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STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

6th meeting
Strasbourg, 27-29 September 2000,

REPORT

TABLE OF CONTENTS

Introduction

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

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

Item 3 of the Agenda: Exchange of views with a judge of the European Court of Human Rights

Item 4 of the Agenda: Further examination of the elements to provide a basis for discussion on the future work of the DH-S-AC

Item 5 of the Agenda: Information on the preparation of the European Ministerial Conference on Human Rights (Rome, 3-4 November 2000)

Item 6 of the Agenda: Date of next meetings and organisation of forthcoming work

APPENDICES

Appendix I : LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

Appendix II : AGENDA

Appendix III : Draft recommendation No R (...) ...of the Committee of Ministers to member States on [access to official information]

Appendix IV : Draft explanatory memorandum

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Introduction

1. The Group of Specialists on access to official information (DH-S-AC) held its 6th meeting from 27 to 29 September 2000 at the Human Rights Building, Strasbourg, with Ms Helena JÄDERBLOM (Sweden) 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 further examined the elements identified at the previous meetings and decided to propose to [the CDDH](#) the preparation of a draft Recommendation and explanatory memorandum. The texts retained as a basis for discussion at the next meeting appear in Appendices III and IV to this report.

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

4. The Chairperson reported on the discussions at the last meeting of the CDDH (20-23 June 2000, [CDDH \(00\) 19](#), paragraphs 61 – 64) on the on-going work of the DH-S-AC. At that meeting she had addressed, in particular, the following points:
 - i. the completion of a first reading of the elements to be included in the draft legal instrument by the DH-S-AC;
 - ii. the need to address the question of access for persons with special needs, which has not yet been dealt with, and to keep in mind the concerns of the observer of the European Committee on Legal Co-operation (CDCJ) regarding data protection (concerning the latter, the DH-S-AC received a draft opinion by the Project Group on Data Protection (CJ-PD) reproduced in document [DH-S-AC \(2000\) 8](#), see paragraph 21 below);
 - iii. the need for discussion over the legal nature of the instrument.

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

5. A “*tour de table*” provided information on on-going legislative work (Germany, Norway, Poland, Russian Federation, Sweden, United Kingdom) or legislation completed since the last meeting (Bulgaria). Important political developments were taking place in the Netherlands where it is proposed to include the right of access to official information in the human rights’ chapter of the Dutch constitution.
6. Moreover, the Group was informed that the Dutch government was suing the European Council before the European Court of Justice for exempting whole categories of documents related to security and defence from existing rules concerning access to European Union institution documents. Sweden was going to support the Dutch action.

Item 3 of the Agenda: Exchange of views with a judge of the European Court of Human Rights

7. Judge LORENZEN (Denmark) of the [European Court for Human Rights](#) presented, in a personal capacity, the case-law concerning Articles 8 and 10 of the [European Convention for Human Rights](#) and their relationship with the right of access to official information. At the outset, he emphasised that the very wording of Article 10 provides the right to receive and impart information without interference by the State but does not grant a general right of

access to official information, which is confirmed by the case-law. In the *Leander case*,¹ the Court stated that Article 10 did not confer on individuals a right of access to official information or an obligation on governments to grant such information to the individual.

8. In reply to a question, Judge Lorenzen considered it unlikely the possibility of a broader interpretation of Article 10 in the future, since this would be contrary to the wording of this Article. In this context, Judge Lorenzen mentioned the broader scope of Article 19 of the UN Universal Declaration on Human Rights, which confers a right to “seek information”.

9. Judge Lorenzen acknowledged that the concept of human rights develops and that it is not excluded that a general, basic right of access to information could be incorporated into the ECHR in the future.

10. Regarding Article 8, Judge Lorenzen referred to the *Gaskin* and *Guerra* cases², which confirm that this article sets positive obligations to communicate information to individuals relating to their personal life. In the “Z” v. *Finland* case³, the Court held that disclosure of medical information to one party of a case was in violation of Article 8.

11. Comparing this judgment with the “harm test”, he warned of possible contradictions between the two: problems could arise with regard to Article 8 if in a case of overwhelming public interest, private information of the individual involved, was disclosed.

12. Finally he mentioned that in certain circumstances related to court proceedings a right of access to information could also be concluded from Article 6, as can be seen in the *Case of McGinley and Egan v. the United Kingdom*⁴.

