

European Communities

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EUROPEAN PARLIAMENT

# Working Documents

1984-1985

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7 May 1984

DOCUMENT 1-223/84

## Report

drawn up on behalf of the Committee on Youth,  
Culture, Education, Information and Sport

on the compulsory publication of information  
by the European Community

Rapporteur: Mr P. MARCK

PE 89.568/fin.  
Or Fr



At its sitting of 12 September 1983, the European Parliament referred the motion for a resolution tabled by Mr BEUMER and others on openness of government (Doc. 1-589/83) to the Committee on Youth, Culture, Education, Information and Sport as the committee responsible; on 14 November 1983, the Legal Affairs Committee was asked for its opinion.

On 15 September 1983, Parliament referred the motion for a resolution tabled by Mr COLLINS on access to information (Doc. 1-714/83) to the Committee on Youth, Culture, Education, Information and Sport as the committee responsible and to the Political Affairs Committee for opinion.

At its sitting of 12 December 1983, the European Parliament referred the motion for a resolution tabled by Mrs BOSERUP and Mrs VAN HEMELDONCK on open administration (Doc. 1-1116/83) to the Committee on Youth, Culture, Education, Information and Sport as the committee responsible.

On 2 December 1983, the Committee on Youth, Culture, Education, Information and Sport appointed Mr MARCK rapporteur.

At its meetings of 4 November 1983 and 26 January 1984, the committee decided to consider the three motions for resolutions jointly.

The committee considered the present motion for a resolution at its meetings of 20 and 21 March 1984 and 26 April 1984 and at the latter meeting adopted it unanimously.

The following took part in the vote: Mr FAJARDIE, vice-chairman and acting chairman; Mr HAHN, vice-chairman; Mr MARCK, rapporteur; Mr ALEXIADIS; Mr BORD (deputizing for Mr GERONIMI), Mrs GAIOTTI DE BIASE; Mr GEROKOSTOPOULOS; Mr PAPAPIETRO (deputizing for Mr FANTI), Mrs PERY, Mrs PRUVOT (deputizing for Mr BANGEMANN), Mr ROLLAND, Mr SIMMONDS and Mrs VIEHOFF.

On 23 November 1983, the Political Affairs Committee decided not to deliver an opinion on Doc. 1-714/83.

The opinion of the Legal Affairs Committee, in the form of a letter is attached.

The report was tabled on 2 May 1984.

The deadline for tabling amendments to this report will be indicated in the draft agenda for the part-session at which it will be debated.

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A.

The Committee on Youth, Culture, Education, Information and Sport hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

MOTION FOR A RESOLUTION

on the compulsory publication of information by the European Community

The European Parliament,

- having regard to the motion for a resolution tabled by Mr Beumer and others on openness of government (Doc. 1-589/83),
- having regard to the motion for a resolution tabled by Mr Collins on access to information (Doc. 1-714/83),
- having regard to the motion for a resolution tabled by Mr Donnez and others on compulsory publication and provision of information (Doc. 1-432/83),
- having regard to the motion for a resolution by Mrs Phlix and others on publicizing the activities of the European Communities (Doc. 1-1068/82),
- having regard to the motion for a resolution tabled by Mrs Boserup and Mrs Van Hemeldonck on open administration (Doc. 1-1116/83),
- having regard to the motion for a resolution tabled by Mr Hänsch on improving the Community's information policy (Doc. 1-1103/83),
- having regard to the report of the Committee on Youth, Culture, Education Information and Sport (Doc. 1-223/84),

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- A. whereas government should be characterized by the maximum degree of openness to ensure adequate legal protection for citizens,
- B. whereas information should be provided according to clearly defined procedures so as not to interfere with the orderly conduct of administration,
- C. having regard to existing legislation in the Member States,
- D. whereas citizens should be as widely informed as possible about how Community funds are used,

