

**Statewatch (Tony Bunyan):  
Response to the Commission's response to our complaint**

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1. The Commission's response (para 2) opens with the statement that Article 11 requires it to: "provide public access to a register of documents" (11.1)

The Regulation does not refer to "registers" in the plural, that is, that the documents could be listed in a series of "registers" (eg: comitology, individual DG's etc)

I contend that Article 11 is unambiguous in its reference to "a register of documents".

2. The Commission says that:

*"It (Article 11) does not stipulate that public registers should include references to all documents"*

I contend that Article 11 is unambiguous. It states that:

*"References to documents shall be recorded in the register without delay"*

It does not say some documents or certain documents, it clearly refers to all documents. Since the Regulation contains a number of express exceptions to its rules, it follows that if the drafters of the Regulation wanted Article 11 to apply to some documents only, they would have specified this expressly.

3. Quite extraordinarily the Commission seeks to question the definition in the Regulation of a "document". The definition of a "document" is set out in Article 3.a.

Yet the Commission claims that:

*"A fully comprehensive register requires a precise definition of what is a "document" that has to be included in the register"*

Article 3a sets out a definition of a "document". Article 11 combined with Article 3a is perfectly clear: the register must contain a reference to all documents as defined in 3a.

References to national law are irrelevant, as the EC Regulation is not dependent on national law for its interpretation or implementation. If anything the fact that some national laws distinguish expressly between documents generally and documents on a register proves by *a contrario* reasoning that the EC legislature, which concluded its negotiations on the Regulation under the Council Presidency of one of those states, did **not** intend to make such a distinction.

4. These three issues raises a fundamental point. The Council and the European Parliament must both:

- have a single public register of documents
- list "without delay" references to documents
- apply the term "document" as defined in Article 3.a.

The Commission cannot blatantly ignore what is set out in the Regulation.

Their response is even more worrying as the Commission has an obligation, as the custodian of EU law, to ensure the proper implementation of Regulations.

5. The Commission notes (in Point 3) that the Regulation:

*"governs access to any type of documents"*

But then goes on to claim that the Regulation:

*"has a particular focus on the legislative activities of these institutions"*

The Regulation does not have a "particular focus" on legislative activities. References to legislative activities in Articles 12 and 13 are clearly complementary to the provisions in Article 11 in that they refer not to a register but rather direct access to the content of references listed.

6. Article 12: The Commission also states that the "legislative activity of the Commission is well covered by public registers".

It says that "the public register" carries:

- references all draft proposals, reports and communications to COM documents
- COM final documents (full-text)
- references to SEC documents
- references to legal acts (C documents)
- agendas and minutes of meetings of the Commission (full-text)

The terms used by the Commission are revealing as they indicate that only final adopted COM documents and agendas/minutes are available full-text. The other categories are references only and not available full-text.

Article 12 concerns "direct access" to the full-text of documents through the register or in electronic form.

Article 12.2, in the context of direct access to the full-text, refers to:

*"in particular, legislative documents, that is to say, documents drawn up or received in the course of procedures for the adoption of acts which are legally"*

*binding.."*

and Article 12.3 says that where possible other documents for example those relating to the development of policy or strategy should also be directly accessible.

By way of example, a survey carried out by Statewatch in April 2007 shows that:

- for DG Freedom, Security and Justice direct access to the full-text was only provided to:

- 43% of COM doc;
- 21% of SEC docs and
- 0.5% of 599 Commission Decisions

(for details on three DGs, see Appendix).

So it has to be asked - within the parameter that many, many documents are not even referenced - why direct access to the full-text of **all** COM, SEC and C documents, subject to the exceptions, is not given?

**I therefore submit - as the Commission has raised the issue - a consequential complaint that the Commission is failing to abide by the terms of Article 12 of the Regulation.**

7. In point 3.2 the Commission refers to the comitology register and claims that:

*"All documents are available in full text"*

First, not all the documents are available. For example, a number of committees do not publish agendas and only about two-thirds of agendas as listed.

Second, the same goes for summary or minutes of meetings which are to say the least uninformative and minimalist.

Third, the texts of draft measures are very rarely available full-text.

8. In points 3.3 and 4 the Commission refers to other sources of information such as DG websites. These are indeed additional sources of information however they are by no means comprehensive and cannot be said to meet the standards set in the Regulation.

The Council and the European Parliament also provide information sources on specific policy areas and committees but do not claim that this absolves them of providing a public register of documents.

9. The Commission argues the right of access through the Regulation is exercised by "professionals of European affairs rather than by citizens". Academics, researchers, students, journalists, lawyers, NGO and voluntary group workers, for example, are "citizens" as well as pursuing their legitimate "professional" interests.

Moreover, it should be observed that only if the right of access through a comprehensive public register is established is there any guarantee that the "information" made available is not partial, limited or tailored to the institutions' perspective. The provision of "information" should not be confused with access under the Regulation.

10. In its final point 5 the Commission says that it:

*"will gradually extend the scope of its public registers"*

It is not for the Commission to gradually take its time when it was obliged from mid-2002 to provide a proper public register.

In addition the Commission says that "in the near future" it is "foreseen" that the updated "Adonis" system will provide a centralised document management system. However, in the light of their contention that:

- the definition of a "document" in the Regulation is not acceptable to the Commission
- there is no obligation under Article 11 to include references to all documents
- the obligation under Article 12 to provide full-text access to documents concerning the legislative process is interpreted partially in practice

there is no guarantee whatsoever that a new "centralised document management system" will lead to a proper public register of documents being provided.

11. As to the remark on Adonis: if each DG has its own internal register of documents then why - as an intermediate step - cannot each of these be publicly available?

## APPENDIX

### The Commission and Article 12 (“Direct access” to full-text) of the Regulation on access to documents

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An examination of the Commission’s public register of documents conducted on 15 April 2007 gives the following statistics since the register was set up in 2002:

#### Justice and Home Affairs

	No of docs	No publicly accessible	%
Studies:	None		
Minutes:	None		
Agendas:	None		
SEC docs:	362	75	21%
COM docs:	913	397	43%
Com Decisions:	599	32	0.5%

#### DG: Personnel and Administration

Studies:	None		
Minutes:	13	0	
Agendas:	None		
SEC docs:	403	50	12%
COM docs:	150	76	50%
Com Decisions:	358	55	15%

#### DG: Communications

Studies:	None		
Minutes:	None		
Agendas:	None		
SEC docs:	76	10	13%
COM docs:	20	7	35%
Com Decisions:	39	9	23%