



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 27 March 2002
DH-S-AC(2002)004

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

9th meeting
7 – 8 March 2002

REPORT

Introduction

1. The Group of Specialists on access to official information (DH-S-AC) held its 9th meeting from 7 to 8 March 2002 at the *Palais de l'Europe*, 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:
 - Decided on the follow up to [Recommendation Rec \(2002\) 2](#) of [the Committee of Ministers](#) to member states on access to official documents, in particular the procedure to follow with a view to organising a seminar on 27-29 November 2002 and the preparation of a booklet;
 - held an exchange of views with the representative of the European Ombudsman.

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

4. See introduction.

Item 2 of the agenda: Exchange of views on possible activities to implement the Recommendation Rec (2002) 2 on access to official information

5. The Chair recalled that the Committee of Ministers had adopted the recommendation on access to official information (Recommendation Rec (2002) 2) on 21 February. In considering the text the Deputies had congratulated the group on its excellent work.
6. The Secretariat said that terms of reference of the DH-S-AC had been extended to the end of 2002 so that the group could work on implementation of the recommendation and consider what concrete problems implementation might cause in the member states. The seminar and booklet were highly relevant to this. These activities would amount to an initial response by [the CDDH](#) to the decisions taken by the Ministers' Deputies in this area¹. They could be the basis for further initiatives beyond 2002.
7. M. Mario OETHEIMER, Media Section, [Council of Europe](#) Directorate General II (Human Rights), said that a seminar and a booklet would assist better everyday understanding of the recommendation and were keenly awaited in the region where his section was following assistance programmes (south-east Europe, the Commonwealth of Independent States and the Caucasus). The question was one on which his section was often approached and his section would be happy to assist with the seminar and booklet.
8. M. Michael REMMERT, Manager of the integrated project "*Making democratic institutions work*", said his team had been set up to deal with cross-sector issues affecting the Council of Europe's various activities. Consequently he was extremely interested in the subject of access to official documents and would give the group every possible support in its work on it.

¹ At their 736th meeting (10-11 January 2001), the Deputies discussed what follow-up should be given to the [European Ministerial Conference on human rights](#) (Rome, 3-4 November 2000; document [CDDH \(2001\) 3](#)). At this meeting, they instructed [the CDDH](#) 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.

a. Possible preparation of a seminar (including workshops)

9. It was agreed on the need to organise a seminar on 27-29 November 2002 in order to help with the implementation of the recommendation.

10. To prepare the seminar as well as possible it was agreed that it was important to draw up a detailed questionnaire. This would be sent to all prospective seminar participants (the draft questionnaire can be found in Appendix III to this report). The Secretariat would then prepare a document analysing the replies. This document would then be sent for comments to all those invited to attend the seminar. The Secretariat would revise its document in the light of any comments and send it to participants so that they could prepare for the seminar. The timetable was:

- *25 March 2002*: time limit for DH-S-AC members who so wish to send to the Secretariat:

- (i) their possible comments on the draft questionnaire;
- (ii) their possible availability to chair a workshop during the seminar;
- (iii) their possible availability to send national examples or to write case studies that could provide the basis for discussion of one of the workshops;
- (iv) possibly, names of international or national NGOs, or names of other organs or persons, which could be invited to participate in the seminar.

- *31 March 2002*: questionnaire to be sent to CDDH members for forwarding to the national specialist nominated in their respective countries and any other seminar participants;

- *31 May 2002*: time limit for replies to the questionnaire;

- *30 June 2002*: Secretariat to send seminar participants its analysis of the replies;

- *31 July 2002*: time limit for comments on the analysis;

- *31 August 2002*: Secretariat to send revised analysis to participants.

11. It was agreed that each Council of Europe member state should be represented by one person with genuine knowledge of the subject. It was also fully accepted that ombudsmen with a special role in matters of access to official documents should be invited, together with NGOs (whether national or international) and other representatives of civil society. The group decided to send the secretariat the names of NGOs liable to be interested in the seminar so that the secretariat could contact them. Lastly it was agreed that Council of Europe bodies with an interest in the subject should also be invited, as should relevant bodies of other international organisations. Practical aspects of the seminar will be found in Appendix IV to this report.

12. The DH-S-AC decided that the seminar would deal with practical, highly concrete matters for easier implementation of the recommendation. In the interests of comprehensive, open discussion so as to obtain more tangible results, it was decided that in addition to the plenary sessions the seminar would offer small workshops. The seminar programme will be found in Appendix V to this report.

b. Possible preparation of a booklet

13. The Group agreed on the importance of a booklet covering practicalities, to be widely distributed, to help to ensure that the principles which appeared in Recommendation Rec (2002) 2 were properly implemented. The experts expressed a wish for this booklet to be pragmatic, relatively short, easy to read, and possibly to have illustrations to facilitate its dissemination. Specific practical cases could also be included in the booklet, together with the responses appropriate in order to comply with the principles laid down in the recommendation. A glossary explaining the terms used was also suggested. It was acknowledged that the replies to the questionnaire prepared for the seminar would also be very useful for the preparation of the booklet.

