



REPORT

**The European Parliament held a Public Hearing “Towards a European Freedom of Information Act” providing an extensive assessment of the current Regulation 1049/2001 on access to documents and the proposed amendments by the Commission.
ECAS was represented by Tony Venables (Director) and Maria Gancheva (Trainee).**

Speakers:

Gerard Deprez – Chairman of the LIBE Committee;
Marco Cappato – Member of the EP and current Rapporteur on the Annual Report on Access to Documents of the EU institutions;
Margot Wallström – Vice President of the European Commission;
Presidency of the Council – Representative of the Slovenian Ministry;
Michael Cashman, Member of the EP and Rapporteur on Regulation (EC) No 1049/2001 and on its new proposed revision;
Christopher Napoli – Research Fellow at CEPS, Transparency and Public Access to Documents;
Ian Harden – European Ombudsman, Secretary-General;
Steve Peers – Statewatch.

A list of all experts who contributed at the Hearing is available at:

<http://www.europarl.europa.eu/document/activities/cont/200805/20080519ATT29212/20080519ATT29212EN.pdf>

According to a previous ECAS Research Report the EU should shift from an access to documents system to a freedom of information system. Access to documents is a fundamental right incorporated by the Amsterdam Treaty in Article 255. The last years have witnessed an increased demand in getting information from the EU institutions but this demand has been limited by certain restrictions. Under Regulation 1049/2001 personal data is still treated as an absolute exception. The Regulation is seen as not adequately reflecting the issue of public information.

Since access to documents became a right the refusal rate by the Commission increased to 30%. Further steps are needed to update Regulation 49/2001 in light of the case law of the ECJ, the extent of Community powers based on 49/2001 and the experience gained in the EU as a whole. The Commission’s proposed amendments met considerable criticism by the panel of experts – a major criticism is that the amended Regulation does not strengthen the right of access to documents but is a step backwards. The EP should, therefore, examine the Commission’s proposal carefully.

A number of concerns remain to be addressed further: the influence of political controls/proportionality on access to documents; the need for greater interoperability of information and the problem of technically weak information systems; the possibility that trust in the institutions is being eroded because change is much more rhetorical than reflected in practice; the need to widen the definition of what constitutes a document; the associated risks with the culture of exceptions which could lead to administrative non-compliance. Decision-making processes should take legislative forms. Reforms towards freedom of information should attract greater political support, as well as place a duty on the institutions to locate documents.

- **The Commission's view**

The EU has come a long way since 1992 and the EU institutions are more transparent. However, the Regulation has benefited professionals of EU affairs more than citizens. The proposal for amendment is aimed at improving access for citizens and dissemination, clarifying the legal text, and giving a clearer definition of the concept of document. The institutions should continue to improve proactive dissemination, registers and communication with citizens. All names of public persons will be disclosed and Member States now have the obligation to provide reasons if they refuse access.

- **M Cashman (EU Parliament Rapporteur)**

More will be achieved by putting pressure on the institutions although it could prove difficult in practice.

- **Remarks by the European Ombudsman**

With the amended Regulation documents will not be more accessible and the definition of a document is still vague. The new Regulation does little more than enhancing the Commission's discretionary power. Only the exceptions in the Regulation should justify a refusal of access to information. According to the Court of First Instance statements, a good balance is needed between the rights guaranteed by the Data Protection Regulation (45/2001) and the Access to Documents Regulation (49/2001). The relation between privacy/confidentiality and public access is not supplemented by sufficient guidance. The requirement should be to establish an actual and specific effect on privacy and then the exception would apply. There are fundamental unresolved issues of commitment to access to information.

- **Statewatch criticism**

Improvements are not likely with the new amended legislation and Member States will have greater scope for refusing access to documents. Documents that have not been numbered and officially registered will be very difficult to access. This reinforces the impression that the EU is disconnected from its citizens. The Council is still entitled to keep certain documents secret but its public debate should be made accessible.

- **The Slovenian, Scottish and US experience**

Slovenia has a very well functioning system of accessible information and enforcement of the public interest test – everything done in the public institutions is expected to correspond to the public interest. The Scottish authorities are releasing far more information now, there is an independent Commission to enforce rights, 74% of the public are aware of their rights, and there is a very high degree of openness. In the US a record is considered any information maintained by an agency contractor and there have been an estimated 21.5 million requests to Federal Agencies.

The Commission has responded to some demands from the EP; however, still some categories of documents are not accessible. Parliament has the highest percentage of documents accessible and the Commission – the lowest, and the highest number of complaints. Some experts consider the necessity of an independent oversight body to be responsible for the correct implementation of access to documents rights without the need for going to Court. A special Ombudsman or Freedom of Information Commissioner could be empowered to pursue greater accountability and have the right to demand the confidentiality clause to be taken out.