

INTERPRETATION THE CONCEPT OF TRANSPARENCY IN THE STRATEGIC AND LEGISLATIVE DOCUMENTS OF MAJOR INTERGOVERNMENTAL ORGANIZATIONS

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ABSTRACT

Administrative procedures, as well as public bodies that carry out these procedures, ought to perform functions related to the application of administrative law in a constantly changing social, economic, and political environment. This presents them with new challenges and expectations time and time again. According to the findings of the this study, the relation of transparency and administrative procedures – which could be described as a type of historically rooted but, at the same time, contemporary expectation towards public administration – fits in the above concept.

The study attempts to interpret and define the concept of transparency on the basis of the terminology used by international organisations in the field of the examination of administrative procedures, and thus to highlight the issues, divergences and their causes.

KEYWORDS

Public administration, authorities, administrative procedure, transparency, openness.

I. Introduction

In addition to national-level regulations, general and policy ideas and planning documents for public administration, the most important expectations are communicated by international organisations to their Member States and participating countries. These expectations may be part of a set of expectations and requirements for transparency in governance, which, because of this definition, may also include guidelines for the application of administrative law. With this in mind, I will examine some of the expectations and guidelines of the United Nations (UN), the Organisation for Economic Co-operation and Development (OECD), the Council of Europe and the European Union, as international and supranational organisations that are relevant to global governance, by analysing the content of their published public materials.

Before presenting the analysis, I think it is important to underline my preliminary expectations and related experience: when examining the transparency approaches of the various international organisations and initiatives, I expected, and this assumption was confirmed during the study, that the individual organisations World usually only address a corner or part of the extremely complex concept of

transparency in their documents, and this would naturally also be related to the subject matter to which the documents under examination originally relate. Assessing the overall picture, this was in fact the aim of the present part of the research: to explore - as far as possible - all relevant interpretations and definitions, in order to extract from them the concept and conceptual elements of transparency that can be interpreted in the context of the administrative procedure. It should also be stated in advance that the above-mentioned international organisations most often formulate criteria and expectations for the whole of government or the public administration as a whole, but that the bodies implementing administrative law and regulating the administrative procedure play a very important role in their implementation. Accordingly, in analysing the specific requirements, expectations and guidelines published by international organisations, I will focus primarily on the requirements that apply expressis verbis and immanently to these bodies, in order to outline the system of requirements for transparency in the public administration process and its individual elements.

II. United Nations (UN) expectations and guidelines

First, I will deal with the documents issued by the UN and its specialised bodies. The organisation has repeatedly addressed certain issues of public administration, including the publication of guidelines on transparency, and has integrated this issue into programmes launched by the UN and its specialised agencies.

Let us look through these in order to identify the expectations and guidelines on the subject published by the international organisation.

1. UN Development Programme documents

From the point of view of our topic, a policy document issued in 1997 by the United Nations Development Programme (UNDP), established in November 1965, is the first to address the issue of transparency: the policy document, *Governance for Sustainable Human Development* emphasises that good governance and human development are inseparable processes, the latter presupposing the fullest possible realisation of the former. In this regard, the concept of good governance is described as being, among other expectations, "*participatory, transparent and accountable*"¹, i.e. based on the participation of social stakeholders, and in this formulation, the document sets out expectations for all government activities, including public administration. Transparency is defined as being based on the free flow of information between public administrations, and to this end the processes of public administration, the various bodies of the public administration and the information relating to them are directly accessible to citizens - the information

¹ UNDP: *Governance for Sustainable Human Development – A UNDP Policy Document*. New York, UNDP, 1997. pp. 2-3.

necessary to understand and monitor these processes is also provided². If we interpret this definition, we can conclude that:

- It captures a fuller picture of the concept of transparency and its areas than the ideas which, in a very simplistic and unjustifiable way, reduce the concept and the subject of transparency to the provision of freedom of information by the state. Of course, this subject can also be an important part of governmental transparency and, within it, of administrative transparency, but the position I have taken in this thesis is that it cannot be considered as the whole or only way of applying the concept.
- The definition also highlights the different levels of transparency as dimensions, thus addressing the issue of process transparency, organisational transparency (which can be applied both to the organisational system of public administration and to the internal transparency of the individual public administration bodies implementing administrative law).
- Finally, the issue of communication in public administration is also immanent in the document, since in order for citizens, potential or real clients, to be able to understand and even control certain processes of public administration, and thus also the processes of public administration law enforcement, there is a need for well thought-out and open communication that is capable of developing them.

It should also be noted that the later parts of the concept see public, accessible information as leading to greater transparency, wider public participation and more effective decision-making - an institution (or system) that acts on and receives public feedback in this way will ultimately become transparent to society and in line with the rule of law.³ An important conclusion of this concept, which will also be relevant to the examination of the hypotheses, is that the above characteristics of the state, and of public administration within it, presuppose ideal conditions which are not fully met in any society. This means, among other things, that *full transparency as a goal and condition to be achieved in the public administration process and in the performance of its duties can only be approximated, but cannot be achieved, even if it meant the unqualified implementation of the legality of public administration.*

A critical comment is that the definition in the document focuses too strongly on the role of information, while leaving untouched areas that could create the conditions for transparency.

The 2006 revision of the concept paper, *Governance for the Future Democracy and Development in the Least Developed Countries*,⁴ devotes two chapters to the issue of

² Op.cit. pp. 4-5.

