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. 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 thorough examination by the Information Working Party of Articles 2, 3, 4 and 5 of the Commission's proposal for a recast of Regulation (EC) No 1049/2001, the discussion at the forthcoming IWP meeting, to be held on 25 June, will be dedicated to the modifications proposed by the Commission regarding Articles 6, 8, 10, 12 and 16 of the Regulation.

The outcome of the discussions on the recasting proposal held at the IWP meetings on 2 and 21 April, 14 May and 3 and 25 June will be summarized in a progress report to be distributed to delegations by the end of June.

The following documents will serve as a basis for the work of the IWP on 25 June:
- 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's Legal Service on the recasting proposal (doc. 5671/09 ADD 1)
- the admissible amendments adopted by the EP at its plenary session on 11 March 2009 (as listed in annexes I and II to document 7791/09).

In line with the thematic approach applied during the previous examination of the Commission's proposal, it is suggested to structure the discussion on the provisions of Articles 6, 8, 10, 12 and 16 of the recasting proposal around the following themes:

1. the amendment of Article 6, paragraphs 2 and 3, which cater for situations where documents requested by a Member of the public can not be easily identified;

2. the extension of the time-limit for the processing of a confirmatory request from 15 to 30 working days, with a possibility for a further extension by 15 working days (Article 8, paragraph 1);

3. the insertion of a new paragraph in Article 10, clarifying that access to documents may in certain cases be subject to the payment of a fee (Article 10, paragraph 5);

4. the redrafting of Article 12 with a view to ensure that direct access be granted to documents which are part of procedures leading to the adoption of EU legislative acts or non-legislative acts of general application (Article 12, (new) paragraph 1);

5. the insertion of an additional provision in Article 16 which clarifies that when the information contained in a document (held by an institution) is covered by the existing rules on copyright, possible access granted to the document concerned will be limited to a right to consult the document "in situ" without any possibility to copy, reproduce or exploit the content of the document.
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: references to the comments and observations made by delegations and the European Commission during the first examination of the recasting proposal as set out in document 5671/1/09 REV 1 + COR 1 + COR 2.
### Article 6

#### Applications

1. Applications for access to a document shall be made in any written form, including electronic form, in one of the languages referred to in Article 314 of the EC Treaty and in a sufficiently precise manner to enable the institution to identify the document. The applicant is not obliged to state reasons for the application.

2. If an application is not sufficiently precise or if the requested documents cannot be identified, the institution shall ask the applicant to clarify the application and shall assist the applicant in doing so, for example, by providing information on the use of the public registers of documents. The time limits provided for under Articles 7 and 8 shall start to run when the institution has received the requested clarifications.

| Amendment 62 |
|------------------|------------------|------------------|
| Article 6 – paragraph 2 (Art. 16(2)) |

2. If an application is not sufficiently precise the institution shall within 15 working days ask the applicant to clarify the application and shall assist the applicant in doing so, for example, by providing information on the use of the public registers of documents.

For comments and observations made by delegations, see document 5671/09 REV 1, page 19, footnote 17.
### Annex DG F III

**COM (2008) 229 final**  
**Technically admissible EP amendments**  
**Observations**

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<td>3. In the event of an application relating to a very long document or to a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair and practical solution.</td>
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<td>For comments and observations made by delegations, see document 5671/09 REV 1, page 19, footnote 18.</td>
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<td>4. The institutions shall provide information and assistance to citizens on how and where applications for access to documents can be made.</td>
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### Article 8

**Processing of confirmatory applications**

1. A confirmatory application shall be handled promptly. Within 15 working days from registration of such an application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal. In the event of a total or partial refusal, the institution shall inform the applicant of the remedies open to him or her, namely instituting court proceedings against the institution and/or making a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively.

**Amendment 66**  
**Article 8 – paragraph 1 (Art. 18(1))**

1. A confirmatory application shall be handled promptly. Within 15 working days from registration of such an application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal. In the event of a total or partial refusal, the institution shall inform the applicant of the remedies open to him or her.

