How to make the EU institutions more transparent

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Abstract

While the EU institutions have often been seen as more open and transparent than many of its member states, this analysis finds that its own, twenty-year old Regulation 1049/2001 is too restrictive in transparency and at the same time the EU does not even follow it in practice adequately. The study offers recommendations in three key areas.

First, the registers covering its legislative activities are clearly incomplete, our research into the volumes of documents reveals, especially in the case of the European Parliament's register of documents. The system of publication needs to be double-checked and made to adhere to the current transparency regulations. Also, the trialogue negotiations, the very common way of creating new legislation, essentially use way around the standard rules of legislative process and thus escape the transparency requirements as well. The best way to change it would be to return these negotiations into the regular rounds of legislative process.

Second, unlike the grants they provide to member states, the EU institutions themselves do not proactively publish the list of their own contractors nor the full text of contracts or invoices. This is in fact contrary to what the EU recommends as a good practice to member states when handling the EU funds.

Finally, the twenty-year old EU Regulation 1049/2001 gives transparency short shrift against the commercial secrecy, individual privacy, national security and member states' political interests (recent case in point – the vaccines purchase of 2021). The regulation should be amended to balance out public interest in openness with other values on a regular basis. Also, more powers should be given to the EU ombudsman to watch over such controversial disputes.

Overall, this study offers 11 specific recommendations on how to fill the transparency gaps in the EU (and four more ideas to do so specifically in Slovakia).

Introduction

While the access to government documents had for a long time been limited by both unwillingness of those in power as well by lack of technological means to share the information, the last three decades recorded change on both fronts. Most of the countries, including the European Union (EU), have shared enormous amount of information with the public. The arrival of inexpensive computers, internet connection and finally of smartphones made it very easy to publish and process the information produced.

Yet a recent wave of weakness in many democracies as well as the onslaught of fake news propaganda reminds us how important it is to continue to push for more transparency and accountability. This study looks at the state of access to information of the institutions of the European Union, the club of 27 countries in Europe. The paper will identify several transparency gaps and offer legal and administrative recommendations on how to close them.

First, the study will analyze the EU's key transparency act, the Regulation 1049/2001 and how it compares with other similar laws. Then it will check whether this regulation is both complied with in practice in three key EU institutions – The Parliament, the Commission and the Council. In the second part, the text will look more closely at three key exceptions to transparency – internal decision-making (the issue of so-called trilogue negotiations), commercial interest (e.g. the case of vaccine contracts) and individual privacy.

Throughout the analysis the examples of other EU or non-EU countries are highlighted. Also, the text relies on a number of studies that civil society and other transparency activists prepared in the past decade. Last but not least, the EU ombudsman's decisions as well as the EU court rulings are cited whenever the access to information in the EU institutions was in question.

In the interest of disclosing potential conflicts of interest it is worthwhile to note that the author himself has worked on transparency issues chiefly in Slovakia in the last decade – he was an executive director of Transparency International Slovakia.

Legislation and its limits

The access to information from the European Union institutions is delineated by its twenty-year old "**Regulation 1049/2001 regarding the public access to European Parliament, the Council and Commission documents**." In the beginning it recalls the statement from the Treaty of the European Union of striving to create "*an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen*." In its preamble the Regulation emphasizes:

> ***„Wider access** should be granted to documents in cases where the institutions are **acting in their legislative capacity**, including under delegated powers, while at the same time preserving the effectiveness of the institutions' decision-making process. Such documents should be made directly accessible to the greatest possible extent."*

The Regulation also notes that as much as the access to EU institutions' own documents is important, so is the access to documents "*received by them*." The institutions should set up registers of documents in order to make it easier for citizens to get hold of them.

Only the EU citizens have the right to access the information, according to the Article 2 (1) of the Regulation:

> *Any citizen and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.*

While limiting the costs of handling information, this approach also limits the usefulness of the information held. The citizens of the EU candidate countries, or third-country officials seeking to better understand EU policies, have in effect no right to ask for information through this Regulation. In comparison, the UK's information law as well as the U.S. Freedom of Information Act gives the same right to non-citizens to use the law and ask for the information or data as well.

> Proposal 1: Abolish the requirement, that a requestor for information must be an EU country citizen or a resident company or organization.

The time limit provided by the Regulation for an institution to answer the requestor is 15 working days, that is in effect three calendar weeks. For comparison, the limits are 20

working days in the US and the UK, 15 days in the Czech Republic but only 8 workdays in Slovakia. There have not been any big campaigns or arguments that this limit needs to be changed.

The Regulation allows for five types of **exceptions** (see Articles 4 and 9):

1. public security and international relations, including the economic, financial and monetary policies of the Union and Member States,

2. individual privacy,

3. documents labeled as SECRET by any institution which produced the document,

4. commercial secrets and legal advice including the inspections, investigations and audits, and finally,

5. internal documents whose release would undermine decision-making process.

However, **only the fourth and the fifth exceptions are explicitly to be weighed against the "*overriding public interest in disclosure*.**" The first three appear to be used as vetoes to any attempt to access the documents. Such blatant disregard for other values including transparency undermines the benefits of the Regulation. There are clearly many potential situations dealing with national security, foreign or economic policy where one can imagine public concern might outweigh arguments for non-publication.

According to the separate Access Info study on access to decision-making documents, "**protection of the integrity of the individual in the European Union transparency rules is an absolute exception** that is not covered by a public interest test. In practice, there is no need to demonstrate harm as the ECJ has ruled that requests for personal information need to be processed in line with the Data Protection Directive and Regulation, which does not require a "harm test", Access Info study says.

Picture 1: Article 4 of the 1049/2001 Regulation on Access to documents, describing exceptions to the rule

Exceptions

1. The institutions shall refuse access to a document where disclosure would undermine the protection of:

(a) the public interest as regards:

- public security,

- defence and military matters,

- international relations,

- the financial, monetary or economic policy of the Community or a Member State;

(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

2. The institutions shall refuse access to a document where disclosure would undermine the protection of:

- commercial interests of a natural or legal person, including intellectual property,

- court proceedings and legal advice,

- the purpose of inspections, investigations and audits,

unless there is an overriding public interest in disclosure.

3. Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

Source: The Eur-lex

While this range of exceptions is similar to freedom of information laws around the world, the approach to them varies. The countries ranking high on both access to information quality rankings and good governance measurements, such as Sweden or the UK, have a much more nuanced legal concept of exceptions.

Sweden, which is generally recognized as a country with the first ever freedom of information law, dating back to the 18th century, uses the public interest/harm principle with most of its exceptions. For instance, the commercial secrecy usually requires a double test – the companies or other entities have to ask for secrecy themselves and second, if they do, they need to prove that damages would exist. The public authority then examines whether the damage is large enough so that it outweighs the public interest in the document being released.

The United Kingdom's Freedom of Information Act from the year 2000 requires the authorities to carry so-called public interest (public good) test whenever dealing with "qualified", not "absolute" exemptions to disclosure obligations. Only a minority of exemptions are absolute: they include exemptions of national security matters held by specific government agencies (e.g. security service, the armed forces, special tribunals and crime agencies), court documents outside of court hearings, special parliamentary documents, communication with Her Majesty and personal information (to the extent defined by the data protection law).

According to the Information Office of the UK the official public body in charge of transparency and privacy issues, the public interest test usually takes into account specific context of the information requested – its time of origin (the older the document, the less need for secrecy), its nature (can its disclosure shed light on government abuse?), or if there are other possibilities to obtain it (the more of them out there, the less need for release).

Proposal 2: Introduce the concept of public interest test in case of all exemptions into the EU Regulation 1049/2001

According to the EU Regulation 1049/2001, the exceptions generally apply for 30 years maximum. Again, this has been criticized as excessive by transparency activists (see below). However, it is the period that is most commonly used. The US, Germany, Ireland and Australia have sunset clauses of such length. So does the UK, although in some cases they started moving toward the 20-year limits. In similar vein, the Slovak law on archives has a standard 30-year limit on access, which can be lengthened to 50 years in special circumstances.

In last year's **Right to Information ranking** of laws regulating access to public information, which is regularly published by Access Info Europe, the Spanish-based NGO and Centre for Law and Democracy, the EU regulation scored 96 points out of maximum 150 points. Its score is equal to that of Estonia, which ranks 48th out of 129 countries measured, and much better than that of France, Germany and Belgium, where most of the EU institutions reside.

The key weaknesses, according to the ranking's results, are in the scope (too many exceptions), requesting procedures and sanctions (see table 1 below).

Table 1**: Where the EU lags behind, according to the RTI ranking for 2020**

Characteristics	Points subtracted	Key explanation for scores
Right of access to information	1	Guaranteed access to "documents", not information. Also, only for EU citizens and legal persons
Scope	11	Exemptions to Court of Justice, European Central Bank and European Investment Bank (subject to documents access in their administrative tasks only), and also to MEPs' documents they receive but not formally propose in the parliament
Requesting procedures	11	In some cases postal addresses are required from requesters, no fee waivers for large copying requests of people in need, limits on free reuse of data, no obligation to forward the request to body who has the information, no requirement to assist applicants with special needs
Exceptions, refusal	6	Lack of public interest test for documents relating to security, defense, international relations, economic policy and individual privacy, public interest exemption valid for maximum of 30 years (too long)
Appeals	8	EU Ombudsman recommendations are not binding
Sanctions and protections	7	No sanctions provided in legislation, nor any given by courts
Promotional Measures	10	No specific officials

		responsible for right to information issues, no consolidated report on the topic for all EU institutions present in the Parliament

Source: RTI Ranking

Proposal 3: Reconsider the role of the Ombudsman with the possibility of giving him the power of binding decisions on transparency, including the sanctions

The annotated Regulation 1049/2001 with suggestions and comments is attached as annex at the end of this study.

Practice – the Commission

The above analysis relies on procedures set in law. But just as important is the practice, that is how wide the scope of available information is in reality.

The European Commission proactively publishes legislative documents in its online register. The register can be found easily, two mouse-clicks within both the Commission's and EU's main webpages. The register is available in all EU languages (but not all its documents!) and has useful search functions, such as full-text and the department/type of document/date options. When conducting the search, the register lists the documents in reverse chronological order.

Proposal 4: Register should include statistics on the most searched for/viewed documents, enabling the audience to learn from others what the most interesting documents are at the moment (private news media have this search feature often on their websites). Similarly, a counter next to each document would show how often the document was accessed online by users. The Slovak register of public contracts has this feature installed (although it is not functional at the moment). The register should also automatically include all the documents that were requested through official requests for information, so that other potential users can find them online.

The EU register contains 205 thousand documents as of time of writing this report (autumn 2021), with those earliest from 2016. According to the Commission's 2021 annual report on its transparency, the site received almost 15 thousand visitors and over 24 thousand pageviews in 2020, more than double the 2020 traffic. Still, the number is relatively low in comparison to similar national databases. Slovakia's contract register has had 200 to 300 thousand visitors every year since its launch in 2011. Slovakia's government website has 400-500 thousand visitors per year. The US Federal government document register has a three million visitors annually (source: similarweb.com).

In 2020 almost 20 thousand documents were uploaded to the Commission's register, about 50 per workday. Three quarters of them consisted of the Commission decisions. Surprisingly few Commission meeting minutes (79 in 2020) are available, just over half of all uploaded meeting agendas, themselves clearly underreported.

The 2017 study by Access Info Europe, transparency NGOs, criticized the lack of records about the meetings, both at the Commission and elsewhere in the EU: "*There is no general legal obligation at the European Union level to compile or record minutes of meetings related to a particular policy or decision-making process*." But the Regulation 1049/2001 on access to documents in Article 3 does define "document" widely enough, so the key problem appears to be the institutional attitude rather than a legal obstacle:

> *„"document" shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility"*

According to the register numbers, the total number of uploaded documents concerning the calendar year has remained stable in the last five years, around 10 500 on average. The volume of published decisions, acts or reports is largely consistent over years also within Directorates, as shown in the table below. It is beyond the scope of this study to analyze whether the differences in numbers *between* DGs are justified considering their different portfolios.

