

Proposal of the Commission COM(2008)0229

**Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL regarding public access to European Parliament, Council and Commission documents**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 255(2) thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>2</sup>,

Whereas:

(1) A number of substantive changes are to be made to Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>3</sup>. In the interest of clarity, that Regulation should be recast.

(2) The second subparagraph of Article 1 of the Treaty on European Union enshrines the concept of openness, stating that the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

(3) Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system. Openness contributes to strengthening the principles of democracy and respect for fundamental rights as laid down in Article 6 of the EU Treaty and in the Charter of Fundamental Rights of the European Union.

*(3a) Transparency should also strengthen the principles of good administration in the EU institutions as provided for by Article 41 of the Charter of Fundamental Rights of the European Union<sup>1</sup> ("the Charter"). Internal procedures should be defined accordingly and adequate financial and human resources should be made available to put the principle of openness into practice.*

<sup>1</sup> OJ C 302, 14.12.2007, p. 1.

~~(4) The general principles and the limits on grounds of public or private interest governing the public right of access to documents have been laid down in Regulation (EC) No 1049/2001, which became applicable on 3 December 2001<sup>4</sup>.~~

~~(5) A first assessment of the implementation of Regulation (EC) No 1049/2001 was made in a report published on 30 January 2004<sup>5</sup>. On 9 November 2005, the Commission decided to launch the process leading to the review of Regulation (EC) No 1049/2001. In a Resolution adopted on 4 April 2006, the European Parliament has invited the Commission to submit a proposal amending~~

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ L 145, 31.5.2001, p. 43.

<sup>4</sup> OJ L 145, 31.5.2001, p. 43.

<sup>5</sup> COM(2004) 45.

~~*the Regulation<sup>6</sup>. On 18 April 2007, the Commission published a Green Paper on the review of the Regulation<sup>7</sup> and launched a public consultation.*~~

(6) The purpose of this Regulation is to give the fullest possible effect to the right of public access to documents and to lay down the general principles and *the limits on the grounds of public or private interest which govern* such access in accordance with Article 255(2) of the EC Treaty *and taking into account the experience of the initial implementation of Regulation (EC) No 1049/2001 and of the resolution of the European Parliament of 4 April 2006 with recommendations to the Commission on access to the institutions' texts under Article 192 of the EC Treaty\**. *This Regulation is without prejudice to existing rights of access to documents for Member States, judicial authorities or investigative bodies.*

*\* OJ C 293 E, 2.12.2006, p. 151*

(7) Since the question of access to documents is not covered by provisions of the Treaty establishing the European Atomic Energy Community, the European Parliament, the Council and the Commission should, in accordance with Declaration No 41 attached to the Final Act of the Treaty of Amsterdam, draw guidance from this Regulation as regards documents concerning the activities covered by that Treaty.

(8) In accordance with Articles 28(1) and 41(1) of the EU Treaty, the right of access also applies to documents relating to the common foreign and security policy and to police and judicial cooperation in criminal matters. ~~*Each institution should respect its security rules.*~~

~~*(8a) The Council and the Commission act in their legislative capacity when, by associating the European Parliament, they adopt, even under delegated powers, rules of general scope which are legally binding in or for the Member States, by means of regulations, directives, framework decisions or decisions, on the basis of the relevant provisions of the Treaties.*~~

(9) The European Parliament and the Council adopted on 6 September 2006 Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters to Community institutions and bodies<sup>8</sup>. With regard to access to documents containing environmental information, this Regulation should be consistent with Regulation (EC) No 1367/2006.

(10) *The Community institutions and bodies should treat personal data in a fair and transparent way and in full compliance with the rights of data subjects as defined by 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 and by the case-law of the Court of Justice of the European Communities ("the Court of Justice"). The institutions should define their internal procedures, duly taking into account the recommendation of the European Data Protection Supervisor. Since the adoption of Regulation (EC) No 1049/2001 the case-law of the Court of Justice and decisions and positions adopted by the European Ombudsman and the European Data Protection Supervisor have clarified the relationship between that Regulation and Regulation (EC) No 45/2001, to the effect that it is Regulation (EC) No 1049/2001 which is to be applied to requests for documents containing personal data and that any application of the exceptions to the rules*

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<sup>6</sup> [...]