Item 4 of the Agenda: Further examination of the elements to provide a basis for discussion on the future work of the DH-S-AC

a. Further examination of the draft instrument and examination of the draft explanatory memorandum

13. The DH-S-AC resumed examination of the elements which could provide a basis for discussion for its future work. It took as a departure point for discussion, the text appearing in Appendix III of the report of its last meeting ([DH-S-AC \(00\) 3](#)). The Group also discussed the draft explanatory memorandum to accompany the instrument. The results of the Group’s work appear respectively in Appendices III and IV to the present document. The Group will continue its work on this basis in 2001, subject to the adoption of new terms of reference by the Ministers’ Deputies.

b. Legal nature of the instrument being prepared

14. Following the request by the CDDH, the Group held an exchange of views on the legal form to be given to the instrument.

15. The large majority of experts were in favour of drawing up, at this stage, a recommendation, the contents of which must be strong enough to advance the principle of

¹ *Leander v. Sweden*, judgment of 6 March 1987, Series A no. 116, P. 29, § 74.

² This position was confirmed in the later *Gaskin* (judgment of 7 July 1989) and *Guerra* (judgment of 19 February 1998) cases.

³ *Case of “Z” v. Finland* (judgment of 25 February 1997).

⁴ *Case of McGinley and Egan v. United Kingdom* (judgment of 9 June 1998).

access to official information. This exercise would not, of course, exclude the possibility of a binding legal instrument being drawn up at a later date: on the contrary, the recommendation could be the first step in this direction.

16. It was considered that the major advantage of a recommendation at this stage would be the fact that it would allow for clear guidelines to be given rapidly to member States which are currently or are planning on drafting legislation on access to official information. The recommendation, which will contain minimum European standards, could provide a very useful reference, which, nevertheless, will have to be re-examined and updated regularly with regard to the general developments in Europe in this field and particularly with regard to developments in information technology and communications.

17. The Group will finalise the draft Recommendation and the explanatory memorandum in 2001 and will submit to the CDDH. In transmitting the draft Recommendation to the [Committee of Ministers](#), the CDDH should ask the latter to adopt a political declaration committing itself to continuing cooperation in this field and to move even further ahead in the field of intergovernmental activities relating to access to official information and transparency of the administration.

18. Moreover, the Group considered that the [Council of Europe](#) offers an excellent opportunity to the experts of different countries to exchange periodically their experiences in their respective countries. Such regular contact between experts facilitates the progress of national laws and practices in this sensitive area, allowing experts to take into account the experiences of other member States.

19. The Group considered that the next Ministerial Conference in Rome was an appropriate event to highlight the importance of this subject. The Group noted with satisfaction that the draft Resolution N° 2 which will be submitted to the Conference already addresses the issue of access to official information. Even so, the Group proposed to strengthen this reference. It consequently suggested to the CDDH to introduce the following wording:

60. WELCOMES the ongoing drafting of a recommendation within the Council of Europe concerning principles which could constitute a minimum basis for access to official information;

60bis. REQUESTS, in view of ongoing development of legislation in Europe and technical developments, that the Council of Europe continue co-operation in this field.

c. Examination of the observations submitted by the Project Group on Data Protection

20. The CDDH took note that the representative of the Project Group on Data Protection (CJ-PD), observer for the European Committee on Legal Co-operation (CDCJ), Mr Michel CAPCARRERE was not present at the meeting, and that the draft opinion of the Bureau of the CJ-PD would only be examined and possibly adopted at the next plenary meeting of the CJ-PD (9 – 13 October 2000). The DH-S-AC therefore decided to postpone to its next meeting (March 2001) discussion on the observations of the CJ-PD, in the light of the formal opinion that the latter will then have given and any oral information that may be given by the CJ-PD representative at the meeting.

Item 5 of the Agenda: Information on the preparation of the European Ministerial Conference on Human Rights (Rome, 3-4 November 2000)

21. The Secretariat reported on the preparation of the Ministerial Conference both on substance and on organisational matters. In particular, it had been already announced that the Swedish minister will speak about the importance of transparency of the administration, which is closely linked to the work of the DH-S-AC.

Item 6 of the Agenda: Date of next meetings and organisation of forthcoming work

22. The DH-S-AC decided to hold its 7th meeting from 28 to 30 March 2000. The 8th and final meeting of the DH-S-AC has also been planned from 19 to 21 September 2001.

