

A more pro-active approach towards transparency for the EU

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Introduction

Ladies and Gentlemen! Welcome to this seminar on the "International Right to Know Day". This is the second time that we organise an event on this date, and I am strongly in favour of maintaining what I very much hope will become a tradition. As for the subject matter of this year's event, I consider it important to support call from access-to-information-advocates to seize the opportunity afforded by the "International Right to Know Day" to put the spotlight on transparency around the globe.

This year, we decided to focus on **best practices** as regards transparency as well as on access to information and documents, not only within but also outside the European Union. Establishing and promoting best practices are among my main priorities. During my time as Ombudsman, I have had many fruitful exchanges on this subject with colleagues, politicians, and experts from within the EU, but also from countries like the United States and Canada.

I am delighted to share the podium today with **Heidi Hautala**, the Finnish Minister for International Development and former MEP. Heidi has been and remains a fervent defender of transparency, and, especially, of improved access to documents rules in the EU. I am looking forward to hearing her perspective on best practices in the Nordic countries.

I am also very happy to welcome **Thomas J. White**, the Chargé d'Affaires of the U.S. Mission to the EU, who will give us his insight into the lessons we can learn from the 45 years during which the United States Freedom of Information Act has been in force.

I am pleased that **Helen Darbshire**, from Access Info, is able to join us today. Access Info's contribution to enhanced transparency in the EU is very important and I am sure that Helen will provide us with ambitious proposals on how to make the EU more transparent and accountable.



For my part, I would like to start with a short introduction regarding the improvements brought about by the Lisbon Treaty, as well as the Ombudsman's perspective concerning transparency, and, more specifically, access to documents at the EU level, and what could be improved in this respect. The focus of my intervention will be on the need for the EU to adopt a more pro-active approach to transparency.

European citizens' right to know

The entry into force of the Lisbon Treaty and the conversion of the Charter of Fundamental Rights into a legally binding document mark a crucial stage in the long process of empowering European citizens and other stakeholders.

As many of you know, the section of the Charter entitled 'Citizens' Rights' contains the right to complain to the Ombudsman. It also contains the **right to good administration**, a right which lies at the heart of what the Ombudsman does. Elements of the right to good administration which are specifically mentioned in the Charter include the right to have one's affairs handled "impartially, fairly and within a reasonable time" by the EU administration, the right of every person to be heard, and the right of every person to have access to his or her file.

A range of other articles in the Lisbon Treaty provide for **greater transparency** in the activities of EU institutions, bodies, offices, and agencies. They include a provision for the Council to meet in public when it deliberates and decides on draft legislation - something I had repeatedly called for. The Treaty also requires that the Union administration conduct its work as openly as possible, in order to promote good governance and ensure the participation of civil society.

Article 42 of the Charter of Fundamental Rights is especially important for the Ombudsman's work. It provides that citizens shall have a **right of access to documents** held by the Union institutions, bodies, offices, and agencies. This constitutes a significant improvement, since it extends the right of access to not only documents of the European Parliament, Council, and Commission, but to all EU institutions, bodies, offices, and agencies, including, for the first time, the European Council.

All of these provisions are crucial for the right to know. European citizens have to be able to see what the governments they have elected as national citizens are doing at the European level. They also have to be able, as Union citizens, to monitor more effectively the work of the EU institutions. Furthermore, they have the right to an open and citizen-friendly EU administration which is committed to a culture of service.

Lack of transparency in the EU administration

This is all very promising. Reality, however, struggles to keep up. Just to recall: Every year, the European Ombudsman receives around 3 000 complaints from citizens, businesses, NGOs,



civil society organisations, and associations, and opens hundreds of inquiries into alleged maladministration by the EU institutions.

In 2010, by far the most common allegation examined by the Ombudsman was **lack of transparency** in the EU administration. This allegation arose in 33% of all closed inquiries and included refusal to provide information or access to documents.

The European Parliament and the Ombudsman recently commissioned a Special Eurobarometer survey in which 27 000 European citizens were asked about their perceptions regarding citizens' rights and the performance of the EU administration. Of the persons responding to the survey, 42% were **not satisfied with the level of transparency** in the EU administration. Only 9% stated that they were satisfied.

I remain very concerned about some of the central messages arising from the survey and the consistently high number of transparency-related complaints, since an open and accountable administration is key to building citizens' trust in the EU.