<sup>7</sup> COM(2007) 185.

<sup>8</sup> OJ L 264 , 25.9.2006, p. 13.

***allowing access to documents and information for the purpose of protecting personal data must be based on the need to protect the privacy and integrity of an individual.***

(11) Clear rules should be established regarding the disclosure of documents originating from the Member States and of documents of third parties which are part of judicial proceedings files or obtained by the institutions by virtue of specific powers of investigation conferred upon them by EC law.

***(12) In compliance with the democratic principles outlined in Article 6(1) of the EU Treaty and the case-law of the Court of Justice on the implementation of Regulation (EC) No 1049/2001, wider access should be granted to documents in cases where the institutions are acting in their legislative capacity, including under delegated powers. Legal texts should be drafted in a clear and understandable way<sup>1</sup> and published in the Official Journal of the European Union; preparatory documents and all related information, including legal opinions and the interinstitutional procedure, should be made easily accessible by citizens on the Internet in a timely manner.***

***Better law-making practices, drafting models and techniques as well as technical solutions to track the life-cycle of preparatory documents and to share them with the institutions and bodies associated in the procedure should be agreed by the European Parliament, the Council and the Commission in accordance with this Regulation and published in the Official Journal of the European Union.***

<sup>1</sup> ***Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation (OJ C 73, 17.3. 1999, p. 1).***

***(12a) Documents related to non- legislative procedures, such as binding measures without general scope or measures dealing with internal organisation, administrative or budgetary acts, or of a political nature (such as conclusions, recommendations or resolutions) should be easily accessible in compliance with the principle of good administration outlined in Article 41 of the Charter, while at the same time preserving the effectiveness of the institutions' decision-making process. For each category of document the institution responsible and, where appropriate, the other institutions associated should make accessible to citizens the workflow of the internal procedures to be followed, which organisational units could be in charge, as well their remit, the deadlines set and the office to be contacted. Special arrangements may be made with the interested parties in the procedure even when public access could not be granted; the institutions should duly take into account the recommendations of the European Ombudsman.***

***(12b) The institutions should agree on common guidelines as to the way in which to register their internal documents, to classify them and to archive them for historical needs according to the principles outlined in this Regulation. Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community\* should then be repealed.***

***\* OJ L 43, 15.2.1983, p. 1***

(13) Transparency in the legislative process is of utmost importance for citizens. Therefore, institutions should actively disseminate documents, which are part of the legislative process. Active dissemination of documents should also be encouraged in other fields.

***(13a) An interinstitutional register of lobbyists and other interested parties is a natural tool for the promotion of openness and transparency in the legislative process.***

(14) In order to ensure the full application of this Regulation to all activities of the Union, all agencies established by the institutions should apply the principles laid down in this Regulation. *All the other EU institutions are invited to adopt comparable measures in accordance with Article 1 of the EU Treaty.*

(15) *In order to develop the activities of the institutions in areas which require a degree of confidentiality, it is appropriate to establish a comprehensive security system covering the treatment of EU classified information. The term "EU classified" should mean any information and material the unauthorised disclosure of which could cause varying degrees of prejudice to EU interests, or to one or more of its Member States, whether such information originates within the EU or is received from Member States, third countries or international organisations. In accordance with the democratic principle outlined in Article 6(1) of the EU Treaty, the European Parliament should have access to EU classified information notably when such access is necessary for the performance of legislative or non-legislative duties conferred by the Treaties.*

(16) In order to bring about greater openness in the work of the institutions, access to documents should be granted by the European Parliament, the Council and the Commission not only to documents drawn up by the institutions, but also to documents received by them. A Member State may request *the European Parliament*, the Commission or the Council not to communicate to third parties *outside the institutions themselves* a document originating from that State without its prior agreement. *If such a request is not accepted, the institution which received the request should give the reasons for refusing it. According to Article 296 of the EC Treaty, no Member State is obliged to supply information the disclosure of which it considers contrary to the essential interests of its security.*

(17) In principle, all documents *drafted or received by* the institutions *and relating to their activities* should be *registered and* accessible to the public. However, *without prejudice to the European Parliament's scrutiny, access to the entire document or to part of it could be postponed.*