Table 2: **Number of documents held in the online EC Registry of documents, total and in selected Directors-General**

	2016	2017	2018	2019	2020	2021*
Total number	10 390	10 448	10 547	10 448	10 839	8 708
Of those:						
DG AGRI	849	770	627	625	648	536
DG BUDG	96	79	85	104	131	98
DG COMP	957	900	914	860	1558	1305
DG ECFIN	180	173	208	213	303	180
DG EMPL	114	170	242	187	260	229
DG ENER	162	165	149	209	138	121
DG ENV	119	189	159	202	106	98
DG FISMA	194	170	153	100	130	188
DG SANTE	1840	1809	2333	2252	1992	1813
DG JUST	100	95	127	87	82	94
DG HOME	302	329	329	260	241	190

Source: Register of Commission Documents

*1/1/21 to 25/10/21

Unpublished documents can be obtained via official requests for information. There has been a gradual increase in these requests since 2016, with the number topping 8 thousand requests in 2020. Roughly 55 to 60% of requests for information are provided with the data asked, with further 20-25% given partial access, according to the Commission data. Every year 10% to 20% of information requests are completely denied but since 2016 the ratio gradually declined to the record low of 10% in 2020.

Table 3: **Number of public information requests from the Commission**

	2015	2016	2017	2018	2019	2020
Nr. of requests	6 752	6 077	6 255	6 912	7 445	8 001
Share of refusals from all requests	15%	19%	18%	16%	13%	10%

Source: European Commission

However, according to the small Access Info survey of people requesting the information through their website AskEU.org (which then directs them to EU institutions) from February 2020, 41% of respondents said that the EU institutions including the Commission did not provide them with complete information they asked for. As many as 30% complained about long delays in getting answers.

According to the Commission statistics, around 40% of information requests were denied due to the protection of privacy of individuals. The second most likely reason for not providing information is commercial interest of concerned subjects (14%).

The practice of the Commission to ask for the postal address from whoever requests information from them was criticized by the European Ombudman Emily O'Reilly in 2018. The Commission argues that it prevents abuse of requests and it is also needed when sending the paper copy of the response anyway. The Ombudsman found this practice excessive and suggested that the Commission only ask for the postal address if it suspects that the requests are indeed malicious or under false identity. The above-mentioned Swedish freedom of information law, for instance, does not require applicants to even state their names when asking for information. The Commission declined to change its practice in any way, however.

The Ombudsman criticized the Commission's practice in another ruling a year later. It concerned the Commission's refusal to publish voting records for each member country in the so-called comitology meetings. These approve the Commission's role as an implementing agency in some of its laws. The Commission actively publishes the voting totals, but repeatedly refused to provide – even on demand – how each member country on the committee voted.

The Commission argued that publication of views of Member States would undermine decision-making process, put them under undue pressure and "*prevent them from frankly expressing their views.*" On the contrary, the Ombudsman stressed that the comitology meetings are part of the legislative activity that should be under public scrutiny. She noted that member countries, that is governments, are well used to public scrutiny and that the Commission showed no specific evidence how the decision-making process was to be affected by the publication of the votes. It noted:

> *„The public disclosure of the requested documents would enable EU citizens, such as the complainant, to scrutinise the reasons put forward by Member States for and against the adoption of the guidance and, if wished, attempt to influence an ongoing decision-making process. Understanding which positions the different representatives of Member States hold is vital in a democratic system which is accountable to its citizens."*

Still, the Commission has not changed its position to this day.

> The Proposal 5: Push the Commission to follow up on Ombudsman's recommendations regarding the comitology voting records and abolishing the requirement for a postal address when requesting the information.

Practice – the Parliament

Just like the Commission, the European Parliament has its own register of documents where the information is published pro-actively. It has similarly functional full-text search function (however, the proposal 1 to include most searched items and add statistics on use of each document as well as to publish information already provided on-demand applies to this register as well). The register page includes a possibility to request the document (again, with postal address being mandatory).

As of early October, the Register had 870 thousand documents available in English (but only 335 thousand in the Slovak and the same in the Czech language). The fact, however, that the **number of documents has been decreasing in the last years may suggest that the register is incomplete** and that it is not consistently being updated with new documents.

Also, there are large discrepancies in non-English documents. For instance, the registry holds 54 thousand items in English for 2015 and only 11 thousand documents in Slovak, yet three years later it has 33 thousand English-language documents against the same 11 thousand items in Slovak.

Table 4: **The number of documents in EP Register**

In thousands (rounded)

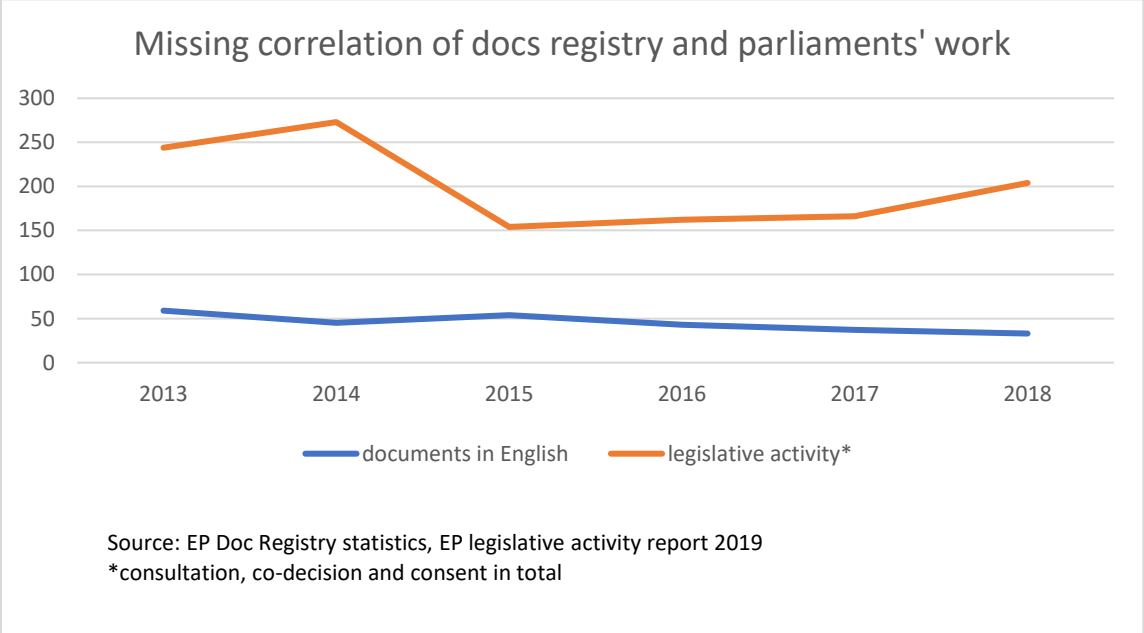
*Jan-Sept

language	2013	2014	2015	2016	2017	2018	2019	2020	2021*
English	59	45	54	43	37	33	23	29	19
Slovak	22	14	11	11	10	11	7	8	6

Source: Register statistics online

While the volume of legislative activity of the Parliament on average indeed decreased, it is hard to understand why the year to year changes in activity do not at all reflect the changing number of documents in the registry (see chart below).

Chart 2: **Volume of European Parliament's legislative work and volume of its documents published in its official online registry, 2013-2018**



Source: EP Doc Registry statistics, EP legislative activity report 2019
*consultation, co-decision and consent in total

Similarly, the number of documents does not correlate much with the size of the political groups in the EP. The Greens and United Left are either notably overrepresented in number of documents or are, as opposition, perhaps simply more active in tabling proposals than other MEPs.

Table 5: **Number of Register documents by political groups in English-language documents**

In thousands, rounded, in order of size in the previous Parliament, from the biggest downwards, 2014-19

Political group / Year	Total docs in English	Total MEPs
EPP	2,6	216
S&D	2,3	185
ECR	1,7	77
ALDE	1,9	69
GUE-NGL	2,8	52
Greens EFA	2,8	52
EFDD	2,4	42
ENF	na	36
NI	0,3	20

Source: Register Statistics online, when documents sorted by political authority

When looking at the documents' footprint of EP committees, again we do not find an understandable relationship between the number of documents available in the EP register and the amount of work output by the committee.

Table 6: **Number of Register documents by political committees in English-language documents**

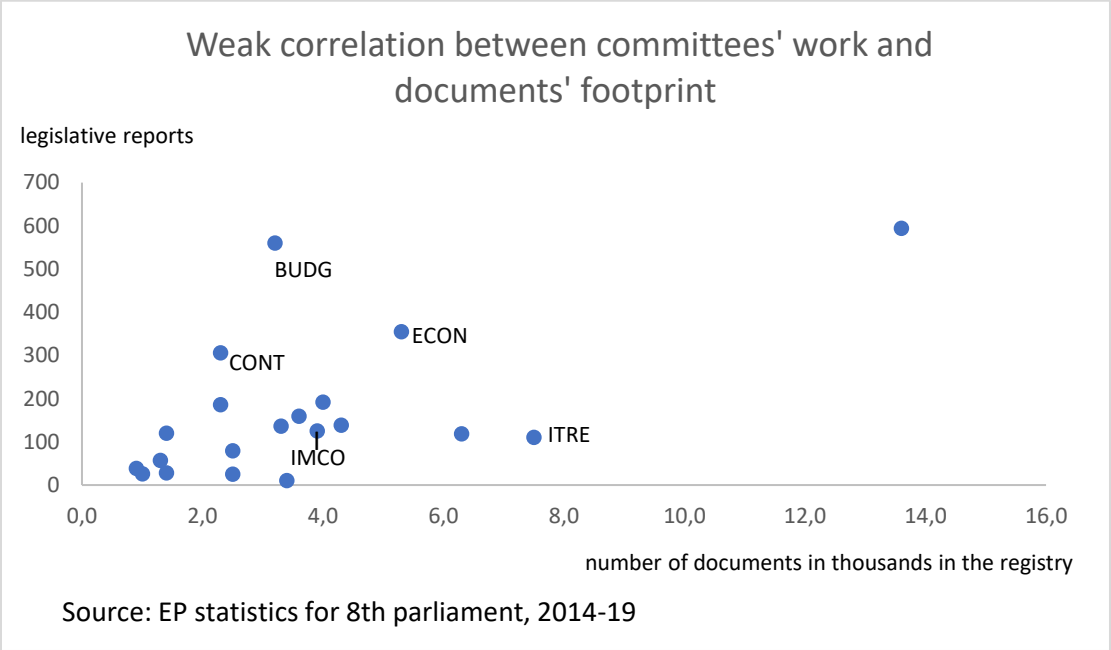
In thousands, rounded, in order of activity of the committees in the previous Parliament, from the biggest downwards, 2014-19

Political group / Year	Total docs in English	Total reports**
ENVI	13,6	594
BUDG	3,2	560
ECON	5,3	355
CONT	2,3	306
LIBE	4,0	192
JURI	2,3	186
TRAN	3,6	159
AFET	4,3	138
INTA	3,3	136
IMCO	3,9	125
PECH	1,4	120
AGRI	6,3	118
ITRE	7,5	110
EMPL	2,5	79
REGI	1,3	57
AFCO	0,9	38
CULT	1,4	28
FEMM	1,0	26
DEVE	2,5	25
PETI	3,4	10

Source: Register Statistics online, when documents sorted by political authority

**includes own-initiative reports, legislative reports, other reports and delegated acts, excludes joints legislative work of more committees (EP methodology, see EP in Facts and Figures, October 2019, p.10)

Chart 3: **Correlation between the legislative work of EP committees and the number of documents published in the EP online registry**



Source: EP statistics for 8th parliament, 2014-19

Just like in the above comparisons, there does not have to be a perfect correlation, of course – the register includes not only output such as press releases, motions, drafts or texts proposed and adopted, but also input and side materials of the committees: emails (ingoing and outgoing), questions and answers of the Commission to MEPs. Still, the huge discrepancy between the numbers deserves a closer scrutiny, or a well-executed check whether the register does indeed systematically publish all the relevant documents consistently and thoroughly.