³ Op.cit. pp. 6-7.

⁴ Welch, G. – Nuru, Z. (Eds.): *Governance for the Future Democracy and Development in the Least Developed Countries*. New York, UNDP, 2006.

transparency: on the one hand, it discusses accountability and anti-corruption measures in the context of public service delivery, and on the other, it describes the civil sector as a *watchdog* for non-state actors, an activity aimed at democratically monitoring the delivery of public services.

In this context, the concept explains that public administrations can achieve capacity development fundamentally if they can enforce the principles of democratic governance in their own activities. In this context, it highlights the principles of transparency, accountability, predictability, responsiveness and participation.⁵

Transparency in this respect is defined in the document as a core feature of good governance, the definition of which is more closely in line with that of the 1997 document, but it could not go beyond it in terms of conceptual elements.⁶

The document also underlines that:

- Transparency and openness naturally require that those who hold public office embrace these ideas and even consciously undertake to openly address these issues.
- Without an effective system of social, judicial, political and economic checks and balances, it will be impossible to implement and enforce transparency and accountability in the individual states.
- The document highlights these in part as a means of reducing corruption, in terms of increasing organisational transparency, and also suggests that they can be seen as core values of bureaucracy, but that they can only be fully realised if they are also applied in key decision-making processes, in government activity in general, in strategic planning for government, in the drafting of legislation for public administration, and in the decision-making and application of law by public authorities in individual cases.

The above analytical document was followed in 2014 by the *Discussion Paper - Governance for Sustainable Development Integrating Governance in the Post-2015 Development Framework*, an assessment publication that included the results of a major international consultation, which covered the range of governance measures and attitudes required to achieve the UN's objectives and priorities, including the development agenda.

Accordingly, the concept of transparency in this paper describes transparency as a central commitment that defines government action,⁷ both in the fight against corruption,⁸ and in the relationship between the public sector and citizens.⁹ It also describes the phenomenon of transparency as a governmental

⁵ Op. cit. p. 29.

⁶ Op. cit. p. 35.

⁷ UNDP: *Discussion Paper - Governance for Sustainable Development Integrating Governance in the Post-2015 Development Framework*. New York, UNDP, 2014. p. 2.

⁸ Referring to the UN Convention against Corruption, which will be discussed later.

⁹ UNDP: *Discussion Paper*... op. cit. p. 6.

behaviour that provides a strong signal to citizens and the international investment community that the state and its organisation are committed to the rule of law. The paper argues that openness on the part of governments in this direction has a proven impact on investment and the development of the state. Transparency is also interpreted here in terms of fiscal transparency, which is an important requirement for the organisation of the state - but is outside the scope of this study.

Despite the fact that the document's use of terms, important conceptual elements and links are mentioned, it distances the concept of transparency from being able to formulate concrete requirements (it approaches it as a commitment), which, in my opinion, is crucial to ensure that transparency is implemented.

After 2015, the UN Development Programme, partly on the basis of the national experiences received, turned more strongly towards the promotion of anti-corruption activities, with the documents produced not providing any further relevant aspects of transparency in public administration and the application of public law beyond those discussed above. The final documents and reports of the programme examined the transparency aspects of public action in response to the pandemic COVID-19,¹⁰ with the main guidelines relating to public procurement, the integrity of the health sector and the use of technological innovation to enhance transparency. In fact, each of the priority factors did not really extend the scope of the conceptual elements and features already discussed (involvement, information, organisational transparency), but only served to prioritise them and to allocate resources effectively to the measures.

2. Relevant requirements of the UN Convention against Corruption

The UN General Assembly adopted the Convention against Corruption on 31 October 2003, which entered into force on 14 December 2005.¹¹ The Convention contains important implications for the interpretation of the concept of transparency, in particular with regard to the assessment of organisational transparency.

The Convention reaffirms the now oft-mentioned UN core values on which all planning and strategy documents are based. Among these core values is transparency, which, although it is mainly associated with the promotion of development activities, illustrates how the UN and its specialised agencies see transparency as one of the most important points of development in governance.¹² The normative part of the Convention states in Article 5 that the promotion of transparency in public affairs and public administration processes can be considered as a preventive policy and practice in the fight against corruption.

¹⁰ See: UNDP: *Guidance Note – Transparency, Accountability and Anti-Corruption Service Offer for COVID-19 Response and Recovery*. New York, UNDP, 2020.

¹¹ *General Assembly Resolution 58/4*.

¹² *United Nations Convention against Corruption 2003, Foreword*

Relevant to our topic, the scope of Article 7's provisions on the public sector in substance obliges States Parties to establish, among many other aspects, efficiency, transparency and objective criteria-based requirements for elected public officials and, where applicable, other rules for non-elected public officials. Paragraph 4 of the article, while soft law, nevertheless sets out the expectation that States Parties should endeavour to adopt, maintain and strengthen systems that ultimately promote transparency, in accordance with the principles of their domestic law.

