



## Statewatch analysis

### EP report on the Regulation on public access to EU documents

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**This analysis assesses the major EP amendments, as adopted by the plenary on 11 March 2009, on the proposed new Regulation on access to documents:**

<http://www.statewatch.org/news/2009/mar/eu-access-reg-cashman-11-march-adopted.pdf>

It concludes whether each of the major amendments should be -

**supported or strongly supported** - because they would either protect the current standards applying to the right of access to documents from the Commission's attempts to lower these standards, or because they would enhance that right further; or

**opposed or strongly opposed** - because they would either endorse the Commission's attempts to lower the current standards, or because they would reduce standards even further than the Commission proposes.

This analysis refers back to the Statewatch article-by-article commentary on the Commission's proposal, which demonstrates that it would not improve the current standards in any way, and in many respects would lower them:

<http://www.statewatch.org/foi/sw-analysis-docs-june-2008.pdf>

The Commission's original proposal can be found at:

<http://www.statewatch.org/news/2008/may/eu-access-reg-com-229-final.pdf>

The existing Regulation 1049/2001 on public access to EU documents:

<http://www.statewatch.org/news/2001/jul/newregoj.pdf>

#### **Amendment 24 – strongly supported**

This amendment would increase the scope of the Regulation, and therefore the standard of access to documents.

#### **Amendment 114 – opposed**

This amendment (which was added in plenary) would exclude entirely an entirely new category of documents from the scope of the Regulation. It would obviously reduce the standard of access to documents. Moreover, it is doubtful whether it is legal to exclude an entire category of documents from the scope of the Regulation.

#### **Amendment 32 – very strongly supported**

This amendment would entirely delete an unjustifiable proposal to reduce the current standard of access to documents.

### **Amendment 33 – strongly supported**

This amendment would entirely delete an unjustifiable proposal to reduce the current standard of access to documents.

### **Amendment 108 – strongly supported**

This amendment (added in plenary) would significantly improve the current standard of access to documents.

### **Amendment 36 – very strongly supported**

This amendment is essential, since it restores the core definition of 'document' in the current Regulation. As pointed out in the Statewatch commentary, the Commission's proposed amendment here would significantly lower the standard of protection of the right of access to documents.

### **Amendment 37 - suggested amendments**

The proposed new Art.3aa, which would take over the existing Art. 9, sets higher standards than the current rules in many respects, but in one respect it sets lower standards, because it widens the scope of the concept of classified/sensitive documents as compared to the current rules. To avoid this, the words '*in the areas covered by Article 4(1)(a)*' should be added after the words '*Member States*' in Art. 3aa, so that the scope of the classified/sensitive documents clause is not altered.

Alternatively, it could be considered that the scope of this provision should be narrowed even further, in order to raise standards. To that end, the word 'notably' could be dropped from Art. 3aa. This would make the list of matters covered by Art.3aa exhaustive.

### **Amendment 44 - oppose**

This amendment should be opposed because it inserts into to the regulation the Council's classification code without improvements as regards access to documents

### **Amendment 47 - supported**

This amendment to the 'public security' exception would narrow its scope as compared to the current rules and as compared to the Commission's proposal, since the new words 'including the safety of natural or legal persons' would be deleted. As pointed out in the Statewatch commentary, it is not clear whether the new words would lower current standards, but it would be preferable to delete the new wording to make sure of this.

### **Amendment 49 - strongly supported - proposed amendment**

This amendment would largely restore the current wording of the 'privacy and integrity' exception, as compared to the Commission's proposed new wording of Art. 4(5). The amendment would also add the words 'as well the principle of transparent and good administration outlined in Article 1(c)'. The retention of the current wording would maintain current standards, for the Commission's proposal for the new Art. 4(5) would significantly lower current standards, for the reasons set out in the Statewatch commentary. The new amendment would have the potential to raise current standards.

In order to protect the current case law, including the very recent judgments in the *Borax Europe* cases (11 March 2009) the following words could also be added to the end of this provision, as suggested in the Statewatch commentary:

'In any event, the names, titles and functions of public office holders, civil servants and interest representatives in relation with their professional activities shall be disclosed.'

