platform* of over 500 Spanish CSO's which analysed the election manifestos. An ad-hoc coalition came together over the submission of a report on freedom of expression and information in Spain to the UN Human Rights Council. It is important to note that civil society groups in Spain increasingly have access to information as part of their regular work, both using the right and advocating for it to be strengthened.

The United Nations Universal Period Review of Human Rights in Spain

In Western Europe civil society does not have a strong tradition of raising human rights concerns about their governments with bodies such as the United Nations, but it can be a powerful instrument. In 2019, Access Info joined forces with freedom of expression groups the Platform for Defence of Freedom of Information (PDLI), the Federation of Journalists' Unions (FeSP), the Criminal Policy Study Group (GEPC) and the Complutense University, to present a report on freedom of expression and access to information in Spain to the UN Human Rights Council. The report was submitted in July 2019, and then presented in Geneva in December 2019 by a representative of the PDLI accompanied by a member of the Access Info team. The main concerns raised include that Spain should:

- » **Recognise a fundamental right of access to information** linking it to the Right to Freedom of Expression recognised in Article 20.1 of the Spanish Constitution
- » **Expand the right to the legislative and judicial branches** of government, as well as to all information held by administrative bodies, and strengthen the mandate and resources of the Transparency Council which oversees the law.
- » **Simplify request procedures** eliminating the requirements for identifying the requester, such as a digital certificate or self-signature.
- » **Reform the so-called "gag law" and the penal code** to eliminate the sanctions established for those who attack the reputation of public institutions, offend religious feelings, insult national symbols and/or criticise in the media the actions of members of the security forces.

The presentation of the report was accompanied by a series of actions in Madrid, including meetings with government officials, meetings with Embassies, and briefings for civil society and the media. Discussions on the recommendations will continue as the review process proceeds during 2020.

Agenda Setting for the Next Five Years of the Transparency Law

On 10 December 2019, Spain marked five years since its transparency law came into force. While it is undoubtedly the case that there has been significant progress in the culture of transparency in Spain in the past five years – and indeed since 2006 when Access Info started campaigning for the right of access to information in Spain – there remains much more to be done.

Here are some of the priority issues and recommendations that Access Info raised to the Spanish government to mark the anniversary:

- » **Too few requests:** At under 5,000 requests for central government, Spain is well below the level of other European countries. The government must make it easier to request, simplifying the complex online system that requires a digital certificate.
- » **Too many male requesters:** A shocking 69% of requests are made by men, just 26% by women and the remaining 5% by legal persons (businesses or NGOs). More work needs to be done to reach out to the wider public and educate about the right.
- » **It's too complicated:** There is a complicated legal structure in Spain, with different laws – and different systems for requesting – in Spain's 17 autonomous region. A harmonised system is badly needed.
- » **Too many appeals:** There has been an increase of complaints to the Transparency Council (a 25% rise in 2018), and there is an increasing tendency of public bodies to either mount legal challenges to the Transparency Council's decisions or, worse, to simply ignore them. The Council must have the power to sanction those bodies that fail to comply with its decisions.

Building a Culture of Transparency: Priorities for Spain's next OGP Action Plan

- » **Adopt a Lobby Regulation law** and set up a comprehensive register of lobbyist so that the corporate influence on decision making becomes transparent,
- » **Adopt a Whistleblower Protection law:** Transpose the new European Directive and go further, adopting a broad whistleblower protection law;
- » **Empower the Transparency Council:** Commit more resources and powers to the Transparency Council;
- » **Approve the Regulation for the Transparency Law**, which should have been adopted in the first quarter of 2014, prior to the law coming into force in December 2014.
- » **Open the Company Register**, as a vital anti-corruption data set.

European Union Transparency in an Election Year

Overview: During 2019, Access Info continued its focus on key strands of EU transparency. We were conscious that 2019 was a year of change, with the European Union elections, and we did respond to those, with a broad analysis of the transparency dimension of electoral programmes.

At the same time, consistent with our philosophy of keeping a strategic focus on ensuring that the **EU's access to documents rules work in practice**, we continued pressure in key areas. These include the issue of transparency of the **European Commissioners' travel expenses**, which has become a symbol for the levels of accountability to citizens that the EU is ready to provide, which in turn goes to the heart of the debate on the EU's democratic deficit.

Another important issue is **transparency of lobbying**, where we continued to work during 2019 liaising with civil society in Brussels and with incoming MEPs. A win for Access Info in 2019 came in the form of a European Ombudsman decision that the Commission had been wrong to withhold from Access Info its legal advice about whether the transparency (lobby) register could be binding or not (see below for full details).