These requirements could bring to the surface an important issue not yet addressed in the previous documents: the transparency of public administration, including the application of the law by public authorities, can only be expected to be achieved and implemented by public officials if the public service model of the State under examination is also based on transparency. I will return to this issue in more detail in the main chapter on organisational transparency. The provisions most relevant to the subject are those of Article 10 of the Convention, the content of which I have included here:

„Article 10 – Public reporting

*Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, **take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:***

*(a) **Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;***

*(b) **Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and***

*(c) **Publishing information, which may include periodic reports on the risks of corruption in its public administration.***

The requirements in Article 10 cover almost the entire spectrum of transparency, almost all the elements mentioned above, and are particularly concerned with the public administration within the State organisation in which the measures imposed will apply. The above section of the Convention goes a long way towards defining the definition that we will be able to give as a summary of this analysis of certain conceptual elements and key requirements of transparency in the administrative process. The fact that the above governmental measures are taken to prevent and combat corruption, a specific issue, does not detract from this conclusion, since, as we have seen above, one of the objectives of transparency, both in general terms and in the context of the concept of transparency in public procedures, is to reduce the incidence of abuse and corruption and to guarantee the

purity, legality and effectiveness of the public sector. The observations relating to the provisions of the above section can be formulated as follows:

- The sets of governmental measures linked to the provisions should cover almost all the major areas and topics of public administration, which are also discussed in other ways from the point of view of transparency: including organisational issues (see the chapter on organisational transparency), functional issues of public administration and relevant decision-making processes, thus bringing them together in a systematic way.
- The wording of Article 10 is only an illustrative list: in addition to these, a number of measures and sub-programmes can be identified, the central objective of which will be to increase transparency in the organisation and operation of public administrations.
- The first provision set out in the article relates to the obligation to provide information, which has been discussed several times - identifying as an expectation that there should be procedures and standards in the organisation of public administrations which enable society to obtain information on their organisation, operation, decision-making processes, the general normative rules under which they operate and the individual decisions taken, where this is not subject to restrictions.
- Already here, the limitations that can be considered as general limitations to transparency (e.g. protection of personal data, classified data, implementation of official controls, etc.) - which are analysed in separate sub-chapters - emerge.
- An important point is the requirement to simplify administrative processes, which could represent a major improvement on the traditional model of public authority law enforcement, based on a hierarchy of authority, particularly as regards contacts with the competent decision-making bodies and involvement in the decision-making process,
- Lastly, returning to the subject of communication in public administration, the Convention's system of requirements highlights the obligation to report, which can be a means of creating and maintaining trust in citizens, in relation to the adequacy of the body or organisational system concerned, and thus indirectly, but demonstrably, can increase the level of trust in the State and in public administration.

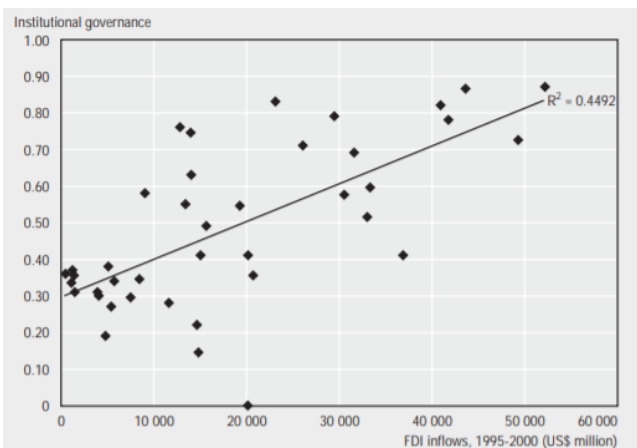
Further transparency requirements are primarily related to the regulation of public procurement, transparent budget planning and management, and relations between non-state actors, and are therefore outside the narrow scope of the study.

III. Expectations and guidelines of the Organisation for Economic Cooperation and Development (OECD)

Due to the economic and social policy orientation of the Organisation for Economic Co-operation and Development's activities, the public administration and the administrative procedure within it are only indirectly affected by the expectations contained in the organisation's guidelines and documents, but this is precisely the characteristic that makes them relevant for the study.¹³

In fact, the economic guidelines of the international organization express requirements and expectations: an investor-friendly environment (which is one of the foundations of any modern economy¹⁴) can only be imagined under stable legal regulation, efficient and predictable provision of administrative activities, and in expressing this, the documents also identify transparency as such an indispensable condition for public administration and the application of public law within it - formulating a number of requirements that may be important for the study in the elaboration of a system of expectations and requirements of transparency in the narrower field.

Figure 1 – The relationship between investment and the quality of governance.



Source: OECD: *Foreign Direct Investment – Maximising Benefits, Minimising Costs*. Paris, OECD, 2002. p. 180.

¹³ OECD: *Who we are*. <https://www.oecd.org/about/> (2021.09.01.)

¹⁴ OECD: *Public Sector Transparency and the International Investor*. Paris, OECD, 2003. pp. 8-10. Irtyshcheva, I., et. al.: Building favorable investment climate for economic development. *Accounting*, 6(5), 2020, pp. 773-780. <https://doi.org/10.5267/j.ac.2020.6.006>

At the same time, in the areas of social and societal justice, social participation in the relevant legislation and decision-making, broad access to information and the public perception of and trust in the state and public administration become important factors as well as the various aspects of ensuring transparency.

One of the OECD's central objectives within the scope of its activities as defined above is to disseminate good governance models among its member countries. To this end, a Directorate for Public Governance has been set up to promote public sector anti-corruption activities and the integrity of public administration, and to publish guidelines on open government. In the following subsections, I will examine some of these guidelines in more detail in order to identify their links and interrelations with transparency.