23. The DH-S-AC will devote these meetings to finalising the draft recommendation and explanatory memorandum, on the basis of the texts set out in Appendices III and IV to the present report and particularly in the light of its exchange of views during the 7th meeting with the representative(s) of the Project Group on Data Protection.

24. Finally, The DH-S-AC expressed its gratitude to its Chairperson, Mrs Helena JÄDERBLOM (Sweden) for the excellent manner in which she carried out her role. Hearing that as a result of being given different responsibilities, she would no longer be able to participate in the work of the Group in 2001, the DH-S-AC wished her every success in her new functions. The DH-S-AC unanimously decided to propose Mrs Tonje MEINICH (Norway) to the CDDH for its Chair in 2001. It took note that the CDDH intends to reexamine the composition of the Group when renewing its terms of reference and that the Ministers' Deputies will be asked to approve the terms of reference in January 2001.

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

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Mr Philipp MITTELBERGER, Programme Adviser/Conseiller de Programme

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* * *

Appendix II : AGENDA

1. **Opening of the meeting and adoption of the agenda**
2. **Tour de Table on recent developments in member States**
3. **Exchange of views with a judge of the European Court of Human Rights**
4. **Further examination of the elements to provide a basis for discussion on the future work of the DH-S-AC**

Report of the 5th meeting of the DH-S-AC
(22 – 25 February 2000)

[DH-S-AC \(00\) 3](#)

Draft explanatory memorandum to accompany the instrument being drafted by the DH-S-AC on the public's right of access to official information

[DH-S-AC \(00\) 6](#)

Information on activities within the Council of Europe having a link to the terms of reference of the DH-S-AC

[DH-S-AC \(00\) 5](#)

Extracts of the report of the 55th meeting of the Bureau of the CDDH (26 May 2000) and of the 48th meeting of the CDDH (20 – 23 June 2000)

[DH-S-AC \(00\) 4](#)

Information documents

Available in the meeting room:

Terms of reference of the Group of Specialists (as approved by the Ministers' Deputies at their 613th meeting, 18-19 and 23 December 1997)

[DH-S-AC \(98\) 1](#)

[Recommendation No R \(81\) 19](#) on the access to information held by public authorities

[Recommendation No R \(91\) 10](#) on the communication to third parties of personal data held by public bodies

[Recommendation No R \(2000\) 13](#) on a European policy on access to archives

Available from the Secretariat:

Green Paper from the European Commission on Public Sector Information in the Information Society
COM (1998) 585

Collection of reports on official secrets law and free access to public records (reports prepared by national partners of the Programme on Security Services in a Constitutional Democracy)(English only) (Helsinki Foundation for Human Rights, December 1997)

DH-S-AC (98) 2 and Addendum

Icelandic law on public access to information

MM-S-AC (97) 3 (English only)

Italian law on access to administrative documents

MM-S-AC (97) 4 (French only)

The Swedish approach to the issue of access to public documents

MM-S-AC (97) 5 (English only)

5. Information on the preparation of the European Ministerial Conference on Human Rights (Rome, 3-4 November 2000)

6. Date of next meeting and organisation of forthcoming work

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Appendix III : Draft recommendation No R (...) ...of the Committee of Ministers to member States on [access to official information]

**elaborated by the DH-S-AC
at its 6th Meeting (27 – 29 September 2000)**

Preliminary note:

This Appendix contains the draft recommendation, which emerged from discussions of the Group of Specialists on access to official information (DH-S-AC), during its first, second, third, fourth fifth and sixth meetings (4-6 March 1998 and 21-23 October 1998, 9-12 March 1999, 5-8 October 1999, 22 – 25 February and 27 – 29 September 2000). This text constitutes the basis for discussions at future meetings. The DH-S-AC wished to bring it to the attention of the CDDH for information and possible observations at the latter's 49th meeting (3 – 6 October 2000).

