



RECOMMENDATIONS FOR TRANSPARENCY OF DECISION MAKING



This Analysis is based on research carried out by Access Info Europe and its partners: Forum Informationsfreiheit (Austria), OKFN Deutschland (Germany), InfoHouse (Slovenia), Request Initiative (UK), researchers in Finland and Ireland, Watchdog (Poland), Gong (Croatia), Diritto di Sapere (Italy), and VouliWatch (Greece).

For more information please visit <https://www.access-info.org/decision-making-transparency>



Europe's First Mapping of Decision-Making Transparency

The first mapping of its kind ever to be undertaken by the right to information community in Europe, has revealed an appalling lack of transparency of decision making across Europe, which prevents members of the public from following and participating in decision-making processes, as well as from holding public officials to account for their exercise of power.

The research into 12 European jurisdictions and 96 decision making processes found that, overall, almost two thirds **(60%) of key decision-making information is not available to the European public.**

Just 20% of information was proactively available and only 30% was fully disclosed when requested using national laws, despite European legal frameworks in theory permitting access to information regarding decision-making processes such as minutes of meetings or documents submitted by lobbyists.

When it came to the type of information that could be obtained, either proactively or pursuant to requests, there was a particular challenge obtaining minutes of meetings and documents submitted by third parties (such as lobbyists), both essential documents for following the decision-making process.

» Record Keeping Undermining Right to Information

The research also identified a lack of record keeping, with responses that no relevant documents were held (such as minutes of meetings) even when it was known that such meetings had taken place (there was an overall 30% information not held rate for minutes of meetings).

» Insufficient Proactive Publication

One of the most concerning findings is the lack of proactive publication of key information needed to follow and understand a specific decision-making process. Across Europe, we were unable to find proactive publication of around 90% of the information sought: there was no publication of appointment diaries of public officials (90% not published), minutes of the meetings held (93% not published), and documents submitted by lobbyist and interest groups during a concrete decision-making processes (88% not published). The situation was somewhat better although not acceptable when it came to documents justifying decisions made (68% not published).

With respect to public consultations, they were not always conducted (46% of decision-making process), and in those instances where consultations had been carried out, information was not available for 46% of cases, with full information being published for 36% of cases and a further 18% of instances providing partial information.

» Disproportionate Application of Exceptions to Access

When information about specific decisions was requested, we identified a serious lack of availability of key information needed to follow and understand a specific decision-making process: just 29% of documents were released in full in response to requests, with another 24% being partially released.

Formal denials of information were frequent (for a total of 24% of information requested, access was denied in full, with a further 28% being provided only partially with some redactions applied). The most common grounds for refusal were protection of privacy (32%), protection of decision making (22%), cost of compiling information (16%) and protection of international relations (11%). Exceptions such as legal advice and commercial secrecy, amounted to just 3% respectively other exceptions were used for the remaining 13%.

» **Slow Responses & Administrative Silence**

Another finding of the research, which is a cause for concern, is that the average time frame for responding to requests is 87 calendar days (almost three months). Although this ranges from 4.3 days in Finland to 149 days in Germany, it is common for the response times to be longer than established in national transparency laws and international standards. The situation is particularly worrying in Italy and Greece where 33% of requests in each country received no responses.

1. Recommendations on Priority Reforms

The severe lack of information on decision making identified by this research has the direct effect of weakening citizens' and civil society's ability to participate in ongoing processes and to hold decision-makers to account after decisions have been taken.

Given the high public interest in ensuring transparency of decision making, governments should take urgent steps to ensure access to decision-making information.

To this end, Access Info recommends that:

➤ **Transparency applies to all decision-making bodies and processes**

All bodies which bear responsibility for public decision making should fall under the scope of the access to information rules. The right of information should be upheld by all national, supra-national, and intergovernmental bodies and processes.

➤ **Establish an obligation to create records**

Public authorities should be obliged by law to document decision-making processes so that there exists information necessary for public participation and scrutiny, as well as for the historical record.

➤ **Require proactive publication of key decision-making information**

There should be a legal requirement to publish key information about decision-making processes, including details on the process itself, in a timely fashion, to the public. Information should be actively disseminated, by appropriate channels, to all relevant stakeholders.

➤ **Ensure rapid availability of decision-making information**

Prompt responses to information requests are essential to facilitate potential participation in decision-making processes. This also applies when responding to appeals. At a minimum, for all information that is not published proactively, it should be available in time for requesters to participate in the relevant process.

➤ **Apply exceptions narrowly to information related to decision making**

There should be, in law, a presumption of disclosure of information needed to follow, participate in, and hold officials accountable for, a decision-making process. The law should establish both harm and public interest tests, ensuring that exceptions always be applied narrowly, and always taking into account any overriding public interest in full (or partial) disclosure of information.