1. Considers that the European Community should have on openness of government of Community affairs;
2. Requests its President to call on the newly-elected Parliament to press for the drafting of legislation on this matter;
3. Expresses its appreciation of the work done by the information services of the various Community institutions and considers that their activities should be expanded so as to satisfy the information requirements of European citizens to an even greater extent;
4. Considers that the explanatory declarations made by the individual Member States, by the Commission or by the Council itself and recorded in the Council minutes should be published in the Official Journal of the European Communities, together with the relevant directive or regulation;
5. Considers that the notifications sent by Member States to the Commission confirming that national legislation or regulations have been brought into line with European legislation are not confidential and should therefore be accessible to the other Member States, the Community institutions and interested citizens;
6. Believes that every citizen should have access to any studies, research, statistics, etc. on which a directive or regulation is based;
7. Considers that the Member States should be obliged to disclose the contribution made by the European Community in the case of measures, public works and grants that have been made possible by a financial contribution from the Community;
8. Instructs its President to forward this resolution to the Council of Ministers, the Commission and the other Community institutions.

B

EXPLANATORY STATEMENT

Public administration is still for the most part carried out in secret behind closed doors. Only the final decision is made public, and is then unaccompanied by an explanation of the authorities' underlying views. The rule of secrecy is written into most of the regulations applicable to officials. Reports by advisers are also kept secret. Exceptions are the meetings of elected bodies, although here too the preparatory work is carried out in camera.

1. OPENNESS AS A LEGAL PRINCIPLE

Open administration really concerns the availability of government documents and public access to the mainsprings of government action. Every citizen should have the right to examine the documents leading to a decision-making process in which a government body is involved. Open government has been defined as 'a de facto situation, based on rules of positive law, in which any persons can acquaint himself with the decision-making processes of public administration'.<sup>1</sup>

Rules of positive law allow the public to attend meetings of legislative chambers and local councils, for example. In some countries (see below), legal provisions have been adopted to regulate open administration.

2. LEGISLATION ON OPEN ADMINISTRATION IN THE MEMBER STATES

The most far-reaching laws are those in Denmark, Luxembourg and the Netherlands:

- in Denmark: the law of 10 June 1970
- in Luxembourg: the law of 1 December 1978
- in the Netherlands: the law of 9 November 1978

Partial legislation exists in other Community countries, such as the French law of 6 January 1978 on computerized information.

The front-runners in the world are undoubtedly Sweden and the United States, which have adopted extensive legislation and practical measures covering public accountability, the duty to supply information and public access procedures. There is also already a body of case law in these countries.

<sup>1</sup> L.E.M. KLINKERS, 'Openbaarheid van bestuur', in 'Overheidsvoorlichting en public relations', Brussels 1974, No. 33, p.10

A comparison of the most significant features of present legislation leads one to the following conclusions, always bearing in mind the differences in national administrative practices and procedures.

1. In general terms, it can be said that the previously accepted golden rule of silence on the part of officials and secrecy of administrative action is no longer perceived as universally valid, and has been countered by a number of initiatives aimed at penetrating this secrecy and gradually replacing it with a right for citizens to be given information concerning government action.

2. In all countries, a dual course is being pursued: active and passive information supply. The former is proceeding on a broader and more general front, whilst only hesitant steps are being taken in the direction of the latter.

3. Active information supply is progressing in nearly every country, albeit at different rates, being conditioned by the administrative structures and above all, by the response of the information media, which often rightly or wrongly interpret this active information supply as competition. The relationship between political authority and administration plays an important role here, the greater independence of the administration in the Anglo-Saxon and Scandinavian countries offering more scope than the strongly politicized administrative structures of the Latin nations.

This situation also entails the risk that active information supply may degenerate into government propaganda and one-sided publicity.

4. Passive information supply, based on a citizen's right to obtain data, is proceeding with more difficulty in many countries because of the fear that administrative efficiency will be disrupted. Its introduction also requires the adoption of legal measures, with all the delays which that implies.