14. The main target audience for the booklet was those officials who were in direct contact with people who requested access to public documents. It was nevertheless agreed that the widest possible dissemination was desirable.

15. The DH-S-AC therefore decided that a draft booklet would be prepared before the seminar, so that it could be used as a working document at the seminar. A consultant would be instructed to draw up the draft booklet, which would then be reworked to take account of the findings of the seminar and the comments put forward.

16. The result of the Group's discussions on the booklet appears in Appendix IV to this report.

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17. The Group also considered possible future activities after the seminar had been held and the booklet produced. The Secretariat said that consideration might be given to a wider-ranging European activity in 2003 or 2004 on the theme of access to public documents, in the context of the integrated project on democratic institutions. It might also be possible to have the booklet translated into languages other than the official languages of the Council of Europe, such as German or Russian.

Item 3 of the Agenda: *Tour de Table* on recent developments in member States

18. Each member in turn was given an opportunity to provide information about legislative work in progress or already completed since the previous meeting, as well as about the other activities under way in several member states.

Bulgaria – The data protection law has been adopted by the Parliament².

Finland - A report was being drawn up in on the monitoring of the law on access to public documents, which had come into force in December 1999, particularly with a view to ascertaining whether this law was easy to implement and whether its objectives (restricting the limits on access to public documents) had been achieved. A committee had also been set up to put forward new legislation on access to documents connected with court proceedings, access to documents during trials and access to judicial authority documents. Thanks to the result of these activities, draft legislation should be drawn up, and could be brought before parliament early in 2003.

Netherlands - There had been two legislative developments. The first related to a draft law with a view to implementation of the Aarhus Convention³, which should be adopted before the summer of 2002 and would entail amendments to the law on access to public documents. The second plan was to

² Contrary to what has been mentioned in the last meeting report, this law was not adopted at that time.

³ *United Nations Convention on access to information, public participation in decision-making and access to justice in environmental matters*, adopted in Aarhus, Denmark, on 25 June 1998.

amend constitutional law so as to include the fundamental right to access to public authority documents, subject to some restrictions directed to the legislator. They relate both to traditional forms of access to documents and to access via electronic means. This draft was currently under examination by the Council of State and would subsequently be submitted to parliament. This amendment of the Constitution, however, was not planned for the short term, and probably not before 2007, as the procedure for any revision of constitutional law was a very long one. A seminar, entitled "Transparency in Europe", had also been held, on 15 and 16 February 2001. On that occasion, participants from countries of the European Union had examined practical cases, so they had been able to hold specific exchanges of national experience which had been extremely interesting for all.

Norway - A number of proposals for amending the Norwegian Constitution article 100, which concerns freedom of expression, was submitted to the Parliament before the latest elections. These proposals also include a right to access to public documents. The Government is presently working on a White Paper on this topic, which will be submitted to Parliament in 2003, in order to assist the Parliament in making its final decision. The Governmental Committee which is working with a revision of the Norwegian Freedom of Information Act, will present its proposals by the end of 2002. The Government is also working on a proposal for a new act which will implement the Aarhus Convention.

Poland -The new law on access to information had come into force in on 1 January 2002, with the exception of some provisions such as those relating to the start of the Internet newsletter. It was also stated that no specific body had been set up to monitor the proper application of the law.

Russian Federation - The law on access to public information had passed its first reading in parliament, but was still awaiting a second reading. In the meantime, some amendments had been made to it.

Sweden - Opening up security service files dating from the Second World War was under consideration, for large numbers of these files were still classified "secret". Currently, a discussion is going on with regard to possibly extending the possibility to further restrict access to photographs in the national registers on passports and drivers licences. Moreover, the Swedish government has concluded that no changes are necessary to national legislation in order to comply with the EC regulation 1049/2001 on access to documents of the European Parliament, the Council and the Commission, as regards the obligation to consult with the institutions in cases of applications for documents originating from them.

United Kingdom - The Lord Chancellor had, in November 2001, published his first annual report on the implementation of the Freedom of Information Act 2000. This law is due to be implemented step by step, according to a precise timetable, culminating in full application in January 2005. Consequently, all public authorities were preparing their schemes for publishing information held by them. The right of access would then enter into force in January 2005. The Scottish Parliament is currently examining a freedom of information bill, which is expected to be passed during the summer of 2002.