* * *

The [Committee of Ministers](#), under the terms of Article 15.b of the Statute of the Council of Europe,

- i. Considering that the aim of the [Council of Europe](#) is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;
- ii. Bearing in mind, in particular, Article 19 of the Universal Declaration of Human Rights, Articles 6, 8 and 10 of the [European Convention on Human Rights](#) and Fundamental Freedoms, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters⁵, and the Convention on the protection of individuals with regard to automatic procession of personal data of 28 January 1981 (ETS no 108); the Declaration on the freedom of expression and information adopted on the 29 April 1982; as well as [Recommendation No. R \(81\) 19](#) on the access to information held by public authorities; [Recommendation No. R \(91\) 10](#) on the communication to third parties of personal data held by public bodies; [Recommendation No. R \(97\) 18](#) concerning the protection of personal data collected and processed for statistical purposes and [Recommendation No. R \(2000\) 13](#) on a European policy on access to archives;
- iii. Considering the importance in a pluralistic, democratic society of transparency of public administration and of **the ready availability of** information on issues of public interest;
- iv. Considering that wide access to official documents, on a basis of equality and in accordance with clear rules:
 - allows the public to have an adequate view of, and to form a critical opinion on, the state of the society in which they live and on the authorities that govern them, whilst encouraging informed participation by the public in matters of public interest;

⁵ Adopted in Aarhus on 25 June 1998.

- encourages the efficiency and effectiveness of administrations and helps maintain their integrity by avoiding the risk of corruption;
 - contributes to affirming the legitimacy of administrations as public services and to **strengthening** the public's confidence in public authorities;
- v. Considering therefore that the utmost endeavour should be made by member States to ensure availability to the public of information contained in official documents, subject to the protection of other legitimate rights and interests,
- vi. Stressing that the principles set out hereafter constitute a minimum standard, and that they should be understood without prejudice to domestic laws and regulations which already recognise a wider right of access to official documents;
- vii. Considering that, whereas this instrument concentrates on requests by individuals **for** access to official documents, public authorities should commit themselves to conducting an active communication policy, with the aim of making available to the public any information which is deemed useful in a transparent democratic society.

Definitions

For the purposes of this recommendation:

- "public authorities" shall mean:

- i. government and administration at national, regional or local; level;
- ii. natural or legal persons insofar as they perform public functions or exercise administrative authority and as provided for by national law;

- "Official documents" shall mean:

all information recorded in any form, drawn up or received and held by public authorities and linked to any public or administrative function, with the exception of documents under preparation;

Scope

This recommendation concerns only official documents held by public authorities as defined above. However, the member States should examine, in the light of their domestic law and practice, to what extent the principles of this recommendation could be applied to information held by legislative bodies and judicial authorities.

Principle 1 **General principle**

The member States should guarantee the right of everyone to have access, on request, to official documents held by public authorities.

Principle 2 **Possible limitations**

1. Member States may derogate from the right of access to official documents. Limitations or restrictions must be applied **sparingly, be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of providing protection on:**

- i. national security, defence and international relations;
- ii. public safety;
- iii. prevention, investigation and prosecution of criminal activities;
- iv. [privacy and other legitimate private interests, in particular the protection of personal integrity;]⁶
commercial and other economic interests, be they private or official;
- vi. equality of parties concerning court proceedings⁷
- vii. nature
- viii. inspection, control and supervision by public authorities;
- ix. economic, monetary and exchange rate policies of the state;
- x. confidentiality of deliberations within or between public authorities for an authority's internal preparation of a case.

2. Access may be refused only if the disclosure of the information contained in the official document :

- i. risks harm to the interests mentioned in paragraph 1 and
- ii. if there is no overriding public interest attached to the disclosure.

3. Member States should consider setting maximum time limits for the restrictions mentioned in paragraph 1.

Principle 3

Requests for access to official documents

An applicant for an official document does not need to specify any reason for having access to the official document.

2. Formal requirements for requests should be kept to a minimum.

Principle 4

Treatment of requests of access to official documents

Any public authority holding an official document is competent to decide on the request for access to that document.

2. Any request for access to a official document shall be dealt with promptly. The decision should be reached and communicated within any time limit **which may have been specified beforehand.**

3. Any decision to grant access to a official document has to be executed without unnecessary delay.

4. Access to information shall be provided on the basis of equality.

⁶ The Group will further consider if there is need for a specific provision to cover protection of statistical information **and on the wording concerning privacy, which could read “respect for his [and/ or her] personal and family life” as in Article 8 of the European Convention on Human Rights.**

If the public authority does not hold the document it should, wherever possible, guide the applicant to the competent authority.

