

APPENDIX 30. EUROPEAN COMMISSION GREEN PAPER ON PUBLIC SECTOR INFORMATION IN THE INFORMATION SOCIETY

PUBLIC SECTOR INFORMATION: A KEY RESOURCE FOR EUROPE¹³⁶

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THE ISSUE

1. Public sector information¹³⁸ plays a fundamental role in the proper functioning of the internal market and the free circulation of goods, services and people. Without user-friendly and readily available administrative, legislative, financial or other public information, economic actors cannot make fully informed decisions.

¹³⁶ This excerpt is available at <http://www.nclis.gov/govt/assess/assess.appen30.pdf>.

¹³⁷ Only the introduction and Chapter I are reproduced in this report. European Commission, *Public Sector Information: A Key Resource For Europe; Green Paper On Public Sector Information In The Information Society* (Com(98)585final, Adopted on 20 January 1999); [http://europa.eu.int/ispo/docs/policy/docs/com\(98\)585/gp-intro.html](http://europa.eu.int/ispo/docs/policy/docs/com(98)585/gp-intro.html).

¹³⁸ The definition of the public sector is an issue for discussion and is further analysed in Chapter III. However, state-owned companies operating under market conditions and subject to private and commercial considerations are clearly not meant to be covered by this Green Paper.

2. Public information in Europe is often fragmented and dispersed and so in many instances it is less clear than intended. This situation is mainly due to differing national legislation¹³⁹ on the ways information can be accessed and exploited, and to various practices which hamper the availability of data. The issue at stake is not that Member States should produce more information, but that the information which is already available to the public should be clearer and more accessible to potential users.
3. The ready availability of public information is an absolute prerequisite for the competitiveness of European industry. In this respect, EU companies are at a serious competitive disadvantage compared to their American counterparts, which benefit from a highly developed, efficient public information system at all levels of the administration.¹⁴⁰ The timely availability of public sector information is also increasingly important to further the networked economy and valorise its economic potential.
4. In Europe the issue is particularly crucial to SMEs, which have fewer resources to devote to an often difficult search for fragmented information. Ultimately, this has a negative bearing on job creation. The same goes for the difficulties European content firms encounter in comparison to their American counterparts as far as the exploitation of public sector information is concerned.
5. Moreover, in today's economy and society in which the Euro fosters the integration process, the fact that EU citizens and consumers cannot make better use of public information available in other EU Member States is something of an anachronism. In effect, this situation constitutes a challenge to the rights of citizens under the EC Treaties.
6. Whereas the increasing use of electronic media to store and to disseminate public sector information can serve to improve this situation, this has also tended to magnify still further the differences that already exist between Member States. Certain Member States have begun to examine the effects of new technologies on the public service and in particular on access to and exploitation of public sector information.¹⁴¹ This topic is also important for the enlargement of the EU, where candidate Member States will have to adapt their legal systems and public services to comply with the requirements of the EU membership. Better access to public sector information will contribute to this process.
7. The need for launching a concerted debate at the European level is now more clear and urgent than ever. The objective of this Green Paper is to undertake a broad public consultation involving all the actors concerned with a view to examining the main issues at stake and also to triggering a political discussion at European level. The Green Paper draws on the results of an extensive preliminary consultation process that started in June 1996 and has involved representatives from the Member States, from citizens' and users' groups and from the private sector and more specifically the information industry. All those consulted considered it appropriate to launch a debate on this issue.
8. The subjects addressed in the Green Paper were drawn from the results of this extensive consultation. The reactions to this Green Paper and to the questions it poses will guide future action on this issue. It is clear that further discussion and an exchange of best practice will be necessary with the Member States and the other key actors.
9. Some issues may require technical solutions; some may be dealt with by improving administrative procedures; others will require political solutions. Depending on the results of the public

¹³⁹ See summary of legislation in Annexe 1.

¹⁴⁰ Since the Freedom of Information Act was enacted in 1966, the US government has pursued a very active policy of both access to and commercial exploitation of public sector information. This has greatly stimulated the development of the US information industry. Annexe 3 gives a picture of the current legal framework in the US.