Item 4 of the Agenda: Exchange of views with the Representative of the European Ombudsman

19. The DH-S-AC held an exchange of views with Mr Ian Harden, Head of the Legal Department at the office of the European Ombudsman, Mr Jacob Söderman, who welcomed the adoption of Recommendation Rec (2002) 2, as well as the activities planned by the DH-S-AC to facilitate its implementation. He particularly took the view that the writing of a booklet on access to public documents could prove very helpful, and that the services of the European Ombudsman could help to distribute this. The Ombudsman has made several public references to the Council of Europe handbook "The administration and you". He also drew the attention to the handbook as one source of inspiration in the drafting of a European Code of Good Administrative Behaviour, which was recently approved by the European Parliament.

20. Mr Harden said that the services of the European Ombudsman could also be interested in taking part in the workshop. He also thought that it would be very useful to invite national ombudsmen.

21. Referring to Recommendation Rec (2002) 2, Mr Harden emphasised *inter alia* the importance of paragraph 1 of principle V, according to which anyone requesting a public document should not be asked to give reasons for wishing to have access to the document concerned.

22. Furthermore, Mr Harden stated that once access to a document is granted under the right of public access it enters the public domain. In this context, he said that it was highly relevant that the recommendation referred to the need for the public authorities to pursue an active communication policy, a policy which could only be beneficial to citizens. He suggested that, as a practical measure, once consent had been given to a request for individual access to a public document, the responsible authorities could make the document available to citizens generally via the Internet.

23. He also pointed out that the recommendation laid down a dividing line with the relevant instruments on the protection of personal data. He supported this approach, since he considers it useful to make a distinction between the protection of personal data relating to private and family life on the one hand and information relating to an individual's public activities on the other hand. A debate is taking place on this matter within the European Union.

24. During the exchange of views, Mr Harden pointed to the variety of persons who had complained to the European Ombudsman about matters relating to access to Community documents. They had included journalists, NGOs, commercial companies and individuals. In practice, applicants must opt either for a complaint to the Ombudsman or for an application to a court. To illustrate the kind of complaints dealt with by the European Ombudsman, he referred to a case in which a journalist had been denied access to documents of the Council of the European Union on the grounds that his applications were repeated too often and involved large quantities of documents (systematic requests to be sent agendas, and so on). In that particular case, the Ombudsman had ruled in favour of the applicant.

25. The DH-S-AC extended warm thanks to Mr Harden for his address.

Item 5 of the agenda: Other business

26. The DH-S-AC decided not to meet, as was initially scheduled on 26 and 27 November 2002, but instead to raise the length of the seminar to three days (27-29 November 2002), instead of the two initially foreseen.

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

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Apologised/Excusé

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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

M. Mikaël POUTIERS, Administrator/Administrateur

Mrs Katherine ANDERSON-SCHOLL, Administrative Assistant / Assistante administrative

Mme Michèle COGNARD, Administrative Assistant/Assistante administrative

* * *

Mr Michael REMMERT, Project manager, Integrated Project « Making democratic institutions work » / Directeur de projet, Projet intégré « Institutions démocratiques en action »

M. Mario OETHEIMER, Programme Adviser, Assistance and technical co-operation in the media field, Media Division/Conseiller de Programme, Assistance et coopération technique dans le domaine des médias, Division Média

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Interpreters/Interprètes

Mme J. BLANC
Mme H. PRIACEL
Mr W. VALK

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Appendix II**AGENDA**

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

Item 2: Exchange of views on possible activities to implement the Recommendation Rec (2002) 2 on access to official information

a. Possible preparation of a seminar (including workshops)

b. Possible preparation of a booklet

Working documents

[Recommendation Rec \(2002\) 2](#) of the Committee of Ministers to member States on access to official documents (adopted by the Committee of Ministers on [21 February 2002 at the 784th meeting of the Ministers' Deputies and explanatory memorandum [DH-S-AC \(2002\) 3](#)

Extracts of the report of the 52nd meeting of the CDDH (6-9 November 2001)
[DH-S-AC \(2002\) 1](#)

Reflection document prepared by the Secretariat
[DH-S-AC \(2002\) 2](#)

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](#)

Report of the 8th meeting of the DH-S-AC (18-21 September 2001)
[DH-S-AC \(2001\) 9](#)

Final Activity Report of the DH-S-AC
[CDDH \(2001\) 22](#)

Item 3: “Tour de table” on recent developments in member States

Item 4: Exchange of views with the Representative of the European Ombudsman

Item 5: Other business

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Appendix III

Questionnaire

For the seminar and booklet (see Appendix III) the DH-S-AC decided at its 9th meeting (7 and 8 March 2002) that a detailed questionnaire should be sent to the CDDH experts. They are asked to forward it to the appropriate national authorities for completion and return to the Secretariat by 31 May 2002. As the DH-S-AC also is interested in the experiences of representatives of civil society and the media, the members of the CDDH are asked to forward, or make sure that the questionnaire is forwarded, to relevant national non-governmental organisations.