> Proposal 6: Carry out an audit of the system of publication of documents in the official Public Registry of Documents of the European Parliament and make sure that the differences between volumes of documents between years, political groups or committees have legitimate reasons and do NOT reflect gaps in transparency.

Apart from searching the documents register, the public can directly ask for information, by email, phone or online form. In the past six years, the EP received on average 450 requests for information per year, with the 2019 being an exception with 645 requests. According to the EP report, the increase was in large part related with the EP elections that year.

Every year around half of the request is in English. German and French-language requests make up another third of the requesters.

As the table 7 below also shows, **only about a quarter of requests concern new, previously unpublished information**. This suggests that most of the people asking for information did not know about the online documents register or were not able to find the information there. As for the unpublished information, the public most often asked for so-called trilogue negotiations, the EP says.

Table 7: **Number of public information requests from the EP**

	2015	2016	2017	2018	2019	2020
Nr. of requests	444	499	452	498	645	442
Requests for previously not released documents	24%	27%	19%	23%	16%	21%
Share of refusals from all requests	10%	5%	7%	4%	7%	7%

Source: EP

The share of requests denied averaged seven percent of the total. Over half of refusals were based on two legal exemptions: privacy and guarding the decision-making process. Protecting commercial interests is usually the third most common reason when EP refuses to provide the information.

In the 2020 report, the EP concedes that providing access to trilogue documents takes longer as it has to consult both the Council and the Commission: "*as a result, Parliament often needed to extend the time limit to respond to applications for trilogue documents by 15 working days, in accordance with Regulation (EC) No 1049/2001.*"

However, the EP, just like the Commission, does not provide any numbers on how many requests are complied with in 15 days and how many need more days, nor does it offer the average duration and trends in time. Hence, it is impossible to tell how effective the EP is in providing timely responses to applicants.

The proposal 7: Report the average (percentiles) length of replies to requests for access to information as well as the percentage of requests that are not served within 15 working days. This obligation should be inserted to other duties of annual reporting, as stated in Article 17 of the Regulation 1049.

Transparency and Accountability of MEPs

Adopting laws and declarations by the MPs is the key part of every parliament. The EP has a dedicated website on its Plenary work that enables the public to follow how legislation is proposed, debated and adopted (or not).

Most of the national parliaments in the EU countries offer texts of legislation, voting records, details on deputies or daily agendas. The EP portal compares rather well to such national sites – it has all of those features. In comparison, it has some rare benefits, but also some gaps.

On the plus side, the portal enables users to sign up for updates related to their interests through key words. This makes it easier to get involved once the EP deals with topics of interest to particular citizen or company. The Plenary page also offers verbatim records of floor debates including the videos of each particular MEP speech.

On the other hand, it has a rather cumbersome system of recording the votes. The main votes subpage only offers totals and then separate page with how each MEP votes, but without a detailed description of what the vote was about. In comparison, the US Congress has a much more user-friendly way of showing the votes, the description of the bill and its passage in time. In fact, a semi-commercial portal VoteWatchEU.org has a much better system of tracking how MEPs voted and what their opinions on matters of public interest are.

Similarly, the search function, which is comprehensive, could be improved in some details. Again, the US Congress search features provide a good example. Unlike the EP search windows, where you have to type in the names of the rapporteur or author, the US page offers a pulldown menu with names of all representatives. The EP page also does not offer

any explanation what PE number (one of the search options) actually means or where to look for an explanation.

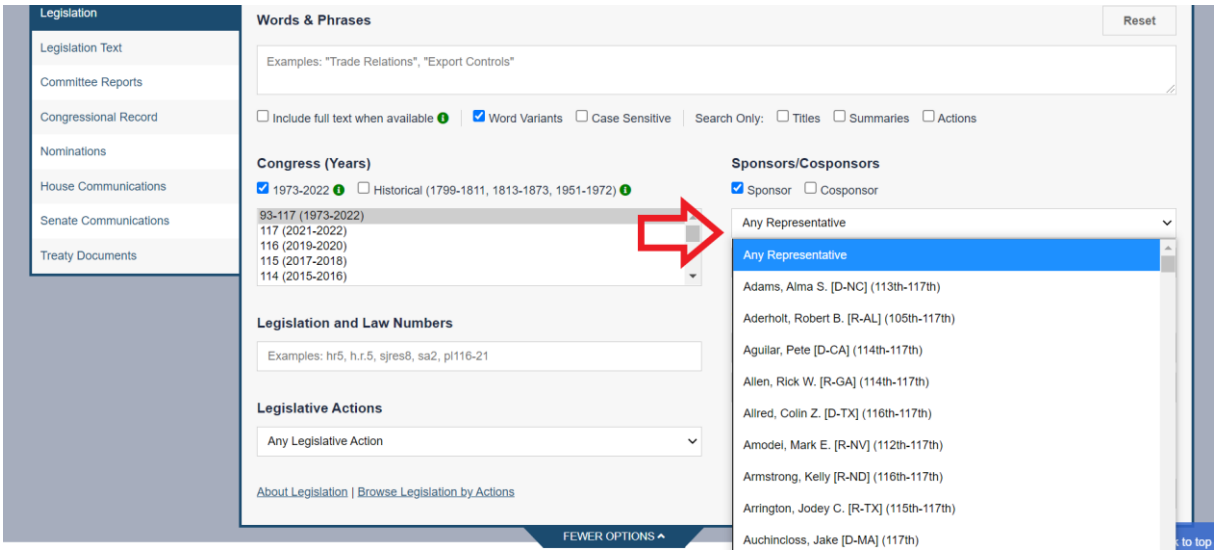
As for the MEP profiles, the US congress page also provides several ideas for improvement. For instance, each profile of a congressman or woman includes complete record of activity and its statistical breakdown – how many bills a politician sponsored or co-sponsored, at what stages of process they are, how many became law or which policy areas they concerned. The EP website with MEP profiles does not offer such information – in fact it will not offer the whole MEP's activity but one has to use "load more" button to unscroll more information with no clear end in sight. Nor is there any link to votes of the MEP in the plenary (the Slovak parliament's website is a good example how to make this information easily accessible). On top of that, the US Congress page also offers several separate custom-made lists, including ranking of its representatives or senators by the number of legislation sponsored.

Also, when testing the services on updates of politicians' work, one wonders how reliable it really is. There were exactly zero notifications for the key word "Eugen Jurzyca" in the email subscription service all of November 2021 for the activity of one of the Slovakia's MEPs, even though he took part in all the EP sessions. In comparison, we received as many as ten emails for the same month describing the legislative activity of Pete Aguilar, the House representative, from the notification services of the US Congress. Aguilar is ranked average by seniority and we chose him randomly from those "average" members of Congress.

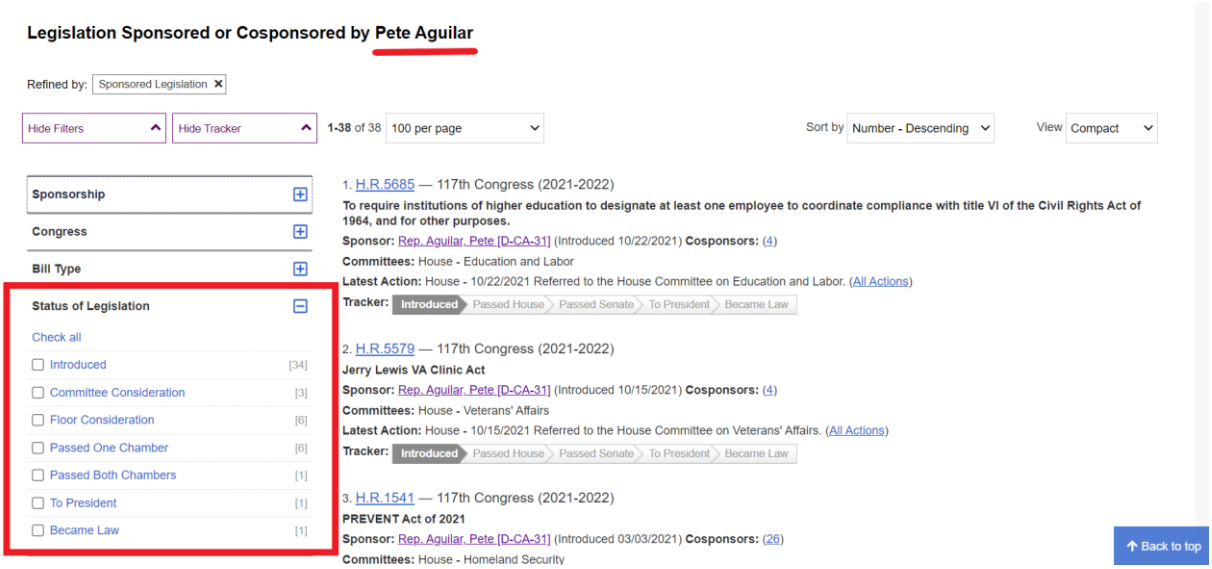
Pictures: **Examples of features of the US Congress and the Slovak parliament's webpages that enable more accountability and transparency of MEPs' work** (screenshots)

1. Summary of each legislation

2. Choices are listed for authors of the legislation



3. Representatives' profiles include statistical breakdown of their work



4. Statistical breakdown and the voting record of each deputy on the website of the Slovak parliament

Source: congress.gov, nrsr.sk

Practice – The Council

Like the Parliament and the Commission, the European Council has its own register of documents online. It contains half a million original language documents as of writing this study, over 3,5 million documents in all languages. Annually, 22-25 thousand documents are added to the register.

Table 8: **Number of original documents added in the online the Council's registry of documents**

	2016	2017	2018	2019	2020
Total number	22 671	25 514	25 000	23 000	22 375
Of that public	71%	70%	71%	71%	73%

Source: The European Council

It is welcome that the register includes information about the secret (so-called LIMITE) documents, because it is clear they exist and could be potentially demanded later, if their status changes. But as the Transparency International EU notes in its recent study, the share of non-disclosed documents is very high in light of successful appeals and later publication. In 2020, for instance, the Council labeled LIMITE almost 60 percent of legislative documents initially, and only later that year made two thirds of them public. Similarly, from the total number of 118 appeals to its decision not to provide the document, on the second stage the Council released fully or partially 56% of documents.

Overuse of LIMITE labelling was criticized by the EU Ombudsman in her 2019 ruling concerning the fishing quotas. The Council annually decides on the distribution of fishing quotas, a decision which has strong economic, environmental and political implications. When asked for the information including the positions of Member States, the Council would regularly decline to provide such documents. It argued that such decisions are non-legislative, and thus the Regulation's transparency obligation is not that strong, and moreover, that the documents' publication would undermine decision-making process.

The Ombudsman in her judgement disagreed with both points. First, she relied on the European Court of Justice's ruling which argued that while the documents were formally

non-legislative, its nature – being binding – showed that it decides on matters important to the public and should be widely accessible. As for the second argument, the Ombudsman did not find any evidence in the Council's claims that the documents publication would undermine its ability to carry out its decision in an efficient manner. Openness in other matters of decision-making do not seem to disrupt the ability of the Council to continue its work, said the Ombudsman.

In March 2021, the European Parliament consequently suggested to increase transparency of the Fisheries regulation, removing the Member states' veto from the provisions on data publication. However, the Regulation has not been amended yet as it still has to pass through the Council.