¹⁴¹ e.g. The UK's Freedom of Information White Paper, the Dutch memorandum 'Towards the Accessibility of Government Information' and the French Action Programme "Preparing France's entry into the Information Society".

consultation process, proposals for action could be formulated by the Commission to improve the situation at European level in specific fields. Such proposals will, of course, only be considered where consistent with the subsidiarity and proportionality principles. The type and intensity of any response must be limited to what is necessary to achieve the objectives of the Treaties.

10. Nothing in this Green Paper, nor in any future action which it might lead to, should be seen as an attempt to prejudice national rules governing the system of property ownership, nor the role of any public body in the Member States.

All interested parties, both from the public and private sectors, are strongly encouraged to provide their views on the issues raised in this document. The Commission would be pleased to provide additional background information on existing Commission or national access to public information policies upon request. Answers, comments and requests should be sent to the following address before 1st June 1999.

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Hard copies of all submissions will be made available at the conclusion of the consultation, unless a request for confidentiality is received. A Web site has been opened for the posting of both the Green Paper and submissions received at the address: <http://www.echo.lu/legal/en/access.html>.

CHAPTER I: WHY IS PUBLIC SECTOR INFORMATION A KEY RESOURCE FOR EUROPE?

I.1 Importance of access for European citizens

Taking advantage of EC rights

1. The EC Treaty has conferred a number of fundamental freedoms on EU citizens. There are, however, **considerable practical difficulties** that can prevent people from exercising those rights. These difficulties result primarily from a **lack of transparency for citizens, employers and administrations at all levels.**¹⁴²
2. In many cases, the information may be spread over different databases or information points of local administrations. A better transparency of public sector information can therefore strengthen the rights conferred by the EC Treaty by improving the practical conditions for their application.
3. The existence of different languages in Europe will continue to hamper to some extent EU-wide access to public sector information. However, the provision of a multilingual information could be facilitated in particular through the use of ICT-technologies.¹⁴³

¹⁴² See for example the Single Market Scoreboard of May 1998, p. 14ff.

¹⁴³ The language engineering activities in Framework Programme IV and V for R&D address the technological aspects of this issue. The R&D-actions are complemented by the market oriented MLIS programme: multiannual programme to promote the linguistic diversity of the Community in the Information Society, O.J. N° L306, 28.11.1996, p. 40.

4. Access to public sector information is **essential for the mobility** of both workers and categories like students and retired people within the EU. A better knowledge of opportunities, circumstances and procedures in countries throughout Europe can help them to make more informed choices about mobility and to take full advantage of the right to move to another EU country.
5. The following example shows that efforts are being made at European level to improve information flows, thus enhancing mobility perspectives for individual **workers** within the European Union.

*The European Commission has created, together with the Member States the **EURES** Network, with the support of the EU's Interchange of Data between Administrations (IDA) programme. This network aims to interconnect job vacancy databases in every European country to a common European network. This system not only provides job-seekers with job offers, but also with other relevant information that they will need to work in another EU country. At the same time it gives employers the chance to seek the skills they need Europe-wide. <http://europa.eu.int/jobs/eures/>.*

6. Access to public sector information goes beyond mobility issues. It also has an impact on the way citizens can take advantage of the **internal market**. Lack of information on administrative procedures or on prices, quality and safety conditions of products is one of the barriers that prevent consumers from buying goods and enjoying services from other Member States. It is, for example very difficult to obtain information on importing right-hand drive vehicles (or left-hand, as appropriate) from the British Isles to the Continent or vice-versa.¹⁴⁴ Another example is the field of taxation, where taxpayers find it enormously difficult to obtain full information on international tax arrangements.¹⁴⁵
7. At the Cardiff European Council, a programme was launched called 'Dialogue with Citizens and Business'. This Community programme is a follow-on to the Citizens First initiative. It addresses citizens and business alike in an effort to encourage greater awareness of the opportunities offered by the Single Market. A better access to public sector information is extremely important in this respect.