The questionnaire was drawn up in the light of the principles set out in Recommendation Rec (2002) 2 on access to official documents and its explanatory memorandum. The recommendation and explanatory memorandum will be sent to the experts and future seminar participants along with the questionnaire.

Recipients of the questionnaire are requested to give as brief and concrete answers as possible, illustrating the situation nationally and supplying examples, statistics, etc. As far as possible they should avoid sending long pieces of legislation with no direct bearing on the questions.

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Question 1⁴

- (i) Are there legislative texts / regulations in your country on access to official documents? If so, please indicate the most relevant references (it is not necessary to send the text)
- (ii) Does this legislation only cover access to official documents / information on request, or does it also cover the authorities obligation to actively publish documents / information, particularly with a view to encouraging an informed participation of the public in decision-making?⁵

Question 2⁶

- (i) Please briefly describe the way texts mentioned in question 1 define the concepts of “public authorities” and “official documents”.
- (ii) Is the meaning given to these notions in your country different from that expressed in Recommendation Rec (2002) 2? If so, briefly describe how
- (iii) Concerning the notion of "public authorities", what is the scope of your legislation? Please indicate precisely which authorities are covered by this notion? In particular, are private entities covered when performing public functions?

⁴ Question relevant for workshop A (*Policy advice / Space to think / [Documents] under preparation*).

⁵ For example, if it is desirable that citizens participate in decision-making at a local level, the local authorities should lead an active policy to ensure access to the official documents necessary for such a decision-making.

⁶ Question relevant for workshop F (*Definition of “public authorities” which can hold official documents – Definition of the “public” nature of a document*) and for workshop A (*Policy advice / Space to think / [Documents] under preparation*).

Question 3

- (i) In your country, does access to "internal documents" / "documents under preparation" exist?
- (ii) If documents under preparation are excluded from access provisions, at what point do they become "official documents"? It is at the point when a decision on a policy matter is taken, for instance ?
- (iii) If documents under preparation are considered to be "official documents", how is access to them made compatible with the need to protect confidentiality of deliberations within or between public authorities during the internal preparation of a matter .

Question 4

- (i) Who has the right to access official documents in your country?
- (ii) Is there any distinction in favour of or against journalists as opposed to other categories of persons?
- (iii) Do nationals and non-nationals have the same right to access to all official documents?

Question 5^s

- (i) How is a request made to access an official document in your country? Describe how a person applies for access to an official document. Does he or she need to apply in writing?
- (ii) Please indicate if the person requesting the document need to refer to the legislative texts or regulations which give him/her the right to access official documents. If so, to which ?
- (iii) Is there an obligation for public authorities to help the applicant, for example, to:
- formulate his/her request;
 - identify the document requested;
 - identify the relevant authority to deal with the request;
 - transfer the request to this authority?

Question 6²

⁷ For instance: governmental authorities (political and administrative – public officers) at central, regional and local levels; private bodies performing functions of public service, etc. As for "legislative and judicial authorities", see the Explanatory Memorandum, § 11.

⁸ Question relevant for workshop B (*Handling of request handling / Charges / Duty of the public authorities to assist the requesting parties / Times limits (in the context of processing requests)*).

⁹ Question relevant for workshops D (*Access to official documents which contain personal information / Boundary between data protection and access to public documents*), E (*Commercial confidentiality / Request for access to documents in the environmental field (case studies)*) and G (*Possible limitations on access to official documents to the aim of protecting national security, defence and international relations*).

- (i) Do the possible limitations to access to official documents in your country coincide with those which appear in Recommendation Rec (2002) 2, principle IV¹⁰, as expanded upon in the Explanatory Memorandum?
- (ii) If not, please indicate briefly the differences between the limitations in your country and those set out in the above-mentioned principle IV.
- (iii) Does a "harm test" exist in your country as described in principle IV, § 2 of the Recommendation Rec (2002) 2?¹¹
- (iv) Is the "harm test" drafted in different ways for the different limitations? If so, how?
- (v) Do you have any mechanism for taking the public interest into account when considering an application for access to an official document where the document contains material which falls under a limitation?
- (vi) What is the procedure in your country for weighing the balance between the protection given by the limitations and other interest?

Question 7

- (i) What is the link, in your country, between the system of access to official documents and the rules on national security?
- (ii) Please describe the situation, in your country, on access to documents which deal with national security and defence.
- (iii) Under which conditions are such documents made public (and therefore accessible)?