For comments and observations made by delegations, see document 5671/09 REV 1, page 21, footnote 19.
Article 8 (continued)

22. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

3. In the event of a total or partial refusal, the applicant may bring proceedings before the Court of First Instance against the institution and/or make a complaint to the European Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively.

24. Failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and shall entitle the applicant to institute court proceedings against the institution and/or make a complaint to the Ombudsman, under the relevant provisions of the EC Treaty.
**Access following an application**

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, including, where available, an electronic copy, according to the applicant's preference. The cost of producing and sending copies may be charged to the applicant. This charge shall not exceed the real cost of producing and sending the copies. Consultation on the spot, copies of less than 20 A4 pages and direct access in electronic form or through the register shall be free of charge.

2. If a document has already been released by the institution concerned and is publicly available and is easily accessible to the applicant, the institution may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document.
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<td>Article 10 (continued)</td>
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<td>3. Documents shall be supplied in an existing version and format (including electronically or in an alternative format such as Braille, large print or tape) with full regard to the applicant's preference</td>
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<td>4. The cost of producing and sending copies may be charged to the applicant. This charge shall not exceed the real cost of producing and sending the copies. Consultation on the spot, copies of less than 20 A4 pages and direct access in electronic form or through the register shall be free of charge.</td>
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<td>5. This Regulation shall not derogate from specific modalities governing access laid down in EC or national law, such as the payment of a fee.</td>
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For comments and observations made by delegations, see document 5671/09 REV 1, page 26, footnote 20.
<table>
<thead>
<tr>
<th><strong>COM (2008) 229 final</strong></th>
<th><strong>Technically admissible EP amendments (Title III - Method of access)</strong></th>
<th><strong>Observations</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Article 12</strong></td>
<td><strong>Amendment 71</strong></td>
<td><strong>For comments and observations made by delegations, see document 5671/09 REV 1, page 28, footnote 22.</strong></td>
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<td><strong>Direct access in electronic form or through a register to documents</strong></td>
<td><strong>Amendment 71</strong>&lt;br&gt;<strong>Article 12, paragraph -1 (Art. 14(1))</strong>&lt;br&gt;1. The institutions shall as far as possible make documents directly accessible to the public in electronic form or through a register in accordance with the rules of the institution concerned.</td>
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<td>21. In particular, legislative documents, that is to say, documents drawn up or received in the course of procedures for the adoption of EU legislative acts which are legally binding in or for the Member States, should or non-legislative acts of general application shall, subject to Articles 4 and 9, be made directly accessible to the public.</td>
<td><strong>Amendment 72</strong>&lt;br&gt;(Cappato)&lt;br&gt;<strong>Article 12, paragraph 1 (Art. 14(2))</strong>&lt;br&gt;2. The institutions shall make all documents directly accessible to the public in electronic form or through a register, particularly those drawn up or received in the course of procedures for the adoption of EU legislative acts or non-legislative acts of general application.</td>
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<td>22. Where possible, other documents, notably documents relating to the development of policy or strategy, should shall be made directly accessible in electronic form.</td>
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<td>4. Where direct access is not given through the register, the register shall as far as possible indicate where the document is located.</td>
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<td>4. Each institution shall define in its rules of procedure which other categories of documents are directly accessible to the public.</td>
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### COM (2008) 229 final

**Article 16**

**Reproduction of documents**

This Regulation shall be without prejudice to any existing rules on copyright which may limit a third party's right to obtain copies of documents or to reproduce or exploit released documents.

### Technically admissible EP amendments

**(Article 8)**

**Amendment 82**

(Svensson, Liotard)

**Article 16**

This Regulation shall be without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents.

### Observations

For comments and observations made by delegations, see document 5671/09 REV 1, page 31, footnote 23.

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### Annex

DG F III