



City Research Online

City, University of London Institutional Repository

Citation: Costa, M. (2019). Review of Leonor Rossi and Patricia Vinagre e Silva Public Access to Documents in the EU. *European Law Review*, 2(44), pp. 283-285.

This is the accepted version of the paper.

This version of the publication may differ from the final published version.

Permanent repository link: <https://openaccess.city.ac.uk/id/eprint/22159/>

Link to published version:

Copyright: City Research Online aims to make research outputs of City, University of London available to a wider audience. Copyright and Moral Rights remain with the author(s) and/or copyright holders. URLs from City Research Online may be freely distributed and linked to.

Reuse: Copies of full items can be used for personal research or study, educational, or not-for-profit purposes without prior permission or charge. Provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

Leonor Rossi and Patricia Vinagre e Silva, *Public Access to Documents in the EU*. Oxford: Hart Publishing, 2017. 340 Pages

It is often alleged that the EU's decision-making is insufficiently transparent and that accountability deficits are even growing, something which compromises the Union's overall legitimacy. In this regard, the EU's Access to Documents regime can be considered as an on-going process capable of securing, through a set of binding rules, open performance of the decision-making process. It is here that the role of the Court of Justice of the EU (CJEU) comes into play. Tasked with interpreting the access regime, the CJEU established that the exceptions of the access to documents must be justified objectively and be applied strictly in a manner that does not defeat the application of the widest possible access. Perhaps more importantly, the CJEU ruled that abstract and general justifications cannot be accepted and that the institutions are obliged to state reasons for their decisions. In doing so, the institutions need to carry out a concrete and individual assessment before deciding whether or not to release the requested documents. Finally, according to well-established CJEU case law, the risk of the public or private interest being undermined must be reasonably foreseeable and not purely hypothetical.

This new book in effect addresses the fundamental research question of openness in the Union's decision-making process. It does so by analysing the access regime from a fresh perspective. This is a difficult, controversial and many times politically sensitive issue of EU law. Overall, the book provides the reader with an exceptionally clear taxonomy of the CJEU's jurisprudence from 1995 to 2015. In particular, the book offers something uniquely innovative: it is currently the only book that is solely focused upon public access to documents in the EU. Usually, access is a topic that concerns only one section within books on broader issues in EU administrative law. The focus of the book is therefore a significant achievement, on its own, which fills an important research gap.

The book begins with an introductory chapter, which, *inter alia*, covers, from a historical perspective, the contribution of the EU's institutions in the area of transparency. Chapter 1 examines the efforts introduced by the Maastricht Treaty in 1992 for the recognition of a 'right' to access official information. It then reviews the Code of Conduct regarding access to documents established in 1993. The authors also focus extensively upon the developments of Regulation 1049/2001 on access to documents of the European Parliament, the Council and the Commission. A significant part of their detailed historical analysis covers the evolution of the jurisprudence of the EU Courts over two decades. Consequently, the authors answer whether the EU Courts have contributed to openness and, if so, to what extent. Have the transparency standards of a Union which supposedly belongs to EU citizens been increased through the evolution of access law? The authors conclude, rightly, that the legislative framework provides for a mere annulment of the institution's decision rather than for a substantive entitlement of the citizenry to access official documents.

Chapter 2 examines the types of litigants and divides them to applicants by *right* or by *grace*. In this part of the book, the authors have meticulously provided with statistical analysis in relation to the profiles of the applicants. The analysis is comprehensive and covers the period from 1994 to 2013. The arguments are further developed in chapter 3 by assessing the activity of EU institutions, bodies, offices and agencies with regards to access before they move on to explain the meaning of 'document' (chapter 4) under the EU's access regime. They conclude, in essence, that the institutions can deny access without reading, not even attempting to browse through the documents. The analysis would have not been comprehensive without examining the ambiguously drafted derogations and the development of presumptions of non-disclosure of documents through the case law as well as addressing the question of the lack of an answer to a request for access (chapters 5 and 6). The remaining of the book (chapter 7) covers new statistical data with regards to the number of intervention cases by Member States as well as by institutions. There is a final, concluding chapter, which summarises the book's findings. The authors conclude, rightly, that the outcome of the access litigation can largely be unpredictable. That nature, however, offers legal researchers the opportunity to reflect on the *status quo*.

The book is a pleasure to read. It is an updated and comprehensive research on the problematic aspects of the EU's access to documents regime. The analysis is well supported with clear, logical and impeccably researched arguments. Given that the book considers access to documents from, *inter alia*, a historical perspective, and with references to EU institutions, bodies, offices and agencies as well as the Member States, the authors had a lot of ground to cover. Yet, their findings are accurately presented throughout.

The analysis could benefit from more detailed considerations of some ideas and concepts. For instance, why exactly do the EU judges decide to refuse access in so many cases? In particular, why is it so difficult to predict the outcome of pending access cases? Also, it would benefit if the authors would set the arguments of the book within the broader context of the debate on democratic deficit or even within the context of the operation of remedies before the CJEU where issues of accountability also arise in relation to annulment proceedings. It is of course understandable that the authors had a lot of information to cover and therefore it would be difficult to expand the above comments in detail; hence, these suggestions should not be considered as a flaw from the quality of the book.

The book is an excellent read for academics and students - mainly postgraduates - as well as for EU and national judges. Policy-makers very often come across with difficult questions concerning the EU's access regime and they would also largely benefit from this book.

Marios Costa

The City Law School, City, University of London