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## **NOTE**

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To:	Delegations
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Subject:	Questionnaire on Member States' legislation on transparency and access to documents – Synopsis of Member States' replies

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## **INTRODUCTION**

1. This survey was conducted by the General Secretariat of the Council and examines Member States' legislation on access to documents. The survey includes a questionnaire that was distributed to all Member States in October 2016. All but one Member State filled in the questionnaire, providing detailed information about their national legislation on access to documents including links, facts and examples.<sup>1</sup>
2. Member States have provided information about the nature of their national legislation, when their legislation entered into force, the beneficiaries, scope and limits. They have also provided information about the practices an authority uses to reply to a request, the deadline for replying to a request, the possibility of reviewing an initial reply and the deadline for such a review.

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<sup>1</sup> Member States' replies are compiled by question in the addendum to this note and by Member State in 7780/17.

3. Member States have also provided information about the review of their national legislation, the reasons for reviewing it, the setting up of one or more public registers of documents, documents authored by a third party, and the procedure for processing a request for access to a third-party document. Information about the reasons for an authority not to process requests for access and about regular reporting on the application of national legislation was also included in the questionnaire. Finally, they have provided information about the authority that is responsible for replying to the request for review.
4. Moreover, Member States adopt different types of provisions (constitutional law, legislative acts, secondary legislation, etc.) that provide for and protect individuals' right of access to documents. The requests are related to administrative, governmental and public authority matters.
5. The right of access to documents is not granted to all persons by all countries but may depend on nationality or country of residence. Public authorities provide access to information in several different ways such as written replies, recorded information, visual, audio or audio-visual recordings.

## **ANALYSIS OF THE REPLIES**

### **General Information**

#### **Question 1: Please indicate your national legislation on access to documents**

6. All but one Member State have adopted legislation that allows free access to public sector information. The remaining Member State is in the process of legislating on the matter.
7. Depending on this legislation, people may be able to have access to information relating to administrative, environmental, governmental or local authorities, agencies, institutions, courts of law and bodies for the administration of law, public undertakings, and independent institutions subject to public law, parliamentary agencies, consultative bodies and working groups.

**Question 2: Please provide a link to your national legislation on access to documents (if available)**

8. All but two Member States provided links to their national legislation.

**Question 3: When did your national legislation on access to documents enter into force?**

9. The large majority<sup>2</sup> of Member States adopted their national legislation during the last 38 years, i.e. between 1978 and 2017, with the exception of Finland and Sweden, who adopted the first such legislation in 1766, and Latvia, who did so in 1922.

**Question 3.1: Is it currently being reviewed?**

10. Nine<sup>3</sup> Member States are currently or constantly reviewing their national legislation. Some others are also considering a review.

**Question 3.2: If yes, what are the main reasons for the review?**

11. Member States review their national legislation because they face practical difficulties in implementing previous legislation<sup>4</sup> or in order to adapt to new technologies<sup>5</sup> and policies<sup>6</sup>.
12. For instance, some Member States need to restructure their online systems in order to be more efficient and user-friendly. Other reasons for reviewing are the wish to improve communication about government activity by increasing transparency and accessibility, and the wish to simplify access to public information and to make the application of the access regime more consistent. In some cases, revision has been triggered by data protection concerns. Of course, Member States may have more than one reason to make a review.

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<sup>2</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovenia, Slovakia, Spain, United Kingdom.

<sup>3</sup> Austria, Belgium, Cyprus, Czech Republic, Denmark, Luxembourg, Malta, Netherlands, Sweden.

<sup>4</sup> Belgium (Flanders), Ireland, Portugal.

<sup>5</sup> Czech Republic, Ireland, Portugal.

<sup>6</sup> Austria, Belgium (Flanders), Cyprus, Czech Republic, Ireland, Malta, Netherlands, Portugal.

#### **Question 4: Who are the beneficiaries of your national legislation on access to documents?**

13. In many cases, free access to documents depends on citizenship or country of residence. There are by and large three categories of citizens who have the right to access public information:
14. Four<sup>7</sup> Member States stated that they allow access to any of their citizens and to natural or legal persons residing on their territory.
15. Three<sup>8</sup> Member States stated that they provide access to documents to any citizen of the European Union and any natural or legal person residing in the European Union.
16. Twenty-five<sup>9</sup> Member States provide access to documents to any natural or legal person.

#### **Question 5: Does your national legislation set limits to its scope?**

17. It emerged from the replies that five<sup>10</sup> Member States do not set limits to the scope of their legislation, while the others<sup>11</sup> exclude certain categories of documents:
  - a) The first category concerns **public authorities**, and thirteen<sup>12</sup> Member States set limits of access to documents related to "non-governmental authorities", intelligence services, defence, security, parliaments, independent financial bodies, courts, prison authorities, the Ministry of Foreign Affairs, a corruption bureau, the Office of Attorney General, the Ombudsman's office, criminal records or the central bank.