2. Recommendations on Information to be Published

Access Info Europe and its partners have identified the minimum information which should be generated in decision-making processes and to which the public should have access:

1. Basic information about the decision-making process: The relevant public body should create and make public proactively documents that permit the public to understand, follow, and participate in the process. This set of documents should, at a minimum, include:

- The timetable for the process, which should be regularly updated if there are changes.
- Details of the public body and person responsible for the decision, including contact details.
- Any expert groups convened to advise on a policy or decision-making process: information about the composition, processes, and outcomes of any consultation with experts should be made public.

2. Diaries of Senior Public Officials: Public officials who are responsible for decision-making processes and who might be subject to lobbying should keep and make public their appointments agendas. This information is in addition to the lists of meetings held by public officials involved in decision-making processes.

The diaries should include details on meetings held and who attended, and the names of those who they meet, as well as records of phone calls. There should be a record of conversations held on decision making.

3. List of Meetings of public officials: It is essential that the public know which meetings have taken place, between whom, and what was discussed. The types of meetings about which information should be made public include:

- Meetings held by representatives of a public body with their staff or with other public bodies;
- Meetings held by representatives of a public body with interest groups, including stakeholder consultations;
- Meetings, conferences, and events attended by public officials, including those organised by interest groups (lobbyists, other interest groups, political parties, etc.) or at which they are present;
- Phone conversations held between public officials and interest group representatives should be noted. When they relate to an ongoing decision-making process they should be published proactively, in other cases the information should be available upon request.

4. Meeting Documents: The public should be informed about upcoming meetings relating to a decision-making process as well as provided with a detailed record of the meeting, the minutes. The minutes should be sufficiently detailed to permit members of the public to know the main issues discussed at the meeting and to be informed of any agreements reached or decisions taken.

The names of those participating in meetings relating to a decision-making process should be accessible. To this end, all potential participants in a meeting should be informed at the outset that the meeting is public, and that a precondition for participating in the meeting is consent to have the full name and the organisational affiliations of the person made public.

Type of Information	What published	Frequency of Publication
Information on upcoming meetings	<ul style="list-style-type: none"> » Date, time and location of the meeting » Organization holding the meeting (and responsible for keeping a record of it) » Expected participants and the organizations they represent » Agenda of the meeting » Issues to be discussed » Documents submitted by any parties in advance of the meeting 	<p>One week (5 working days) before the meeting.</p> <p>If this is not possible, the information should be made available as soon as it is known.</p>
Information to ensure accountability after a meeting	<ul style="list-style-type: none"> » Date, time, location and duration of the meeting » Participants present (specify clients/interests represented) » Issues discussed » Copies of all documents presented or considered during the meeting if not previously published » Minutes of the meeting which must include at a minimum all agreements or conclusions reached, as well as planned next steps » Copies of any texts revised or concluded during the meeting 	<p>Within one week (5 working days) of the meeting taking place or as soon as relevant documents, such as minutes, are finalised.</p>

5. Documents submitted during public consultations: The relevant public body should make public proactively all documents emanating from public consultations, including all submissions and all documents that provide feedback and evaluation of the process, and which show how the submissions of third parties has been taken into account.

Submissions to public consultations should be published no more than 15 working days after the close of the consultation. They should include:

- All submissions to the public consultation
- Documents submitted by interest group representatives, along with the names of the relevant persons and the details of who they represent
- Documents submitted by legal persons along with the details of the legal person and who they represent in the case of acting on behalf of another.

After a consultation is concluded and has been evaluated:

- Evaluations of the consultation process, and an explanation of how the input into the consultation has been taken into account.

Data Protection: To ensure that it is possible to publish the names of those who participate in a public consultation, there should be an online form requiring consent to making public the name and (where relevant) professional affiliation of the person making the submission. The same goes for organisations, whose names will always be made public.

6. Documents generated or used during a decision-making process: Such as impact assessments, human rights evaluations, environmental impact studies, legal advice, draft policies, evaluation of implementation of previous policies, plan of actions for implementation, interim or final evaluations or reporting.

7. Documents submitted by lobbyists and interest groups: No more than 15 working days after receipt of the document, a public body should make available all documents received from third parties such as lobbyists, other interest groups, and other public authorities or other governments, which relate to a decision-making process, such as:

- Documents tabled that are directly related to an ongoing decision-making process
- Drafting suggestions and recommendations
- Reports, research findings and other documents (even if not written explicitly for the particular decision-making process)
- Communiqués, press statements, news bulletins and other written material sent to the public authority

8. Documents justifying a decision: Information or documents justifying the reasons why a particular decision was taken should be published promptly and proactively. These documents should include, at a minimum: the problem that had to be addressed, the options available to address it, and the criteria used to take the decision.

The document should include and/or refer to any public consultations held and the input to the proposals received to the public consultation.

Any documents relevant to or drawn upon in the final decision making process should be referred to in the decision document and should also be public. It is important that the public is provided with copies of the key data and arguments which were used as the basis for a particular decision such as: Reports, research findings, impact assessments, and any other documents such as the ones mentioned in point 6 (even if not written explicitly for the particular decision-making process).