

EUROPEAN PARLIAMENT

2004



2009

Committee on Civil Liberties, Justice and Home Affairs

Public Hearing

Towards a European Freedom of Information Act

The Revision of Regulation 1049/2001
on Access to EU Documents

Monday 2 June 2008, 15.00 – 18.30

Brussels

Room ASP 3E2

FOREWORD

Democracy is based on the principle of publicity of the laws, as well as on the openness of the decision-making process: democratic parliaments hold their meetings, discussions and votes in public, while draft laws and related texts are also available. Freedom of Information Acts have been adopted in many States to further guarantee that information and documents are accessible. Furthermore, the accountability of a democratic political system strongly depends on the mechanisms set up in order to inform people on how public bodies take decisions.

In the European Union, access to documents has been progressively recognised as a fundamental right and it has played a significant role in giving effect, in a practical way, to the principles of publicity, transparency and openness.

In the Declaration 17 to the Treaty of Maastricht (1992), it was recognised that openness is an essential aspect of democracy and of strengthening public confidence in the institutions of the European Union. Since 1993 access to Commission and Council documents has been governed by a Code of Conduct and after that most EU institutions, including the European Parliament and the EU bodies, have adopted similar rules. The Court of the European Community and the European Ombudsman have both worked to make the regime enforceable and effective. The Amsterdam Treaty in 1997 went further in embracing the principle of openness: first, by including it among the general principles of the Union (article 1 TEU) and second, by introducing a specific provision granting EU citizens and residents a right to access to European Parliament, Council and Commission documents (article 255 TEC).

The principles and limits governing this right of access have been determined by Regulation (EC) No 1049/2001¹ regarding public access to European Parliament, Council and Commission documents, which became applicable on 3 December 2001.

By looking at the quantitative data provided in the Annual reports that the European Commission, the European Parliament and Council of the EU have to publish every year according to article 17 of the current regulation, it can be deduced that transparency *vis à vis* EU citizens has improved. In addition, a large number of documents have been made publicly accessible for instance through the Internet. However, such data does not reveal that a number of issues raised by civil society and by the European Parliament are still to be solved. This can be seen also from the fact that through the years, a quite substantial number of cases on key provisions of the Regulation on public access have been brought to the European Ombudsman and to the Court of the European Communities. The judgements issued by the Court of Justice dealt with a number of important issues, such as access to opinions of the legal services of the institutions, access to Council meetings documents, the relation between the right to privacy covered by Regulation (EC) No 45/2001² and the right to access to documents displaying names of people when exercising a professional activity. This non-exhaustive list demonstrates that the current legal framework is far from being satisfactory.

¹ OJ L 145 of 31.5.2001, p. 43

² Regulation (EC) no 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8 of 12.1.2001, p.1

Finally, one month ago the European Commission, after repeated requests from the European Parliament and civil society, presented an amended version of Regulation 1049/2001. This proposal will be analysed jointly by the European Parliament and the Council under the co-decision procedure.

This hearing constitutes the perfect arena to evaluate the positive and negative aspects of the current legal framework in the light of the newly formulated revision of Regulation 1049/2001. A close look will be taken at possible perspectives with regard to transparency under the Treaty of Lisbon. Finally, some important case laws and the work of the European Ombudsman and European Data Protection Supervisor will be considered. Exchanges of views with NGOs, lawyers and university professors will provide us with experts' opinions on how to improve the current and proposed future regime. The debate that will follow will serve as an important source of inspiration for the months to come when the co-legislators will focus all their energy at improving the legislation in the field of public access to documents of EU institutions.

In her press release on 30 April 2008, when the proposal for the revision of Regulation 1049/2001 was published, Vice-President of the European Commission Mrs Wallström said: *"Our objective is increased transparency, increased access and increased outreach and understanding. This is fundamental in any democratic system: the citizen's right to know. Access to documents is an essential tool for democracy and now we want to improve it"*. More than ever, these words are true and important in our European society. This is a great opportunity for the EU institutions to establish with citizens a link that legitimises the policies and legislation affecting their daily lives, but which are taken in the often opaque European Multi-level system of governance. Clarity and openness of the European Institutions will bring Europe closer to its citizens and reduce the mist over Brussels to its proper status as a mere natural phenomenon.