The most important justification for passive information supply is that it would ensure greater protection for citizens' rights at a time when the administration is being entrusted with more and more tasks and is better equipped to deal with them, and when on the other hand parliamentary control appears to be less effective.



In recent years, attempts have been made to establish consultative and discussion bodies in the preparatory phase so as to give citizens the opportunity of participating in the formulation of laws and regulations. This does not alter the fact that once these measures have been adopted, individual citizens should have the means of finding out all the details involved in order to safeguard their rights to the full. Greater openness can prevent misunderstandings and contribute to increased protection of citizens' rights. Individuals can form a complete picture of their chances of success in any possible litigation: if these chances appear reduced in the light of fuller knowledge of the matter, the citizen will be able to avoid pointless legal action.

Passive information supply is therefore an important element in preventive action to safeguard citizens' rights.

5. A first requirement might be for an administration to be obliged to justify its decisions. This is not the case at present, but that does not mean it can never happen. Most draft laws are accompanied by an explanatory memorandum, and parliamentary discussion is seen as a basis for examining the reasoning behind decisions and their possible interpretation. The same opportunity does not exist, however, in the procedure for dealing with administrative matters. Openness of administrative decisions and general accountability are important aspects in improving the protection of citizens' rights. Creating a clear parallel with the administration of justice would in itself represent a major step forward.

6. Who should be granted the right to information - the interested parties, or all those who voice interest, i.e. any citizen? Both systems have their advantages and disadvantages: limiting this right to the interested parties raises the question of defining what constitutes an interest; extending it to everyone interested creates a risk that they may interfere in the affairs of others. It seems desirable to allow for a broad interpretation, however, with the proviso that all legislation should include a ban on the communication of data that would represent an invasion of privacy.

7. This brings us to the list of exceptions: the American, Dutch and Swedish laws feature an identical series of exceptions, on which there is obviously a broad international consensus, subject to the necessary modifications.

This list covers:

- (a) the security of the State;
- (b) good relations with other countries;
- (c) the economic and financial interests of the State and other public bodies;
- (d) the investigation and prosecution of punishable offences;
- (e) inspection, control and supervision by government bodies;
- (f) the right of every individual to respect for his personal privacy and confidentiality of the results of medical and psychological tests affecting individual cases;
- (f) undue criticism or prejudice in respect of the individuals involved in a case.

It seems desirable, however, for this list to be kept restrictive in the sense that further extensions should only be possible on the basis of specific legal provisions.

8. An important element in all legislation on open government are the procedures for information supply and for appeals in cases of refusal. The setting of precise time limits and the opportunity to take copies at reasonable cost are essential practical provisions. The right of appeal against refusal is of fundamental importance.

9. A further question concerns administrative efficiency. One view is that a high degree of openness would sometimes disrupt administrative action in such a way as to jeopardize the smooth running of government and would result in decisions being delayed or not taken at all. These objections are not entirely without foundation. However, they can be obviated to a large extent through adjustments to the regulations. Most legislation in any case stipulates that a matter can only become public knowledge once a decision has been taken and its consideration concluded, thus preventing certain documents from being released prematurely. Another concern is to avoid communications between officials being disrupted through the knowledge of third parties: the American courts have ruled that no exception should be made for internal correspondence where it contains only facts and not opinions. The same applies to notes giving a legal interpretation.

In order to avoid excessively strict provisions causing a sudden switch from written to oral communication, Danish legislation has specified that decisions must be based on written supporting documents.

### 3. POSSIBLE APPLICATION IN THE EUROPEAN COMMUNITY

The framework outlined above could also be applied in the European Community. The present Parliament would do well to hand this task on to its successor, since the time now left is really too short for serious proposals to be worked out.

Nevertheless, it seems desirable to take a few small steps in the meantime in order to remove some of the difficulties which obstruct access to background information. There are also a number of fundamental problems concerning the Council's minutes, through which the aims of Community legislation are sometimes significantly altered.

