

(scanned letter from)

Jose Manuel Barroso,
President of the European Commission

Brussels 22 May 2007,

*Subject: **Complaint by Statewatch**, ref: 3208/2006/GG*

Dear Mr Diamandouros,

Thank you for your letter of 23 October 2006 regarding the above case.

I am pleased to transmit to you the enclosed comments of the Commission on the above mentioned complaint.

I regret that a certain delay has occurred in transmitting this reply.

Naturally, the Commission remains at your disposal for any further information you may require.

Yours sincerely,

Jose Manuel BARROSO

Enclosure

*Mr Nikiforos DIAMANDOUROS
European Ombudsman
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27.4.2007

Comments of the Commission on a request for information from the European Ombudsman - Complaint by STATEWATCH, ref. 3208/20061GG

1. THE COMPLAINT

The complainant contends that the Commission's register of documents does not fulfil the requirements of Article 11 of Regulation 1049/2001, because it does not include the vast majority of documents produced and received by the Commission in the course of its activities.

He alleges that the Commission's register only contains legislative texts and adopted Commission reports (including SEC documents).

Finally, the complainant refers to internal databases that could provide the basis for a more comprehensive public register of documents.

2. THE OBLIGATIONS RESULTING FROM ARTICLE 11 OF REGULATION 1049/2001

Article 11 requires the institutions to "provide public access to a register of documents". It does not stipulate that public registers should include references to all documents. On the other hand, Article 3(a) gives a very wide definition of a "document" as "any content whatever its medium". A fully comprehensive register requires a precise definition of what is a "document" that has to be included in the register. This is the case in Sweden, Finland and Denmark, countries with a register based system for public access to their documents,

where a distinct difference is made between "documents" in general and "official documents", the latter being the only documents to which rights of access apply. Under Regulation 1049/2001, the registers are intended to assist applicants in identifying relevant documents as indicated in recital (14) of the Regulation; they are search tools and do not in any way limit the scope of the right of access, which instead stretches to any document in the possession of the Institutions.

3. PUBLIC REGISTERS IN THE FIELD OF COMMUNITY LEGISLATION

The Regulation governs access to any type of documents held by the European Parliament, the Council and the Commission. However, it has a particular focus on the legislative activity of these institutions, as is demonstrated in recitals (1), (2) and (6) and in Articles 12 and 13. The legislative activity of the Commission is well covered by public registers.

3.1. Coverage of the public register of Commission documents

The public register, opened by the Commission on 3 June 2002 has the following content:

- references of all draft proposals, reports and communications (COM documents), before their adoption;
- full text of all adopted proposals, reports and communications (COM final documents);
- references of working papers and key administrative documents (SEC documents);
- references of legal acts adopted by the Commission (C documents);
- full text of agendas and minutes of the meetings of the Commission.

3.2. The public register on comitology

In addition to the register mentioned under the previous paragraph, the Commission opened in December 2003 a specific register on documents regarding its decision-making process under delegated powers, the so-called comitology procedures. This register contains the following types of documents:

- agendas of committee meetings;
- draft implementing measures;
- summary records of committee meetings;
- voting results of opinions delivered by a committee

All documents are available in full text; as regards draft implementing measures the full text is usually uploaded after the committee has taken a vote.

In a further effort to increase transparency of the preparatory work, the Commission opened a specific register on expert groups.

3.3. Publicly accessible information on the legislative process

With regard to the drafting of Community legislation, the Pre-Lex system [<http://ec.europa.eu/prelex>] provides extensive information on the different stages in the decision-making process between the institutions, as well as links to the sites containing the documents themselves. It complements the above-mentioned registers and the registers of the European Parliament and the Council, providing the public with a comprehensive view of legislation in progress.

4. OTHER INFORMATION TOOLS AVAILABLE TO THE PUBLIC

The particular focus on legislation does not mean that other activities of the Commission are left in the dark.

All Directorates-General have set up specific websites on the Europa server providing information on their policies and activities as well as access to key documents. These websites are designed to provide information and guidance on Community policies in a user-friendly way.

The Commission would like to point out that in its report of January 2004 on the implementation of Regulation 1049/2001[COMt2004) 45] it found that the right of access to documents was used by professionals of European affairs rather than by citizens. Therefore, the Commission has put great effort in developing these websites, which contribute very substantially to raising citizens' awareness of European policies.

5. FURTHER DEVELOPMENTS

The Commission is currently assessing the existing registers with a view to detect errors and omissions.

Together with the Parliament and the Council, the Commission is looking at ways to make the registers more user-friendly. In particular, the possibility of setting up a single access point to legislative documents is being considered.

The Commission will continue to gradually extend the scope of its public registers and other information tools available to the public. The internal databases, to which the complainant refers, will provide the basis for new or expanded public registers. As regards the "Adonis" database mentioned by the complainant, the Commission would like to clarify that here is no single internal database on Commission documents. Adonis is the common software used by the Commission services for the internal registration and follow-up of mail and documents. Each Directorate General or administrative unit has its own internal register of documents. In the near future, a new centralised document management system should replace the Adonis software. In the context of its development, a module for the export of documents' references from this new system to a public register is foreseen.

6. CONCLUSION

The complainant has based his complaint on one Commission register only and has not taken into account the other information tools, which are available to the public.

Moreover, the complainant's allegation - at the register of COM, SEC and C documents only contains legislative texts and adopted Commission reports is not correct, since references of documents are entered before their adoption.