



## Comments by Statewatch

### - on the revised draft EP report on the access to documents regulation

*The following comments concern the major amendments (leaving aside the preamble) suggested by the March 2010 draft EP report.*

#### **Amendment 31 – support**

Arts 2(5) and 2(6) of the Commission proposal should ideally be deleted, as they reduce current standards. The EP 2009 vote deleted them. Also, excluding an entire category of documents entirely from the Reg is legally dubious. It is welcome that these provisions remain deleted in this draft.

#### **Article 2(2), 2009 EP vote – dropped, should not reinstate**

The new Art 2(2) as inserted by the EP's 2009 vote would have reduced current standards by excluding a category of docs (relating to Art 4 of the MEPs' statute). Excluding an entire category of documents entirely from the Regulation is legally dubious. It is welcome that this provision is dropped from this draft.

#### **Article 2(3), 2009 EP vote - dropped, should reinstate**

The new Art 2(3) as inserted by the EP's 2009 vote would have usefully provided for a specific clause on access to documents relating to infringement proceedings. It is dropped from the 2010 draft and it would be better to have kept it. It might be necessary to consider more precise drafting for this clause, and in particular to consider specifying the relationship between this rule and the exceptions in Article 4.

#### **Amendment 32 – support**

New Art 2a – this matches Art 3 in the EP's 2009 vote by specifying that Member States' legislation can set higher standards. This is very welcome.

#### **Amendment 33 – support**

Revised Article 3(a) – dropping the Commission's proposed reduction of standards as regards the definition of 'document' (as in the EP's 2009 vote) is essential.

New Article 3(ab), et al – the broad definition of legislative document and the narrow definitions of non-legislative document (retained from the 2009 EP vote) would be very welcome.

#### **Amendment 38 – support**

Like the EP's 2009 vote, this would restore essentially the current wording of the provision relating to data protection, rather than reduce standards as proposed by the Commission. This text is therefore welcome.

#### **Amendment 40 – support**

This should be welcomed, as it would narrow down the legal advice exception even more than the wording of the EP's 2009 vote.

#### **Amendment 41 – support**

This should be welcomed, since it would narrow down the scope of the new exception proposed by the Commission, just like the EP's 2009 vote.

#### **Amendment 42 – support**

The deletion of the current article 4(3), as in the EP's 2009 vote, is essential to increase the openness of decision-making. This amendment is strongly supported.

#### **Amendment 43 – support**

This largely matches the EP's 2009 vote except for the deletion of a sentence relating to legislative and non-legislative proceedings. That sentence made no sense, since documents relating to those proceedings were anyway outside the scope of this Article, according to other EP amendments. The revised provision would raise current standards so is very welcome.

#### **2009 EP vote – Article 4(4) – dropped, should not reinstate**

This proposed text has rightly been dropped from the 2010 draft, since it would have reduced current standards.

#### **Amendment 44 – support**

This is a useful clause taken from the 2009 draft, and should be welcomed.

#### **Amendment 45 – support**

The same provision appeared in the 2009 EP vote. This is better than the Commission proposal, although it might still be questioned whether the possibility of refusing access due to 'adverse effect' would reduce current standards.

#### **Amendment 46 – support**

This appeared in the 2009 EP vote, and would increase standards greatly. It should be strongly supported.

#### **Amendment 47 – support**

This appeared in the 2009 EP vote, and would increase standards. It should be supported.

#### **Amendment 48 – support**

This appeared in the 2009 EP vote, and would increase standards as compared to the current rules and the Commission proposal. It should be strongly supported.

#### **Amendment 49 – support**

This appeared in the 2009 EP vote, and would increase standards as compared to the current rules. It should be strongly supported. So should the further amendments made to para 4 in the 2010 draft.

#### **Amendment 50 – support**

This appeared in the 2009 EP vote, and would increase standards as compared to the current rules. It should be supported.

#### **Amendment 53 – support**

This appeared in the 2009 EP vote, and would increase standards as compared to the current rules. It should be supported.

#### **Amendment 54 – support**

This appeared in the 2009 EP vote, and would maintain current standards rather than drop them, as in the Commission proposal. It should be supported.

#### **Amendment 59 – delete: strongly opposed**

The 2010 draft seeks to justify the amendment by saying it is: *“To guarantee a sound and coherent overview of processed documents the registration system should contain certain obligatory references.”*. Under the current Regulation (Art 11.1) *“References to documents shall be recorded in the register without delay”*, thus it is obligatory to list all documents without delay. The creation of an exception which says “in particular” to list certain categories will undermine the definition of a “document” proposed.

Moreover, this amendment would also undermine the Ombudsman’s Recommendations in the Statewatch complaint against the Commission: see:

<http://www.statewatch.org/analyses/no-82-eu-commission-register.pdf>

and the Ombudsman’s follow up report (pp35-36):

<http://www.statewatch.org/news/2009/dec/eu-ombudsman-follow-up-report-for-2008.pdf>

#### **Amendment 60 – support**

The proposed para 1 improves standards as compared to the current rules, the Commission proposal, and also the 2009 EP vote. It should be strongly supported.

#### **Article 13 – further amendments needed**

The acts referred to in para 1(c), (d) and (e) and 2(b) of the Commission proposal (ie the current Regulation) are now no longer adopted, so these provisions should be deleted. The reference to the initiatives in para 2(a) should be updated to refer to Article 76 TFEU. Also the latter provision should be made subject to the provisions in the proposal (as amended by the 2010 draft) on the release of documents involving the association of the EP, etc, since the measures concerned are either legislation (as defined by the Treaty) or acts on which the EP must be consulted (ie pursuant to Article 74 TFEU).

#### **Amendment 67 – support**

This appeared in the 2009 EP vote, and would increase standards as compared to the current rules. It should be supported.

#### **Amendments 69-72 – support**

These amendments all appeared in the 2009 EP vote, and would increase standards as compared to the current rules. They should be supported.

### **Amendment 73 – support**

This appeared in the 2009 EP vote, and would maintain current standards rather than drop them, as in the Commission proposal. It should be supported.

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

Statewatch previously 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 revised 2010 draft does not contain such a provision. Such an amendment would give substance to the proposal in the 2010 draft to retitle the legislation as a 'Freedom of Information Act'.

**Statewatch 26 April 2010**