Transparency International EU, the Brussels-based chapter of the largest anti-corruption movement in the world also notes that the Council's register is incomplete and difficult to work with. As noted in the registers of the Parliament or the Commission, it is hard to use the register's subject and document type features without a good knowledge of all procedures. Statistics on most common words or documents is not available. All in all, the pro-transparency organization concluded that it is rather clear that the Council regularly violates the transparency regulation.

> The proposal 8: Review the procedures at the Council and find out why such a high share of documents are not made accessible originally while the majority are made public upon appeal or in course of time.

In comparison to the Commission or the Parliament, the Council receives by far the most requests for information – around 2500 on average. Half of them concern three large areas – justice and home affairs, economic and monetary policy and common foreign and security policy, according to the 2020 Council report on access to information. On average the response from the Council takes 17 working days, which given the possibility to prolong the deadline in complicated cases, largely conforms to the legal threshold of 15 days.

About one ninth of requests in 2020 were fully denied. This is the lowest number since 2015. Two most common reasons used are protection of decision-making process and overriding public interest in international relations.

Table 9: **Number of public information requests from the Council**

	2016	2017	2018	2019	2020
Nr. of requests	2 342	2 597	2 474	2 567	2 321
Share of refusals from all requests	17.7%	22%	20.2%	19.5%	12%

Source: European Commission

Key outstanding issues

Access to trilogue documents

Given the multi-national and multi-institutional nature of the European Union, decision-making process is rather complicated and multi-faceted. One of the key moments in the legislative process is also one of the most opaque: so-called Trilogue negiotiations.

These are informal dialogues among the Commission, the Council and the Parliament that eventually lead to a final position towards an issue. They can happen at any stage of the legislative process, but most often they take place at the initiation phase. In practice, trilogues thus reduce the formal three-stage process of legislation-making, which has strict rules for transparency.

Within trilogues, various positions are exchanged in a table, with the fourth column registering suggested, compromised positions. According to the Parliament, 70-80 percent of the EU legislation is now a result of such trilogue negotiations.

The EP had provided the public with access to some tables but refused to publish full tables including the fourth columns, citing the concern for effectiveness of decision-making process. If such information was to be released, it would jeopardize the space for negotiations and thus endanger reaching any compromise, it argued.

"*Disclosure at a time when the negotiations are still ongoing would likely lead to public pressure being exerted on the rapporteur, shadow rapporteurs and political groups, since the negotiations concern the very sensitive issues of data protection*, "claimed the EP in its position. Also, they argued that

„the principle that 'nothing is agreed until everything is agreed' is very important for the proper functioning of the legislative procedure and, therefore, disclosure before the end of the negotiations of one element, even if it is itself not sensitive, may have negative consequences on all other parts of a dossier; furthermore, disclosure of positions that have not yet become final risks giving an inaccurate idea of what the positions of the institutions actually are."

In March 2018, in the case T-540/15, de Capitani versus the Parliament, the Court however made a ground-breaking judgment concerning the trilogues. It argued that the EU's access to information Regulation 1049/2001 allows for exemption for not providing internal documents where decisions have not yet been made. However, this exemption also must be weighed against the public interest in the matter. In short, the institution refusing to provide access to information "*must, in principle, explain how access to that document could specifically and actually undermine the interest protected by the exception.* "

In the beginning of its reasoning, the Court emphasized that if the trilogues are at the core of the legislative process, then so much more important it is for the public to see what is going on:

„It is precisely openness in the legislative process that contributes to conferring greater legitimacy on the institutions in the eyes of EU citizens and increasing their confidence in them by allowing divergences between various points of view to be openly debated. It is in fact rather a lack of information and debate which is capable of giving rise to doubts in the minds of citizens, not only as regards the lawfulness of an isolated act, but also as regards the legitimacy of the decision-making process as a whole. "

In looking at the specific documents demanded, the Court stated:

„The documents at issue relate to the area of police cooperation cannot per se suffice in demonstrating the special sensitivity of the documents. To hold otherwise would mean exempting a whole field of EU law from the transparency requirements of legislative action in that field. "

When the Court examined the documents carefully, it found that there is nothing inherently sensitive about that, in comparison to other already published columns, for instance. „*Whilst*

relating to a matter of some importance, certainly characterized by both political and legal difficulty, the content of the fourth column of the documents at issue does not seem to be particularly sensitive to the point of jeopardizing a fundamental interest of the European Union or of the Member States if disclosed, " the Court said in its judgement.

Moreover, the Court continued,

> *„As regards the assertion that access, during a trilogue, to the fourth column of the documents at issue would increase public pressure on the rapporteur, shadow rapporteurs and political groups, that, in a system based on the principle of democratic legitimacy, co-legislators must be held accountable for their actions to the public. If citizens are to be able to exercise their democratic rights, they must be in a position to follow in detail the decision-making process within the institutions taking part in the legislative procedures and to have access to all relevant information.*
>
> *...**The expression of public opinion in relation to a particular provisional legislative proposal or agreement agreed in the course of a trilogue and reflected in the fourth column of a trilogue table forms an integral part of the exercise of EU citizens' democratic rights**, particularly since ... such agreements are generally subsequently adopted without substantial amendment by the co-legislators."*

The external pressure reasoning by the Parliament as an argument for not disclosing documents was inadequately explained, said the Court. Nor is the stage of legislative process relevant, it added:

> *„The preliminary nature of that information does not per se justify the application of the exception provided for in the first subparagraph of Article 4(3) of Regulation No 1049/2001, since that provision does not draw a distinction according to the state of progress of the discussions... Public opinion is perfectly capable of understanding that the author of a proposal is likely to amend its content subsequently."*

The judgement also looked into the argument stating a need for privacy in negotiations. It said there is enough space of that in meetings in trilogues:

> *„Prior to the entry of the compromise text into the fourth column of trilogue tables, discussions may take place during meetings for the preparation of such text between*

the various participants, so that the possibility of a free exchange of views is not called into question, particularly since, as noted in paragraph 86 above, the present case does not concern the issue of direct access to the work of the trilogues, but only that of access to documents drawn up in the context of those trilogues following a request for access."

In sum, the Court ordered the Parliament to release (the fourth column) trilogue documents as it found that only a seriously substantiated argument, specifically related to documents in question, would be a relevant basis for refusing to publish them. It emphasized that the Parliament cannot not grant access to trilogue information based on general arguments such as undermining efficiency of trilogues or heightened external pressure on legislators.

In its 2018 report on Access to Documents, the Parliament stated that following this court ruling, it granted full access to all the other four-column tables that the public requested that year. But trilogues tables are only accessible to the public through individual requests for information, and they continue to be withheld from regular, pro-active publication. Transparency International and other civil society groups as well as the EU Ombudsman call for the tables to be published before each trilogue meetings, including the agendas, names of participants and summaries of the meetings.

One of the ways to do so would be to enlarge the EP Plenary database for such documents, the NGOs suggest. In January 2020, ten EU countries supported greater transparency of trilogues in a non-paper.: Belgium, Denmark, Estonia, Finland, Ireland, Latvia, Luxembourg, Slovenia, Sweden and the Netherlands. However, no large EU state was part of such initiative, and the lack of transparency of trilogues remains the fact to this day.

Proposal 9: Publish a system for regular publication of trilogue tables and corresponding meeting agendas and their summaries. More ambitiously, readjust the 3-stage legislative process so that trilogues cannot be used as an alternative way to pass legislation.

Data privacy vs Transparency

There are two common approaches to balancing rights in the privacy laws (such as GDPR legislation in the EU) and access to information laws in the world. In one, in place in Slovakia, for instance, the privacy law allows for exemptions that are specifically delineated in the Freedom of information act.

In Slovakia, the Freedom of information act of 2011 provides an explicit exception from the protection of privacy for some information in case of public officials, public service employees in management positions, municipality assembly members, outside experts paid by the state, as well as members of selection committees nominated by the state. All these can be fully named, their work title, assignment and pay revealed, the law states in Article 9 (3). In November 2021 the Slovak Ministry of Justice drafted an amendment to include their CVs in the information excluded from privacy protections, too.

The second approach, found in the US and the UK, while making room for explicit exemptions, deals with private information in the context of a public interest test. As discussed in the first section of this study, this approach leaves it to the public bodies to consider whether a specific information requested has a public interest value and if yes, if it is greater than the right to privacy. In the US state of Illinois, public bodies have to consider four things – purpose of the requester, public interest, degree of privacy invasion and availability of the information elsewhere. Following this system, the Public Information Councilor in Illinois ordered a municipality to release the CV and job application of one of its new employees to the local newspaper in 2014, which had a suspicion that hiring was done improperly.

However, based on previous court rulings, one is not able to obtain unsuccessful job applicants' CV information in the US under FOIA. The Courts argued that unsuccessful candidates could be negatively affected by this information and that the general interest is larger than privacy only in the case of successful candidates, where the exemption from privacy under FOIA is generally upheld.

The first approach is convenient for its simplicity and may be better when institutions are relatively weak, even though its binary distinction may not be perfectly applicable to all situations. On the other hand, the public interest test requires more sophistication in

decision-making and is more demanding on staff which will make such decisions, but such a system may better fit to the complicated reality with competing values and interests.

> The proposal 10: Amend the EU Regulation 1049/2001 to make individual privacy subject to public interest test.

EU institutions' spending contracts

None of the EU institutions publishes the non-employee contracts based on which they spend money on its administration. Annually, the EU bureaucracy spends over 10 billion euros, according to its most recent budget.

The Commission does run the so-called Financial Transparency system website, however, it is rather limited. It **does not provide access to any contracts**, but instead, it is a database of contractors and grantees. Moreover, it published expenditures data from a given year only in the middle of the following year. Since the information is divided by years, the users cannot easily see the total amount even if it is based on a single contract, lasting several years – they have to do the sums themselves. Last but not least, according to the Financial Regulation, which governs the Commission's budget rules, no spending items under 15 thousand euros are even entered in the database and also excluded is the "*financial support provided through the financial instruments for an amount lower than 500 000 euros*."