Our work on **transparency of EU Funds**, signalled in the Migration section of this report, will continue into 2020, as we learned that there is no systematic campaign to open up these funds. It is, however, not only data on the spending of the funds that is important, but also access to **information about monitoring of the use of funds**. Our work here included providing legal advice to a journalist seeking to understand the oversight of ethics criteria in Horizon 2020 projects.

Many of Access Info's **projects being carried out at the national level have strong EU components**, which is only natural given the impact that EU rules and policies have in the Member States. In this Annual Report 2019 we have shown how recommendations arising from our national project work, on issues such as participation or public procurement, are often directed at EU bodies. In this way, many of our projects have a component to **promoting compliance with EU standards at the national level**, but also feeding recommendations back the European institutions on how to **strengthen the EU mechanisms for protecting rule of law, increasing transparency, and combatting corruption**.

The need to ensure participation for good regulation, highlights our ongoing demand for **Council transparency**. That does not mean that the other institutions do not have a need to improve, as our work running the request platform AsktheEU.org shows. In 2019 we were forced to focus on some of the practical issues that requesters have, such as having to supply the IDs to Frontex when making requests. There is also an ongoing debate on the **definition of a document** with resistance being shown to widen the definition, and with artificial distinctions being placed between the concept of "documents" and "information". These issues were debated at an event organised by the Finnish Presidency on 24 September 2019, with all the main institutions present. While there were no conclusions to the event, it helped to clarify the agenda for the next legislature and the new Commission.

Also looking to the future, the year ended on a positive note with the **re-election of European Ombudsman Emily O'Reilly** for a further five-year mandate. Access Info had actively supported Ms O'Reilly's candidacy, urging MEPs to vote for her, as we believed that she was the candidate with the strongest track record in defending the right of access to information, be it at the EU or national level.

EU: Transparency about Lobby Transparency

The request: In May 2016, at the height of discussions on whether the future lobby register would be voluntary or mandatory, Access Info requested from the Commission the legal advice about whether the treaties provide a legal basis for regulating lobbying in Brussels, the world's second largest lobby capital after Washington.

The Commission refused to provide it, refused to share the documents, arguing that it needed to protect ongoing decision making and legal advice.

The European Ombudsman's decision: In June 2019, the European Ombudsman found the European Commission guilty of maladministration for this refusal. The Ombudsman has now concluded that this refusal was "very formalistic", that the Commission failed to raise compelling arguments as to why disclosure would undermine legal advice, and concluded that it is "*somewhat ironic that the Commission has failed to be as open and forthcoming as possible about the very measure aimed at promoting transparency as a means to achieve greater EU legitimacy.*"

Importantly, the Ombudsman argued that the nature of the agreement being discussed, known as an Inter-Institutional Agreement between the Commission, Council and Parliament, is akin to a legislative process, where the EU Treaties and Court of Justice of the European Union jurisprudence require particular openness.

The take-away: While the story ended on a positive note, it is something of a pyrrhic victory, given that the debate has since moved on. Not totally, because the lobby regulation is still on the agenda for the new Commission and Parliament. In the three intervening years, however, Access Info and other civil society organisations were prevented from being able to participate fully in the debate on an important topic: how to ensure transparency of corporate influence in Brussels.

Lessons for reflection: This case highlights a serious problem, which is that civil society faces a huge challenge in engaging in debates in Brussels. Often, if information is not leaked, you will not get it on time to be useful in ongoing debates. This case demonstrates the need to significantly strengthen proactive and automatic transparency around anything that is a rule-making procedure in Brussels.

When Documents Don't Exist: the case of Horizon 2020

The request: As part of its work to provide assistance to investigative journalists, during 2019 Access Info helped a journalist who was seeking information about the ethics conditionality put into some Horizon 2020 research grants. The European Commission argued that the requested documents did not exist, and so could not be provided. This raised the question how the Commission itself oversees compliance with the ethics conditionality.

The appeal: In supporting the requester in taking an appeal to the European Ombudsman, Access Info drafted arguments that allege maladministration either because the documents do exist, and were wrongly refused, or, if they do not exist, they should. The appeal was lodged in December 2019.

The issue: This is an important case because record keeping and the problem of missing documents continues to be a problem, even at the European Union level (not to mention the national level).

Transparency in European Parliament Election Manifestos

The objective: In May 2019, Access Info Europe evaluated the election manifestos of a total of 29 parties from the EU's five largest Member States: France, Germany, Italy, Spain, and the United Kingdom. This was done with the objective of helping voters concerned about transparency issues know which party best represented their interests.

The analysis: Access Info's evaluation was carried out on a number of transparency-related topics, grouped as transparency of decision making (including trilogues), spending transparency, and lobby transparency. Sub-topics included algorithmic transparency, public procurement transparency, protection of whistleblowers, and other anti-corruption measures. Lobby transparency included also rules on ethics and revolving doors.