1. Public Sector Transparency and the International Investor

In 2003, the OECD published a summary assessment document entitled *Public Sector Transparency and the International Investor*,¹⁵ which is important to highlight for the purposes of this study: the first chapter of the document is entirely on the same topic as the study, and thus sets out very important requirements and expectations, as well as summarising the benefits that accrue when international investment expectations are met by a transparent public sector.

The main findings of the paper are related to transparency and, in particular, to the transparency of the administrative procedures:

- Transparency in public administration, including the application of public law, is not only important for investment, but also for the efficiency of society as a whole and of government.¹⁶ Increasing transparency also brings predictability to public administration processes, the positive effects of which are widely felt.
- Transparency cannot be seen as an end in itself, but rather as a means of improving the achievement of the objectives already pursued by public administration, including the application of public law.¹⁷
- There is no single model for how to create transparency in public administrations in different countries, given that these can vary widely and are not usually directly affected by international binding standards, but the basic principles and good practices for achieving this can be identified.
- The implementation of reform programmes aimed at increasing transparency may encounter unforeseen difficulties or even resistance from public administrations and public officials, which can only be

¹⁵ OECD, 2003, op. cit.

¹⁶ Op. cit. p. 7.

¹⁷ Op. cit. p. 13.

countered by thorough and in-depth communication, highlighting the advantages and excluding the disadvantages as far as possible.

- In all cases, the establishment and maintenance of transparency requires continuous improvement on the part of public administrations, so that they can respond to constantly changing needs and take advantage of the results of the latest developments, whether technological or social, in terms of involving society, increasing the efficiency of processes or even in terms of communication.
- It is not enough to create transparency in the relevant legislation and other mandatory requirements or in the application of the law, the issue of procedural transparency, i.e. how the various procedural legal instruments influence the transparency of the public authorities' application of the law, also plays an important role.¹⁸
- Consistent, wide-ranging communication and information to society and stakeholders is seen as key to achieving transparency, without which the results of the measures already taken will remain latent. This also means that, where the regulatory environment allows, prior notification and consultation of stakeholders should be carried out, where possible, before the public authority starts the enforcement process, in order to allow relevant information to emerge that could otherwise have a significant impact on the decision of the administrative authority.¹⁹

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In my view, the evaluation document discusses important sub-areas and requirements, but due to the nature of the document, it often takes too general an approach to the topic to encourage Member States to change or amend specific measures and regulatory solutions in the area of public administration and the application of administrative law.

2. OECD Principles for Transparency and Integrity in Lobbying

Following a major OECD survey in 2009, the OECD issued its 10 principles to make the role of public interest representation more transparent and to enhance the integrity of the public sector. For the purposes of this study, this has mainly concerned the creation and expansion of legal provisions on advocacy and organisational transparency.²⁰ Two principles in particular are considered important for enhancing transparency:

- One of them (Principle 4) is to ensure an adequate level of transparency in each Member State, consistent with the need for public officials, citizens

¹⁸ Op. cit. pp. 46-49.

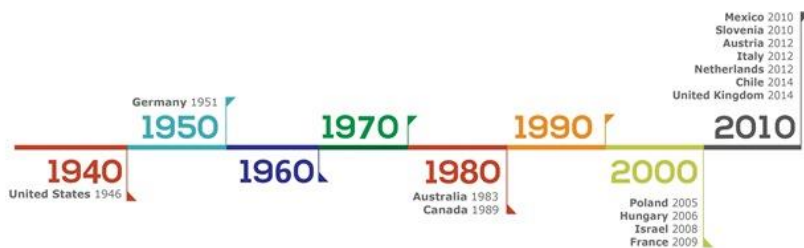
¹⁹ Op. cit. pp. 44-46.

²⁰ OECD DAC: *Transparency and Integrity in Lobbying*. Paris, OECD DAC, 2013. <https://www.oecd.org/corruption/ethics/Lobbying-Brochure.pdf> (2021.08.01.)

and business to have sufficient information on lobbying activities affecting public administration bodies,

- The second (Principle 5) is that each country should allow stakeholders, including NGOs, business, the media and the public in general, to monitor lobbying activities in order to ensure that they remain within a regulated framework.

Figure 2 – The emergence of regulations on lobbying in OECD member states.



Source:

<https://www.oecd.org/gov/ethics/oecdprinciplesfortransparencyandintegrityinlobbying.htm>
(2021.08.01.)

3. OECD Recommendation of the Council on Open Government

Another relevant strand of the OECD's requirements and recommendations on governance is the concept of open government, on which the international organisation has published a recommendation addressed to the governments of its member states. The 2017 Recommendation also reflects a previous Recommendation issued by the organisation to improve access to and use of public information.²¹ The Recommendation makes the following observations:

- The Recommendation underlines that stakeholder engagement enhances transparency in governance, including the involvement of citizens, which can contribute to building, maintaining and developing citizens' trust.
- Considers transparency as one of the principles of open government and, in this context, Member States' open government strategies and initiatives should seek to achieve this, among other principles.²²
- Individual governments should develop a legal framework at all levels of government, both horizontal and vertical (including at the level of individual legislation), which promotes the implementation of these

²¹ OECD Recommendation of the Council for Enhanced Access and More Effective Use of Public Sector Information [C(2008)36]

²² OECD Recommendation of the Council on Open Government [C(2017)140] I.

principles and should take all necessary measures to achieve and maintain them.²³

The recommendations fail to go beyond the expectations already set out in previous OECD documents, and so the document focused more on reiterating the much-vaunted expectations than on helping to translate them into reality.

