



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 28 May 2009

**Interinstitutional File:
2008/0090 (COD)**

10297/09

LIMITE

**INF 144
API 77
CODEC 766**

NOTE

from: General Secretariat of the Council
to : Delegations

No. Cion prop.: 9200/08 INF 103 API 23 JUR 192 CODEC 946 + COR 1 (COM(2008) 229 final)
No. prev. doc. 16343/1/08 REV 1 INF 252 API 88 JUR 532 CODEC 1661
5671/09 ADD 1 JUR 26 INF 5 CODEC 74 API 4
5671/1/09 REV 1 INF 5 API 4 CODEC 74 + COR 1 + COR 2
7791/09 INF 58 API 32 CODEC 380

Subject: Proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (recast)

Following the examination of the provisions of Article 4(1) and 4(2) of the Commission's recasting proposal at the IWP meeting on 14 May 2009, it was agreed to dedicate the next meeting of the Working Party, scheduled for 3 June 2009, to an examination of the modifications proposed by the Commission regarding the remaining parts of Article 4 and Article 5 of Regulation (EC) 1049/2001.

In the context of this examination, the IWP should also take into account the relevant amendments, which were adopted by the European Parliament during its plenary session on 11 March 2009.

At the forthcoming meeting, the IWP will thus continue its work on the access to documents Regulation on the basis of:

- the Commission's proposal for a recast of Regulation 1049/2001 (doc. 9200/08)
- the comments made by delegations during the first examination (doc. 5671/1/09 REV 1 + COR 1 + COR 2)

- the observations made by the Council Legal Service on the recasting proposal (doc. 5671/09 ADD 1)
- the admissible amendments tabled by the EP (as listed in annexes I and II to document 7791/09) and
- the working document prepared specifically for the examination of the provisions of Article 4 (doc. 9234/09).

In line with the thematic approach applied during the first examination of the Commission's proposal, the discussion on the provisions of Article 5 of the recasting proposal will notably address the insertion of a new Article 5 (2) laying down **the procedure to be followed in those cases, where the EU institutions receive requests for access to documents originating from a Member State.**

The table at annex sets out

- in its first column: the text proposed by the Commission
- in its second column: the relevant amendments tabled by the European Parliament
- in its third column: amendments proposed by delegations as set out in document 16338/08.

<p>Commission proposal for Recast of Regulation 1049/2001 (COM (2008) 229 final)</p>	<p>Technically admissible EP amendments</p>	<p>Observations</p>
<p style="text-align: center;"><u>Article 5</u></p> <p style="text-align: center;">⊗ Consultations ⊗</p> <p>41. As regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception ⊗ referred to ⊗ in paragraph 1 or 2 <u>Article 4</u> is applicable, unless it is clear that the document shall or shall not be disclosed.</p> <p>5. A Member State may request the institution not to disclose a document originating from that Member State without its prior agreement.</p> <p>2. Where an application concerns a document originating from a Member State, other than documents transmitted in the framework of procedures leading to a legislative act or a non-legislative act of general application, the authorities of that Member State shall be consulted. The institution holding the document shall disclose it unless the Member State gives reasons for withholding it, based on the exceptions referred to in Article 4 or on specific provisions in its own legislation preventing disclosure of the document concerned. The institution shall appreciate the adequacy of reasons given by the Member State insofar as they are based on exceptions laid down in this Regulation.</p>	<p>Amendment 91 (Cashman) Article 5 – paragraph 2 (Art. 7(2))</p> <p>2. Where an application concerns a document originating from a Member State, - <i>which has not been transmitted by the Member State in its capacity as a member of the Council, or</i> - <i>which does not concern information submitted to the Commission concerning the implementation of EC policies and legislation</i></p> <p>the authorities of that Member State shall be consulted. The institution holding the document shall disclose it unless the Member State gives reasons for withholding it, based on the exceptions referred to in Article 4 or <i>in equivalent provisions of its own legislation or objects on the basis of Article 296(1) (a) of the EC Treaty that the disclosure would be contrary to its essential security interests. The institution shall assess the adequacy of reasons given by the Member State.</i></p>	<p>During the first examination of the recasting proposal, two delegations proposed the following wording of Article 5 (2): “The institution holding the document shall disclose it unless the Member State, within the time limit provided for in Article 7, gives reasons for withholding it, based on the exceptions referred to in Article 4 or on specific provisions in its own legislation preventing disclosure of the document concerned (see doc. 16338/08, pp. 2-3).</p>

Commission proposal for Recast of Regulation 1049/2001 (COM (2008) 229 final)	Technically admissible EP amendments	Observations
<p><u>3.</u> Where a Member State receives a request for a document in its possession, originating <input checked="" type="checkbox"/> which originates <input type="checkbox"/> from an institution, unless it is clear that the document shall or shall not be disclosed, the Member State shall consult with the institution concerned in order to take a decision that does not jeopardise the attainment of the objectives of this Regulation. The Member State may instead refer the request to the institution.</p>		
