

Topics Regarding Access to European Information Institutions

European Union so Close and yet so Far

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Abstract: From the 1990s, the Parliament, the Council and the European Commission adopted a new approach to disclosure of their working papers. Legal instruments to regulate and allow a fairly broad access to internal working documents of these institutions were created. European institutions also exploited the potential of Information and Communication Technologies, developing new instruments to register the documents produced and make them accessible to the public. The commitment to transparency sought to show a more credible European government, and reduces the democratic deficit. However, the data analysis regarding access to EU institutions documents shows that general public is still far from direct contact with European bodies.

Transparency as a Prerequisite of Good European Governance

The earliest origins of transparency idea can be identified in Chinese or Greek political doctrines. However, only in eighteenth-century authors, such as Jean-Jacques Rousseau, Immanuel Kant and Jeremy Bentham, is possible to find a more obvious connection with the concept of transparency developed, stated and applied in the twentieth century (Hood, 2006, 5-10).

In the last decades of the twentieth century, transparency has become one of the most important doctrines of governance, creating new rules regarding how the state relates to citizens, how it makes decisions and keeps accounts.

Maastricht Treaty (1992) introduced the principle of transparency of the decision-making process, as the right of access to information, in order to strengthening “the democratic nature of the institutions and the public's confidence in the administration”. This position was reinforced in the European Councils held in Birmingham (October, 1992), Edinburgh (December, 1992) and Copenhagen (June, 1993) and by the Commission work in this area.

During 1993-1994, the Council, the Commission and later the European Parliament adopted a common Code of Conduct on Access to Document (1993). The provisions applied to documents in the possession of each of the institutions, regardless of the format in which they were registered. Documents in the possession of an institution but

not produced by it were not covered by the regulations, meaning that information authored externally could not be accessed, which was a significant restriction.

Documents could be accessed physically by means of in loco consultation or the forwarding of a copy at the expense of the applicant. However, at that time there was no public register of documents and ordinary citizens could experience great difficulty in supplying the relevant forms of identification to enable them to consult the material they wanted. Moreover, access to a document could be denied in a wide range of circumstances defined in generalised terms, including protection of public interests, protection of the individual and individual privacy, protection of commercial and industrial secrecy, protection of Community financial interests, protection of any requested confidentiality or in order to guarantee secrecy for internal Council and Commission decisions.

These EU measures regarding document access had a dual aim. They were directed towards opening up European bodies to public scrutiny, providing citizens with access to information that could enable them to take part in the debate on Europe, and they also helped to make the legislative process more transparent by improving information on the decision-making process itself.

In 1997, the Amsterdam Treaty established that decisions should be taken as openly as possible and as closely as possible to the citizen. In addition, the right of access to information was embedded by the Treaty with Article 255 providing to any citizen of the Union and to any natural or legal person residing or having its registered office in a Member State the right to access European Parliament, Council and Commission documents, without the need to specify any reason. Following this article, European institutions adopted Regulation 1049/2001 on public access to European Parliament, Council and Commission documents.

Regulation 1049/2001 adopted a very broad definition of a document as «[...] any content, whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility» (Article 3). This approach refers to the right of access to information rather than the right of access to documents, given that the medium is not a defining element in terms of granting or denying access to content. Anyway, not all documents must be made public but any refusal of access could only constitute an exception and had to be justified. A new important issue of the Regulation was the possibility of partial access to documents (Article 4). The right to full access prevailed: all documents held by an institution, including those produced internally and those received from third parties, had to be accessible to the public (Article 2).

In 2005, Commission launched the “European Transparency Initiative” and start to review the Regulation 1049/2001. The European Parliament gave its opinion on the Regulation through the work of MEPs Michael Cashman (2006) and Marco Cappato (2008). Following this work and to achieve greater transparency in the legislative process and bringing EU provisions into alignment with the Aarhus Convention regarding access to environment information, European Commission presented a proposal to change the Regulation 1049/2001 (COM (2008) 229). This reformulation led to an intense debate in Parliament. The discussion focused mainly on the definition of the

concept of “document” (Article 3), on the Regulation scope of application (Article 2), on relation between the right of access to documents and the right to personal data protection (Article 4) and on Members States rights to restrict access to their own documents.

The Commission Proposal defines document as “(...) any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility drawn-up by an institution and formally transmitted to one or more recipients or otherwise registered, or received by an institution; data contained in electronic storage, processing and retrieval systems are documents if they can be extracted in the form of a printout or electronic-format copy using the available tools for the exploitation of the system” (Article 3a). This wording implies a more restricted access to documents because it excludes the information produced for internal circulation. Moreover, contrary to Regulation 1041/2001, this proposal does not seem to necessarily consider the databases as documents.

Due to these and other aspects that were not appreciated by the Parliament, in 2009, the Cashman Report was voted with substantial amendments to the Commission proposal. However, Parliament decided not to adopt any legislative resolution and no formal position was forged in this first reading.

EU Information Provision via Europa Gateway

Following Regulation 1049/2001, the European Parliament, the Council and the Commission created Internet tools for documents register. Citizens were therefore guaranteed knowledge of unpublished content relating to all institutional spheres of activity. Internal documents, including those that were not yet definitive versions or were not destined to be published, became identifiable and could be consulted and accessed by actors who were not EU staff. It became possible to consult, for example, preparatory decision-making and policy initiative documents, including preliminary drafts, interim reports, draft legislative proposals or decisions, explanatory documents, statistics, memoranda or studies, as well as correspondence between institutions, Member States, citizens and companies.