6. The authority should help the applicant, as far as possible, to **identify the requested official document, but the public authority is not under a duty to comply with the request if the official document still cannot be identified.**

7. Any request for access to a document must be dealt with, unless the request is manifestly unreasonable.

8. Any public authority refusing access to an official document shall give the reasons for the refusal [].

Principle 5 **Forms of access**

When access is to be granted to a specific document the applicant has the right to receive a copy of the document or to inspect the original. The public authority must take into account, within reasonable limits, the preference expressed by the applicant

If a restriction applies to some of the information in a document, the public authority shall grant access to the remainder of the information contained in the document and any deletions should be clearly indicated. However, if the remainder of the document is misleading or meaningless such access may be refused⁷.

The authority does not have to give access to an official document if the document is easily accessible to the applicant by other means.

[Explanatory memorandum could:

develop the notion of “within reasonable limits” – for example if the form of access required:

- is practically impossible as the technical facilities are not available (for audio or video copies)
- will unreasonably increase costs may endanger intellectual property rights or
- may provide conditions for unlawful use of the document

explore the term “copy” as being used for an electronic version of a document. Should authorities guarantee authenticity of such a document?

suggest conditions in which it would be appropriate to refuse access to the original if it is physically fragile, especially in relation to historical archives.

emphasise that the term “easily accessible” has to be evaluated for each individual case – what may be easily accessible for one individual will not be for another eg. access to internet, geographical situation etc. and consequently consider the issue of positive discrimination

address the obstacles that could arise from “on-the-spot” consultations: opening hours, several persons wanting to consult the same document at the same time, etc)

⁷ For the time being Norway will have problems with some aspects of the solution proposed in paragraph 2 of Principle 6. on partial release of documents. But on-going work on revising the Norwegian law, may lead to a result that is in accordance with the principle set out above.

- refer to data protection legislation]

Principle 7
Costs

1. Access to original documents on the premises of the public authority shall be free of charge.
2. When a copy of the document is supplied, a fee may be charged to the applicant. The fee must be reasonable and not exceed the actual costs incurred by the authority.

[Explanatory Memorandum:

The cost of access may be charged to the applicant but the authorities should not make any profit, the fees should be reasonable and kept to a minimum. The issue of indirect charges could be raised eg. for research, technical recordings, electronic transmissions, etc (value-added services)]

Principle 8
Possible review

1. An applicant whose request for a document has been refused, whether in part or in full, or dismissed, or has not been dealt with within the time limit set out in principle 5.2, shall have access to a review procedure before a court of law or another independent and impartial body established by law.
2. An applicant shall always have access to an expeditious and inexpensive procedure, whether that be reconsideration by an authority or review in accordance with paragraph 1.

[The Explanatory Memorandum could

- mention that the aim of principle 8 is to provide for an unsatisfied applicant to have an inexpensive and expeditious review procedure available to them.
- mention that, in certain national systems, an internal review procedure is seen as an intermediary step before a Court appeal;
- point out that excessive access to information or to an administrative document may result in an appeal by a third party before a competent judge in accordance with legislation which protects such and such private interests, and in particular private life.]

[New principle after Principle 8]

[A public authority should take the necessary measures to make public information which it holds when the provision of such information is in the interest of promoting transparency of Public Administration and efficiency within administrations or will encourage informed participation by the public in matters of public interest.]

Principle 9
Support systems

1. Member States shall take the necessary measures to inform the public about the way in that right may be exercised.
2. Member States shall take the necessary measure to ensure that public officials are trained in their duties and obligations in this right;
3. Member States shall take the necessary measures to ensure that applicants can exercise their right. To this end, public authorities shall
 - (i) manage their documents efficiently so that documents are easily accessible;
 - (ii) apply clear and established rules for preservation and destruction of their documents;
 - (iii) set up, as far as possible, publicly available lists, registers or files of the documents held by the public authorities.

[]

4. [If necessary, the public authorities shall help the applicant to understand the contents of the documents issued.]

[The Explanatory Memorandum could point out, that among the methods used in providing access to documents, the authorities could indicate a contact point which, within a given department of an Administration, could facilitate access to documents in that department.]

[The Explanatory Memorandum could refer to [Recommendation \(93\) 1](#) regarding access to law and justice of persons in extreme poverty.]

[The Explanatory Memorandum could point out that public authorities should make available the necessary material to allow easy access to documents (availability of appropriate technical equipment, including necessary equipment incorporating new information technology and communication; well-adapted premises, preservation and physical security of original documents, etc.)]