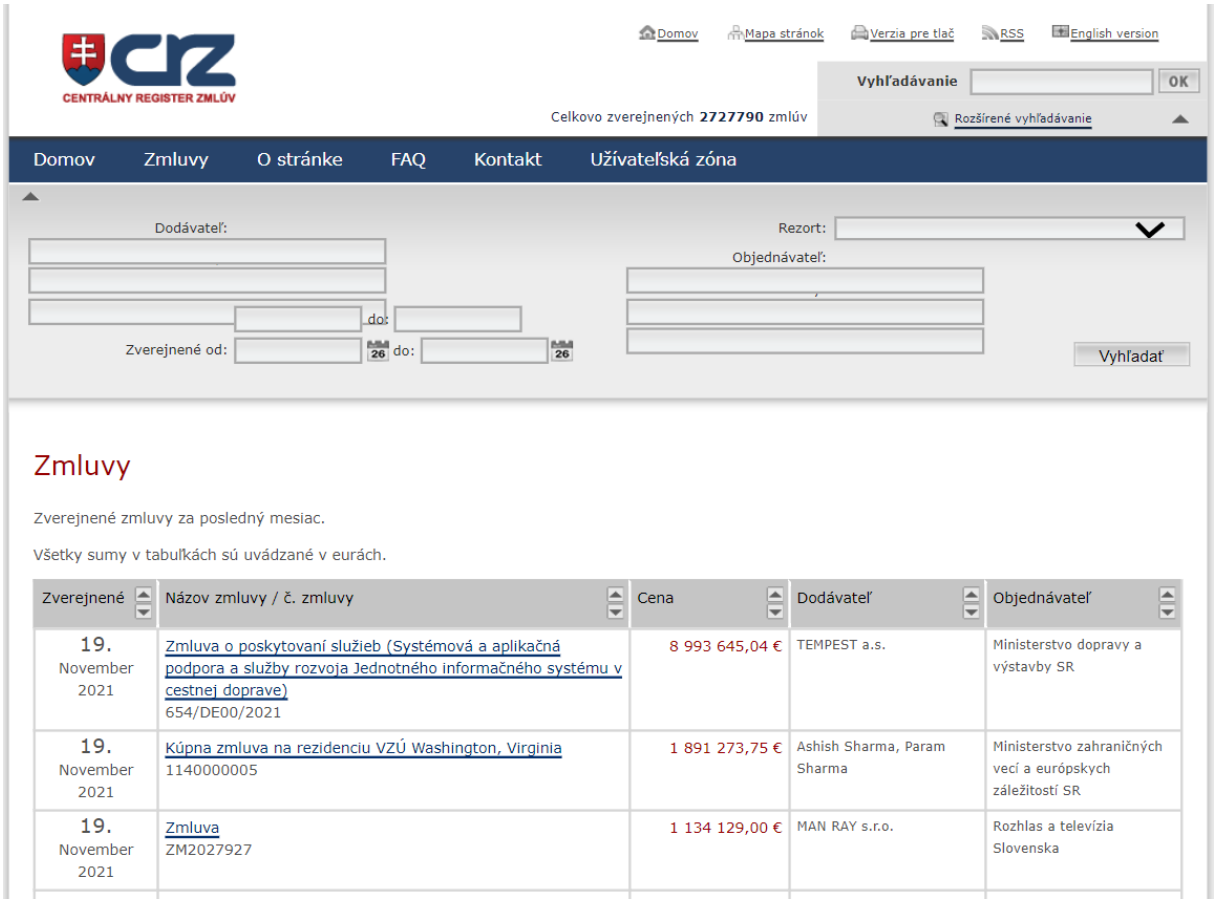
One can ask for the full text of contracts through the online request and receive the information in 15 working days. We tested this service in November 2015 for both the Commission and the European Parliament. We asked for the cleaning services contracts. We only received the answer from the Parliament. The contracts' annexes including the pricing information were not included, as it was deemed commercial sensitive. The Parliament did send the tables of invoices related to the contracts. One can indirectly get the sense of the total price but surely would not be able to determine easily whether the contract is in fact cost efficient for the Parliament.

Apart from the time delay, the lack of pro-active publication severely limits the strength of public oversight. One has to know what contracts to ask for. The public has no way of knowing which contracts are the largest in which institution.

Within the EU, it is Slovakia and Portugal that have the most comprehensive government contracts database available online. Ukraine from countries outside the Union, is also a good example of such openness.

By far the most comprehensive system exists in Slovakia. For eleven years running, all government institutions have to publish contracts, receipts as well as orders online for all to see. In case of contracts, the transparency requirement is the strongest – they have to be published online in full BEFORE they enter legally in force. These contracts are published in the central database online (however, local government institutions do it on their own webpages). Almost 2,8 million contracts have been published in this way so far.

Picture: Website of the Slovak contracts' database



Source: Crz.gov.sk

Importantly, one can access the full text of contracts in the database. However, there are several legal exceptions such as national security, trade secrets and personal data. Also, sometimes the unit prices are missing as well. Overall, in the years-long experience of TI

Slovakia overseeing the completeness of contracts, some 95 percent of them were published in full without any redactions.

Portugal is the second EU country which has a very good public contracts database, called BASE. The register provides data on contracts in extensive structural form and includes the link of contracts as well (though many did not work at the time of writing this report). Unlike the Slovak database, BASE also includes the open data information on prices and dates of actual realization of the contracts, including reasons for their change if it happened. Also, the portal provides visual analysis of trends in contracting.

Paradoxically, the EU holds the cases of both Portugal and Slovakia on its own website as examples of good practice in the area of transparency.

Picture: Website of the BASE database of Portuguese public contracts

Objeto do contrato	Adjudicante	Adjudicatário	Preço contratual	Publicação	
Aquisição de Hardware e Software para DataCenter	Associação RAEGE Açores - Rede Atlântica de Estações Geodinâmicas e Espaciais	INETUM TECH PORTUGAL, S.A.	67.988,45 €	21-11-2021	⊕
ABS/2021/56 - Contratação da Prestação de Serviços Artísticos de Solista-Cantora (Christine Rice) – Concerto com OSPCM	Fundação Casa da Música	Rice Woodhead Limited	7.500,00 €	20-11-2021	⊕
ABS/2021/55 - Contratação da Prestação de Serviços Artísticos de Maestro (Joseph Swensen) – Concertos com OSPCM	Fundação Casa da Música	Joseph Swensen	10.500,00 €	20-11-2021	⊕
ABS/2021/54 - Contratação da Prestação de Serviços Artísticos de Solista (Wu Wei) – Concertos com OSPCM	Fundação Casa da Música	KAJIMOTO	8.000,00 €	20-11-2021	⊕
ABS/2021/53 - Consulta Prévia para o Fornecimento de Electricidade - 4º trimestre 2021	Fundação Casa da Música	Galp Power, S.A.	74.800,00 €	20-11-2021	⊕
ABS/2021/52 - Consulta Prévia para o Fornecimento de Gás natural - 4º TRIMESTRE DE 2021	Fundação Casa da Música	Gold Energy - Comercializadora de Energia, S.A.	40.000,00 €	20-11-2021	⊕
PROC-DP-64/2021 - Concurso Público sem Publicidade Internacional para Aquisição de Polímeros para as Estações de Tratamento de Água da Águas do Douro e Paiva, S.A.	Águas do Douro e Paiva, S. A.	SNF PORTUGAL – Sociedade Unipessoal, Lda.	16.810,71 €	20-11-2021	⊕
AQUISIÇÃO DE LICENCIAMENTO PARA ADOBE EDUCAÇÃO (K-12) OU SIMILAR	E. P. F. - Ensino Profissional de Felgueiras, E. M., Unipessoal, L.da	StorelT Unipessoal, Lda	1.773,75 €	20-11-2021	⊕
Aquisição de quadros brancos para sala de aula	E. P. F. - Ensino Profissional de Felgueiras, E. M., Unipessoal, L.da	Diversa Soluções, Unipessoal, Lda.	492,00 €	20-11-2021	⊕
Material diverso para aulas práticas - Oficinas	E. P. F. - Ensino Profissional de Felgueiras, E. M., Unipessoal, L.da	Italart - comércio de Peles e acessórios, Lda	1.714,14 €	20-11-2021	⊕
REIT | Renovação de acesso à plataforma TURNITIN para a U. PORTO	Universidade do Porto	Turnitin, LLC	38.587,00 €	20-11-2021	⊕

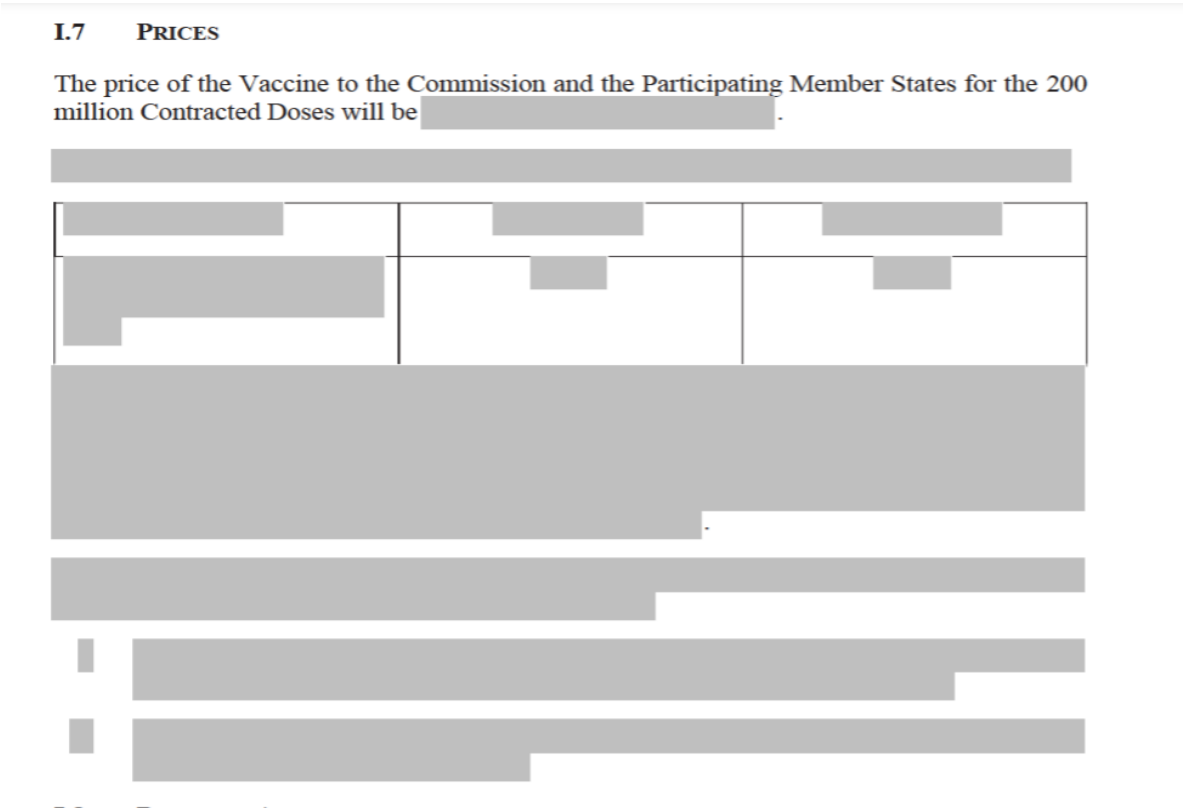
Source: base.gov.pt

Proposal 11: Introduce mandatory publication of full texts of contracts online, similar to the regime in Slovakia with contracts being valid only after they are published online. Regulation 1049, Article 12 about direct access to documents should be amended so that contracts are mandatorily made part of the registers, too.

To fight the COVID-19 pandemic, the European Commission signed advance contracts for vaccines worth 2.8 billion euros on behalf of all the interested member states in summer of 2020. However, the Commission refused to provide the texts of contracts to the public (requests from September 2020) and only in January 2021 it published their redacted versions. The Commission refused to reveal them fully, arguing that the protection of the commercial interests of the private contractors, such as the BionTech, Pfizer, Moderna and AstraZeneca pharmaceutical firms, is more important than transparency.

Hence, the blackened out parts of the contracts include product specification, delivery schedule, prices, liability and warranty, contract termination stipulations, even definitions of some contracts definitions such as “force majeure” conditions as well as “best reasonable efforts.”

Picture: The advance purchasing agreement between the European Commission and BionTech/Pfizer over the delivery of Covid vaccines



I.7 PRICES

The price of the Vaccine to the Commission and the Participating Member States for the 200 million Contracted Doses will be [redacted].