Question 8

- (i) What is the link, in your country, between the system of access to official documents and the rules on environment / protection of nature?
- (ii) Please describe the situation, in your country, on access to documents which deal with the environment / protection of nature.
- (iii) Under which conditions are such documents made public (and therefore accessible)?

Question 9¹²

In your country, is the person requesting an official document required to state why he or she wishes to have access to the said document?

Question 10

¹⁰ As interpreted in the light of the Explanatory Memorandum.

¹¹ Also see Explanatory Memorandum, § 31-33.

¹² Question relevant for workshop B (*Handling of request / Charges / Duty of the public authorities to assist the requesting parties / Times limits (in the context of processing requests)*).

- (i) Are there maximum time limits on confidentiality of official documents originating from public authorities in your country, and if so, what are they?
- (ii) Are there different time limits for different types of documents?

Question 11

- (i) In your country, what is the maximum time limit to process a request for access?
- (ii) What are the possible consequences for the public authority responsible for exceeding the time limit?

Question 12

What are the most common reasons for denying access to documents in your country?¹³

- (i) Can you give approximate percentages?
- (iii) Does the notion refusing to process a request for an official document, on the grounds that such a request is “manifestly unreasonable”, exist in your country? If so, in which circumstances is it most often applied ?
- (iv) Is there a possibility for the person requesting access to appeal against a refusal founded on this notion?
- (v) If so, what is the procedure?

Question 13

- (i) What is the procedure in your country if only some of the information contained in a document is confidential? (access is granted to the whole document with the confidential part blanked out / access is granted to some of the document / a summary of the document is provided; all access to the document is denied, etc.).
- (ii) Are there specific rules concerning electronic versions of documents (available on the internet)?

Question 14

- (i) If a public authority denies access to an official document wholly or in part, does it give reasons for its decision?
- (ii) In what circumstances might it not do so?

Question 15

¹³ For example, (a) the allegation by the public authority of the « manifestly unreasonable » character of the request or (b) their refusal given by the public authority on the basis of one of the reasons given in the above-mentioned principle IV (see question 7 above); or (c) the allegation by the public authority that the applicant did not give the reasons for which he/she wished to have access to the document; or (d) the allegation that the request was not clear enough, or (e) badly formulated; or (f) the allegation according to which the applicant did not have the right to access the document as he/she was a non-national, etc.

- (i) Please describe the charges which may be requested by public authorities in your country for access to official documents (charges for access, charges for research, charges for copies, ...)
- (ii) Is access to official documents on the spot free of charge in your country?

Question 1614

(i) Independent review mechanism (independent commission, Ombudsman, ...)

Is there an external review procedure by an independent body as well as or instead of an internal one? If so, which? Is the requesting party charged? What are the charges? Does this independent review mechanism have the power to modify the decisions taken by public authorities?

(ii) Administrative review mechanism

Is there an administrative review procedure in the event that access is denied? If so, which? Is the requesting party charged?

Question 17

What measures have been taken in your country to inform the public about its rights of access to official documents and the way in which that right may be exercised?

Question 18

What measures have been taken in your country to ensure that public officials are trained in their duties and obligations in respect of this right?

Question 1915

What is your national experience as regards (a.) efficient management of documents so that they are easily accessible; (b.) clear and established procedures for preserving and destroying documents; (c) creating lists or registers of the documents that may be consulted by the public?

Question 20

Please describe the existing measures in your country for establishing statistics (number of requests, percentage of refusals, number of appeals made to the review body)?

Question 21

- (i) What concrete difficulties with regard to access to official documents in your country have been brought to your attention?
- (ii) Are there particular problems concerning access to documents stored electronically?

¹⁴ Question relevant for workshop C (*Procedures to review requests (independent review mechanisms and/or internal review at the administrative level)*).

¹⁵ Question relevant for workshop H (*Support systems (document management). Pro-active publication of documents at the initiative of the public authorities*).

Question 22

Have you any particular experiences to communicate which could be useful for the booklet or for the seminar on 27-29 November 2002?

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Appendix IV

Activities aiming to facilitate the application of Recommendation Rec (2002) 2 on access to official documents

Introduction

With a view to facilitate the application of [Recommendation Rec \(2002\) 2](#) on access to official documents¹⁶, the DH-S-AC, at its 9th meeting (7-8 March 2002), decided to organise a seminar on 27-29 November 2002 in Strasbourg and to proceed to the elaboration of a handbook.

Sections I and II of this appendix set out decisions taken by the DH-S-AC in this regard. Section III deals with other activities which could be undertaken within the Council of Europe after 2002.