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Appendix IV : Draft explanatory memorandum

[]

Historical background

1. In the course of the last years, there has been growing interest among the member States in making provision in domestic law for measures to ensure open government and public access to official information. Work was accordingly put in hand in the Council of Europe to achieve a balance between, on the one hand, the right of access to official information, and, on the other hand, the need to preserve confidentiality of certain information and the right to respect for private life.

2. This work was entrusted in the first instance to [the Steering Committee on the Mass Media \(CDMM\)](#). Then, in 1997⁸, the Ministers' Deputies approved specific terms of reference given by [the Steering Committee for Human Rights \(CDDH\)](#) to the Group of Specialists on access to official information (DH-S-AC).

3. According to these terms of reference, the DH-S-AC was to examine options for preparing a binding legal instrument or other measures embodying basic principles on the right of access of the public to information held by public authorities. In so doing, the DH-S-AC was to have due regard to [Recommendation No. R \(81\) 19](#) on access to information held by public authorities and to legislative developments in the field of access to information both in the member States of the Council of Europe and at European level as well as of relevant work being carried out within the Council of Europe and in other fora.

Definitions

Public authorities:

4. It should be noted that there is no definition of “public authorities” in other legal instruments of the Council of Europe. However, the book *“The Administration and you, Principles of administrative law concerning the relations between administrative authorities and private persons, a handbook”*, Council of Europe Publishing 1996 states (on page 11) that [administrative authority] means “any entity or person in so far as these are entitled to take decisions or measures which constitute an administrative act.”

5. For the purposes of this recommendation, the expression “public authorities” shall cover the government and all bodies at national, regional or local administration, the term “government” covering both the political and administrative meaning of the term.

6. The term “public authorities” also includes natural or legal persons performing public functions or public administrative functions insofar as they act in this capacity or exercise administrative authority under national law [].

7. “Public authority” may therefore be defined as: any entity or person, at whatever level and regardless of how organized, in so far as this entity or person is entitled to take decisions or measures which constitute an administrative act. It goes without saying that this notion should be interpreted in accordance with national law.

Official documents

⁸ At the 613th meeting (18-19 and 23 December 1997) of the Ministers' Deputies.

8. The aim of this definition is to specify that the term “official documents” covers, **for the purpose** of this Recommendation, any information fixed on any physical medium (written texts, tape-recordings - sound or audiovisual, photographs, e-mails, information stored in electronic data bases, etc.)

9. In member States, there are different traditions and practices concerning the qualification of documents as “official documents”. **Such documents must, in any case, be in a readable form.** In principle, documents do not become official until they are finally approved by the competent authority. Documents (drafts, proposals etc.) not yet finally approved are regarded as “documents under preparation” **and are excluded from the scope of the present instrument.** Nevertheless, it has to be noted that in some member States, documents are made available in their preliminary form, before the decision for which the document is being prepared is taken, to enable participation in the decision-making process. **Thus, in these member States such documents are, therefore, not considered as “documents under preparation”.**

[]

10. In addition, it is important to distinguish clearly between documents received by public authorities which relate to their functions and those received by the officials as private individuals and not having any link to their functions, for example letters received in the officials’ capacity as politicians, holders of external posts []. The latter category of documents is not covered in the definition adopted for the present instrument.

11. For terminological reasons, the term “informations publiques” has been chosen rather than “informations officielles” in French. The latter term corresponds to the translation of the English term “official information”. However, the term “informations publiques” reflects better in French the fact that, in certain legal systems, information is considered official even if it cannot be circulated to the public (for instance, an internal memorandum from a minister is official but not public). The term “official information” covers all recorded information held by the various public authorities. This means essentially documents in the broad sense: printed documents, computerised documents in a retrievable form, documents recorded on audio or videotape, etc. The documents may contain texts, images, etc.

Comments on the principles

Principle 1 General Principle

12. Within the Council of Europe, the principle of public access to official information began to be developed in Recommendation N° R (81) 19 on access to information held by public authorities. The most recent example of European cooperation in the field of access to official information is the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters⁹. It should be noted that Article 19 of the Universal Declaration on Human Rights appears to grant a wider right of access to official information than the European Convention on Human Rights. The principle of public access to official information is being developed in an increasing number of member States.

