

Public access to European Parliament, Council and Commission documents

2008/0090(COD) - 30/06/2008 - Document attached to the procedure

OPINION OF THE EUROPEAN DATA PROTECTION SUPERVISOR on the Proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents.

The aforementioned proposal was sent by the Commission to the EDPS for consultation and was received by the EDPS on 15 May 2008. The aim of the proposal is to make a number of substantive changes to Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

The attention of the EDPS has in particular been triggered by the fact that the proposal contains a provision dealing with the delicate relation between access to documents and the rights to privacy and to the protection of personal data, the proposed Article 4(5). This opinion supports the reasons behind replacing the present Article 4(1)(b) by a new provision to some extent, but does not support the provision itself.

This provision is criticised for the following reasons:

- the EDPS is not convinced that this is the appropriate moment for change, while an appeal is pending before the Court of Justice;
- the proposal does not provide the appropriate solution. It consists of a general rule that: (i) does not reflect the judgement of the Court of First Instance in *Bavarian Lager*; (ii) does not do justice to the need for a right balance between the fundamental rights at stake; (iii) is not viable since it refers to EC legislation on data protection that does not provide a clear answer when a decision on public access must be made;
- it consists of a specific rule that is in principle well defined, but with a scope that is far too limited.

The EDPS proposes an exception to public access to personal data. In this regard, personal data shall not be disclosed, if such disclosure would harm the privacy or the integrity of the person concerned. The EDPS also outlines situations in which such harm does not arise. Nevertheless, personal data shall be disclosed if an overriding public interest requires disclosure. In those cases, the institution or body shall have to specify the public interest. It shall give reasons why in the specific case the public interest outweighs the interests of the person concerned. Moreover, where an institution or body refuses access to a document, it shall consider whether partial access to this document is possible.

The opinion identifies several other points where clarifications are needed of the public access regulation. These clarifications can be given by introducing recitals or possibly legislative provisions on the following subjects:

- the concept of a document so as to ensure the widest possible application of the public access regulation;
- the interpretation of Article 8(b) of Regulation (EC) No 45/2001 in the context of public access so as to ensure that the applicant for public access does not need to prove the necessity of disclosure;
- the relation between the right of access to public documents and the right of access to own personal data under Regulation (EC) No 45/2001 so as to ensure that the right of access to public documents is without prejudice to the right of access to own personal data;
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the obligation of an institution to examine on its own initiative whether that person is entitled to access under Regulation (EC) No 45/2001, when a person requests access to data concerning him or her under the public access regulation;

- the further use of personal data contained in public documents, in order to ensure that this further use is subject to the applicable rules on the protection of personal data.