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<sup>7</sup> Greece, Lithuania, Malta, United Kingdom.

<sup>8</sup> Lithuania, Malta, United Kingdom.

<sup>9</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom.  
<sup>10</sup> Belgium (Flanders), Finland, Hungary, Poland, Slovenia.

<sup>11</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovakia, Spain, Sweden, United Kingdom.

<sup>12</sup> Belgium, Denmark, France, Germany, Greece, Latvia, Luxembourg, Malta, Netherlands, Portugal, Slovakia, Spain, United Kingdom.

- b) The second category concerns **areas of activities**, and eleven<sup>13</sup> Member States set limits of access to documents related to court proceedings, security, external relations, private life of third parties, consultations within the Council of Ministers, judicial investigations, administrative, police or military authorities, criminal records, scientific information, a broadcasting authority, libraries, archives, trade affairs or the national bank, or to documents unrelated to public services.
- c) The third category concerns **policies**, and one<sup>14</sup> Member State sets a limit of access to documents containing information that is considered to put the country at risk. One other<sup>15</sup> excludes access to documents concerning the maintenance of public peace, order and security, comprehensive national defence, external relations, in the interest of a corporate body of public law, for the preparation of a ruling or in the overriding interest of the parties involved.
- d) The fourth category concerns **categories of documents** and fourteen<sup>16</sup> Member States set limits of access to classified documents, documents of national archives, memoranda, unfinished documents, medical records or documents containing confidential business information (trade secrets).
- e) Finally, six<sup>17</sup> Member states refer to other reasons as well.

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<sup>13</sup> Austria, Croatia, France, Greece, Latvia, Luxembourg, Malta, Netherlands, Portugal, Slovakia, United Kingdom.

<sup>14</sup> Portugal.

<sup>15</sup> Austria.

<sup>16</sup> Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Greece, Italy, Latvia, Lithuania, Malta, Portugal, Slovakia.

<sup>17</sup> Austria, Croatia, Germany, Ireland, Portugal, Sweden.

**Question 6: Is the setting up of public register(s) of documents mandatory under your national legislation?**

18. In eleven<sup>18</sup> Member States, the setting up of one or more public registers of documents is mandatory. One Member State did not answer this question.

**Question 6.1: Please provide a link to an example of a public register of documents (if available)**

19. Twelve<sup>19</sup> Member States provided a link to an example of a public register of documents.

**Question 7: Please indicate which of the practices below are used by your public authorities to reply to requests for access**

20. **Five** practices were mentioned in this regard:

- a) **Requests are answered by identifying only documents listed in registers: four<sup>20</sup>** Member States,
- b) **Requests are answered by identifying any content**, including content found in non-registered documents: sixteen<sup>21</sup> Member States,
- c) **Requests are answered by identifying any content, including content found in emails: fourteen<sup>22</sup>** Member States,

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<sup>18</sup> Belgium (Flanders), Bulgaria, Cyprus, Czech Republic, Hungary, Lithuania, Malta, Slovakia, Slovenia, Sweden (certain exceptions apply). In Ireland, registers as such are not mandatory, but an obligation to develop publication schemes is applied.

<sup>19</sup> Belgium, Bulgaria, Croatia, Czech Republic, Hungary, Ireland, Lithuania, Malta, Netherlands, Slovenia, Slovakia, Sweden.

<sup>20</sup> Cyprus, Latvia, Portugal, Slovakia.

<sup>21</sup> Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Germany, Hungary, Ireland, Italy, Malta, Netherlands, Slovenia, Sweden, United Kingdom.

<sup>22</sup> Belgium, Croatia, Cyprus, Czech Republic, Denmark, Germany, Hungary, Ireland, Italy, Malta, Netherlands, Slovenia, Sweden, United Kingdom.

- d) **Requests are answered by identifying any content, including extracts from databases:** eighteen<sup>23</sup> Member States,
- e) **Requests are answered by identifying any written content,** other than the content mentioned above: ten<sup>24</sup> Member States.

21. Other practices can include access text messages from phones, any written correspondence, on paper or as audio, as video or as audio-visual recordings, electronic data, and images.

**Question 8: Does your national legislation recognise the definition of a "document authored by a third party" (e.g. another Member State or an EU institution)?**

22. Ten<sup>25</sup> Member States stated that their national legislation recognises the definition of a "document authored by a third party", while the others do not.