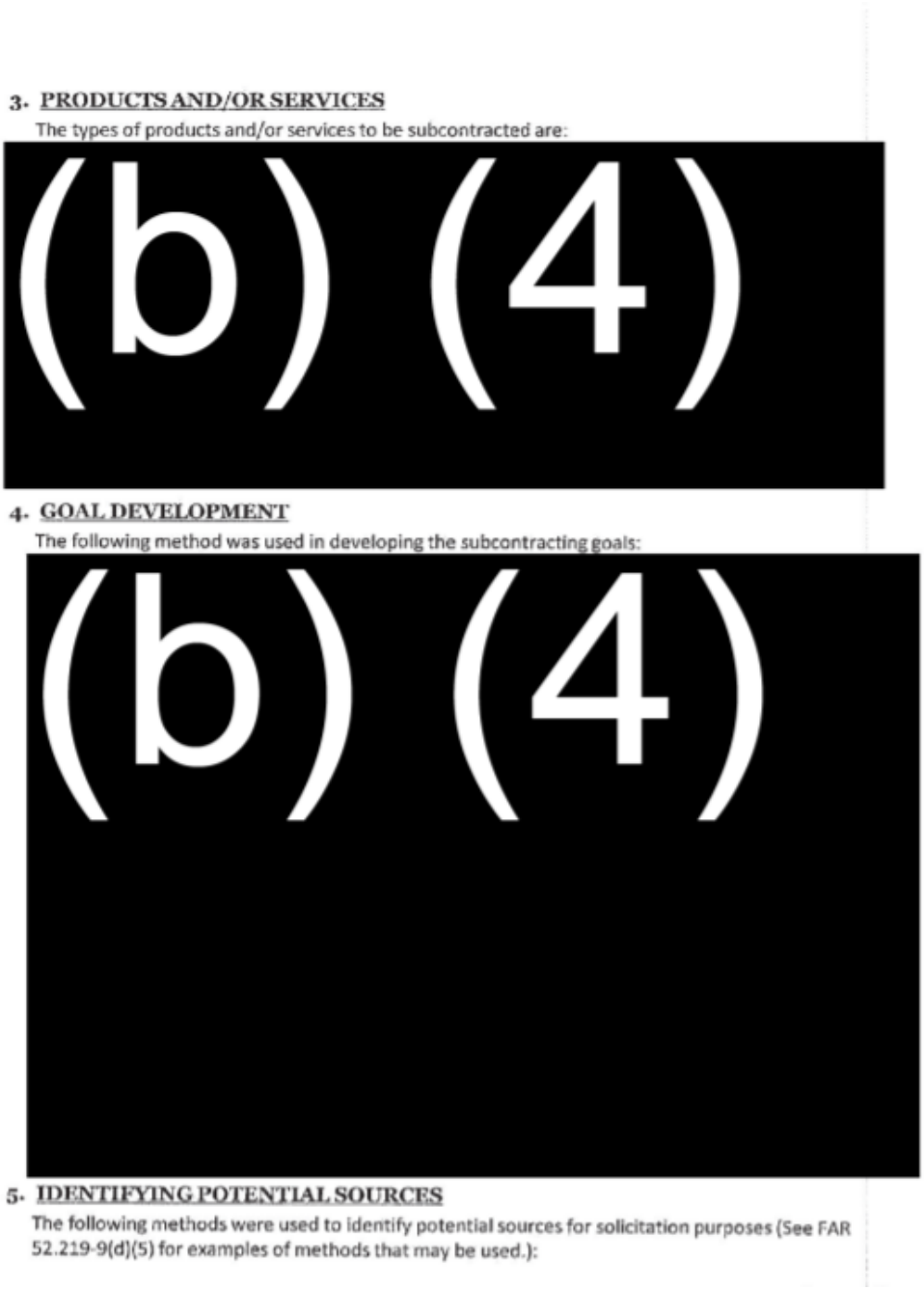
[redacted]

Source: The European Commission

In late October 2021, five MEP took the Commission to court over the failure to disclose the full contracts. They said in the interest of accountability it was important to know detailed conditions of the contracts such as prices, liabilities as well as names of the people who negotiated these conditions.

According to the Transparency International Global Health study from May 2021, over 94% of vaccine contracts in the world had not been published at all. The USA is the only country, according to this report, which consistently published all its contracts. The US contracts consisted of public information on total prices (but not unit prices), quantities as well as liability obligations, for example. Whenever the US government used redactions, it always indicated, which exemption of the Freedom of information law (FOIA) it applied. For instance, the most common type of redaction used - (b)(4) - refers to the FOIA article on commercial secrets.

Picture: The contract of the US Department of Health with Pfizer on Covid19 vaccine delivery



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3. PRODUCTS AND/OR SERVICES

The types of products and/or services to be subcontracted are:

(b) (4)

4. GOAL DEVELOPMENT

The following method was used in developing the subcontracting goals:

(b) (4)

5. IDENTIFYING POTENTIAL SOURCES

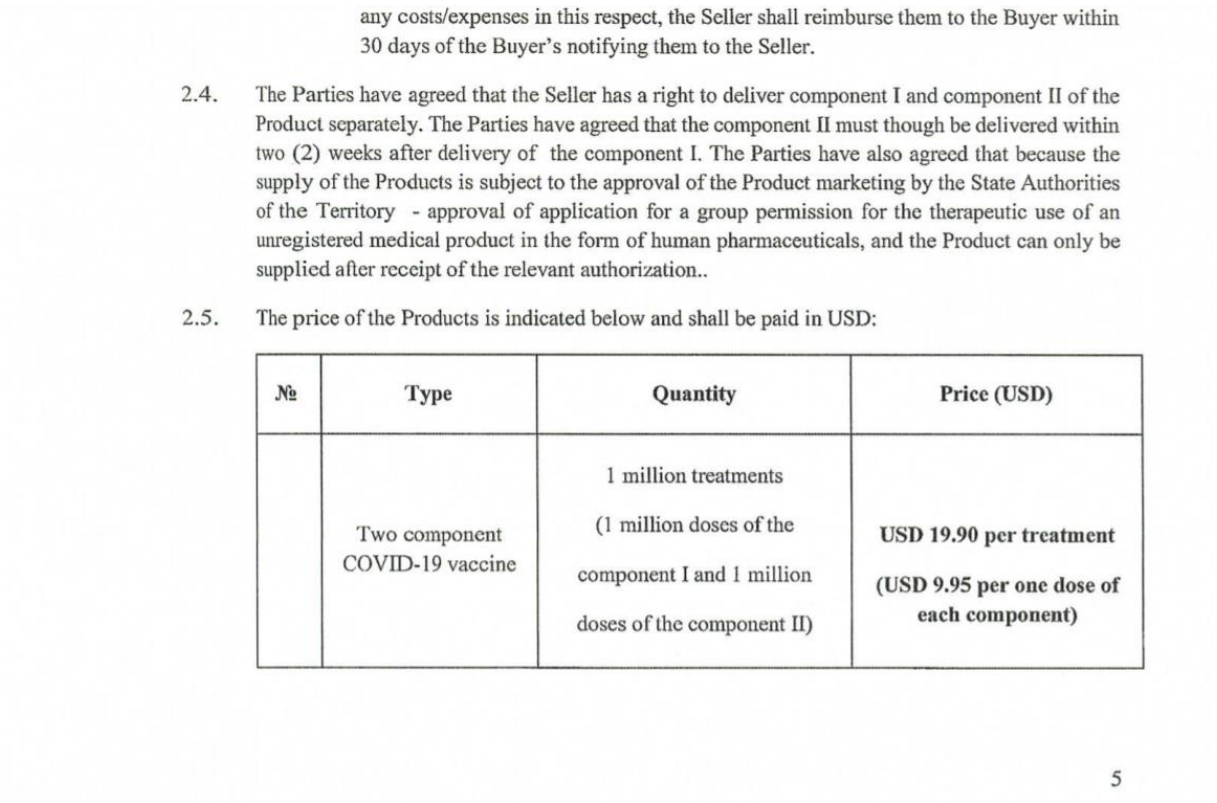
The following methods were used to identify potential sources for solicitation purposes (See FAR 52.219-9(d)(5) for examples of methods that may be used.):

Source: Knowledge Ecology International

The only current EU member country known to the author to have published a vaccine contract is Slovakia. In early 2021 its government signed a contract with a Russian government institute for the purchase of the Sputnik vaccine. While originally it also refused to publish the document, under pressure from Transparency International Slovakia the Slovak Ministry of Health finally made the whole document public in April 2021.

The contract is the least redacted document of all the published vaccine contracts to date – it includes unit prices, delivery schedule, manufacturing sites information as well as liability and sanctions conditions. Two further amendments to the contract have been published as well. It is clear that the strong transparency legislation in Slovakia made it much harder to deny the public the access to even such a politically and commercially sensitive contract such as the vaccines purchase agreement.

Picture: Price details of the Sputnik vaccine purchase by the Slovak government



any costs/expenses in this respect, the Seller shall reimburse them to the Buyer within 30 days of the Buyer's notifying them to the Seller.

2.4. The Parties have agreed that the Seller has a right to deliver component I and component II of the Product separately. The Parties have agreed that the component II must though be delivered within two (2) weeks after delivery of the component I. The Parties have also agreed that because the supply of the Products is subject to the approval of the Product marketing by the State Authorities of the Territory - approval of application for a group permission for the therapeutic use of an unregistered medical product in the form of human pharmaceuticals, and the Product can only be supplied after receipt of the relevant authorization..

2.5. The price of the Products is indicated below and shall be paid in USD:

№	Type	Quantity	Price (USD)
	Two component COVID-19 vaccine	1 million treatments (1 million doses of the component I and 1 million doses of the component II)	**USD 19.90 per treatment (USD 9.95 per one dose of each component)**

5

Source: Central Register of Contracts, crz.gov.sk

Access to better statistical data

The Eurostat, the EU's statistical agency, annually produces almost half a billion indicators, according to its last year's activity report. Almost every working day it schedules one or more new data releases. The Eurostat publishes the data either in publications or in organized manner on its website.

Yet the access to microdata (anonymized granular data collected) is much more difficult. The Eurostat officials admit that there has been an increase in demand for such data, yet they do not offer any solution to make the access easier at this point.

There are only two datasets, whose microdata are made accessible to public by the Eurostat: the labor and income surveys. Another fourteen surveys are readily available for scientific purposes and the rest would be decided case by case based on researchers' application.

This follows the Regulation 223/2009 on European Statistics, which defines confidential data as "*data which allow statistical units to be identified, either directly or indirectly, thereby disclosing individual information*." It is up to agency officials to look at the data context (sample volume, data characteristics) and determine to what extent this confidentiality prevents them from releasing data. The article 23 of the Regulation states that also the national statistical agencies have to approve any release of data to researchers.

The Commission's Regulation 557/2013 provides the rules on how the release of data for research purposes takes place. In general, there is an application process with a need for a detailed research proposal concerning the demand for data, registration of the research facility and a mutual contract with a guarantee for confidential handling of data.

International surveys of the practices among statistical agencies in releasing microdata suggest that the EU's rules are rather standard (see the literature of the OECD, or the UN Commission for Europe). All the countries studies adhere to the UN Fundamental Principles of Official Statistics which stress confidentiality as one of the cornerstones of work of statistical agencies. The Principle number six stresses the need to protect individuals from being identified and their data thus being shared outside of the agencies.

Statistical authorities explain their restrictive approach through the need to gain trust of the people or companies, whose data they collect. They also argue that anonymization of data is rather expensive and time-consuming (see the description how data are adjusted by the Slovak Statistical Office). Finally, they claim that with more data being currently available online, combining various datasets makes it easier to identify statistical units, so they have to be extra careful in releasing any sets of microdata.

On the other hand, researchers and advocates for more public access argue that having data more available makes them more useful, and thus more cost effective. The cost-effectiveness is also a value, alongside confidentiality, which the EU Regulation 557/2013 contains. The Eurostat itself rightly considers the usefulness of its data one of its own key performance indicators.

Ultimately then, the way forward in the clash of these values lies in prioritizing which datasets should be adjusted and provided to the public and which to researchers only. It might thus be fruitful to actively seek input about what data users lack in Eurostat's output, measure which data are most used and cited in both general media and scientific journals and compare them with costs involved.

One easy way to do it would be to place a visible request on its main website, asking visitors to provide examples of data that they sought yet failed to find. The Eurostat currently asks for public opinion on a matter of updating labor statistics legislation. In a similar fashion the institution should be asking for opinion on data that it does not provide at the moment at all. For instance, a number of governments as well as cities have been asking citizens in the past years which data to prioritize in releasing as open data (see the example from Canada, for instance).

The Eurostat should also include in its annual reports some statistics such as the average number of requests for microdata, time it took to provide data and what share of requests were denied. This could better answer the question whether the current Eurostat practice is appropriate or not.