The parties: We selected parties which have obtained a majority vote in the past or which were well placed according to opinion polls. Four parties, including the Lega Nord and the Brexit Party had no election manifesto, but we included them in the results table in any case.

The findings: Out of a possible 24 points, the remaining 25 political parties with a manifesto scored between zero and 20 points. The average score was a very disappointing 5 points.

On the whole parties known for democratic and pro-European credentials had a somewhat higher score than anti-European and populist parties, but this was not always the case: AfD (Germany) scored 9 points, above La Republique En Marche (France) with 8 points.

The only four parties to score above 10 points were Unidas Podemos (Spain, 20 points), Die Linke (Germany, 16 points), Bundis 90 Die Grunen (Germany, 15 points), the Green Party (UK, 11 points).

The take-away: More research would be needed, but one can speculate that the four parties with the strongest scores in terms of their proposals for EU transparency and integrity are those which in the previous legislature had MEPs well versed on EU transparency issues, or had very knowledgeable candidates. These in turn contributed to the respective election manifestos.

It may well also be the case that, as in the case of Germany and Spain, where the average score for the parties was above average (8 and 6 points respectively), there is a broader debate about transparency in the society than in France and Italy. (The UK is discounted here as there are other reasons for little attention being paid to EU transparency in the manifestos).

In the future, if civil society wants to secure greater transparency at the EU level, there is also a lot of work to be done at the national level. This is already something recognised for the national governments and the issue of Council transparency, but is less talked about for the MEPs.

For Access Info there is a clear line of work to be done in the coming five years to ensure that in the next European Parliament elections, the issues of transparency at both the EU level and the setting of EU rules for Member State transparency is squarely on the agenda.

EU Expenses: Transparency vs Privacy

The background: After campaigning for transparency of the Commissioners travel expenses since 2014, and having secured, as of early 2018, the proactive publication of these expenses, it might have been time for Access Info to move onto other EU transparency issues. But in early 2019 one of our excellent interns started collating and reviewing all the published expenses. He downloaded them into a spreadsheet – a time-consuming task as they are all published separately – and also ran what he had collected by an investigative journalist who had written about the original expenses story.

The intriguing expenses: Most of the expenses seemed eminently reasonable for the challenging jobs and the extensive travel that European Commissioners undertake. Between them, however, they spotted a handful of unusual expense claims. Specifically:

- » Commissioner Vera Jourova travelled to Avignon and Prague from 29 July to 29 August 2018. She attended a French course. The total mission claim was €3,543.35
- » Commissioner Valdis Dombrovskis also studied French in Provence, at Millefeuille, from 19 to 24 August 2018. The total mission claim was €2,536.56
- » Commissioner Cecilia Malmström attended a video conference on 4 April 2018. In Brussels. She claimed €775.14 in travel expenses.
- » Commission President Jean Claude Juncker spend €8,320 on miscellaneous expenses while attending the G20 in Buenos Aires in November 2018.

The requests: It seemed entirely legitimate to be curious about the nature of these expenses. What are the rules on attending French courses in the south of France in August and having travel covered by the Commission? How does attending a video conference in Brussels incur travel expenses? What kind of miscellaneous expenses amount to €8,320? So in May 2019, the Access Info team set about asking.

The refusals: The requests were all refused, on the basis of protection of personal privacy. It was argued that the documents explaining or justifying these expenses are linked to the names of the persons concerned, and hence are all personal data. The argumentation is based on a very strict and broad interpretation of the EU's personal data protection rules, with no flexibility for the fact that the persons concerned are not private individuals but public figures spending public funds.

The appeals: Access Info challenged these refusals with formal appeals to the Commission. Over the course of the summer and into early autumn, there were many delays in receiving a response. Access Info took the cases to the European Ombudsman. We only did so after a rigorous analysis of all the relevant transparency and personal data protection rules, and after consulting with various legal experts.

The tricky issues: At the end of 2019 all the cases were being investigated by the European Ombudsman. The Ombudsman will have to determine whether the existing rules on access to documents and personal data protection were correctly applied. Access Info does see that it's not totally clear cut. Whilst it is obvious that this kind of spending should be public, the European Union's very tight rules on data protection have been designed to protect private individuals but have totally failed to anticipate clearly that there are some types of data which, even if linked to the names of particular persons, are clearly not related to them as persons, but rather to their public functions, in this case as Commissioners. Furthermore, the money is not private money, but funds provided by the taxpayer, to whom an account should be given of how their money has been spent. Depending on the outcome of the European Ombudsman's enquiry, Access Info will shape our strategy during 2020.