#### 3.1 Minutes of Council meetings

It is the practice in the Council for explanatory statements to be made by individual Member States, the Commission or the Council after a directive or a regulation has been adopted. These statements are entered in the minutes, but remain secret.

The principle of the secrecy of Council meetings should naturally be retained, as should the opportunity for the parties concerned to explain their views and to have these minuted. What must be changed is the secrecy surrounding statements which actually alter the purpose of a directive or given an interpretation making them tantamount to secret legislation. For this reason, it should be established that Council minutes liable to alter the interpretation or the aims of a directive are published in the Official Journal.

#### 3.2 Notifications of compliance

When directives specify a date by which national laws or regulations are to be amended in order to comply with a directive, the Member States send notification of compliance to the Commission. These notes are not published by the Commission, so that the contents remain unknown to other Member States and other institutions. Without them, it is particularly difficult to ascertain whether a Member State has in fact adapted its legislation. They are therefore essential for improved knowledge of the current state of legislation.

Such notes cannot be confidential in nature, since they normally simply state that legislation has been adapted, and national laws and regulations are also a matter of public knowledge.

These notes should be accessible. Some governments (Netherlands, United Kingdom) have already made them so in specific cases.

### 3.3 Studies or documents leading to a directive

Studies, research and statistics generally form the basis for a directive or regulation. Sometimes they are attached to the explanatory memorandum, sometimes not. The same applies to administrative notes.

When requested, these documents are sometimes refused. A procedure for safeguarding accessibility should be laid down.

### 3.4 Automatic announcement of participation

The Community provides a substantial financial contribution towards various investments, public projects and grants. It should be a matter of course for the citizens concerned to be clearly informed that the European Community is helping to finance the benefits they are receiving. This would also be an additional factor in gaining support for Community policy.

MOTION FOR A RESOLUTION DOCUMENT 1-589/83

tabled by Mr BEUMER, Mr PENDERS and Mr JONKER

pursuant to Rule 47 of the Rules of Procedure

an openness of government

The European Parliament,

- A. whereas the European Community is a community of parliamentary democracies,
- B. whereas certain powers, including legislative powers, have been surrendered by the Member States to the European Communities,
- C. concerned at the obscure, lengthy and secretive procedures used in the formulation of European legislation, which do nothing to promote recognition and acceptance of the European Community by the people of the Member States,
- D. whereas Parliament does not yet play any decisive role in the formulation of Community legislation,
- E. concerned at the lack of openness in the decision-making procedures leading to the formulation of Community legislation,
- F. whereas Community legislation, which supersedes national legislation and is binding on all citizens of the Community Member States, cannot, by definition, in a Community of traditional parliamentary democracies, be formulated in camera,
- G. whereas, in a democratic system, openness should be the rule and secrecy the exception,
- H. whereas more open government would increase the possibilities of control and hence the influence of the European Parliament,

Requests the Commission to submit a memorandum to Parliament before the end of this session:

- setting out principles applicable to openness of government,
- itemizing the legal provisions of the individual Member States on openness of government and indicating the degree of openness of legislative processes within the European Community, the various Community organs and the Committee of Permanent Representatives and the extent to which more open government might be secured on the basis of the relevant national legislation,
- indicating the practical possibilities for achieving a greater degree of openness in the European Community.