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Preparation of the seminar *“What access to official documents?”¹⁷* **(Strasbourg, 27-29 November 2002)**

(This seminar would take the form of a highly practical and fairly informal working meeting. It will contain several workshops. It is therefore not a seminar in the sense of a “conference”, or any other name which implies something rather more formal and grand).

Aims

1. The seminar will provide an opportunity to:
 - (a) exchange information on national experiences in the various areas covered by the Recommendation. Since the latter merely sets out general principles, it is important to ascertain, through specific examples, to what extent and how these principles are already applied at national level;
 - (b) In the light of this experience, identify the main difficulties in implementing the recommendation and any solutions that ought to be applied (drawing on good practice in a particular country, while seeking to adapt it to specific national features: legal traditions, level of economic development, social structure, etc);
 - (c) exchange views on the assessment criteria to be used for “monitoring” the implementation of the recommendation in 2004.
 - (d) make national authorities and the general public aware of the importance of these issues (the *duty of transparency* and the *right to know* should be part of the “civic culture” in a democratic country). A draft publication (a handbook; see below, § 4-7) would be prepared in

¹⁶ Adopted by the Ministers’ Deputies at their 784th meeting (21 February 2002).

¹⁷ Another proposal for a title was made by an expert: “Public right to access to official documents”. This title raises however a difficulty in the French version since the word “public” is used twice but with different meanings.

plenty of time for the seminar, so that the participants could discuss it and, if appropriate, approve it).

(e) again with a view to raising awareness, exchange views on the multidisciplinary aspect (ie involving various areas of Council of Europe activity) of the issue of access to official information. The seminar discussions could prepare the ground for the activities to be carried out in 2003-2004 under one of the Council of Europe's "integrated projects" (see below).

Participants

2. The workshop could bring together a maximum of eighty participants representing various approaches and specialist areas, in order to reflect the distinctly transsectoral nature of the issue to be discussed. These participants could be broken down as follows:

(a) 43 representatives of the member states

These would be made up not of CDDH members, but rather of the 11 current members of the Group of Specialists on Access to Official Information (DH-S-AC), who drafted the recommendation and are responsible for organising the seminar, plus 32 experts representing the other member states, who could provide different perspectives on the issues concerned. Some, for example, might come from the Archives sector, others from national committees on access to official documents, the Ministry of Social Affairs or the Ministry of Justice, etc.

NB Participation by the 11 members of the DH-S-AC would be financed by DG II.

The exact number of representatives of other Member states would be defined within the limits of the available financial resources, and bearing in mind the need of a well-balanced geographic representation.

(b) 10 representatives of civil society

These would be appointed from among in particular:

the NGOs, including those concerned with freedom of expression and information (such as *Article XIX*, which has already participated in the work of the DH-S-AC as an observer) and the interests of the press (FIJ, WAN);

1. citizens' associations, including organisations which seek to promote active participation by individuals (including young people) in public life, organisations which represent disadvantaged groups (immigrants, illiterate persons, etc);
2. others (eg as regards access by deprived sections of the population to information about their rights, etc).

NB The participation of these 10 representatives would be subject to outside funding being available.

(c) 10 representatives of the various Council of Europe bodies concerned

1. the [European Court of Human Rights](#) [so that it can describe its case-law relating to freedom of information and to the notion of "democratic society" (including its limits and requirements)];

2. the Council of Europe's [Parliamentary Assembly](#) [so that it can describe, for example, the approach adopted by its committees on social affairs, health and family affairs; legal affairs and human rights; and culture and education];

3. [the Congress of Local and Regional Authorities of Europe \(CLRAE\)](#) [so that it can describe, for example, the approach adopted by its various bodies concerned with: citizens' rights and responsibilities, the local and regional information society, the situation with regard to local democracy in the member states];

4. the European Committee for Social Cohesion (CDCS), [so that it can describe, for example, the approach adopted by its bodies concerned with: promoting equal opportunities for migrants and disadvantaged ethnic groups, improving the quality of life of dependent elderly people, innovative social policies in towns and cities];

5. the Council for Cultural Co-operation (CDCC) [so that it can describe, for example, the approach adopted by its various bodies concerned with: democratic citizenship, the educational and cultural aspects of democracy, human rights and minorities, Archives];
6. the European Steering Committee for Youth (CDEJ) [so that it can describe, for example, the approach adopted by its various bodies concerned with: youth participation and active democratic citizenship];
7. the European Committee on Legal Co-operation (CDCJ) [so that it can describe, for example, the approach adopted by its bodies concerned with: data protection, information technologies, administrative law, the fight against corruption];
8. the Steering Committee on Local and Regional Democracy (CDLR) [so that it can describe, for example, the approach adopted by its various bodies concerned with: citizens' participation in local public life; local services];
9. [the Steering Committee for Human Rights \(CDDH\)](#) [so that it can describe, for example, the approach adopted by its various bodies concerned with access to official information];
10. [the Steering Committee on the Mass Media \(CDMM\)](#) [so that it can describe, for example, the approach adopted by its various bodies concerned with the impact of new information technologies on human rights and democratic values; journalistic freedoms and human rights].