AsktheEU.org: A Tool for Transparency



AsktheEU.org is an important resource for journalists, academics, and members of the European civil society who want to know more about the EU and its institutions. Around 4,000 individuals are subscribed to the platform, with more than 7,000 requests submitted since the launch of the website, in 2011.

The support: The Access Info Team continues to provide support to the users of AsktheEU.org on a daily basis. Our work consists in a mix of:

- » Help to requesters who have been required to send their personal data (i.e. postal addresses and IDs) in order to have their requests processed by the European Commission and the European Border and Coast Guard Agency (Frontex);
- » Advice to users on how to best phrase their access to documents requests, which EU body to contact, how to write confirmatory applications, appeals, and complaints to the European Ombudsman;
- » Support to journalists who would like to keep their investigations private, by temporarily hiding their requests on the platform;
- » Assistance to European Union institutions with disclosure errors such as accidental personal data breaches and unintentional release of information;
- » Creation of a network of journalists, lawyers, and CSOs working on the same issues but based in different countries, so that they can help each other filing requests at the national level;
- » Constant update of the names and contacts of the 140 agencies and institutions of the European Union present on the platform.

Our engagement: In 2019, Access Info was contacted for help by an increasing number of journalists and CSOs. Our team provided assistance by filing multiple requests and by drafting confirmatory applications on a range of different topics. In Spain, for example, a group of students in journalism was helped to find information on religious lobbying at the EU level. In Italy, we coordinated with a journalist interested in getting information about the use of European agricultural funds in order to send a series of requests to EU as well as at national level in Italy, Spain, France, Germany, and Poland. In Hungary, Access Info supported a human rights organisation investigating into the financial corrections applied by the EU to Hungary as a consequence of corruption and financial violations in the country. In Bulgaria, we liaised with partners to be able to help a citizen in getting legal advice on the competition rules of a public tender he had applied for.

The network: Access Info is an active member of the Alaveteli Community, a group of activists, journalists, technologists, and campaigners which promotes access to information laws and helps to manage access to information platforms across the world. In September 2019, the Access Info Team participated in the third international AlaveteliCon, the Freedom of Information (FOI) technologies conference hosted by mySociety, in Oslo.



Access Info Europe

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Fiscal Code G84816610

Income and Expenditure Accounts

Financial Year 1 January 2019 - 31 December 2019

This is a summary presentation in English of the original accounts prepared under Spanish law by:

Numéritas, SL

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Income

Grants and Project funds	€ 281,497.59
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These funds comprise:

» European Commission DG Near	58,462.85
» Adessium Foundation	82,213.33
» Open Society Foundations	61,958.01
» European Commission ISF Fund	33,475.94
» You4EU / Europe for Citizens	19,714.29
» TI Italia (European Commission)	22,673.17
» mySociety (UK Citizens)	3,000.00

Honoraria Conferences & Consultancies	2,891.70
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Reimbursement travel / Per diems	1,393.32
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Donations private individuals	25.00
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Exchange rate differences	29.47
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Total Income	€ 285,837.08
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Expenditure

Personnel & Management Costs

Executive Director (with tax and insurance payments)	60,984.00
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Staff and professional collaborators (inc. tax and social security)	92,083.06
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Consultants & Researchers	20,394.48
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Accountant, Payroll	7,780.95
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Legal services	4,297.75
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<i>sub-total</i>	€ 185,540.24
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Operating and Project costs	
Accommodation	3,387.98
Bank charges (includes transfer fees)	194.36
Depreciation Office Equipment & Furniture	2,220.04
Gifts (in lieu of accommodation) and presents	257.29
Insurance - Office, Liability, Travel, Health	890.32
Office & IT Equipment	606.15
Office cleaning	2,501.77
Office rental	26,136.00
Office supplies, consumables, newspapers, books	2,158.67
Postage and couriers	113.09
Printing	6.50
Evaluation occupational hazards	446.41
Refreshments, business meals, per diems	2,394.69
Re-Grants to Partners	42,274.35
Software	1,994.85
Telephone/internet/mobile/Skype	1,260.26
Travel (includes long distance and local ground transport)	11,032.62
Utilities - Electricity, Gas & Water	1,488.37
Advertising	54.45
Web domains	186.51
Web hosting	692.16
<i>sub-total</i>	€ 100,210.19
Total Expenditure	€ 285,837.08
BALANCE	€ 0.00

Approved by: the *Junta Directiva* of Access Info Europe / confirmed by the General Assembly at its meeting of 9 December 2020.

Audited by: Capital Auditors & Consultants, Conde de Peñalver 38, 6º E, 28006 Madrid