

Breakout Session 4: Freedom of Information and EU Law

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Regulation 1049/2001 on Public Access to Documents: two limitations

- (a) Applies directly to the three main Community institutions only.
- (b) Gives right of access to existing 'documents', not 'information'.

Application to other Community Bodies

Under Regulation 1049/2001 a right of access is granted only in respect of the three main institutions: the Council, Commission and Parliament (reflecting the terms of Art. 255 EC). The Regulation therefore does not apply directly to documents held by the following bodies:

- Court of Justice
- Economic and Social Committee
- European Central Bank
- European Data Protection Supervisor
- Office for Official Publications
- Numerous other Community agencies...¹
- Court of Auditors
- Committee of the Regions
- European Investment Bank
- European Ombudsman
- EC Personnel Selection Office

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¹ e.g. European Defence Agency; Europol; Eurojust; European Environment Agency; European Medicines Agency; Office for Harmonisation in the Internal Market (Trade Marks and Designs); European Agency for Safety and Health at Work; European Food Safety Authority; European Maritime Safety Agency etc.

However:

- Regulation 1049/2001, Preamble, recital 8:
'In order to ensure the full application of this Regulation to all activities of the Union, all agencies established by the institutions should apply the principles laid down in this Regulation.'
- Article 1 TEU: *'This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.'*
- Joint Declaration: [2001] OJ L173/5:
'1. The European Parliament, the Council and the Commission agree that the agencies and similar bodies created by the legislator should have rules on access to their documents which conform to those of this Regulation. To this effect, the European Parliament and the Council welcome the Commission's intention to propose, as soon as possible, amendments to the acts establishing the existing agencies and bodies and to include provisions in future proposals concerning the establishment of such agencies and bodies. They undertake to adopt the necessary acts rapidly.

2. The European Parliament, the Council and the Commission call on the institutions and bodies not covered by paragraph 1 to adopt internal rules on public access to documents which take account of the principles and limits in this Regulation.'
- According to European Ombudsman, the principle of consistency and equal treatment requires that the general principles on Regulation 1049/2001 be applied throughout the Community administration.
- Voluntary codes adopted by Community Institutions.

On accessing 'information', see:

- *Decision of the Secretary-General of the Council/High Representative for Common Foreign and Security Policy of 25 June 2001 on a code of good administrative behaviour for the General Secretariat of the Council of the European Union and its staff in their professional relations with the public², article 6.*
- Commission Code of Good Administrative Behaviour³
- 'Europe Direct': <http://europa.eu.int/europedirect/>
- Articles 41 - 43 of the Charter of Fundamental Rights

(41) Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union. ...

(42) Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

(43) Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

² http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/c_189/c_18920010705en00010004.pdf

³ http://europa.eu.int/comm/secretariat_general/code/_docs/code_en.pdf

The European Ombudsman⁴

- General right to complain about 'maladministration': Articles 21 / 195 EC
- Regulation on public access to documents gives applicants a choice of remedy: they may challenge a refusal of access either in court proceedings under Article 230 EC, or by way of complaint to the Ombudsman.
- Not restricted to access to documents under Regulation 1049/2001. All forms of maladministration, including refusal to provide 'information'.
- European Code of Good Administrative Behaviour 2005⁵, article 22
- Some decisions:
 - Complaint 753/2003/GG against the European Commission
 - Complaint 1286/2003/JMA against the European Commission
 - Complaint 1402/2002/GG against the European Commission

Environmental Information

There have been Environmental Information Regulations in the UK since 1992, based on EU law (cf. FOIA, which is a purely domestic measure). In 1998 the UK also signed the **Århus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters**. Ratified on 24 February 2005. It deals with:

- public access to environmental information;
- public participation in decision-making on matters related to the environment; and
- access to justice in environmental matters.

UK Environmental Information Regulations 2004 (SI 2004/3391) came into force on 1 January 2005 and have been updated to incorporate requirements of the Århus Convention and implement EC Directive 2003/4/EC on public access to environmental information.

EU Measures:

Public Access to Documents Regulation, article 2(6) makes it clear that that measure is without prejudice to Århus rights. EC ratified the Århus Convention on 17 February 2005. Prior to ratification, EC adopted the following measures:

- Directive 2003/4/EC on public access to environmental information; and
- Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment.

There is also now a proposal for a **regulation applying the Århus Convention to the EU institutions and bodies** [COM(2003) 622].

Query whether the Århus right to access information adds to existing rights. Cf. Article 4 in proposed regulation on 'Collection and dissemination of environmental information'.

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⁴ <http://www.euro-ombudsman.eu.int/home/en/default.htm>

⁵ <http://www.euro-ombudsman.eu.int/code/en/default.htm>