

EU Civil Society Contact Group

Briefing

Green paper

'Public Access to Documents held by institutions of the European Community'

22 May 2007

Does the current regulation on access to documents contribute to more transparency of the EU legislative process? Are the EU institutions' registers of documents comprehensive enough? What does the growing number of request indicate? How could a wider public be informed about the right to access documents? How can the 30% refusal rate be explained?

These are some of the questions raised in the context of the publication of the green paper on public access to documents held by the EU institutions. The green paper forms part of the European transparency initiative (ETI). The Civil Society Contact Group has been following the ETI since the debate was launched in autumn 2005:

- The Civil Society Contact Group briefing on the follow-up to the green paper on a European transparency initiative
<http://act4europe.horus.be/module/FileLib/CSCG%20Briefing%20April%2007%20final.pdf>
- The Civil Society Contact Group contribution to the consultation on the green paper on the Transparency Initiative
http://www.act4europe.org/code/en/actions.asp?id_events=107
- A Civil Society Contact Group briefing on the Transparency initiative from May 2006
<http://act4europe.horus.be/module/FileLib/Transparency%20Initiative%20briefing.pdf>

1. Background

The Treaty of Maastricht in 1992 introduced the principle of openness with a view of strengthening the democratic nature of the EU institutions. In 1997 the right to access documents was enshrined in the Treaty of Amsterdam (Article 255). A regulation translating this right into practice was adopted in 2001. The regulation 1049/2001 (http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_145/l_14520010531en00430048.pdf) defines the scope, the exceptions and the procedures of the right to access documents held by the EU institutions.

In order to ensure that the Union is "open to public scrutiny", the European Commission adopted and launched on November 2005 the Transparency Initiative http://europa.eu.int/comm/commission_barroso/kallas/doc/transp_report_en.pdf. It announced the launch of a green paper on the same topic in March 2006. On 3 May 2006 the green paper on the Transparency Initiative was finally launched: http://europa.eu.int/comm/commission_barroso/kallas/doc/com2006_0194_4_en.pdf. Both documents announced the review of regulation 1049/2001.

The green paper (http://ec.europa.eu/transparency/revision/docs/gp_en.pdf) launched by the Commission on April 18 2007 initiates this review. It opens a consultation that will last three months until July 15. A website has been dedicate to the green paper and the consultation: http://ec.europa.eu/transparency/revision/index_en.htm.

2. Main issues raised in the green paper

The green paper after an introduction is organised in two parts. Part 1 on the “application of the existing rules” looks at the implementation of the regulation (1.), the case law on the regulation (2.) and at other developments (3.), namely the Aarhus Convention and the openness of Council meetings. Part 2 “options for improving the access rules” opens three areas for consultation:

- A more active dissemination policy (5.)
- The coherence with the Aarhus convention (6.)
- Exceptions: the balancing of interests (7.)

This briefing concentrates on Part 2 that forms the area of consultation. Each of the issues opened for consultation will be summarized in this chapter 2. In chapter 3 we present some reactions to the paper before summarizing the next steps (chapter 4) and informing on the key contacts (chapter 5).

A report http://www.ecas.org/file_uploads/1384.pdf from ECAS (European Citizens Action Service) gives more information about how the regulation was being applied since coming into force.

2.1 A more active dissemination policy

Direct access to legislative documents - The green paper puts emphasis on the priority of making the *legislative process* of the EU institutions more transparent and more easily accessible to the general public. Following the green paper many documents forming part of the EU lawmaking process are already directly accessible. Nevertheless the definition of the term ‘legislative documents’ (regulation 1049/2001 Article 12) lacks precision. The green paper proposes two improvements, that remain tough vague:

- amending the regulation to define which types of documents are concerned
- make access to legislative documents easier

Information policy of the EU institutions – The green paper considers press releases a “valuable source of information for the general public”. It still acknowledges that the “institutions could develop a more systematic policy of making documents directly available to the public in a more user-friendly way”. It does tough not make any recommendation on what measures would be necessary to do so.

2.2 The integration of the Aarhus convention

The Aarhus convention is a United Nations Economic Commission for Europe (UNECE) convention on access to information, public participation in decision-making and access to justice in environmental matters. It was signed by 40 (primarily European) countries and ratified by 37 as well as by the EU.