NB Participation would be financed by the respective bodies.

(d) [2-3] representatives of other relevant international agencies

1. European Communities (European Council, European Commission, European Parliament);
2. EFTA (this organisation is planning to introduce its own internal guidelines);
3. The European Ombudsman

NB Participation would be financed by the respective bodies.

(e) Other participants

1. Quebec Access to Information Commission (a representative of this commission has already taken part in the work of the DH-S-AC).
2. National ombudsmen

NB Participation would be financed by the respective bodies.

Content

3. See above.

Practical arrangements

- * Venue and dates: Strasbourg, 27-29 November 2002.
- * Preparation of topics to be dealt with at the workshop

A questionnaire will be sent to the participants (representatives of member states and civil society). See Appendix III to this report.

The text of the Recommendation could be sent in due course to the various departments concerned within the Council (see list above), asking them to comment on the aspects that apply to them (what is their approach to the issue in general; what points, mentioned in the Recommendation, could be developed further in their particular area of activity; what problems do they foresee in implementing the recommendation, etc.).

- * Working methods: The results of this consultation exercise will be examined at the seminar, in workshops, possibly on the basis of a summary prepared beforehand by a

consultant or by the Secretariat. In addition to the eight workshops (four of them will meet in parallel; and will be followed by four others, also meeting in parallel), there will be plenary sessions, presentation of a report, adoption of conclusions, etc.

* Follow-up to be given: send formal conclusions to the CDDH; publish proceedings of the seminar, etc.

* The funding will come from the DG II budget (in the case of DH-S-AC members) and from any assistance that the Council of Europe's Integrated Project I ("*Making democratic institutions work*")¹⁸ might provide to enable other participants to attend (experts from states not represented in the DH-S-AC and non-governmental partners). This integrated project can only assist activities which have a "transsectoral" dimension, ie which span various sectors of the Council. The seminar on access to official documents falls into this category¹⁹.

Preparation of a Handbook

Aims

4. To raise awareness among the public and the authorities as regards the implementation of the recommendation.

Target groups

5. National agencies responsible for access to official documents (eg: CADA in France); the various national central government agencies, especially those which have direct contact with the public; local authorities, etc.

Content

6. In addition to the recommendation and explanatory memorandum, the handbook could contain, by way of example, references to relevant national provisions and practice.

Practical arrangements

7. Subject to the appropriate funding, the task of compiling the handbook would be entrusted to an outside consultant. He or she would incorporate into this handbook the national data gathered via the questionnaire referred to above. The draft version of the handbook would be discussed at the seminar.

III. Possible activities beyond 2002

¹⁸ This project contains *specific objectives* which are related to the activities of the DH-S-AC. In particular, no.1 ("*Responsiveness/accountability*" – 1.9.: *Information policies of democratic institutions / access to official information (including copyright issues)*); and no. 2: "*Participation*" – 2.7: "*learning to participate: the role of civic education, civil society, media, and new technologies in encouraging participation in democratic processes*".

¹⁹ The theme of the seminar (implementation of the recommendation on access to official documents) would seem to cut across other sectors of the Council of Europe, such as local authorities (in that these are the bodies that have most contact with people asking for documents), legal affairs (activities relating to open government, the fight against corruption among public officials), youth (involving young people in the decision-making process in a democratic society by making it easier for them to access official documents, eg through internet facilities in schools, local councils, etc.); social cohesion (access to official documents for disabled people, people living in remote areas, illiterate people, immigrants who are not familiar with the language of the country, etc.).

8. The task of “monitoring” the implementation of the recommendation at national level must be carried out in 2004 at the latest.
9. The results of this “monitoring” exercise (to be conducted by the CDDH) along with information gleaned from the two activities mentioned above (seminar conclusions, results of the questionnaire, published handbook) could be incorporated into a wider programme conducted under the Council of Europe’s “integrated projects”. These projects are to be implemented up to 2004. The DH-S-AC and other interested bodies could participate in them via the appropriate channels. Under the auspices of the department responsible for these integrated projects, for example, a Europe-wide activity could be carried out in 2003-2004 on “*Public administration geared to citizens’ needs – Access to official information in a democratic society*”. It would focus on subjects such as open government and the fight against official corruption; access to official documents by anyone who so requests, simplifying procedures for accessing basic information, particularly in the social field; access to the law and justice for disadvantaged groups / for the media; access to historic records.
10. The programme could lead to a European campaign (entitled for example “*The right to know*”), along the lines of the European civic education campaign, the campaign for freedom of information and the European campaign for young people against racism, xenophobia, anti-Semitism and intolerance. This campaign would be punctuated by events such as an “*Open day for public authorities: what do you want to know?*”; labels or booklets would be produced on specific themes such as “*Do you know your social rights? You’re entitled. Ask your local council.*”
11. Country-by-country operations could also be organised at this stage: promoting field activities (pilot project to equip town councils or schools with computers in order to make it easier for users, in particular young people, to access basic information in a democratic society.

