



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 24 September 2001
DH-S-AC(2001)009

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**GROUP OF SPECIALISTS ON ACCESS TO OFFICIAL
INFORMATION (DH-S-AC)**

8th meeting
Strasbourg, 18-21 September 2001,

REPORT

Introduction

1. The Group of Specialists on access to official information (DH-S-AC) held its 8th meeting from 18 to 21 September 2001 at the Human Rights Building, Strasbourg, with Ms Tonje MEINICH (Norway) in the Chair.
2. The list of participants is set out in Appendix I. The agenda as adopted appears in Appendix II, with references to the working documents.
3. During this meeting the DH-S-AC in particular:
 - completed the draft recommendation of [the Committee of Ministers](#) to member States on access to official documents and its draft explanatory memorandum (Appendix III and IV to the final activity report);
 - adopted its final activity report for the attention of [the CDDH](#) (document [CDDH \(2001\) 22](#)) and discussed its future activities, in the event of its receiving fresh terms of reference from the CDDH.

Item 1 of the agenda: Opening of the meeting and adoption of the agenda

4. See introduction.

Item 2 of the Agenda: *Tour de Table* on recent developments in member States

5. A “tour de table” provided information on various stages of legislation in member States since the last meeting. Bulgaria had passed a data protection act. Poland’s Access to Official Information Act had been passed very recently, despite criticism, and should partially come into force on 1 January 2002. In the framework of its data protection act, Italy had adopted a code of practice on access to historical archives and a decree on the processing of sensitive data.
6. The DH-S-AC was given information on the Bills being debated in France (concerning, respectively, a society of information, the protection of personal data, and archives), in the Russian Federation and in Turkey. In Sweden suggestions had been made for legislation on electronic access to documents, and a campaign to educate the general public and civil servants in matters relating to access to information had also been launched. The United Kingdom expert announced the Freedom of Information and Data Protection Unit was now attached not to the Home Office but to the Lord Chancellor’s Department.
7. Mention was also made of Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001, based on the Treaty of Amsterdam, regarding public access to documents of the European Parliament, the Council and the Commission.
8. Lastly, the Group heard Ms Danielle PARENT, Deputy Secretary for Legislation at the Quebec Information Access Commission. She spoke about Quebec legislation governing the role of the Information Access Commission, saying that in Quebec the right to information and the right to privacy have a constitutional basis recognised in the *Charter of Human Rights and Freedoms*. The exercise of these rights is detailed in a single, preponderant act: the *Act respecting Access to documents held by public bodies and the Protection of personal information*. This act provides that the documents held by the 3,700 public bodies are in principle accessible, subject to the restrictions laid down in the act. However, if the document requested contains personal data, the principle applicable is that such data are confidential, save for the person concerned (the data subject), who has automatic access to

them. Third parties, including other public bodies, may consult personal data only if the law allows them to do so. The Information Access Commission, whose five members are all appointed by the National Assembly, is responsible for enforcing the law. In performing its duties the Commission has all the powers of an administrative tribunal and may order communication of a document. It is also empowered to conduct investigations on its own initiative or at the request of a citizen, give opinions on draft legislation or issue such orders as may be necessary for enforcing the law.

Item 3 of the agenda: Further drafting of the draft recommendation and explanatory memorandum

9. The DH-S-AC resumed examination of the draft recommendation on access to official information. In so doing, it decided to modify the title of the draft recommendation in order to show that even though the goal is to have access to official information, the principles of the recommendation deal with different aspects of access to *official documents* (as a means to have access to official information). The Group therefore adopted the following wording: *draft recommendation on access to official documents*.

10. The Group took as a departure point for discussion, the text appearing in Appendix III of the report of its last meeting ([DH-S-AC \(2001\) 4](#)). The Group also discussed the draft explanatory memorandum to accompany the draft Recommendation, based on the text appearing in Appendix IV of the report of its last meeting (DH-S-AC (2001) 4). The Group also took into consideration the comments made by the members of the CDDH and by the experts of the DH-S-AC, reproduced in document [DH-S-AC \(2001\) 6 rev](#) or made orally, as well as of rules recently adopted by the European Union (Regulation (EC) N° 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents).

11. The Group was concerned to ensure that the principles being drawn up were compatible with other standard setting activities in [the Council of Europe](#), particularly regarding i) the protection of personal data and ii) access to public documents stored in archives.

- With regard to the first point, the Group agreed that the explanatory memorandum should make it clear that documents containing personal data are also within the scope of the recommendation. In this context, it should be noted that the Convention for the protection of individuals with regard to automatic processing of personal data of 28 January 1981 (ETS N° 108) does not preclude granting third party access to official documents containing personal data. However, when giving access to such documents, this must be done in accordance with the rules laid down in Convention N° 108.