IV. Council of Europe expectations and guidelines

Among the activities of the Council of Europe, an international organisation with a regional scope, the activities and documents aimed at protecting the rule of law will be the most relevant for us, but European responses to current problems and, to some extent, the tasks of democratic stability for public administrations, the guidelines issued in this field, can also be considered relevant, since they may individually and collectively influence expectations and requirements for the administrative procedures in the context of its transparency.

1. Recommendation on good administration

In June 2007, the Committee of Ministers of the Council of Europe adopted Recommendation CM/rec(2007)7 on Good Governance and its appendix. The Recommendation contains important expectations relevant to the subject under discussion concerning the organisation and functioning of public administrations in the Member States. On the one hand, it states the importance of transparency in the organisation of public administrations, and on the other hand, it emphasises the principles of public participation and the rule of law, which are laid down as requirements of the rule of law²⁴.

The Recommendation also sets out transparency as a fundamental principle of good public administration in Article 10, setting out the following expectations:

„Article 10 – Principle of transparency

1. *Public authorities shall act in accordance with the principle of transparency*
2. *They shall ensure that private persons are informed, by appropriate means, of their actions and decisions which may include the publication of official documents.*
3. *They shall respect the rights of access to official documents according to the rules relating to personal data protection.*
4. *The principle of transparency does not prejudice secrets protected by law.*”²⁵

From the wording of the first point and from the definition of the principle, we can conclude that transparency must cover the entire administrative procedure, that this principle must permeate all the legal institutions related to the procedure, from the initiation of the procedure to the final decision of the law enforcement body, and even, in connection with this, the appeal procedures and

²³ Op. cit. II. 1.-3.

²⁴ Recommendation CM/rec(2007)7. p. 3.

²⁵ Op. cit. Article 10.

enforcement, since in these cases too, administrative authorities will act. The definition's approach shows that it attaches particular importance to information and access to information in order to achieve transparency, but also sets limits to this.

The Recommendation sets out more tangible expectations than the UN and OECD Recommendations discussed above, but only places the measures necessary to ensure transparency in a mosaic of uncontextualised arrangements that do not contribute to the meaningful transposition of the expectations into the law and practice of States Parties.

2. 12 Principles of Good Governance

The 12 principles, which are part of the Council of Europe's Committee of Ministers' *Strategy on Innovation and Good Governance at Local Level*, were defined in 2007.²⁶ The principles were originally mainly aimed at local authorities, but have been applied more widely in the formulation of guidelines and recommendations, and have been extended to cover the processes of public administration and governance, including the application of public law. One of the 12 principles is openness and transparency, summarised as follows:

„Decisions are taken and enforced in accordance with rules and regulations.

There is public access to all information which is not classified for well-specified reasons as provided for by law (such as the protection of privacy or ensuring the fairness of procurement procedures).

Information on decisions, implementation of policies and results is made available to the public in such a way as to enable it to effectively follow and contribute to the work of the local authority.”²⁷

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It is possible to identify, on the basis of the above, the principle of the binding nature of administrative bodies, in this text specifically referring to decisions. Other aspects of the definition may already be familiar from the wording of other organisations: public access to all information which is not subject to restrictions, and the specific form of accountability linked to the obligation to report, which allows society and the public to follow the development of certain activities of the public administration.

3. The Tromsø Convention on access to documents containing information of public interest

In the area of transparency linked to freedom of information, the Council of Europe established in 2009 the Convention on Access to Documents containing public

²⁶ Council of Europe: *15th session of the Conference of European Ministers responsible for local and regional government (Valencia, 15-16 October 2007) – Report by the Secretary General.*

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d3dc8#globalcontainer (2021.08.01.)

²⁷ Council of Europe: *12 Principles of Good Governance.* <https://www.coe.int/en/web/good-governance/12-principles#{%2225565951%22:3}> (2021.08.01.)

interest information, the objective of which is that the States Parties to the Convention should grant their citizens the right to free access to these documents and information.²⁸ Although the Convention only entered into force after a very long delay, in December 2020,²⁹ the requirements of the Convention have greatly contributed to the transparency of administrative procedure in the States Parties, as it facilitates access to information, as mentioned above. The Explanatory Memorandum to the Convention thus defines the concept and requirements of transparency in this field. The Explanatory Memorandum to the Convention thus defines the concept and requirements of transparency in this field:

*"Transparency of public authorities is a **key feature of good governance and an indicator** of whether or not a society is genuinely democratic and pluralist, **opposed to all forms of corruption, capable of criticising those who govern it, and open to enlightened participation of citizens in matters of public interest.** The right of access to official documents is also essential to the self-development of people and to the exercise of fundamental human rights. It also strengthens public authorities' legitimacy in the eyes of the public, and its confidence in them."*³⁰

What highlights this formulation and definition from the point of view of the study is that, in fact, both transparency and freedom of information, which is one, but not the only form of its realisation, the disclosure of data of public interest, can be considered as a basis of social legitimacy, which also provides an opportunity to inspire confidence in society towards the law enforcement bodies performing their public duties.

