

# Statewatch

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Dear Mr Diamandouros,

Thank you for your letter of 25 July 2007.

1. As of 11 September 2007 the Commission still has not produced its annual report for 2005 on access to documents under Regulation 1049/2001.
2. The Commission has a legal obligation under the Regulation to produce an annual report each year on the previous year. Yet the Commission argues that priority was given to the publication of the Green Paper. I contend that the Commission's first obligation is to meet its legal duty.

The timing of the Green Paper (which was promised in October 2006 and did not appear until April 2007) was an internal matter for the Commission to decide after it met its legal obligations.

Indeed Article 17 of the Regulation says that the Commission had to report by 31 January 2004 on the implementation of the Regulation and make recommendations. This was published on 31 January 2004 and did not recommend any changes to the Regulation.

*"After its adoption on 30 January 2004, the evaluation report was published. The Commission concluded in the report that the application of the Regulation had not met problems which would give grounds for an amendment in the short term. It felt that a review of the Regulation should be carried out in relation to the entry into force of the Constitutional Treaty..."* (SEC 1025, 2005)

It is hard to see any case for giving "priority" to the Green Paper as the EU Constitution was "dead" and discussions underway for the Reform Treaty (see: March 2007, 50<sup>th</sup> anniversary celebrations in Berlin).

3. The second reason given is a "major turnover of staff" dealing with the Regulation. This is all the more reason for prioritising the Commission's legal obligations over optional initiatives.

Given the length of time which has passed and the fact that the Commission has still failed to produce the 2005 annual report this would appear this should be a matter for the Commission's Internal Audit Service (and possibly

the Court of Auditors) if resources and staff have not been allocated to meet the Commission's legal obligations.

4. Both explanations, in my view, reinforce the case of maladministration.

5. Finally, according to the consistent case law of the Court of Justice, Member States cannot plead administrative or political difficulties as an excuse for their failure to implement EC law correctly within the applicable deadline. Surely the same rule applies to the EU institutions, in particular the Commission.

Yours sincerely,

Tony Bunyan,  
Editor  
(member of the International Federation of Journalists)