Outlook for the future

In 2019 the Access Info Europe, the premier transparency NGO focused on the EU, put together a new set of recommendations for the EU institutions in the area of access to documents. While acknowledging decent progress in the past twenty years, they also identified new challenges. This study covered predominantly the first two – access to legislative information and spending data. For the future, there are several important topics to watch.

For instance, what about the information that private organizations hold yet are of public interest? More and more, the governments push the companies to disclose mandatorily the information on their ownership, financial accounts or litigious matters. But there is a wide gap among the EU countries. While the UK, Denmark or Slovakia have fully open beneficial ownership registers of company owners for anybody to see, most of the EU member countries chose not to make those data available. Finding consensus on what data on private individuals to share is proving very difficult.

There also remains a lot of work in making information available in open data formats. Some researchers mention unresolved conflict between the GDPR, the EU's privacy directive and PSI, the EU's open data directive. There have been reports by medical researchers, for instance, how lack of clear GDPR guidelines limits their academic work with European data. Again, the debates are likely to continue where the balance between the public interest and protection of privacy lies and what sort of data can be released.

Last but not least, the specific area of accessing research data, in particular that of publicly-financed work, has not been satisfactorily dealt with. The 2018 report by Pwc, the consultancy, estimated the cost to the European economy of not having accessible research data at 10 to 26 billion euros annually.

Here are the Access Info Europe's recommendations in full:

„ • **Increase transparency of decision-making**: Ensure that all EU decision-making and legislative processes are sufficiently transparent, in real time, to permit meaningful participation. This includes full transparency of discussions in the Council of the EU.

• **Improve financial transparency**: Achieve transparency of spending of all funds managed by the EU. This includes spending of funds by the EU bodies and institutions, including travel and entertainment expenditure. It also means transparency of funds disbursed by the EU, both directly to beneficiaries and via Member States through “shared management”.

• **Secure full lobby transparency**: The EU should ensure full transparency of lobbying and external influence over decisions by making the lobby register mandatory and ensuring that it applies to all institutions, bodies, and agencies, including the Council of the EU and Permanent Representations of Member States.

• **Set standards for access to information of public importance held by private bodies**: The European Union already mandates access to information from private bodies in specific areas. However, it should ensure that this fundamental right applies to all information of public importance held by private entities (companies), especially in areas of public interest such are climate change, water access, land policy, and forest management.

• Strengthen **Open Data legislation** and revise the PSI (Public Sector Information) Directive so that public data is available free of charge to everyone (civil society organizations, private entities, and the general public). In particular focus on full and free access to “high value” data sets including company and land registers.

• **OpenAccess to Scientific Data**: The European Union should set rules on full and free access to all scientific research and content funded by the public purse. This should apply to all research funded with the EU funds, including those carried out by academia and by private research institutions.“

Lessons for Slovakia

Analyzing the access to information scope in the EU bodies offers a fresh perspective on Slovakia, too. On one hand, it is clear that Slovakia has both rather well-established practices as well as a strong law underpinning the rights of citizens to acquire information or data from public bodies. The 2020 study by Transparency International Slovakia, which compared the access to information about the activities of 26 capital cities in Europe, ranked Bratislava, the Slovak capital, as the eighth most transparent city.

On the other hand, the comparison with the EU and other countries highlights several best practices missing in Slovakia. Here is the short review of the three key ones.

1. **Create the position of the Information Commissioner** (or reform the Data Protection Office)

Several examples of the influence that the EU information ombudsman has had on the access of citizens to information cited above shows the importance of an institution which has an oversight as well as guiding role in resolving controversial cases without the need to address courts. Slovakia has no such option.

One can appeal the refusal to provide information in Slovakia in two possible ways only. First, unsuccessful requestor can appeal to the higher-level administrative body or person and receive response in 30 days after the appeal was launched. Typically, the ministry would judge on appeals related to any information disputes with bodies subordinate to the ministry, such as its budgetary organizations, state companies set up by the ministry, or ministry's own previous decisions. In practice, the appeals are rarely successful (judging by the authors' 10 years of experience at TI Slovakia with dozens of appeals submitted at various levels of government).

The second possibility of appeal, should the first one be unsuccessful, is to go to court. Here it usually takes at least two to three years for a judgment to be made. This option is thus used mostly by non-governmental organizations, which hope for a legal precedent. It is rarely useful for citizens whose main purpose is to get and use the information they originally demanded.

Close to a third of European countries, including the UK, Spain, Serbia, Hungary and Germany, have so-called information commissioners. Usually these bodies have two mandates – they decide on conflicts between state bodies and citizens in the first instance, including imposition of fines, and secondly, they offer guidance on controversial disputes or unresolved law interpretation. Some of them, such as the UK and German commissioners are in charge of both rights of access to information and of privacy protection. This enables more nuanced decisions to be made and puts together enough expertise on precisely the topics that are the grounds for the most common disputes.

Slovakia does have the Personal Data Protection Office but not the Information Commissioner. Reforming the former into a broader based agenda of access to information appears to be the most efficient way forward.

2. Create a single search catalog for state data, connect databases

While Slovakia has an above average number of freely accessible documents registries (state contracts, state procurement, legislative process, courts performance, debtors' lists, cadastre, company ownership, etc), these databases are not interconnected. This undermines the utility of the data and weakens the possibility of government oversight. It also makes it more likely that the citizens will not know where to find the data and will burden the state officials by submitting the freedom of information requests.

While the commercial services such as Google search are a rather imperfect way of searching all these data, there are several ways to improve the situation. First, some databased could be united in one platform. Currently, the state spending contracts are published on crz.gov.sk site, while those of municipalities are published on their own websites. As for the invoices, they are all published on each public bodies' sites, in effect in thousands of places.

Similarly, while many of the contracts are a result of the procurement process, the contracts portal is separated from the procurement website, which is itself separate from the company ownership, company registration and company indebtedness data, even though all of them need to be checked by authorities during the procurement process. The same complicated searches have to be made in turn by any citizen who wants to check, whether the authorities did their work properly.

It might also help if the government created a better catalog of state released data. The one prepared at data.gov.sk is not much of use, as it focuses on who released the data, not on what the data concern. The UK's state data catalog is much easier to use and search, by grouping datasets into understandable themes.

3. Close legal loopholes in the Information law

While the Slovakia's freedom of access to information law from 2001 provides a generous scope of data that state should provide to citizens, there are a few important gaps that in the past proved to be controversial.

Perhaps the key gap concerns the limits on access to information of 100 percent state- and municipality-owned companies. The law stipulates that they only have to release the information about handling the "public finance" which most of them interpret as only the seed money invested by state body or municipality, not all of the assets they own. They also use the all-encompassing "trade secret" argument (recent draft of the Ministry of Justice's amendment to the information law proposes to fully close this loophole) .

The other loophole concerns the banking secrecy argument cited by the law. For instance, the Slovak government provides dozens of millions of bank guarantees to companies during the corona crisis, yet none of the details about who benefited in what amounts are public, as the state loan guarantee bank refused to reveal any information based on this loophole. As a result, on one hand the state revealed all the direct subsidies to the public, yet none of these "indirect" state aid on loans.

Several of the information laws in the EU cite the "public interest" test in the legislation as one of the ways to resolve competing values and interests. Incorporating such a test would help rebalance the Slovak law towards more openness as well.

Last but not least, following the US example and indicating in every redacted part of the contract legal reason for doing so would help the public to understand the public body's reasoning and also perhaps lower the number of baseless refusals to provide information.

4. Create legal obligation to report statistics on provision of data annually

The European institutions have an obligation according to the EU Regulation 1049/2001 (see article 17) on public access of documents to publish an annual report on their practice of

releasing information to the public. This includes the number of requests, number of refusals and their reasons as well as the reasons for "secret" materials that have not been uploaded to the register of documents. In this way the public has a much better ability to understand how exceptions to transparency operate and potentially ask for more detailed explanation. See the EP's report as an example of this practice.

Slovak public institutions do not have any such duty to the public. Some of them include a selection of data on information provision in their annual reports, but almost never pro-actively provide the numbers and explain the reasons for their decisions not to release the information demanded.

Slovakia could also copy the practice of the Commission. Its reports summarize any courts decisions concerning the institution. In cases where the institution lost, it would be worthwhile to make it mandatory to describe the reasoning of the court and explain what kind of information was the subject of the dispute.

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Annex

Annotated Regulation 1049 with amendments suggested in yellow:

Regulation (EC) No 1049/2001 of the European Parliament and of the Council

of 30 May 2001

regarding public access to European Parliament, Council and Commission documents

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 255(2) thereof,

Having regard to the proposal from the Commission(1),

Acting in accordance with the procedure referred to in Article 251 of the Treaty(2),

Whereas:

(1) The second subparagraph of Article 1 of the Treaty on European Union enshrines the concept of openness, stating that the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

(2) Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system. Openness contributes to strengthening the principles of democracy and respect for fundamental rights as laid down in Article 6 of the EU Treaty and in the Charter of Fundamental Rights of the European Union.

(3) The conclusions of the European Council meetings held at Birmingham, Edinburgh and Copenhagen stressed the need to introduce greater transparency into the work of the Union institutions. This Regulation consolidates the initiatives that the institutions have already taken with a view to improving the transparency of the decision-making process.

(4) The purpose of this Regulation is to give the fullest possible effect to the right of public access to documents and to lay down the general principles and limits on such access in accordance with Article 255(2) of the EC Treaty.

(5) Since the question of access to documents is not covered by provisions of the Treaty establishing the European Coal and Steel Community and the Treaty establishing the

European Atomic Energy Community, the European Parliament, the Council and the Commission should, in accordance with Declaration No 41 attached to the Final Act of the Treaty of Amsterdam, draw guidance from this Regulation as regards documents concerning the activities covered by those two Treaties.

(6) Wider access should be granted to documents in cases where the institutions are acting in their legislative capacity, including under delegated powers, while at the same time preserving the effectiveness of the institutions' decision-making process. Such documents should be made directly accessible to the greatest possible extent.

(7) In accordance with Articles 28(1) and 41(1) of the EU Treaty, the right of access also applies to documents relating to the common foreign and security policy and to police and judicial cooperation in criminal matters. Each institution should respect its security rules.

(8) In order to ensure the full application of this Regulation to all activities of the Union, all agencies established by the institutions should apply the principles laid down in this Regulation.

(9) On account of their highly sensitive content, certain documents should be given special treatment. Arrangements for informing the European Parliament of the content of such documents should be made through interinstitutional agreement.

(10) In order to bring about greater openness in the work of the institutions, access to documents should be granted by the European Parliament, the Council and the Commission not only to documents drawn up by the institutions, but also to documents received by them. In this context, it is recalled that Declaration No 35 attached to the Final Act of the Treaty of Amsterdam provides that a Member State may request the Commission or the Council not to communicate to third parties a document originating from that State without its prior agreement.

(11) In principle, all documents of the institutions should be accessible to the public. However, certain public and private interests should be protected by way of exceptions. The institutions should be entitled to protect their internal consultations and deliberations where necessary to safeguard their ability to carry out their tasks. In assessing the exceptions, the institutions should take account of the principles in Community legislation concerning the protection of personal data, in all areas of Union activities. Whenever exemptions are to be used, the public interest test weighing the arguments for transparency as well as those against disclosure should be carried out.

(Adding the principle of public interest test into the preamble)

(12) All rules concerning access to documents of the institutions should be in conformity with this Regulation.

(13) In order to ensure that the right of access is fully respected, a two-stage administrative procedure should apply, with the additional possibility of court proceedings or complaints to the Ombudsman.

(14) Each institution should take the measures necessary to inform the public of the new provisions in force and to train its staff to assist citizens exercising their rights under this Regulation. In order to make it easier for citizens to exercise their rights, each institution should provide access to a register of documents.