4. CLREA Recommendation 424(2018) and Resolution 435(2018)

An excellent summary of the range of recommendations, guidelines and other soft law documents issued by the international organisation in the field of transparency is provided by the CLREA (Congress of Local and Regional Authorities) Recommendation 424(2018) and Resolution 435(2018), entitled Transparency and open government.³¹ The specific aspect of these documents is that they focus primarily on the organisation and functioning of local governments, but they also clarify a number of expectations related to organisational transparency and the

²⁸ Which was transposed in Hungary by Act CXXXI of 2009 on the promulgation of the Council of Europe Convention on Access to Documents containing Data of Public Interest.

²⁹ In the absence of a sufficient number of ratifications. Ld. Council of Europe: *Details of Treaty No.205 - Council of Europe Convention on Access to Official Documents.* <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205> (2021.09.01.)

³⁰ *Explanatory Report to the Council of Europe Convention on Access to Official Documents* (CETS No. 205) <https://rm.coe.int/090000168071a811> (2021.09.01.)

³¹ CLRAE *Recommendation 424 (2008) (2018. november 7.) CG35(2018)14final*
CLRAE *Resolution 435 (2008) (2018. november 7.) CG35(2018)14final*

procedures of public authorities in the context of local government, which are also relevant to our topic.

The decision identifies transparency as an important principle of open government, necessary to enable local and regional authorities to build good relations with the citizens in their areas. Transparency is understood in this context as part of easy access to information, open data and open document management. It also sees transparency as a fundamental principle of greater involvement of civil society in decisions of public interest and the prevention of abuse.

The Recommendation sets out a broad range of expectations, which the governments of the Member States must implement at the lower levels of the executive.³²

In the commentary to the Decision and the Recommendation, the two rapporteurs explain that the principle of transparency is one of the basic principles of open government. In contrast to what has already been explained above, they distinguish between the principles of transparency, public participation and accountability, and identify transparency with the improved accessibility of government data and information. The same narrow interpretation is given in paragraph 2, where it explains that transparency is in fact based on freedom of information, the concept of open data and the document management required for these to be incorporated into public administration, again separating it from the elements necessary to create participation and accountability. In my view, this approach narrows the definition of transparency too much and artificially separates elements that are in fact interdependent and synergistic. Despite the fact that such a rigid approach is not conceptually impossible, the positions already cited in the literature and other international organisations, and even other authoritative documents of the Council of Europe, take a different view, using a broader concept of transparency.

5. Activities and reports of the European Council of Europe's Commission for Democracy and Good Governance (CDDG)

The Council of Europe's European Commission for Democracy and Good Governance (CDDG) is an intergovernmental forum where representatives from each Member State exchange experiences and evaluate their efforts, good and bad practices, in the field of good governance and democratic stability. For us, the Commission's activities will be relevant to this study because they relate to reforms aimed at reforming public administration, increasing citizen participation, and also cover the moral and ethical aspects of public administration. In addition to the Commission's annual country reports, one of its important reports is the document

³² CLRAE Recommendation 424 (2008), Explanatory Memorandum 1.1., p. 6. <https://rm.coe.int/transparency-and-open-government-governance-committee-rapporteur-andre/16808d341c> (2021.08.01)

on good governance, capacity building and public participation,³³ in which it defines the concepts of transparency and openness as follows:

„Transparency means that decisions taken and their enforcement are done **in a manner that follows rules and regulations**. It also means that **information is freely available and directly accessible** to those who will be affected by such decisions and their enforcement. It also means that enough information is provided and that it is provided in easily understandable forms and media.”³⁴

This definition is very similar to the legality criterion given in the 12 principles of good governance discussed earlier, and the rest of the definition defines the way in which information is made available (free, direct access, information that is at least sufficient), but the requirement of comprehensibility, which makes the information received comprehensible to the data subjects, should be highlighted. Based on this definition, I would like to stress that transparency is not limited to ensuring freedom of information and the availability of data of public interest, but that the scope of the information described above is broader and also applies to the organisation's rules, procedures and operations.

V. The European Union's expectations and strategic orientations

The European Union, as a supranational organisation, plays an important role both in the European context and globally in terms of its requirements, guidelines and orientation. From the point of view of transparency, it is described by several authors as a composite democracy,³⁵ which in our interpretation means that it has different forms of democratic legitimacy: vertically, it gains legitimacy through the elected representation system of the European Parliament and through the democratically elected government delegates in the European Council, and horizontally, it is subject to checks and balances between Member States, complemented by a complex system of expert representation.

For the purposes of the present study, it is not the legitimacy and transparency of the European Union as an international organisation that will be relevant, but the expectations and requirements of the Member States' administrations in the course of their law-making activities. And this is a very narrow framework: due to the characteristics of the European Union, the organisation has only supporting powers in relation to the regulation of Member States' administrations under Article 6 of the Treaty on the Functioning of the European Union, so it can only support, coordinate or complement the measures of EU

³³ European Committee on Local And Regional Democracy (CDLR): *Draft Report on Initiatives to Strengthen Good Governance, Capacity Building and Citizen's Democratic Participation*. Strasbourg, CDLR, 2013.

³⁴ Op. cit. p. 3.