13. The right of access to official information guaranteed in this instrument applies to any person, i.e. natural persons and legal entities, without any discrimination. Foreigners should

⁹ Adopted at Aarhus, Denmark, 25 June 1998

also have a right of access to official documents. No restrictions in this respect are set out in Recommendation N° R (81) 19.

Principle 2 **Possible limitations**

14. The rule must be access to documents and confidentiality the exception, in cases where other legitimate interests take precedence.

15. Limitations and restrictions to the right of access to official documents are possible only for the reasons listed exhaustively in paragraph 1. The criteria for the application of limitations or restrictions **have been drawn up keeping in mind Articles 6, 8 and 10 of the European Convention on Human Rights, as well as the relevant provisions which appear in the instruments relating to data protection and in Recommendation N° R (81) 19.**

16. On the issue of documents emanating from third parties and held by public authorities, any member of the public must, **in principle**, have [] access to such documents.

17. Paragraph 2 expresses the idea of proportionality. The “harm test” between the interests at stake must be applied when deciding on the disclosure of a document.

18. The “harm test” may be carried out for each individual case, or in accordance with a legal provision or regulations laid down covering access to a certain type of document in a particular field. []. The level of sensitivity may vary with time and it should be avoided that the classification of a document would prevent access to the same document in the future.

19. Paragraph 3 stipulates that member States should lay down maximum time limits for restrictions on access. In this context, it has to be noted that there are different **practices in** member States. In the Netherlands, for instance, documents **in general** must be accessible after twenty years, the only possible exceptions being for the protection of privacy and the national interest. In other member States, Sweden for example, secrecy may prevail for certain types of information for an indefinite time.

20. [As regards documents classified confidential, the authorities should ensure that they are made accessible as soon as circumstances permit, or, if the law sets a time limit on confidentiality, as soon as that limit is reached.]

Principle 3 **Requests for access to official documents**

21. Paragraph 1 states that no reasons need be given for the access application. This idea was already contained in Recommendation N° R (81) 19 on access to information held by public authorities.

22. No one need specify the reasons for a request. However, it has to be noted that the right to be anonymous exists for example in Sweden **or in Norway, where applicants can for instance come to the premises of the public authorities and request an official document orally. In other member States, a request has to be in a written form, in which case the public authority needs an address where they can send the official document requested.**

Principle 4 **Treatment of requests for access**

23. Any authority holding an official document shall determine whether the document shall be handed out, regardless of the origins of the official document.

24. Principle 5 on the treatment of requests for access is a consequence of Principle 4, paragraph 2, in that the formalities must be as simple as possible. This being the case, the administration must, as a matter of principle, adopt an attitude both of *service* and of efficiency towards any applicant, without discrimination. This attitude will be reflected, in particular, in speedy treatment of requests and willingness to co-operate with the applicant, for instance in the case the handling of the request is complicated. From this point of view, the text goes further than Recommendation N° (81) 19, which merely states that any request must be dealt with within a reasonable time.

25. In many cases the authority holding the document will be in a position as to supply it directly, without any further formalities.

26. Paragraph 2 on prompt treatment is essential for documents which are needed within a certain time-limit (for example for journalists). **The public authority should, in a spirit of co-operation, and in order to facilitate access, communicate with the applicant, especially if the request cannot be dealt with promptly.**

27. Paragraph 3 is a logical consequence of paragraph 2 and of Principle 4 paragraph 2. In fact, the minimum level of formal requirements and the speed at which the request is dealt with must be followed by an execution of the decision without unnecessary delay.

28. Paragraph 4 refers to non-discriminatory treatment of requests as already provided for in [Recommendation N° R \(81\)19](#). The authorities holding the document, while enjoying a certain margin of appreciation, must bear in mind the requirements of Article 14 ECHR (prohibition of discrimination) [**and of the recently adopted [Protocol No. 12](#) broadening, in a general fashion, the field of application of Article 14 (non-discrimination).**] In principle, requests should be dealt with in order of receipt.

29. Paragraphs 5 and 6 are an expression of willingness to co-operate with the applicant and are particularly important if the applicant is disabled, illiterate, homeless, etc. **The extent of the willingness to cooperate depends on the situation of the specific case. Therefore, the public authority enjoys a certain margin of appreciation, but should be as helpful as possible. On the other hand, in some member states, there are abusive requests of applicants, such as repetitive ones, which aim mostly to hamper the public authority concerned or certain people working there.**

30. Paragraph 7, stipulating that all requests must be dealt with unless manifestly unreasonable, is intended to allow for rejections in cases of unclear requests.

