



Statewatch analysis

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

Professor Steve Peers, University of Essex

This analysis assesses the adopted European Parliament's Civil Liberties Committee (LIBE) report on the proposed new Regulation on access to documents (dated 19.2.09):

<http://www.statewatch.org/news/2009/feb/eu-access-reg-cashman-report-amended.pdf>

The report is due for discussion and adoption by the EP plenary in March 2009.

It concludes whether each of the major proposed 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 73 – strongly supported

Rules on re-use of documents could enhance the application of the right of access to documents in practice.]

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 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 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, 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 draft 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 draft 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 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 59 - support

This draft amendment would confirm and improve upon the status quo as regards Member States' documents.

Amendment 61 - supported

This amendment 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.

Amendment 65 - supported

The involvement of the Ombudsman could improve standards.

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.

Amendment 74 - support in part

This amendment 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 76-81 - support

These amendments would improve administrative practice regarding transparency.

Amendment 82 - support

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

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Background and full documentation:

Statewatch's 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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