³⁵ To summarise these views: Héritier, A.: Composite democracy in Europe: the role of transparency and access to information. *Journal of European Public Policy*, 10(5), 2003, pp. 814-833. <https://doi.org/10.1080/1350176032000124104>

Auel, K., et. al.: *Democratic governance in the EU. The case of regional policy*. Poliso, Fernuniversität Hagen, 2000. pp. 5-15.

countries, but cannot lay down binding rules in this direction. Therefore, in exercising this competence, the Union typically only undertakes to facilitate administrative cooperation. Accordingly, requirements for transparency in the administrative process are rarely found in supranational legislation or strategies, but several important planning documents and strategies are indirectly linked to this issue.

1. The Charter of Fundamental Rights

The European Charter of Fundamental Rights, proclaimed in Nice in December 2000, entered into force in 2009 and became binding with the Lisbon Treaty.³⁶ By its very nature, the Charter takes a fundamental rights approach to the subject under consideration. The most relevant requirements are set out in Article 41 of the Charter, which regulates the right to good administration. The following sections are relevant to the study:

- Impartial, fair and timely administration - the emergence of the rule of law requirement of equality before the law and the requirements of legal certainty and predictability in the provision of administrative services, which will provide some important elements of the rule of law requirement of transparency.³⁷
- The obligation to state reasons provides the authorities with transparency, clarity, reasoning and a basis for voluntary compliance.³⁸

2. White Paper on European Governance 2001

One of the first relevant strategy documents of a general nature is the European Commission's 2001 Strategy Paper on Governance, in which the Commission summarises the principles of good governance and makes proposals for improving governance.³⁹

In the context of transparency, the following sections of the document can be highlighted - to capture the conceptual elements:

- The concept includes among the principles of good governance the need for openness, participation and accountability on the part of the national institutions, and coherence, which should permeate all policies and regulations in the Union, in order to ensure development with the right level of impact.⁴⁰

³⁶ The Charter of Fundamental Rights. HL C 202., 2016.6.7., pp. 389-405.

³⁷ Leach, W. D.: Collaborative public management and democracy: Evidence from western watershed partnerships. *Public administration review*, 66(S), 2006, pp. 102-105. <https://doi.org/10.1111/j.1540-6210.2006.00670.x>

³⁸ Mashaw, J. L.: Reasoned administration: The European union, the United States, and the project of democratic governance. *George Washington Law Review*, 76(1), 2007, pp. 99-101.

³⁹ *European Governance: A White Paper*. Brussels, 25.7.2001, COM(2001).

⁴⁰ Op. cit. p. 7.

- The proposals highlight the need to strengthen public involvement and participation, with Member States also having a role to play in shaping the social dialogue on issues that can be understood in a European context.⁴¹
- The issue of higher level policy making and regulation, which the document identifies as one of the cornerstones of public trust and compliance, and risk and impact assessment, which takes into account the views and information of the public involved in decisions, to help achieve the objectives of the legislation to be developed.

These findings are important for us because, on the one hand, they help us to define the conceptual elements and sub-elements of transparency and, on the other hand, they highlight the values and expectations that the European Union, through its institutions and legal system, communicates to the Member States and their public administrations.

3. Action Programme for Reducing Administrative Burdens in the European Union

Following the Commission's 2007 "*Action Programme for Reducing Administrative Burdens in the European Union*", a programme of measures related to public processes was launched in all EU Member States (overall: Simplification Programme), the main objective of which was to enable each Member State to effectively reduce the administrative burden for citizens and also to achieve a kind of "clarity of standards" objective: to make the language of the relevant legislation more accessible and understandable in the most important areas of law enforcement, including public administration.⁴² The common target set a 25% reduction in administrative burdens, to be achieved by Member States by 2012. Hungary has also achieved a number of results under the programme, not only administrative procedures but also, for example, company court procedures have been renewed and simplified from an administrative point of view.

4. A vision for public services

In 2013, the European Commission published its strategy paper on creating and strengthening a modern and open public sector.⁴³ The document conceptualises transparency in the context of open data and open, participatory decision-making, and accordingly focuses on the pervasive nature of public data disclosure and the need to involve stakeholders, coupled with the possibility of using digital and e-government tools and IT solutions to achieve this effectively. In exploring the

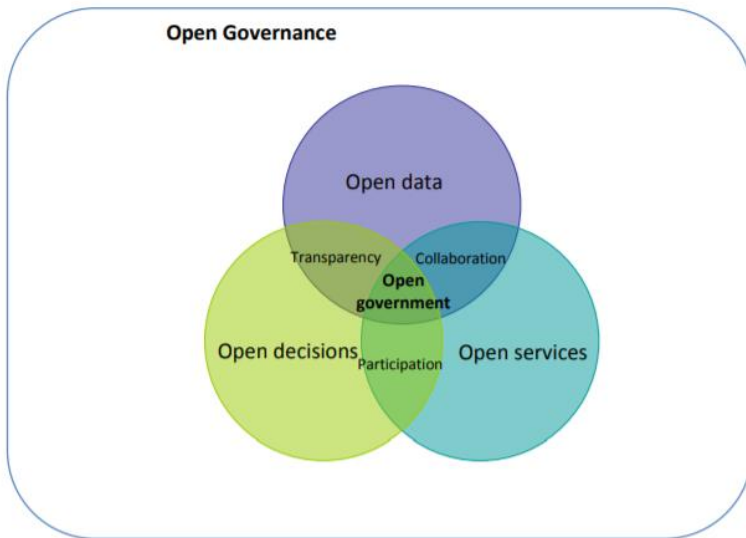
⁴¹ Op. cit. p. 11.

