

**Opinion of the Commission on the European Ombudsman's draft recommendation  
- Complaint by STATEWATCH, ref. 3208/2006/GG**

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**1. THE OMBUDSMAN'S DRAFT RECOMMENDATION**

The Ombudsman has made the following draft recommendation:

The Commission should, as soon as possible, include references to all the documents within the meaning of Article 3(a) of Regulation 1049/2001 that are in its possession in the register foreseen by Article 11 of this regulation to the extent that this has not yet been done.

The Commission understands that this draft recommendation is based on the following findings:

- (1) The term "documents" is defined in Article 3a); there is no evidence that the legislator intended this term to have a different meaning in Article 11. Therefore, all documents defined in Article 3(a) are also covered by Article 11 (paragraph 2.6 of the draft recommendation).
- (2) A citizen cannot make proper use of his/her right of access if he/she does not know which documents are held by the institution (paragraph 2.7).
- (3) The Regulation does not particularly focus on the legislative activity of the EU institutions (paragraph 2.8).
- (4) The registers currently operated by the Commission do not provide references to many documents concerning its activities that are in its possession (paragraph 2.9).
- (5) It should be possible for the Commission to set up a comprehensive register of documents on the basis of the existing internal registers (paragraph 2.10).
- (6) The Commission has had sufficient time to take the necessary measures for setting up a comprehensive register. There is no clear guarantee that the new internal registration system will lead to a proper public register, in particular with regard to documents drawn up or received before the new registration system will become operational. The Commission has not given a precise date by which the public register will be in full conformity with Article 11 of the Regulation (paragraphs 2.11 to 2.14).

**2. POSITION OF THE COMMISSION**

**2.1. Definition of "document"**

The Commission reiterates that the very wide definition of the term "document" in Article 3(a) is not compatible with a fully exhaustive and comprehensive register of documents. Countries with legislation on access to documents associated with public registers have in their legislation a more precise and more limited definition of "documents". Conversely, in countries with legislation on "freedom of information" there are generally no registers.

The Community legislation combines both features. The public registers are a very valuable instrument for citizens in identifying documents that might be of interest to them. However, the scope of the right of access exceeds the coverage of the public registers insofar as access can be requested to "any content, whatever its medium".

The Commission acknowledges that the coverage of its registers needs to be extended. However, it takes the view that it cannot be inferred from the wording of Article 11 that the public registers should cover all documents held by the institutions.

## **2.2. Possibility for citizens to exercise their right of access**

It is absolutely clear that public registers enable citizens to identify documents that could be of interest to them. A search in a register makes it possible, either to have direct access to documents in electronic form or, where the text is not directly available, to formulate a precise request, which is in the interest of the applicant but also of the institution.

The fact that the register does not contain references to all documents does not prevent applicants to make requests for access. The practice in the Commission shows that requests are often formulated in broad terms, so as to include every conceivable document related to a given subject. In such cases, it is up to the Commission's services to identify the relevant documents and to hand them out to the applicant or to explain the reasons why they cannot be disclosed. The processing of such requests is very similar to the processing of requests for information made under freedom of information laws.

For these reasons, the Commission considers that the fact that its registers do not cover all documents in its possession, in practice, does not obstruct the citizens' exercise of their right of access.

## **2.3. Particular focus on legislative activities**

The Commission has already informed in its opinions to the Ombudsman that the coverage of its registers will be increased gradually and that it is in the process of replacing the current IT systems of registration to a single centralised registration system.

Regarding the current coverage, the Commission recalls that it focused on the legislative documents since the legislative activity of the Community is common to the three institutions covered by Article 255 EC. The need to assist citizens in searching through European legislation and draft legislation was felt as a priority. The Commission's registers complement the registers of the European Parliament and of the Council and provide citizens with a comprehensive view of the legislative activity of the institutions.

In this regard, the Commission cannot share the Ombudsman's finding mentioned under point 1(3) above since it is clear from Article 12 and Recital (6) in the preamble that the Regulation puts an emphasis on legislative activities of the institutions.

However, the priority given by the Commission to documents in relation with legislation does not mean that the registers should not cover other documents. The Commission intends to further develop its registers in order to include references to documents related to other activities.

#### **2.4. Setting up of a fully comprehensive register based on internal registration systems**

As the Commission has stated in its opinions, each administrative unit has its own electronic system for registration and follow-up of its documents. There are common rules and common software for the registration of documents but no single data base.

The Commission is in the process of phasing out the existing system and introducing a new centralised registration system. Some Directorates-General operate the new system (Ares). This new system will gradually be introduced in the whole of the Commission. Substantial financial and human resources are being invested in this huge project (migration period 2008 to 2010).

The reason why under the current system (Adonis), there is no single Commission-wide database is the lack of security levels in this system. Therefore, each administrative unit operates its own local register. The data in Adonis has been entered under the assumption that it would only be seen by a limited number of people, usually the members of the relevant administrative unit. Therefore, the records in the Adonis registers contain information which legitimately must be protected. For this reason the information contained in the Adonis registers cannot simply be transferred into a public register. Before transfer to a public register, every single Adonis record would have to be vetted, and possibly edited, by a person who is familiar with the subject matter.

Such a screening and editing exercise of all existing Adonis records would require considerable resources. The Commission intends starting transferring records into a public register once the new internal single registration system (Ares) has become operational.

### **3. CONCLUSION**

For the reasons mentioned above, the Commission agrees that it still has to increase the coverage of its public registers and is committed to further develop them in the interest of enhanced transparency. However, it regrets that it is unable to accept the Ombudsman's draft recommendation as it is formulated since it suggests that the register has to contain the references to all documents as defined in Article 3(a) of the Regulation.

Indeed, it is logically impossible to combine a wide and imprecise definition of documents with a fully comprehensive public register.