

Freedom of Information in Europe

Alison Presly examines the current provisions governing access to information from the Institutions of the European Union in light of a new Green Paper from the European Commission on public access to documents.

The implementation of freedom of information legislation in the United Kingdom has had a significant impact on the way public bodies manage information. It has arguably also promoted a culture of openness and transparency in the public sector. Within the legislative framework of the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002, individuals now have a statutory right to receive information held by public bodies. Analysis of the operation of the legislation shows that there is a growing awareness amongst members of

the British public, and indeed journalists, of the purpose and effect of this new information management regime.

But what about the situation in relation to the supposed “freedom of information” regime in operation within the Institutions of the European Union? Brussels has long suffered from the reputation of inaccessibility for members of the public and from allegations of “deals often being done behind closed doors”. With the inherent difficulties of information management in an regime composing of 27 Member States (with 28 domestic legal jurisdictions), how easy is it to elicit information from the Institutions with legislative responsibility for an increasing number of areas in our daily lives?

Public access to documents held by the EU institutions is currently subject to a 2001 Regulation which outlines the conditions for granting requests for information. This Regulation has come under fire in recent times, however, as a result of rulings by the European Court of Justice challenging decisions by the Institutions to refuse access to certain documents. In the wake of these judicial pronouncements, the European Commission has issued a consultation document or Green Paper inviting responses from stakeholders on the operation of the current provisions regulating public access to documents with a view to amending the 2001 Regulation. The consultation is an integral part of the “European Transparency Initiative”, launched by the Commission in November 2005 which seeks to create more openness surrounding decision-making at a European level.

Statistics show that within the framework of the 2001 Regulation, the European Commission and the Council of Ministers accede to two thirds of all requests for documents. The European Parliament has a stronger record on granting public access to documents with more than 80% of requests met.

Who requests what from the Institutions of the European Union?:

- Most requests are made by “specialists in EU affairs”, economic operators, law firms, NGOs and academics
- In terms of the types of documents requested, the main areas of interest are documents relating to competition cases, taxation, the internal market, the environment, public procurement and justice and security matters.
- Requests for documents are often submitted on a blanket basis by requesting “all documents relating to x”
- Many requests for documents are made in advance of court proceedings to assist in lodging or defending a complaint.

As with domestic freedom of information legislation, the motive behind the request for information or the identity of the person making the request does not form part of the decision making process on whether the document is released.

The Green Paper contains a number of options for improving the rules relating to the access of documents. These include: developing a more active policy regulating the dissemination of information by placing more documents on the internet; integrating the rules on access to environmental information into the general system of access to documents; defining stricter criteria for the disclosure of personal data whilst leaving the provisions flexible to take account for developments in the case law.

The overarching aims of these proposed amendments are: to improve public access to registers and direct access to documents; to better inform the public at large on the activities of the European Institutions; to clarify the legal framework; and to strike the right balance between the public's right to know and the protection of legitimate public and private interests.

In conclusion, the European Commission are keen to stress that the right of access to documents is only one small part of a general policy on openness and has to be assessed in light of the overall information and communication policy of the Institutions. On that basis, the recent amendment to the Council of Ministers rules of procedure to allow public access to Council meetings is undoubtedly a step in the right direction towards ensuring public confidence in a hitherto somewhat opaque European decision-making process.

The deadline for responding to the consultation paper on Public Access to Documents is 15 July 2007.

Weblinks

- [Green Paper: Public Access to Documents held by Institutions of the European Community – A review COM \(2007\) 185](#)
- [Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents](#)