Best practices - The European Medicines Agency

I am aware that the EU institutions and bodies have done a lot in recent years to improve their openness and I am constantly in touch with them to give constructive advice and recommendations on how best to achieve this goal. In my Annual Reports, I regularly highlight so-called "**star cases**" which can serve as best practice examples for the whole EU administration. One of my aims in doing so is to encourage the EU institutions and bodies to adopt a pro-active transparency policy.

To give you one positive example: I received a complaint from an Irish citizen whose son had committed suicide after taking an anti-acne medicine. The boy's father asked the European Medicines Agency for access to adverse reaction reports linked to this medicine. EMA initially refused access, but finally accepted the Ombudsman's recommendation to release the reports.

In a related case, Danish researchers asked EMA for access to clinical study reports and trial protocols for two anti-obesity drugs. Again, EMA initially refused access, arguing that disclosure would undermine the drug producers' commercial interests. Eventually, however, EMA followed the Ombudsman's recommendation and released the documents.

Last December, the Medicines Agency announced a **new transparency policy**, aimed at giving the public much broader access to documents in its possession, including key documents relating to the evaluation of medicinal products. I very much welcomed this move as this is exactly the kind of pro-active information policy I am promoting for the whole EU administration. I have also made some concrete suggestions following a visit to the Agency in May this year and I am expecting its response by the end of this month.



Concrete proposals on how to facilitate access to documents

Let me add a few thoughts about access to documents requests and possible ways to improve the procedures for dealing with such requests in the EU administration. I sometimes have the impression that no-one in the EU institutions thinks about public access until they actually receive an application for access.

In my view, good administration includes having public access in mind at the moment documents are drafted. The drafting process should aim to ensure that citizens, organisations, and businesses can have the widest possible access to documents. If a document must contain confidential information, then that document should, as far as possible, be drafted so as to facilitate partial disclosure. That can be done by putting the confidential material in a separate section of the document, preceded by a non-confidential explanation of why the material is exempt from disclosure and, wherever possible, a non-confidential summary.

If documents were drafted in this way, less time would be needed to deal with applications, fewer confirmatory applications would be needed, and the institutions would be better able to respect the deadlines.

To facilitate public access to documents, I have repeatedly called for the appointment of **information officers** in the EU institutions and bodies. Their role should be to secure citizens' rights of access to EU documents by encouraging the institutions to adopt a proactive approach, as well as ensuring that they react correctly to requests for access.

In practice, that would mean providing advice and training so as to ensure that the right of public access is taken into account at the stage when documents are being drafted.

Another important consideration when we talk of pro-activity is the need to create useful, citizen-friendly, online **registers of documents** that not only inform citizens of the documents available, but, wherever possible, make those documents directly accessible through a link. In this way, the citizen can obtain the document directly, without having to make an application for access.

The EU institutions already make a vast number of documents accessible on-line. But mere quantity is not enough. The good administration of access to documents involves making available the documents that people actually want and presenting them in such a way that they can be easily identified and accessed.

This means that the register should be based upon an analysis of the workflow in the institution and should be continuously adapted to take account of new and changing activities. Documents should be regularly and promptly added to the register.

The creation and maintenance of such a register is an essential aspect of engaging with citizens. Such engagement should be seen as part of the core business of every institution, in



order to help the Union to fulfil its promises of transparency, participation, and good administration. The aim should be to ensure that, unless there are valid reasons to restrict access, people can immediately obtain the documents they need through the register without having first to submit an application. Any restriction of access should be properly justified on a case by case basis.

We will hear about the American experience in a moment. However, I would like to mention that the US government has set up a **single website for all rulemaking proposals** originating from nearly 300 federal agencies. The aim of this website is to make it easier for the public to find out about proposals and to participate in the regulatory process. Moreover, in order to stimulate dialogue, comments from the public are published while the rulemaking is ongoing rather than when it is finished.

I am aware that there are technical problems to overcome in making the new website fully operational, but I have no doubt that, if these can be overcome, it will be a clear example of best practice.

Conclusion

To conclude: The right to know is an extremely important right for all European citizens. Only if they feel that the EU administration is transparent, accessible, and accountable will they develop the necessary trust and willingness actively to participate in the democratic life of the Union.

When it comes to the European citizens' right to access EU documents, a lot remains to be done. I hope that some of my proposals today will help to stimulate the debate about possible improvements in the EU administration.

Thank you very much for your attention. I now look forward to learning about best practices from our guest speakers.