

Open statement: EU Court of Justice - Reform should mandate access to documents

A civil society statement on the need for open justice principles at the CJEU

In mid-July 2023, the European Parliament began discussing a proposal to reform the Court of Justice of the European Union (CJEU). We as civil society urge the Parliament to ensure that open justice principles apply to future CJEU proceedings in line with international standards on access to information. Namely, the reform should mandate the right of public access to the CJEU's documents and documents about its judicial proceedings.

The [legislative proposal](#) consists of the amendment of Protocol No 3 of the Statute of the CJEU and focuses on sharing the CJEU's competence with the General Court. The reform follows a significant increase in the number of requests for preliminary rulings.

We believe that this reform is an opportunity to ensure that the CJEU faithfully observes open justice principles. We note that the current EU standards on access to information, namely [Regulation 1049/2001](#) on access to documents of EU institutions and the CJEU's [Decision concerning public access to documents held by the CJEU](#), give access to documents held by the CJEU in the exercise of its administrative functions. However, these do not fully provide for transparency of the CJEU's decision making. The Decision explicitly excludes access to court documents. According to the CJEU decision in [Sweden vs. Association de la presse internationale ASBL \(API\) and European Commission](#), such public access would harm the sound administration of justice and the equality of arms principle.

The inability of the public to access legal documents of the CJEU is a serious gap and a stark contrast with practices of other international and regional courts. For instance, Article 40(2) of the European Convention on Human Rights provides that 'documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise'. Court documents held by the European Court of Human Rights, including parties' submissions, are accessible upon request via an [online form](#). As the CJEU is increasingly required to rule on matters of a constitutional nature and related to human rights, it should also be subject to the open justice principle.

Access to court documents is important to ensuring transparency of the judiciary and is a precondition for establishing and maintaining public trust in the judiciary. It follows that public access to court documents is an essential element of judicial transparency that promotes the fairness of court proceedings. Transparency of court proceedings also allows the public to access the reasoning behind judicial decisions as well as arguments put forward from the parties and facts. This should apply to court documents held by the CJEU.

Access to court documents is also crucial for public watchdogs and allows for media and civil society organisations to scrutinise the functioning of the judiciary thereby ensuring that the CJEU is held accountable. Furthermore, by doing so, media and civil society organisations can more effectively exercise their right to impart information. These are standards that lie at the heart of the EU as enshrined in Article 11 of the Charter of the Fundamental Rights (CFR) and a core to its democratic values.

Therefore, **we recommend that the amendment of Protocol No 3:**

- Include provisions stipulating that the public can request access to the full range of documents about judicial proceedings held by the Court, including case files, as well as data such as statistics on cases filed, resolved and pending cases or, the court's agenda;
- Ensure that the scope of the right of access to documents held by the Court includes all documents deposited with the Registrar by the parties or by any third party in connection with an application.
- Establish that court documents are made public as a rule and that access requests can be denied only as per a limited and very narrowly-defined list of exceptions as prescribed in Regulation 1049/2001.

We call on the members of the European Parliament (MEPs) to include these issues into their proposals for the amendments of Protocol No 3 or support such amendments proposed by other MEPs.

Drafted by:

ARTICLE 19

Signed by:

[Access Info Europe](#)

[Asociația pentru Tehnologie și Internet, Romania \(ApTI\)](#)

[Balanced Economy Project \(BEP\)](#)

[Campaign for Freedom of Information \(CFOI\)](#)

[Citizens Network Watchdog Poland](#)

[Campaign for Freedom of Information in Scotland \(CFoIS\)](#)

[Citizen D | Državljan D](#)

[Corporate Europe Observatory \(CEO\)](#)

[Daphne Caruana Galizia Foundation](#)

[Doctrine](#)

[European Partnership for Democracy \(EPD\)](#)

[European Federation of Journalists \(EFJ\)](#)

[Forum Informationsfreiheit](#)

[Homo Digitalis](#)

[Irish Council for Civil Liberties \(ICCL\)](#)

[LobbyControl](#)

Privacy International (PI)

Statewatch