MOTION FOR A RESOLUTION

tabled by Mr COLLINS

on behalf of the Committee on the Environment, Public Health and Consumer Protection  
pursuant to Rule 47 of the Rules of Procedure  
on access to information

The European Parliament,

- A. considering that the citizen has a right and an obligation to know what the law is and that this can only be achieved through publication of all relevant information,
- B. considering that the publication of the legislative history of all primary legislation is considered essential to this end in all Member States of the European Community,
- C. considering that certain instruments, and in particular numerous directives in relation to environmental protection adopted by the Council of Ministers, represent primary legislation insofar as they are binding without further review or ratification and do not derive their authority from other legislation but from the Treaty,
- D. considering that it has become common practice for the Council, the Commission or Member States to make declarations or statements at the time of adopting such instruments and to have these recorded in the minutes of the relevant meeting,
- E. considering that such statements and declarations have sometimes been published in the Official Journal together with the relevant instrument, have also sometimes become public knowledge by other means but are more frequently withheld from public knowledge,
- F. ignorant of the full extent of this practice,
- G. convinced that such statements or declarations represent an essential part of the legislative history of the respective instruments and are intended to do so by those who make them; that they can and probably in practice do affect the meaning of published Community legislation,
- H. recalling that the Commission has a vital role in interpreting Community legislation and must be presumed to take such declarations or statements into account to some extent when doing so,

- I. convinced that the Commission should take into account only texts which have been published and are thereby equally accessible to all interested parties,
1. Reaffirms the right of all citizens to have equal knowledge of what the law is and, to this end, to be assured that all relevant texts including the legislative history, have been fully published;
  2. Condemns the practice of withholding parts of the legislative history from public knowledge as contrary to the most fundamental democratic traditions of our countries;
  3. Calls upon the Council to make publicly accessible all declarations and statements pertaining to Community legislative instruments which have already been adopted and in future, to publish with each such Community instrument any declaration or statement which may affect its interpretation;
  4. Urges the Commission to take all necessary measures to ensure that no declaration or statement not thus published is taken into account when interpreting Community legislation.

MOTION FOR A RESOLUTION DOCUMENT 1-1116/83  
tabled by Mrs BOSERUP  
pursuant to Rule 47 of the Rules of Procedure  
  
on open administration

The European Parliament,

- A. whereas the principle of openness is a democratic right which is of fundamental importance for representative government, since it allows the people to monitor their administration and thereby reinforces public debate and the democratic decision-making process,
  - B. whereas it is disgraceful that the public has to rely on the ability of private news agencies to extract information from politicians and officials who have taken part in Community meetings,
1. Proposes:
    - (a) that the Commission, Parliament and the Council should take steps to enable anyone to insist on having access to documents on matters dealt with by the Community;
    - (b) that the Commission, Parliament and the Council should take steps to allow for a more systematic uptake of information concerning Community activities;
  2. Instructs its President to forward this resolution to the Commission, the Council and the governments of the Member States.



OPINION OF THE LEGAL AFFAIRS COMMITTEE

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Letter from the Chairman of the committee to Mr BEUMER,  
Chairman of the Committee on Youth, Culture, Education,  
Information and Sport

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Brussels, 25 April 1984

Dear Mr Chairman,

The Legal Affairs Committee, meeting in Brussels on 25 April 1984, considered the motions for resolutions (Docs. 1-589/83, and 1-1116/83) an openness of government on which it has been asked to deliver an opinion for your committee.

In accordance with the conclusions reached by its draftsman, Mr SIEGLER-SCHMIDT, the Legal Affairs Committee unanimously decided<sup>1</sup> that it would not be advisable for this question, which concerns fundamental aspects of the Community decision-making process and above all the activities of its most powerful and secretive Institution (the Council) and which goes far beyond the technical aspects of informing public opinion, to be dealt with during the last part-session of Parliament's first legislative term, without debate and without all the bodies concerned (and the Legal Affairs Committee and Political Affairs Committee in particular) having an opportunity to express their opinions on the subject.

Yours sincerely,

Simone VEIL

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<sup>1</sup>Present: Mrs Veil, chairman; Mr Sieglerschmidt, draftsman; Mr Enright, Mrs Ewing, Mr Geurtsen, Mr von Hassel (deputizing for Mr Goppel), Mrs Macciocchi, Mr Malangré, Mr Peters and Mr Tyrrell.