It was decided that the Chair of the DH-S-AC would include these points in her reply to the letter of 4 July 2001 from the Chair of the Co-ordination Group of the Project Group on Data Protection (CJ-PD-GC).

- In connection with the second point, the Group agreed that the explanatory memorandum should also state that the recommendation also covered official documents stored in Archives, without prejudice to the application of more specific rules set down in [Recommendation 2000 \(13\)](#) of the Committee of Ministers to member states on a European policy on access to archives.

12. Following its examination, the DH-S-AC agreed to transmit to the CDDH, for consideration and adoption at its 52nd meeting (6-9 November 2001), the draft

recommendation and explanatory memorandum as they appear in Appendices III and IV to the final activity report (document [CDDH \(2001\) 22](#)).

Item 4 of the Agenda: Preparation of a final activity report and future work (subject to the decisions that will be taken by the CDDH)

13. The DH-S-AC prepares a final activity report for the attention of the CDDH. This document presents in a first part the activities held by the DH-S-AC and in a second part, its future activities.

14. The Group noted that its future activities had been discussed by the Ministers' Deputies at their 736th meeting (10-11 January 2001), in connection with the follow-up to the [European Ministerial Conference on Human Rights](#) (Rome, 3-4 November 2000; document [CDDH \(2001\) 3](#)). In doing so, they set the CDDH the task, among others, *to make proposals to be submitted alongside the draft principles on access to official information, for continuing work in this field in the medium term.*

15. With this in mind, the Group considered the opportunity of preparing a binding legal instrument and ways of ensuring that member states would implement the recommendation. It thought that the former would be premature at this stage. Priority should therefore be given to following up the recommendation. They considered that it would be useful to prepare a handbook which could help public authorities in such a task. In addition to the text of the recommendation and the explanatory memorandum, the manual could include, for example, references to relevant national provisions and practices. The possibility of organising a seminar in 2002 was also raised in this context. It would allow for an exchange of information, by bringing together representatives of all member States and various sectors and bodies concerned by the issues addressed in the recommendation.

16. The final activity report, as adopted, appears in [CDDH \(2001\) 22](#). It will be submitted to the CDDH for consideration at its 52nd meeting (6-9 November 2001), with a view to its adoption and submission to the Committee of Ministers, at the same time as the draft recommendation and explanatory memorandum.

17. The DH-S-AC therefore considers that it has fulfilled its current terms of reference.

Item 5 of the agenda: Other business

18. After completing its work, the Group offered its warm thanks to its Chair, Ms Tonje MEINICH (Norway), for the skillful way in which she had conducted its activities in the crucial stage of completing the draft recommendation and the explanatory memorandum. The DH-S-AC also expressed its gratitude to the Secretariat.

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Appendix I**LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS**BULGARIA/BULGARIE

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European Committee for Legal cooperation / Comité européen de coopération juridique (CDCJ)

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European Commission / Commission européenne
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Secretariat / Secrétariat

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M. Alfonso DE SALAS, Head of the Division/Chef de la Division, Secretary of the Group of Specialists/Secrétaire du Groupe de Spécialistes

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Mme Michèle COGNARD, Administrative Assistant/Assistante administrative

Interpreters/Interprètes

Mme Christine TRAPP
Mme Danielle HEYSCH
Mr Robert VAN MICHEL

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Appendix II

AGENDA

Item 1: **Opening of the meeting and adoption of the agenda**

Item 2: **“Tour de table” on recent developments in member States**

Item 3: **Further drafting of the draft recommendation and explanatory memorandum**

Report of the 7th meeting of the DH-S-AC (28-30 March 2001)

[DH-S-AC \(2001\) 4](#) Appendix III

Draft explanatory memorandum

[DH-S-AC \(2001\) 5](#) prov

Comments made by experts of the DH-S-AC and by members of the CDDH on the Report of the 7th meeting of the DH-S-AC and on the draft explanatory memorandum

[DH-S-AC \(2001\) 6](#) rev

Item 4: **Preparation of a final activity report and future work (subject to the decisions that will be taken by the CDDH)**

Report of the 7th meeting of the DH-S-AC (28-30 March 2001)

[DH-S-AC \(2001\) 4](#)

Information document on the activities currently being carried out by the Council of Europe in the field of access to official information

[DH-S-AC \(2001\) 8](#)

Draft Final Activity Report

[DH-S-AC \(2001\) 7](#)

Item 5: **Other business**