**Question: 8.1 what is the procedure followed for processing a request for access to a document of a third party?**

23. Fourteen<sup>26</sup> Member States replied that the **third party is consulted** but that their public authority issues the final reply to the request.

24. Six<sup>27</sup> Member States replied that the request is **forwarded to the third party** to issue the final reply to the request.

25. Six Member States did not reply to this question or gave other answer than the above mentioned.

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<sup>23</sup> Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Germany, France, Hungary, Ireland, Italy, Lithuania, Malta, Netherlands, Slovenia, Spain, Sweden, United Kingdom.

<sup>24</sup> Austria, Croatia, Czech Republic, Denmark, Finland, Greece, Luxembourg, Malta, Poland, United Kingdom.

<sup>25</sup> Belgium (Flanders), Bulgaria, Hungary, Ireland, Italy, Latvia, Luxembourg, Slovakia, Slovenia, Spain.

<sup>26</sup> Belgium/Belgium (Flanders), Czech Republic, Denmark, Estonia, Germany, Hungary, Ireland, Italy, Luxembourg, Malta, Netherlands, Portugal, Slovakia, Slovenia.

<sup>27</sup> Bulgaria, Croatia (situation 2), Greece, Latvia, Lithuania, Spain.

## Deadlines and review

### **Question 9: Please indicate the deadline for your public administration to reply to a request for access**

26. According to the replies<sup>28</sup>,
- a) fourteen Member States<sup>29</sup> need **one month** to reply to a request for access to documents,
  - b) four<sup>30</sup> Member States reply to a request for access within **2 months**,
  - c) six<sup>31</sup> Member States within **20 days**,
  - d) eight<sup>32</sup> Member States within **15 days**,
  - e) three<sup>33</sup> Member States within **2 or 10 days**,
  - f) one<sup>34</sup> Member State within **1 to 2 days**.

### **Question 10: Does your national legislation provide for the possibility of a review of an initial reply (other than a judicial review)?**

27. Twenty-four<sup>35</sup> Member States provide for the possibility of a review of an initial reply, while three do not. Only two Member States did not reply to this question.

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<sup>28</sup> In Finland, the reply should normally be given as soon as possible and in any event no later than after two weeks.

<sup>29</sup> Belgium, Bulgaria (complex cases), Croatia, (extension), Czech Republic (periodically), Finland (large number of requested documents, documents with secret parts, special measures), France, Germany (usually), Hungary (occasionally), Ireland, Italy, Latvia, Luxembourg, Netherlands, Spain.

<sup>30</sup> Austria, Germany (extensive/complex environmental information), Luxembourg (occasionally), Portugal (exception).

<sup>31</sup> Cyprus, Greece, Lithuania (normally), Malta (normally), Slovenia, United Kingdom (normally).

<sup>32</sup> Belgium, Bulgaria (except for complex cases), Croatia, Czech Republic (normally), Finland (in complex cases), Hungary, Poland, Slovakia

<sup>33</sup> Denmark, Estonia, Portugal, Slovakia (normally).

<sup>34</sup> Sweden

<sup>35</sup> Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom.



**Question 10.1: If yes, please indicate the deadline for your public administration to reply to the request for review**

28. a) Four<sup>36</sup> Member States reply within **three months**,  
b) seven<sup>37</sup> Member States need **two months**,  
c) two<sup>38</sup> Member States reply within **6 weeks**,  
d) five<sup>39</sup> Member States reply within **one month**,  
e) nine<sup>40</sup> Member States reply within **15 to 20 days**,  
f) one<sup>41</sup> Member State replies within **1 to 2 days**,  
g) three Member States **do not define** the time period.<sup>42</sup>

**Question 10.2: If yes, indicate the competent authority responsible for review**

29. For ten Member States, the authority responsible for review is the same as the initial authority, while in twenty Member States the competent authority is different. The new authorities can, for instance, be a committee for access to administrative documents, a large group of superior bodies, an Ombudsman, an administrative court, a special authority or an information commissioner.

Six Member States that replied that the authority responsible for review is the initial authority, but also stated that, in some cases, the competent authority can be a different one to the initial authority.

Two Member States did not reply to this question at all.

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<sup>36</sup> Croatia (when dealing with classified information, and the Office of the National Security Council must be consulted), Germany, Netherlands (in the case of the appointment of an advisory committee), Spain.

<sup>37</sup> Austria, Belgium (non-environmental information 45 days), Croatia (examination of proportionality and public interest), Hungary, France, Luxembourg, Slovenia.

<sup>38</sup> Netherlands (normally), Portugal (40 days).

<sup>39</sup> Belgium (environmental information; Flanders/non-environmental information), Croatia (usually), Greece, Italy, Lithuania (in case of extension).