#### **Amendment 50 – strongly supported**

This amendment should be supported since it would protect the status quo, and in particular entrench the judgment in the *Turco* case.

#### **Amendment 51 - oppose**

This amendment would widen, rather than narrow or abolish, a proposed new exception to the access rules. As such it would lower standards even further than under the Commission's proposal. However, arguably there are sound objective reasons for developing exceptions as regards selection procedures and procurement procedures, for the limited period which the amendment refers to.

#### **Amendment 52 - strongly support**

The Commission would have lowered standards here by widening the scope of the exception (see the Statewatch commentary), but the EP amendment more than compensates for this by abolishing the 'decision-making' exception entirely. Obviously this would raise standards.

#### **Amendment 53 - strongly support**

This amendment would a) widen the scope of the override clause to cover paragraph 1 and b) specify further grounds of application of the override clause. Obviously this would raise standards.

#### **Amendment 115 - oppose**

This amendment, added in plenary, appears aimed at protecting the self-interest of MEPs. It would lower current standards.

#### **Amendments 90, 96 and 102 - oppose**

This amendment, added in plenary, undercuts and contradicts amendment 49. The proposed Article 4(5) should simply be deleted altogether, with some additional words added to the current Article 4(1)(a) as suggested above (amendment 49). In particular, the amendment here introduces an 'adverse impact' test which does not appear in the case law (*Bavarian Lager* and *Borax Europe*).

#### **Amendment 55 - support**

The exception for legislative documents would raise standards.

#### **Amendment 56 - support**

This clause would improve standards as regards accountability.

#### **Amendment 58 - support**

This 'lobbyist' clause would improve standards as regards accountability.

#### **Amendment 91 - support**

This amendment (altered in plenary) would confirm and improve upon the status quo as regards Member States' documents.

#### **Amendment 103 - supported**

This amendment (altered in plenary) would clearly raise standards as compared to the status quo.

### **Amendment 62 - supported - further amendment suggested**

This amendment would maintain the status quo. It would be desirable to reject also the proposed amendment to Art. 6(3), with a view to maintaining current standards.

### **New Article 6a needed – freedom of information**

Statewatch has proposed that a new Article 6a be added to the Regulation as follows, to ensure a right of access to information:

1. Notwithstanding Article 6, an applicant has the right to seek information on the activities or policies of the institutions without initially identifying specific documents.

2. In the case of a request for information referred to in paragraph 1, the institutions shall apply Article 6(2) and (4) of this Regulation to the extent that there may be existing documents which are relevant to the request for information. They shall also supply any additional information which may be required to answer the request for information fully, in accordance with the principle of good administration.

The plenary vote does not contain such a provision.

### **Amendment 104 - supported**

The involvement of the Ombudsman could improve standards. This amendment was altered in plenary.

### **Amendment 66 - supported**

This amendment would protect the status quo.

### **Amendment 69 - opposed - further amendment suggested**

This amendment would lower the current standards as it would increase the possibility for charging for access. Furthermore, as pointed out in the Statewatch commentary, the Commission's proposed amendment to Article 10(1) should be rejected, as it would lower current standards.

### **Amendment 70 – strongly opposed**

This amendment would lower the current standards as it would reduce the scope of the registers.

### **Amendments 71 and 72 – supported**

These EP amendments here would protect and improve the status quo.

### **Amendments 74 and 105 - support in part**

This amendment, altered in plenary, would generally increase obligations to publish measures in the OJ, and so should be welcomed. However, it would be preferable to include an obligation to publish Member States' third pillar proposals in the OJ (this would raise current standards), rather than delete any reference to this altogether as proposed in the EP amendment - this would lower current standards.

### **Amendments 106-107, 78-81 - support**

These amendments would improve administrative practice regarding transparency.

### **Amendment 85 – strongly support**

The amendment, added in plenary, would serve the useful function of ensuring accountability as regards EU funding.

### **Amendment 82 - support**

The EP amendment would protect the current level of rights from being lowered.

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For all background documentation, news and analyses see:

Statewatch Observatory on the Regulation on access to EU documents: 2008-2009:

<http://www.statewatch.org/foi/observatory-access-reg-2008-2009.htm>

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