

PRESS RELEASE

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SHOULD THERE BE A FREEDOM OF INFORMATION ACT FOR THE EU?

The European Commission is publishing amendments to Regulation 1049/2001. The new regulation is an exercise more in clarification and codification, rather than more ambitious reform towards genuine freedom of information. The European Parliament and Council will need to look carefully at whether the adjustments reflect a balance between the interests of the public to have greater access to documents and those of the institutions to protect their decision-making processes. This is part of the European transparency initiative, but is transparency moving forward? It appears to be a case of one step forward, two steps back:

- ✚ A welcome development, following the Bavarian Lager Case (Case 194/04), is that the names of civil servants and interests representatives can be released when they participate in meetings. The European Court of Justice is struck a blow to make lobbying more transparent.
- ✚ A less welcome development is that some clarification such as the definition of when a document can be said to exist and a distinction between legislative and non-legislative documents could create “grey zones” for hiding information. (Also, see for example comments by Statewatch on these points <http://www.statewatch.org/>).
- ✚ Although refusal rates are running at some 30%, the tendency nevertheless to add to the list of exceptions in Article 4. Particularly worrying is what could now become a blanket exception for preliminary consultations within an Institution. By eliminating the idea that documents could be refused, “*if disclosure of the document could seriously undermine the Institution’s decision making process in Article 4*”, the implication is that granting access to preliminary drafts can be refused even if it would do no harm to the Institution.

The annual reports from the Institutions show that the numbers of requests are still extremely low - in the thousands, rather than the tens of thousands, and come mostly from stakeholders, lawyers, or lobby groups rather than individual citizens. The new regulation places, rightly, more emphasis on making access to documents better known to the public and improving registers on from which information can be obtained immediately.

Not enough emphasis has been put on how well the system operates in practice as regards deadlines and appeals. In ECAS’ experience it is not sufficiently user-friendly and deadlines often slip to an excessive extent.

On the ECAS website (www.ecas-citizens.eu), there is a report on the application of the existing regulation and the case law of the European Court, as well as an account of a major conference attended by a wide range of interests and the services in the Institutions held one year ago.

A key finding of the research is that the EU should shift from an access to documents system to one of freedom of information:

“The next step should be to change the access to documents system to a freedom of information system. This would send a powerful signal that the EU is committed to reform. It would make the system more useable for ordinary citizens not jus stakeholders. Freedom of information places a duty on the Institution to locate and provide the material requested” (“Should there be a Freedom of Information Act for the EU?” conclusions).

At a time when the EU is trying to reconnect to citizens, this opportunity for more extensive reform should not be missed.