Participation in the European integration process

1. A **Citizens' Europe** will only come about if citizens are to participate effectively in the building of the European Union. Such participation implies that they are well informed on issues related to the functioning of the EU and its activities. Access to information at both European and national level can greatly facilitate this.

*In the last elections of the European Parliament the lack of information on new election rights of European citizens had a negative influence: participation of non-national voters in their Member State of residence was relatively low and only one non-national candidate was elected in her Member State of residence.*¹⁴⁶

2. Indeed, an adequate access to information of and on the European Union can largely benefit the European integration process. The conclusions of the Cardiff European Council have therefore once more stressed the importance of the need to bring the European Union closer to the citizens by **making it more transparent and closer to everyday life** through the EU's commitment to

¹⁴⁴ 'Listening to Citizens; The difficulties that people face in exercising their rights within the Single European Market'.

¹⁴⁵ 'Ibidem. This report contains more example where lack of information makes life difficult for European citizens that exercise their internal market rights.

¹⁴⁶ See the Second report of the European Commission on Citizenship of the Union, COM/97/230 final.

allowing the greatest possible access to information on its activities.¹⁴⁷ This is a concern for the EU and the Member States together since a significant part of the information related to the European Union activities is actually held at national level. It seems thus important that European citizens have a right of access not only to documents held by the Institutions, but also to EU-related information, in the broadest sense, available in the Member States.

3. To enhance the transparency of EU-action for European citizens, the Treaty of Amsterdam has firmly anchored their right to access documents of the European Parliament, Council and Commission in the EC Treaty.¹⁴⁸ The provisions are particularly important in supporting the democratic process and in increasing the understanding of the European integration. They are an important step, given that a considerable number of the complaints lodged to the European Ombudsman deal with transparency and the access to information
4. The EU institutions pursue an **active policy in the field of dissemination of information** on its functioning and the issues within its responsibility. Annexe 2 gives an overview of the initiatives in this field. The EUR-Lex website is one example.

EUR-Lex displays, for example, free of charge the Official Journal for a period of forty-five days following publication, the Treaties, the legislation in force and the case-law. It is updated daily in 11 languages with the latest editions of the Official Journal. These are available on the Internet a few hours after the paper version is published. <http://europa.eu.int/eur-lex>.

5. In spite of these efforts many European citizens would like to have more information on the EU. There is obviously a growing interest for EU-issues that have an impact on citizens' lives.

68% of the surveyed persons need or would like more information on the European Union. Europeans want to know in particular more on their rights as citizens of the Union (49%), on the Single currency (45%) and on employment (42%), issues that are all absolute priorities for the European Union. Source: Euro barometer n°49, September 1998.

6. Another aspect of a Citizens' Europe is a better access to information on other Member States. It will contribute to citizens' knowledge of other European countries, which in its turn can arouse a **greater interest in the European integration process**. To this end public sector bodies in the different Member States could make information with an interest for non-nationals more accessible to them.

I.2 Public sector information: Opportunities for economic growth and employment

Why is access to public sector information important for businesses ?

¹⁴⁷ Conclusions of Cardiff Council, 15/16 June 1998.

¹⁴⁸ New article 191a of the EC Treaty provides that:

1. "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3.

2. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 189b within two years of the entry into force of the Treaty of Amsterdam.

3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents."

Declaration no. 17 attached to the Maastricht Treaty had already prepared the field for this development.

1. Access to public sector information in the different Member States is a necessity to **take advantage of the existing possibilities for all types of businesses** operating in more than one Member State.
2. The information relevant to business is in the first place of an **administrative** nature. At the moment it is still hard to get hold of a full picture of the rights, duties and procedures that allow a company to operate without difficulties in other European countries.

