



Statewatch Briefing Note on the Commission's Green Paper on public access to documents

The Commission has finally produced its Green Paper on the review of the EU Regulation on access to documents. The penultimate version:
<http://www.statewatch.org/news/2007/apr/eu-com-access-green-paper.pdf>

This review of the Regulation was an important opportunity for the Commission to re-engage with the wider European public, many of whom believe that the EU is far too remote and secretive. But like an ostrich, the Commission has hidden its head in the sand rather than confront this problem.

Instead of a frank appraisal of what the EU could do to increase its openness and transparency, the Commission's Green Paper is simply self-congratulatory. A non-European reader of the Green Paper would never know that the EU institutions discussed in the Green Paper (the Council, Commission and European Parliament) are considered to be remote and secretive by many EU citizens.

Rather, the thrust of the Green Paper is that this review is a technical exercise - not a means to address the divide between the EU and its citizens and to ensure that the Union is fully as open as possible.

The Green Paper says little or nothing about most of the important issues concerning the application of the Regulation:

- the need to reform or abolish the absolute power of Member States to 'veto' the documents which they have 'authored';
- the need to reform or abolish the power of non-EU states ("third parties") to veto access in practice, especially the USA;
- the need to restore some meaning to the 'public interest' override over the ability of the EU institutions to refuse access to documents, because the case law of the EU's Court of First Instance has effectively wiped out the prospect of using the override;
- the need to re-examine and limit the exceptions to the right of access under the Regulation, in particular the exceptions for decision-making by

the EU institutions, in light of the developing openness of the public meetings of the Council; and

- the need to extend access to documents in practice by clarifying and reinforcing the obligation of the EU institutions to establish full registers of documents and to make as many documents as possible accessible via the registers.

The Commission notes that the number of requests it receives have more than doubled while the number of requests to the Council:

“remains stable largely due to the increasing number of documents made directly available on the Council’s register” (Point 1)

It then observes that:

“there is room for improvement as regards - the scope of the registers, in particular those of the Commission [and] the number of documents or the amount of information made directly accessible to the public” (Point 1.5)

The Commission does not need to “improve” its public register it needs, six years on, to actually implement Article 11 of the Regulation which says that “References to documents shall be recorded in the register without delay” - this obligation is not optional. See *Statewatch’s* complaints lodged with the European Ombudsman against the Commission on its public register: <http://www.statewatch.org/news/2007/apr/statewatch-ombuds-cases-april-2007.pdf>

As to Article 12 (“Direct access” to full-text documents) of the Regulation the Commission say that as regards lawmaking:

“many of these documents are accessible with their full text” (Point 5.1)

This is largely true of the Council and the European Parliament but certainly not of the Commission.

The Commission fails to recognise the obvious namey, that if it provided a proper public register then it would receive many fewer requests.

Furthermore, there is no attempt to address the great majority of the issues raised by the European Parliament in its 2006 recommendation for a legislative proposal of the Commission on this issue, adopted unanimously: <http://www.statewatch.org/news/2007/apr/cashman-access-final.pdf>

This includes revised rules concerning in particular the drafting and accessibility of legislative texts, rules relating to non-legislative documents, classification, Member States' documents, and some of the practicalities of ensuring access to documents.

The Commission instead seems concerned with effectively reducing access, calling in particular for strengthening the rules on 'confidentiality' of documents, excluding 'excessive and improper' requests for documents, and

deferring to the 'commercial and economic interests' of multinational companies being investigated for allegedly illegal activities by the Commission.

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