The European Parliament created the register of documents which provided access to documents produced since 1999.¹

The public register of Council documents, available since 1 January 1999, contains references for this institution documents which are based on an automatic filing system. Therefore non-sensitive documents presented to the Council or one of its preparatory bodies which are destined to serve as a basis for deliberations, and documents that may influence decision-making processes or reflect the state of work on a particular dossier are automatically cited in the register.²

¹ Available at www.europarl.europa.eu/RegistreWeb/search/simple.htm?language=EN [Access 29.11.2011].

² Available at www.consilium.europa.eu/documents?lang=en [Access 29.11.2011].

The Commission register includes documents with COM references (legislative proposals, other communications and reports prepared by the Commission for the Council and/or other institutions and the respective preparatory documents), C references (referring to official documents that are the responsibility of the Commission, some of which are forwarded to the Council or Parliament for information purposes), agendas (from 2003 onwards) and minutes of Commission meetings (from 2001 onwards) and SEC documents (not classified in other categories).³

The Commission documents register supplements the PreLex database on institutional procedures.⁴ This enables a systematic and integrated view to see the involvement of European institutions (the European Parliament, Council, European Economic and Social Committee, Committee of the Regions, Central European Bank, Court of Justice, etc) in the decision-making process. With PreLex the procedural phase, institutional decisions, names of individuals, services responsible and references for documents can be identified. The database follows all Commission proposals (legislative and budget proposals and the signing of international agreements) and communications from the time they are sent to the Council or the European Parliament. The hyperlinks allow for direct access to the electronic texts available.

In addition to these main resources, the European institutions also offer other databases that allow working documents to be accessed and the decision-making process and the role of the actors involved to be monitored. The Council, for example, provides a database for ordinary legislative procedures, the Parliament offers the European Parliament's Legislative Observatory (OEIL) and the Commission has created the DORIE database, an archive of documents on institutional matters. The archives of each institution also offer access to internal documents dating back over 30 years.

It can therefore be concluded that, via the Internet, European citizens' benefit from a wide range of mechanisms that provide access to documents and institutional procedures. Data on the use of these resources will now be analysed.

Table 1: Documents entered each year in the register (Parliament, Council & Commission)⁵

	2002	2003	2004	2005	2006	2007	2008	2009	2010
Parliament	28.828	33.654	28.356	30.833	43.468	41.930	54.980	48.711	51.457
Council	375.154	92.381	116.181	113.398	152.006	161.100	185.292	176.099	174.146
Commission	11.889	11.876	12.808	12.394	12.623	13.179	15.695	18.063	18.661

³ Available at <http://ec.europa.eu/transparency/regdoc/recherche.cfm?CL=en> [Access 29.11.2011].

⁴ Available at <http://ec.europa.eu/prelex/apcnet.cfm?CL=en> [Access 29.11.2011].

⁵ All data were retrieved from the annual reports on public access to documents from European Parliament, Council and Commission. Cf. www.europarl.europa.eu/RegistreWeb/information/report.htm?language=EN [Access 29.11.2011]; www.consilium.europa.eu/documents/policy-regarding-access-to-council-documents/basic-texts-on-transparency.aspx?lang=en [Access 29.11.2011]; and http://ec.europa.eu/transparency/access_documents/index_en.htm# [Access 29.11.2011].

Table 1 shows that the amount of documents entered in the Council register is each year always higher than those in the Parliament and the Commission register, although it should be borne in mind that the Council calculates all the language versions of each document, which exponentially increases the number of registrations since some may exist in two and others in all 22 of the official languages. In order to obtain a more accurate and coherent picture it would therefore be convenient for all institutions to use the same criteria to calculate the number of registrations available. It should also be noted that the method for calculating existing registrations is not clearly explained in the reports. It would be important to establish some common criteria to all the institutions in order to obtain more specific and comparable data.

Table 2: Number of visits to Council and Commission register⁶

	2005	2006	2007	2008	2009	2010
Council	1.064.039	1.722.354	2.078.602	895.299	1.176.017	1.411.312
Commission	109.780	71.241	39.013	40.845	44.538	48.557

Table 2 shows that the Council register is used much more intensively than the Commission register. In terms of numbers of users, there has been a decrease over time in the use of the Commission register, whereas the figures for the Council register have always risen. Although the reports do not provide any explanations for these numbers, it may be recalled that the Commission, makes intensive use of the PreLex database in addition to its documents register, and this may be the reason why users feel less need to make use of the register.

Conclusions

Transparency policy of EU institutions has become increasingly an urgent mission as the scope of European decisions was more extensive, affecting almost all aspects of Member States citizens daily life. In this context, the opacity or administrative secrecy could foster distrust and a tense relationship with citizens, making the acceptance of the Community integration process.

For an effective transparency the involvement of citizens are needed. Citizens must take part in decisions and have to take responsibility. Transparency is realized only in a dynamic process of participation, involving the institutions and the public. However, while transparency seems to be moving at a good pace, through appropriate legislation and the use of ICT, the dynamics of participation runs out with a very weak involvement of citizens. Citizens seem still very marked by the traditional model of relationships with public institutions where they had to be obedient and passive receivers. Even when they take a more proactive and questioning role, it's mainly as personal and punctual complaint, not inquiring general procedures. Although the European institutions have legal and technological tools that allow greater proximity to citizens, it is necessary to develop initiatives to make the EU accessible to all.

⁶ See footnote 5.

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