<sup>40</sup> Croatia (normally), Czech Republic, Denmark, Ireland, Lithuania, Malta (10 days), Poland, Slovakia, United Kingdom.

<sup>41</sup> Sweden.

<sup>42</sup> In Finland, legislation requires the authority to reply "urgently"

## Limits to the right of access to documents

### **Question 11: Does your national legislation set limits to the right of access?**

30. All Member States who replied stated that their national legislation sets limits to the right of access to documents.

### **Question 11.1: If yes, please indicate which of the exceptions in Regulation 1049/2001 on access to documents is also provided for in your national legislation**

Multiple answers have been given, as follows:

<b>Exception</b>	<b>Member States</b>
Protection of the public interest as regards public security	25
Protection of the public interest as regards defence and military matters	24
Protection of the public interest as regards international relations	25
Protection of the public interest as regards financial, monetary or economic policy of the EU or one of its Member States	20
Protection of privacy and the integrity of the individual	26
Protection of commercial interests	26
Protection of court proceedings and legal advice	25
Protection of the purpose of inspections, investigations and audits	21
Protection of the decision-making process	22

**Question 11.2: If yes, please indicate exceptions to the right of access provided for in your national legislation other than those identified in Regulation 1049/2001**

31. Other reasons for which the Member States do not grant access to documents except in the above-mentioned cases relate to information about criminal matters, criminal justice procedures, advisory reports, preservation of animal or plant species, cases of recruitment and security arrangements of persons, installations and communication systems. Documents that include information about foreign affairs and foreign policy may also be excluded from the public's right of access to documents.

**Question 12: Does your national legislation identify reasons for not processing requests for access?**

32. According to the survey, twenty-three<sup>43</sup> Member States provide reasons for not processing a request for access.

**Question 12.1: If yes, please indicate which of the reasons below are provided for in your national legislation.**

33. Among the most important reasons for which a Member State rejects a request are abusive and unreasonable requests, failure to clarify the request and the excessive burden to reply to a request. A public authority might also not process a request if it is made with the clear intention of impeding the activities of the authority, or if it concerns an unfinished or already published document. Requests may also not be processed if applicants do not provide their full name and correspondence address.

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<sup>43</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovenia, Spain, Sweden, United Kingdom.

## **Reporting**

### **Question 13: Does your national legislation require regular reporting?**

34. Fourteen<sup>44</sup> Member States regularly report on the application of their national legislation.

#### **Question 13.1: If yes, how regular?**

35. Three Member States have not provided exact details on when they report on the application of their national legislation. The majority of the Member States<sup>45</sup> report once a year, one reports once a month<sup>46</sup>.

#### **Question 13.2: If yes, please provide a link to a reporting exercise for the year 2015:**

36. Ten<sup>47</sup> Member States provided links to a reporting exercise, except for one who stated that there are different websites related to each entity. Five Member States stated that no link is available at the moment. Six Member States stated that there is no available link and eleven Member States did not reply to this question at all.

### **Question 14: Is there any other provision or characteristic of your legislation on access to documents that would be useful to mention? Please specify**

37. Fifth-teen<sup>48</sup> Member States referred to additional characteristics of their national legislation. For instance, in some Member States each institution has a communications officer responsible for guidance and for providing information upfront, or an officer who assists applicants in specifying the document and requesting the relevant information.

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<sup>44</sup> Belgium (Flanders), Bulgaria, Croatia, Cyprus, Czech Republic, France, Germany, Hungary, Ireland, Italy, Malta, Portugal, Slovenia, Spain.

<sup>45</sup> Belgium (Flanders), Bulgaria, Croatia, Cyprus, Czech Republic, France, Hungary, Italy, Malta, Portugal, Slovenia.

<sup>46</sup> Ireland.

<sup>47</sup> Belgium (Flanders), Bulgaria, Croatia, France, Hungary, Ireland, Italy, Portugal, Slovenia, Spain.

<sup>48</sup> Belgium, Croatia, Finland, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Netherlands, Poland, Slovenia, Spain, Sweden, United Kingdom.

## CONCLUSION

38. It is obvious from the results of this survey that the majority of the Member States fully acknowledge and protect the public's right of access to information by adopting provisions that allow access to documents related to administrative, governmental and public authority matters. However, there are several restrictions regarding the type of information that is provided.

For instance, it is in general agreed by the Member States that access to documents related to security, defence, intelligence and police investigations is usually restricted.

Moreover, the practices an authority uses to reply to a request and the deadlines for replying, as well as potential beneficiaries, also differ. For example, the right of access to documents is not granted to all persons regardless their nationality or country of residence by all Member States. It is also clear that the Member States provide access to documents in several different ways, such as written replies, recorded information, video, audio or audio-visual recordings.

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