58% of companies think that it is likely that access to information would enable them to expand their activities within the European Union. For instance, 66% of firms identified their need for precise information about administrative procedures. 25% of companies think that the persistence of obstacles to trade and business activities could be attributed to a lack of information about EU rules. Source: Single Market Scoreboard, October 1998

3. The lack of administrative information particularly harms the SMEs that do not have the means to find pieces of information that are often dispersed.
4. But also information of a **non-administrative nature** can be extremely important for the decisions of firms. Statistical, financial and geographic information are some examples. This information plays a **key role for businesses** in all sectors of activity in particular when defining business strategies, marketing decisions, export or investment plans. Quick and easy access to such information helps businesses to make informed choices. A lack of information may considerably delay decisions on transborder operations.
5. The relevant business information throughout Europe as collected by the Chambers of Commerce is for example not readily available. An initiative at European level has been taken to improve the situation in this field (see the box below).

EBR II Project. *The European Business Register project has been established because the absence of a fully integrated information service on European Companies is a **potential threat to the effective operation of the Single European Market.***

Aim of the project is to ensure that basic information on all companies in Europe is available throughout Europe without barriers due to differing technologies, languages, registration systems, networks etc. The EBR that is funded under the EU's Telematics Applications Programme (TAP) has become fully operational in December 1998 and now allows electronic access to business data of 10 EU Member States plus Norway. <http://www.ebr.org/>.

6. Also statistical information on European markets and economic trends is in many cases not timely available. This problem is however rather linked to the collection of national statistics (differing national methodologies, deadlines for submission to Eurostat, quality of indicators, decrease burden for SMEs, ...) than to the issue of access per se.
7. The absence of accessible public sector information may **create a competitive disadvantage** for the foreign firms compared with local firms that can draw upon their own experience on the local situation. This is, for example true for insurance services that largely depend on specific local information on risks etc.
8. It also has a negative effect on companies that, by their nature, have a transnational vocation. International transport companies offering their services throughout Europe are an example of this. Accurate local information -geographic information, traffic information and information on the weather amongst others- , is important for their daily operations.

9. Both administrative and non-administrative information are also relevant for **public procurement**.¹⁴⁹ Transparency of Government action in this field is a prerequisite to the achievement of a real internal market. Access to information on the local situation is necessary to make the rules work efficiently and to optimise fair chances for all firms involved. Since the information at stake is not always transparent, public procurement is often in practice still a national affair notwithstanding EU legislation.
10. Another example where the absence of transparency of the information leads to negative results at European level, is patent information. The European Patent Office estimates that every year more than 18 billion Euro is spent on research that has been done before. Better accessibility of information on the state of the art of research, could decrease this amount.

Esp@cenet. Together with the Member States of the European Patent Organisation and the European Commission, the European Patent Office has launched a new service called esp@cenet, which is accessible via the Internet. The main aim of this new service is to provide users with a readily accessible source of free patent information (over 30 million patent documents). It also aims to improve awareness at national and international level, in particular among small and medium-sized enterprises, of the kind of information that is publicly accessible.
<http://www.european-patent-office.org/>.

11. The conclusion that **access to public sector data is highly relevant for businesses throughout Europe** is backed by the recent Report 'Managing Change' of the High level Group on economic and social implications of industrial change.¹⁵⁰ It indicates as an immediate priority to 'enhance competitiveness by fully opening the European market in telecommunications and data services, and to increase freedom of access to government and other state owned data'.

Public sector information: A potential to further explore and exploit

1. The public sector, by nature of its size and scope of activities, represents the **biggest single information content resource** for the creation of value-added information content and services. Studies have shown that the bulk of commercial information services in the EU information market consists of services in areas where the public sector holds very important resources.
2. Figure 2 clearly shows that public sector information is a **key resource for a very large part of information services** being either the core subject (government/political information, legal information) or an essential raw material (company profile, patent information, scientific, technical and medical –STM- information, etc.).
3. Public sector information is therefore a **prime information content**, essential to the information industry and a key enabler for electronic commerce applications.¹⁵¹
4. The information content industry is growing at an impressive rate and some four million people are employed in the content sector in Europe.¹⁵² Much of this growth will be within SMEs trying

¹⁴⁹ The Special sectorial report on public procurement, November 1997, illustrates the importance of access to information for this issue. See the report on European Commission, DG XV web site at the address <http://europa.eu.int/comm/dg15/en/publproc/>.