(15) Even though it is neither the object nor the effect of this Regulation to amend national legislation on access to documents, it is nevertheless clear that, by virtue of the principle of loyal cooperation which governs relations between the institutions and the Member States, Member States should take care not to hamper the proper application of this Regulation and should respect the security rules of the institutions.

(16) This Regulation is without prejudice to existing rights of access to documents for Member States, judicial authorities or investigative bodies.

(17) In accordance with Article 255(3) of the EC Treaty, each institution lays down specific provisions regarding access to its documents in its rules of procedure. Council Decision 93/731/EC of 20 December 1993 on public access to Council documents(3), Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents(4), European Parliament Decision 97/632/EC, ECSC, Euratom of 10 July 1997 on public access to European Parliament documents(5), and the rules on confidentiality of Schengen documents should therefore, if necessary, be modified or be repealed,

HAVE ADOPTED THIS REGULATION:

Article 1

Purpose

The purpose of this Regulation is:

(a) to define the principles, conditions and limits on grounds of public or private interest governing the right of access to European Parliament, Council and Commission (hereinafter

referred to as "the institutions") documents provided for in Article 255 of the EC Treaty in such a way as to ensure the widest possible access to documents,

(b) to establish rules ensuring the easiest possible exercise of this right, and

(c) to promote good administrative practice on access to documents.

Article 2

Beneficiaries and scope

1. Any citizen, both of the Union's Member State and of other countries ~~, and any natural or legal person residing or having its registered office in a Member State~~, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.

(Removing the restrictiveness of the Regulation for EU citizens and companies only)

2. The institutions may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.

3. This Regulation shall apply to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the European Union.

4. Without prejudice to Articles 4 and 9, documents shall be made accessible to the public either following a written application or directly in electronic form or through a register. In particular, documents drawn up or received in the course of a legislative procedure shall be made directly accessible in accordance with Article 12.

5. Sensitive documents as defined in Article 9(1) shall be subject to special treatment in accordance with that Article.

6. This Regulation shall be without prejudice to rights of public access to documents held by the institutions which might follow from instruments of international law or acts of the institutions implementing them.

Article 3

Definitions

For the purpose of this Regulation:

(a) "document" shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility;

(b) "third party" shall mean any natural or legal person, or any entity outside the institution concerned, including the Member States, other Community or non-Community institutions and bodies and third countries.

Article 4

Exceptions

0. All exemptions are qualified and before their use, the authorities have to carry out the public interest test. They have to weigh the public interest in exemption against the public interest in disclosure. Only when the former prevails, the exemptions will be applied.

(Changing the absolute exemptions mode into qualified one, introducing the necessity to weigh the objective of the exemption against the objective of transparency)

1. The institutions shall refuse access to a document where disclosure would undermine the protection of:

(a) the public interest as regards:

- public security,

- defence and military matters,

- international relations,

- the financial, monetary or economic policy of the Community or a Member State;

(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

2. The institutions shall refuse access to a document where disclosure would undermine the protection of:

- commercial interests of a natural or legal person, including intellectual property,

- court proceedings and legal advice,

- the purpose of inspections, investigations and audits,

unless there is an overriding public interest in disclosure. *(This could be left out if the public interest test is adopted for all exemptions*)

3. Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure. *(This could be left out if the public interest test is adopted for all exemptions*)

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure. *(This could be left out if the public interest test is adopted for all exemptions*)

4. As regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed.

5. A Member State may request the institution not to disclose a document originating from that Member State without its prior agreement.

6. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.

7. The exceptions as laid down in paragraphs 1 to 3 shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. In the case of documents covered by the exceptions relating to privacy or commercial interests and in the case of sensitive documents, the exceptions may, if necessary, continue to apply after this period.

Article 5

Documents in the Member States

Where a Member State receives a request for a document in its possession, originating from an institution, unless it is clear that the document shall or shall not be disclosed, the

Member State shall consult with the institution concerned in order to take a decision that does not jeopardise the attainment of the objectives of this Regulation.

The Member State may instead refer the request to the institution.

Article 6

Applications

1. Applications for access to a document shall be made in any written form, including electronic form, in one of the languages referred to in Article 314 of the EC Treaty and in a sufficiently precise manner to enable the institution to identify the document. The applicant is not obliged to state reasons for the application.

2. If an application is not sufficiently precise, the institution shall ask the applicant to clarify the application and shall assist the applicant in doing so, for example, by providing information on the use of the public registers of documents.

3. In the event of an application relating to a very long document or to a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution.

4. The institutions shall provide information and assistance to citizens on how and where applications for access to documents can be made.

Article 7

Processing of initial applications

1. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within 15 working days from registration of the application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application in accordance with paragraph 2 of this Article.

2. In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.

3. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time-limit provided for in paragraph

1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

4. Failure by the institution to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

Article 8

Processing of confirmatory applications

1. A confirmatory application shall be handled promptly. Within 15 working days from registration of such an application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal. In the event of a total or partial refusal, the institution shall inform the applicant of the remedies open to him or her, namely instituting court proceedings against the institution and/or making a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively.

2. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

3. Failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and entitle the applicant to institute court proceedings against the institution and/or make a complaint to the Ombudsman, under the relevant provisions of the EC Treaty.

(Consider strengthening the Ombudsman's role on par with the Information Commissioners offices present in some Member states)

Article 9

Treatment of sensitive documents

1. Sensitive documents are documents originating from the institutions or the agencies established by them, from Member States, third countries or International Organisations, classified as "TRÈS SECRET/TOP SECRET", "SECRET" or "CONFIDENTIEL" in accordance with the rules of the institution concerned, which protect essential interests of the European Union or of one or more of its Member States in the areas covered by Article 4(1)(a), notably public security, defence and military matters.

2. Applications for access to sensitive documents under the procedures laid down in Articles 7 and 8 shall be handled only by those persons who have a right to acquaint themselves with those documents. These persons shall also, without prejudice to Article 11(2), assess which references to sensitive documents could be made in the public register.

3. Sensitive documents shall be recorded in the register or released only with the consent of the originator.

4. An institution which decides to refuse access to a sensitive document shall give the reasons for its decision in a manner which does not harm the interests protected in Article 4.

5. Member States shall take appropriate measures to ensure that when handling applications for sensitive documents the principles in this Article and Article 4 are respected.

6. The rules of the institutions concerning sensitive documents shall be made public.

7. The Commission and the Council shall inform the European Parliament regarding sensitive documents in accordance with arrangements agreed between the institutions.

Article 10

Access following an application

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, including, where available, an electronic copy, according to the applicant's preference. The cost of producing and sending copies may be charged to the applicant. This charge shall not exceed the real cost of producing and sending the copies. Consultation on the spot, copies of less than 20 A4 pages and direct access in electronic form or through the register shall be free of charge.

2. If a document has already been released by the institution concerned and is easily accessible to the applicant, the institution may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document.

3. Documents shall be supplied in an existing version and format (including electronically or in an alternative format such as Braille, large print or tape) with full regard to the applicant's preference.

Article 11

Registers

1. To make citizens' rights under this Regulation effective, each institution shall provide public access to a register of documents. Access to the register should be provided in electronic form. References to documents shall be recorded in the register without delay.

2. For each document the register shall contain a reference number (including, where applicable, the interinstitutional reference), the subject matter and/or a short description of the content of the document and the date on which it was received or drawn up and recorded in the register. References shall be made in a manner which does not undermine protection of the interests in Article 4.

3. The institutions shall immediately take the measures necessary to establish a register which shall be operational by 3 June 2002.

Article 12

Direct access in electronic form or through a register

1. The institutions shall as far as possible make documents directly accessible to the public in electronic form or through a register in accordance with the rules of the institution concerned.

2. In particular, legislative documents, that is to say, documents drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States, should, subject to Articles 4 and 9, be made directly accessible. Any budgetary spending information, including full-text contracts and receipts, should also be published mandatorily in a register within 7 working days of their becoming valid.

(Creating obligation to publish contracting information by the EU institutions)

3. Where possible, other documents, notably documents relating to the development of policy or strategy, should be made directly accessible.

4. Where direct access is not given through the register, the register shall as far as possible indicate where the document is located.

Article 13

Publication in the Official Journal

1. In addition to the acts referred to in Article 254(1) and (2) of the EC Treaty and the first paragraph of Article 163 of the Euratom Treaty, the following documents shall, subject to Articles 4 and 9 of this Regulation, be published in the Official Journal:

(a) Commission proposals;

(b) common positions adopted by the Council in accordance with the procedures referred to in Articles 251 and 252 of the EC Treaty and the reasons underlying those common positions, as well as the European Parliament's positions in these procedures;

(c) framework decisions and decisions referred to in Article 34(2) of the EU Treaty;

(d) conventions established by the Council in accordance with Article 34(2) of the EU Treaty;

(e) conventions signed between Member States on the basis of Article 293 of the EC Treaty;

(f) international agreements concluded by the Community or in accordance with Article 24 of the EU Treaty.

2. As far as possible, the following documents shall be published in the Official Journal:

(a) initiatives presented to the Council by a Member State pursuant to Article 67(1) of the EC Treaty or pursuant to Article 34(2) of the EU Treaty;

(b) common positions referred to in Article 34(2) of the EU Treaty;

(c) directives other than those referred to in Article 254(1) and (2) of the EC Treaty, decisions other than those referred to in Article 254(1) of the EC Treaty, recommendations and opinions.

3. Each institution may in its rules of procedure establish which further documents shall be published in the Official Journal.

Article 14

Information

1. Each institution shall take the requisite measures to inform the public of the rights they enjoy under this Regulation.

2. The Member States shall cooperate with the institutions in providing information to the citizens.

Article 15

Administrative practice in the institutions

1. The institutions shall develop good administrative practices in order to facilitate the exercise of the right of access guaranteed by this Regulation.

2. The institutions shall establish an interinstitutional committee to examine best practice, address possible conflicts and discuss future developments on public access to documents.

Article 16

Reproduction of documents

This Regulation shall be without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents.

Article 17

Reports

1. Each institution shall publish annually a report for the preceding year including the number of cases in which the institution refused to grant access to documents, the reasons for such refusals, the average period of response to requests for information, the percentage of requests answered later than 15 working days and the number of sensitive documents not recorded in the register.

(Inserting more information on practice which would enable to track compliance with the Regulation better)

2. At the latest by 31 January 2004, the Commission shall publish a report on the implementation of the principles of this Regulation and shall make recommendations, including, if appropriate, proposals for the revision of this Regulation and an action programme of measures to be taken by the institutions.

Article 18

Application measures

1. Each institution shall adapt its rules of procedure to the provisions of this Regulation. The adaptations shall take effect from 3 December 2001.

2. Within six months of the entry into force of this Regulation, the Commission shall examine the conformity of Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community(6) with this Regulation in order to ensure the preservation and archiving of documents to the fullest extent possible.

3. Within six months of the entry into force of this Regulation, the Commission shall examine the conformity of the existing rules on access to documents with this Regulation.

Article 19

Entry into force

This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Communities.

It shall be applicable from 3 December 2001.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 May 2001.

For the European Parliament

The President

N. Fontaine

For the Council

The President

B. Lejon

(1) OJ C 177 E, 27.6.2000, p. 70.

(2) Opinion of the European Parliament of 3 May 2001 (not yet published in the Official Journal) and Council Decision of 28 May 2001.

(3) OJ L 340, 31.12.1993, p. 43. Decision as last amended by Decision 2000/527/EC (OJ L 212, 23.8.2000, p. 9).

(4) OJ L 46, 18.2.1994, p. 58. Decision as amended by Decision 96/567/EC, ECSC, Euratom (OJ L 247, 28.9.1996, p. 45).

(5) OJ L 263, 25.9.1997, p. 27.

(6) OJ L 43, 15.2.1983, p. 1.