31. Paragraph 8 is based on Recommendation N° R (81) 19 and requires the public authority to give reasons for refusing access.

Principle 6 **Forms of access**

32. There are two different forms of access: inspecting the original or receiving a copy of it. The term “copy” also covers electronic versions of a document. **In some member states, there are other forms of access such as** supply of a copy, admission to the premises in order

to inspect the document, supply of a version with blank spaces in order to protect confidential information; or supply, at the applicant's request, of a summary of the document.

33. The public authority must, within reasonable limits, take the applicant's preferences into account. The term "within reasonable limits", refers to cases in which the form of access requested is impracticable, in particular if the technical facilities are not available (for audio or video copies), or if it would entail unreasonable costs, or if intellectual property rights might be infringed, or if unlawful use of the document might be rendered possible. In some cases, it may be appropriate to refuse access, if the original is physically fragile, especially in the case of historical archives. It is not always feasible to produce a copy for example of a videocassette for legal, economic or technical reasons. In such cases, access to the original may be the only option.

34. Furthermore, there may be obstacles arising from "on-the-spot" consultations such as opening hours, several persons wanting the same document at the same time. Again, also in this context it is important that public authorities have an open attitude in allowing the general public into their offices.

35. Paragraph 3 provides that access need not be given to a document which is easily accessible by other means. Whether a document is "easily accessible" must be assessed on a case-by-case basis. What may be easily accessible for one person will not necessarily be so for another. Important factors may be the individual situation of the applicant (for example disabled, illiterate, homeless, etc.), the economic situation of the country concerned (access to Internet), and the geographical situation.

Principle 7 **Costs**

36. In order to facilitate access to public information, access to original documents on the spot should be free of charge.

37. Concerning copies, according to paragraph 2, costs of access may be charged to the applicant, but the authorities should not make any profit; the fees should be reasonable and kept to a minimum. It is the responsibility of public authorities to address the issue of indirect charges for value-added services, provided to the public and which have a cost to the collectivity, eg. for research, technical recordings, electronic transmissions, etc.

Principle 8 **Possible review**

38. The Principle 8 was taken over from Recommendation N° R (81) 19 which stated that any refusal of information shall be subject to review on request. The aim of Principle 8 is to provide an unsatisfied applicant with an inexpensive and expeditious review procedure, be whether it be before an ombudsman or mediator, an internal review procedure (before legal proceedings) or a Court appeal. On this issue, it is important to note that in certain national systems an internal review procedure is seen as an intermediary step before a Court appeal.

39. Where a third party considers that information to or release of an administrative document has harmed his/her private interests or, more to the point, his/her private life, (in this respect, see [Recommendation N° R \(91\)10](#) on the communication to third parties of personal data held by public authorities) he/she shall be able to seek remedies.

Principle 9
Support systems

40. Recommendation N° R (81) 19 stated that effective and appropriate means shall be provided to ensure access to information. Principle 9 is an expression of the idea contained in paragraph vi. of the preamble, whereby public authorities should commit themselves to conducting an active communication policy, and, as a consequence, establish support systems.

41. Among the arrangements for access to documents the authorities could set up and indicate a contact point within the given department, in order to facilitate access to that department's documents.

42. Furthermore, in order to allow easy access to documents as stipulated in paragraph 3.i., public authorities should provide the necessary consultation facilities (appropriate technical equipment including new information and communication technology, well-adapted premises, conservation and secure storage of originals, etc.).

43. Paragraph 3.ii. on preservation relates to the question of the physical security of original documents, and, in particular, the need to ensure the preservation of certain originals in archives, etc.

44. **Furthermore, it may be useful to establish documentation and information centres, as provided for in paragraph 3.iii, within national administrations in order to rationalise and speed up the treatment of requests (see Principle 5 paragraph 2). The establishment of such structures should never complicate the handling of requests, place greater distance between the applicant and the authorities where the information originates, still less operate as a (political) filter.**

45. **Such** lists, registers or files of the documents, the public authorities should ensure that they are always available, this being a prerequisite for the exercise of the right to access to official information. The public authorities need to determine the type of information to be included or not in such registers or inventories, with the aim of protecting legitimate interests.

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