¹⁵⁰ 'Managing change', High level group on economic and social implications of industrial change, Final Report, November 1998. The Special European Council of Luxembourg (21-22 November 1997) invited this Group to analyse industrial changes in the EU and to look at ways of anticipating and dealing with change and its economic and social effects.

¹⁵¹ For a further analysis on recent trends and critical roles of content and the content industry within the network economy, see CONDRINET Study (CONtent and Commerce DRIVEN Strategies in Global NETworks), October 1998, commissioned by the European Commission and conducted by Gemini Consulting.

to exploit the potential to manage and add-value to information. The emergence and development of these highly dynamic companies need to be fostered in particular, as they are **essential for the creation of new jobs in the 21st century**.

5. The European information industry is competing in a global market. During the preparatory process that has led to this Green Paper, European information industry representatives have strongly and repeatedly expressed their concerns about the **competitive disadvantage of European publishers vis-à-vis their counterparts**.
6. Better **possibilities for the exploitation of public sector information could partly redress this situation** and would lead to new opportunities for job creation. In the US the favourable conditions for this type of exploitation has already boosted the information industries.
7. There are **hardly any rules in Europe on conditions for exploitation of public sector information by the private sector**. Guidelines for the synergy of Public and Private Sectors in the Information Market were published by the Commission in 1989. Similar guidelines were produced by the UK Department of Trade and Industry in 1985. In 1994, a French Prime Minister's circular was published and a Memorandum of Understanding was adopted by the Dutch government in 1997.
8. Although these are good initiatives, there is no clear and consistent set of principles throughout Europe. This **lack of clear and consistent principles** means that European industry finds itself in a competitive disadvantage vis a vis its US competitors. In some cases this has led to leading European companies investing in products based on US public sector information.

The British/Dutch Reed Elsevier plc group, has acquired the US based LEXIS-NEXIS company, a leading provider of online information services and management tools for a variety of professionals (1.4 billion documents in more than 8,692 databases, 1.5 million subscribers, 1200 employees world wide). They are amongst others specialised in legal information.

9. Pilot projects within the European INFO2000 programme¹⁵³ have shown that private partners **are interested in cross-border collaboration with public sector bodies** to exploit public sector information and that there is a **real potential to be further explored and exploited at European level**.

The EU potential as shown by INFO 2000 call for proposals In 1998, in the framework of the INFO2000 programme, the European Commission invited proposals for shared-cost pilot, or exploratory projects. The objective of the Call was to make the information resources held by the public sector more readily available for exploitation in European multimedia content services A total of 141 proposals was received by the closing date. The total cost of work proposed amounted to 109.7 MECU, and the total EU contribution requested came to 50.6 MECU. The over subscription of the Call was, therefore, in the order of 7, given the indicative budget resource of 7 MECU.

10. In some cases, the commercial reuse of public sector information may however raise questions as to the **boundaries and limitations on the roles of the different actors**. Once private sector interests enter the market for public information the safeguarding of **access for all** citizens may become more difficult. At the same time, if the public sector adds value to its own information,

¹⁵² European Information Technology Observatory, 1998, Content data include media, publishing, marketing and advertising sectors.

¹⁵³ INFO2000 programme (Council decision of 20 May 1996, O.J. N° L 129, 30.5.1996, p. 24).

launching commercial information products onto a hitherto private information market, the issue of **fair competition** may be raised.

11. These issues and possible obstacles at European level to the exploitation of public sector information will be addressed in chapter III.¹⁵⁴

¹⁵⁴ Chapter III is not included in this report, but is available from the European Commission website at [http://europa.eu.int/ISPO/docs/policy/docs/COM\(98\)585/iii1](http://europa.eu.int/ISPO/docs/policy/docs/COM(98)585/iii1).