Convergence between the Aarhus convention and regulation 1049/2001 – According to the green paper there are just little differences between the Aarhus convention and the regulation 1049. The main difference consists in the scope: the Aarhus convention just concerns environmentally relevant information while the regulation 1049/2001 concerns all documents held by the EU institutions. The green paper proposes to either operate a specific regime for environmental information or to operate one single system for environmental *and* other information.

A single access regime would indeed create more clarity for the three main EU institutions: European Parliament, Council and Commission. Other community bodies would tough still be able to work following other regimes. In order to ensure full compatibility with the Aarhus convention (regulation 1367/3006), regulation 1049/2001 would need to be amended.

2.3. Exceptions: the balancing of interests

Exceptions in regulation 1049/2001 - Chapter 7 of the green paper looks at the exceptions laid down in Article 4 of the regulation 1049/2001. The difficulty consists in bringing the exceptions in balance with the right of public access.

Article 4 of the regulation currently lists the following reasons for the institutions to refuse access:

- public interest as regards public security, defence and military matters, international relations, the financial, monetary and economic policy
- privacy and integrity rules, protection of personal data
- protection of commercial interests, court proceedings and legal advice unless there is an overriding public interest
- undermining of the institution's decision-making process unless there is an overriding public interest

The Green paper in particular looks at the protection of personal data (7.1.) and the protection of commercial or economic interests (7.2.). It proposes that data protection should only be a reason for non-disclosure of information if there is no overriding public interest in disclosure. This already applies for sensitive commercial information.

Good administration – The Commission also proposes to define criteria that would help judging the proportionality of a request. In the view of the Commission they could contribute to "reconcile transparency with the principle of good administration". The Commission having faced requests that implied a "burdensome" handling tries (in chapter 7.3) to limit its workload. The green paper proposes to look at the following three criteria:

- the volume of a requested documentation
- the definition of documents held by the institutions
- the moment of the disclosure

3. Overall assessment

The green paper is meant to generate a discussion on the objectives of the regulation 1049/2001, as Jens Nymand-Christiansen (Director Better Regulation and Institutional Issues, Secretariat General) underlined in a seminar on the issue. What the Commission wants to learn from the consultation is who different stakeholder assesses the current system and how they think it could be improved.

The questions asked in the consultation are therefore focusing on potential improvements. The improvements proposed remain tough vague and very technical. The green paper clearly lacks a bigger ambition than the technical review of the current system. It does not address the bigger context of information of the public.

The green paper fails to outline the part of a bigger information strategy that would go beyond mere publication of documents and achieve genuine information of people.

4. Reactions so far

Statewatch judges the green paper as being self-congratulatory and not taking seriously citizens feeling of remote and secretive institutions. The review seems to be a technical exercise not addressing the divide between the EU institutions and its citizens. In the point of view of Statewatch the green paper fails in addressing a couple of important issues such as:

- the need to reform the member states veto power
- the need to reform third parties' veto power
- the need to clarify the meaning of 'overriding public interest'
- the need to limit the exceptions
- the need to establish comprehensive registers

Find Statewatch's briefing on <http://www.statewatch.org/news/2007/apr/statewatch-briefing-note-on-green-paper.pdf>

ECAS is calling for a change from an access to documents system to a freedom of information act. " The green paper currently fails to address enough of the real issue".

Find the report of an ECAS seminar on the issue held on April 19 at http://www.ecas.org/file_uploads/1387.pdf

Also read ECAS' conclusions in the report on the application of regulation 1049/2001 to learn more about their positions on http://www.ecas.org/file_uploads/1384.pdf

ECAS response to the consultation can be found at http://ec.europa.eu/transparency/revision/docs/contributions/03_C3_ECAS.pdf

5. Next steps

The consultation lasts three months and will end on the 15th of July 2007. A specific website http://ec.europa.eu/transparency/revision/index_en.htm has been set up where you can submit your contribution and read other contributions. You are invited to also give a more general input without sticking to the questions.

The Commission will then analyse the contributions to the consultation and in September 2007 publish a report presenting a summary of the results.

On the basis of the consultation, the Commission will consider possible amendments to Regulation 1049/2001, which should be published in October this year.

6. Key contacts in the European Commission

The European Transparency Initiative falls in the domain of Siim Kallas, commissioner for Administrative Affairs, Audit and Anti-Fraud.

The Secretariat General of the European Commission supports him.

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