⁴² Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions (24 January 2007) - Action Programme for Reducing Administrative Burdens in the European Union [COM(2007) 23]

⁴³ European Commission: *A vision for public services*. <https://ec.europa.eu/digital-single-market/en/news/vision-public-services> (2021.09.01.)

theme of open government, the document interprets it along the spectrum of open services to society, public data published in open formats and public involvement, as follows:

Figure 3 – Components of implementing open government.



Source: https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=3179 (2021.08.01.) p. 3.

It can be seen from this that the interpretation of transparency by the institutions of the European Union, as summarised in this and the above document, narrows the concept of transparency down to the issues of open access to information and public involvement in decision-making, ignoring many aspects that can be included in the scope of the concept on the basis of the documents examined in the previous documents (e.g. legal binding, organisational transparency, procedural transparency, etc.).

5. Model rules on European administrative procedure

In September 2014, the Research Network on EU Administrative Law (ReNEUAL) published the Model Rules on EU Administrative Procedures, which are of relevance to our topic because, as already mentioned above, they were published with the intention of standardising the rules in the field of administrative matters

less affected by the EU's harmonisation activities, including the rules on the application of public law, which is itself an initiative towards transparency.⁴⁴ Although, as a general rule, the provisions contained in the model rules are primarily to be followed and applied by EU agencies, institutions, bodies and agencies, and by national authorities only if expressly provided for, the application of these rules has an impact on the Member States' legislative processes and thus, naturally, on the transparency aspects of these processes.

The model rules address the issue of transparency expressly in several places, namely:

- On the one hand, it is stated in the conceptual ideas that the aim of the model rules is to transpose the constitutional values of the Union into the body of rules on administrative procedures in the public administration, and that this is expected not only to clarify the rights and obligations of public authorities and their clients, but also to increase the transparency of the legal requirements applicable to them.⁴⁵
- Transparency is seen as a basic principle for the interpretation of the rules, as set out in the preamble to the model rules.⁴⁶
- Transparency in administrative law-making is defined as a fundamental principle, the guarantee of which in the legislative process creates the opportunity for social debate and a social choice between alternatives.⁴⁷
- In individual cases, the model rules place the implementation of procedural transparency, which will be analysed in detail later, at the heart of the requirements, highlighting the need to provide reasons for decisions as an obligation when implementing administrative acts.⁴⁸
- The requirement of equal treatment in the area of public contracts is highlighted as one of the requirements for increasing transparency.⁴⁹
- Finally, they highlight the need to ensure a transparent flow of information in procedures, which could be one of the foundations for achieving transparency.⁵⁰

As mentioned above, the model rules sufficiently cover the concept of transparency in public authority procedures, but their practical application in the

⁴⁴ ReNEUAL: *Model Rules on EU Administrative Procedures. (a továbbiakban: ReNEUAL Model Rules)* [http://www.reneual.eu/images/Home/ReNEUAL-Model Rules-Compilation BooksI_VI_2014-09-03.pdf](http://www.reneual.eu/images/Home/ReNEUAL-Model_Rules-Compilation_BooksI_VI_2014-09-03.pdf) (2021.09.01.)

⁴⁵ *ReNEUAL Model Rules*, I. (14) pont

Balogh-Békési, N. – Balázs, I. – Boros, A.: I. könyv – Általános rendelkezések. *Pro Publico Bono*, 2017/2., 24. o.

⁴⁶ *Op. cit.*, I. Preamble

⁴⁷ *Op. cit.*, II. Para (1)

⁴⁸ *Op. cit.*, III. Article 7., 9.

⁴⁹ *Op. cit.*, IV. Article 16.

⁵⁰ *Op. cit.*, VI. Article 9.

practice of national authorities is questionable - due to the above circumstances, they primarily bind only the institutions of the European Union, while the national public authorities - the main subject of my study - are only bound by reference and by chance.

VI. Summary

The picture of the concept of transparency from its inception to the present day is quite varied, as can be seen from the above analysis. There is a wide variation in the conceptual elements by era, document and organisation, as can be seen in the table below. Based on the analysis carried out in this study, I can draw the following observations and conclusions:

- Transparency is often used as an indicator of compliance, continuous improvement and progress in the documents reviewed, without attributing a specific value measure, measure or tangible expectation or requirement. This may, on the one hand, remove transparency expectations from being translated into practice and concrete requirements and, on the other hand, may, after a longer period of time, discredit the concept and render it meaningless when it is reapplied.
- The use of conceptual elements varies not only in comparisons between organisations, but also between documents issued and examined within the same organisation. This could be explained by the passage of time and the need to respond to new needs and scientific and professional developments, but the documents analysed show the opposite: the presentation of conceptual elements varies regardless of the date of issue and the subject matter of the documents, indicating systemic conceptual problems and ad hoc use of concepts in documents.
- The conceptual use of documents becomes particularly problematic because it will provide the central orientation for the subsequent legislation that will evolve from them. The question arises as to how, if the strategy and planning documents do not clarify the meaning of the term, the public processes and, within them, the application of public law can be expected to meet the expectations and requirements of transparency.

Regardless of the above, there are some conceptual elements that stand out as recurring in almost all definitions and approaches: free flow of information, public involvement and inclusive communication, organisational transparency and transparency of legal requirements.