* * *

Draft Program**Seminar : What access to official documents?**

(Strasbourg, 27 - 29 November 2002)

Draft programmeWarning:

The following draft programme has been drawn up subject to the Secretariat being able to find human, financial and material reinforcement to allow for a number of workshops to be held simultaneously. The Secretariat is currently making the necessary consultations and will inform the members of the DH-S-AC as soon as possible.

* * *

Wednesday 27 November 2002

8.30 am: Registration of participants

Plenary session

9.30 am: Welcome [Secretary General of the Council of Europe]

9.40 am: Presentation of Recommendation Rec (2002) 2 [Chair of the seminar]

10.00 am: Background of the work [Judge of the European Court of Human Rights]
[Representative of the Integrated Project on "Democratic institutions"]
[...]

10.25 am: Coffee break

10.55 am: Presentation of the seminar: [Chair of the seminar / General Rapporteur + Secretariat]

- General goal of the seminar (to facilitate the national implementation of Recommendation Rec (2002) 2) [Chair of the seminar / General Rapporteur]

- Working methods (case study within 8 workshop) and presentation of the documentation available [Secretariat]

11.30 am: Presentation of the themes to be dealt with by each workshop [Chair of the seminar / General Rapporteur]

12.00 am: End of the plenary session

Workshops

1.30 pm: Workshops A, B, C & D²⁰:

Workshop A: Policy advice / Space to think / [documents] under preparation²¹

Workshop B: Handling of request / Charges / Duty of the public authorities to assist the requesting parties / Times limits (in the context of processing requests)

Workshop C: Procedures to review requests (independent review mechanisms and/or internal review at the administrative level)

Workshop D: Access to official documents which contain personal information / Boundary between data protection and access to official documents

3.30 pm: Coffee break

4.00 pm: Workshops A, B, C & D²²

6.00 pm: End of work for the day

6.00 – 6.30 pm (Meeting with the rapporteurs of the four workshops, the Chair of the seminar, the General Rapporteur and the Secretariat)

Thursday 28 November 2002

Workshops

9.30 am: Workshops E, F, G & H

Workshop E: Commercial confidentiality / Request for access to documents in the environmental field (case study)

Workshop F: Definition of “public authorities” which can hold official documents – Definition of the “public” nature of a document

Workshop G: Possible limitations on access to official documents with the aim of protecting national security, defence and international relations

²⁰ The "harm test" will be discussed during the general discussion (plenary session) on Thursday 28 November 2002, 4.30 pm.

²¹ For the attention of members of the DH-S-AC: The Secretariat considers that the title and the content of this workshop are not yet clear, at least in the French version. Experts are invited to give their thoughts on this issue.

²² Participants in a workshop held during the first part of the afternoon will attend a different workshop during the second part of the afternoon.

Workshop H: Support systems (document management). Pro-active publication of documents at the initiative of the public authorities [Chairs of this workshop: Mrs H. JÄDERBLOM (Sweden), Mr P. CADELL (United Kingdom, Representative of the International Council of Archives (CIA)]

11.00 am: Coffee break

11.30 am: Workshops E, F, G & H²³

1.00 pm: End of the discussions of the workshops

1.00 pm – 1.30 pm (meeting with the rapporteurs of the four workshops, the Chair of the seminar, the General Rapporteur and the Secretariat)

Plenary session

2.30 pm: Presentation of the work of the eight workshops [Rapporteurs] Discussions

4.00 pm: Coffee break

4.30 pm: General debate on the “harm test” (balance to be found between access to official documents and protection of public interest by limitations to access)

6.00 pm: End of work for the day

6.00 pm – 7.00 pm (Meeting with the General Rapporteur, the Chair of the seminar and the Secretariat)

Friday 29 November 2002

Plenary session

10.00 am: Presentation of the general report [General Rapporteur]

10.30 am: General debate on the follow-up to the seminar:

* Criteria to evaluate in 2004, by the CDDH, the implementation of recommendation Rec (2002) 2 by Member states

12.00 am: End of the seminar.

* * *

²³ Participants in a workshop held during the first part of the morning will attend a different workshop during the second part of the morning