PROGRAMME

15:00 - 15:30

INTRODUCTION

Successes and shortcomings of Access to Documents in the EU

- **Gerard DEPRez**, Chairman of the LIBE committee, welcoming remarks
- **Marco CAPPATO**, Member of the European Parliament 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 or from the Permanent Representation of Slovenia to EU

15:30 - 16:45

SESSION I

Access to documents in the EU, in the Member States and in Third Countries: What to learn from experiences in view of the Revision of the Regulation and of the Lisbon Treaty

Interventions by:

- **Michael CASHMAN**, Member of the European Parliament and rapporteur on Regulation (EC) No 1049/2001 and on its new proposed revision¹, *A Short History of the EU Access to Documents Regime*
- **Christopher NAPOLI**, research fellow at CEPS, *Transparency and Public Access to Documents: some aspects concerning E-transparency in the EU Institutions and the Member States*
- **David BANISAR**, Director of the Freedom of Information Project of Privacy International in London, *Overview of EU Member States Legislation in Transparency Matters*
- **Natasha PIRC**, Information commissioner from Slovenia, *The Slovenian Experience regarding Access to Public Information*
- **Kevin DUNION**, Scottish Information commissioner, *Successful Implementation of Freedom of Information in Scotland*
- **Harold C. RELYEA**, The US Congressional Research Service: *Federal Freedom of Information Policy: Highlights of Recent Developments*
- **Juliet LODGE**, Director, Jean Monnet European Centre of Excellence, Professor of European Studies University of Leeds, *Access to Information: Problems of Accountability and Transparency in a Digital Age*

Questions and Answers

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents. OJ L 145/43 of 31 May 2001; new proposal of recast COM (2008) 0229 of 30 April 2008.

16:45 - 18:20

SESSION II

The European Commission Proposal on the Revision of Regulation 1049/2001

Interventions by:

- **Jens NYMAND-CHRISTENSEN**, Director, Better Regulation and Institutional Issues - Directorate E of the Secretariat-General of the European Commission, *Presentation of the main changes brought about by the new Proposal for the Revision of Regulation (EC)1049/2001*
- **Alfonso DE SALAS**, Council of Europe, *The draft Council of Europe Convention on Access to Official Documents*
- **Ian HARDEN**, European Ombudsman, Secretary-General, *The European Ombudsman Position on the Proposed Revision*
- **Peter HUSTINX**, European Data Protection Supervisor, *The Exception of Personal Data*
- **James WEBBER**, Lawyer at Shearman & Sterling, London, Lawyer in the Bavarian Lager case, *Presentation of the Bavarian Lager case and its possible implications in the new Proposal for the Revision of Regulation 1049/2001*
- **Onno BROUWER**, Lawyer at Freshfields Bruckhaus Deringer, Lawyer in the Turco case, *Accessibility of Legal Services' Opinions under the new Proposal for the Revision of Regulation 1049/2001 (Daniel Mes in case of replacement)*
- **Bolette WEIS FOGH**, Danish Lawyer Ministry of Foreign affairs, *Access to Documents originating from Third Parties or Member States*
- **Brigitte ALFTER**, Brussels correspondent Danish daily Information, *Does the Proposal for the Revision of Regulation 1049/2001 by the European Commission meet the Needs and Requests of Journalists?*
- **Steve PEERS**, Statewatch, *The Analysis of the European Commission's Proposal to amend the Regulation on Access to EU Documents (1049/2001)*
- **Tony VENABLES**, ECAS, *The Need for a Freedom of Information Act*

Questions and Answers

18:20 - 18:30

CONCLUDING REMARKS

Michael CASHMAN, EP rapporteur on the Commission proposal on the revision of Regulation (EC) No 1049/2001

Marco CAPPATO, EP rapporteur on the Annual report on Access to Documents of the EU institutions

ANNEX

PRACTICAL GUIDELINES FOR THE DEBATE

Presentations will be limited to 7 minutes (see programme for details).

During the discussion, so as to make it possible for the highest possible number of parliamentarians to intervene, speaking time will be limited to 2 minutes per contribution or question.

The floor will be given to Members in the order in which requests are received.

Speakers wishing to supplement their speeches may do so in writing by submitting documents (preferably in English or French **at the latest by Friday, 16 May 2008 at 12 o'clock**) in advance to the secretariat (email: ip-libe@europarl.europa.eu). These documents will be circulated during the meeting.

IMPORTANT NOTICE FOR THOSE WISHING TO ATTEND THE HEARING

This seminar is open to the public. However, for security reasons, participants who do not have a European Parliament access badge must obtain a pass in advance. Those wishing to obtain such a pass should contact the seminar secretariat (ip-libe@europarl.europa.eu) **before 23 May 2008**. It is essential to provide us with your **full name, address and date of birth**. Without this information, the Security Service will not provide entry passes.

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