(18) *In accordance with Article 255(2) of the EC Treaty, this Regulation details the general principles and limits on grounds of public or private interest governing the right of access to documents with which all other EU rules should comply.*

*(18a) The institutions should ensure that the development of information technology makes it easier to exercise the right of access and does not result in a reduction in the amount of information available to the public.*

(19) In order to ensure that the right of *citizens'* access is fully respected, *and made easier:*  
– *the texts and information relating to legislative procedure should also be accessible by electronic means in the Official Journal, and preparatory documents should be accessible on an interinstitutional updated daily register providing each procedure with the relevant information/documents;*

– *the other documents or at least the relevant references should be accessible via an institution's register.* A two-stage administrative procedure should apply *for access to documents not directly accessible, whether or not they are classified.*

*An institution's refusal should be open to challenge in court or via a complaint to the European Ombudsman.*

*The institutions should endeavour to apply in a concerted way a policy for the re-use in the public domain of the EU institutions' related information, as is done by the Member States in*

*compliance with Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public-sector information*<sup>1</sup>.

<sup>1</sup> OJ L 345, 31.12.2003, p.90.

(20) *The institutions should in a consistent and coordinated way inform the public of the measures adopted to implement this Regulation and train their staff to assist citizens exercising their rights under this Regulation.*

(21) Even though it is neither the object nor the effect of this Regulation to amend national legislation on access to documents, it is nevertheless clear that, by virtue of the principle of loyal cooperation which governs relations between the institutions and the Member States, *the Member States should grant to their citizens at national level at least the same level of transparency as is granted at EU level when implementing EU rules.*

*By the same token and without prejudice to national parliamentary scrutiny, Member States should take care not to hamper the processing of EU classified documents.*

~~(22) This Regulation is without prejudice to existing rights of access to documents for Member States, judicial authorities or investigative bodies.~~

*(22a) By way of complementing this Regulation, the Commission should propose an instrument, to be adopted by the European Parliament and the Council, on common rules governing the re-use of information and documents held by the institutions which implements, mutatis mutandis, the principles outlined in Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public-sector information.*

(23) In accordance with Article 255(3) of the EC Treaty *and the principles and rules outlined in this Regulation* each institution lays down specific provisions regarding access to its documents in its rules of procedure,

HAVE ADOPTED THIS REGULATION:

## **Article 1**

Purpose

The purpose of this Regulation is:

(a) to define *in accordance with Article 255 of the EC Treaty*, the principles, conditions and limits on grounds of public or private interest governing the right of access to *documents of the* European Parliament, Council and Commission (hereinafter referred to as «the institutions») *as well as of all the Agencies and bodies created by those institutions* to grant the widest possible access to such documents;

(b) to establish rules ensuring the easiest possible exercise of this right

(c) to promote *transparent and* good administrative practice *in the institutions in order to improve* access to *their* documents.

**(ca) to set up by a joint decision of the European Parliament and of the Council, on a proposal by the Management Committee of the Publication Office of the EU<sup>1</sup>, the Official Journal of the European Union. On an interinstitutional basis, other tools such as public registers and**

specific administrative procedures ensuring the easiest possible exercise of this right shall be established.

*'See Article 7 of SEC(2008)2109.*

## Article 2

### Beneficiaries ~~and scope~~

1. Any natural or legal person *or any association of legal or natural persons* shall have a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.

~~2. This Regulation shall apply to all documents held by an institution, namely, documents drawn up or received by it and in its possession concerning a matter relating to the policies, activities and decisions falling within its sphere of responsibility, in all areas of activity of the European Union.~~

~~3. Without prejudice to Articles 4 and 9, documents shall be made accessible to the public either following a written application or directly in electronic form or through a register. In particular, documents drawn up or received in the course of a legislative procedure shall be made directly accessible in accordance with Article 12.~~

~~4. Sensitive documents as defined in Article 9(1) shall be subject to special treatment in accordance with that Article.~~

~~5. This Regulation shall not apply to documents submitted to Courts by parties other than the institutions.~~

~~6. Without prejudice to specific rights of access for interested parties established by EC law, documents forming part of the administrative file of an investigation or of proceedings concerning an act of individual scope shall not be accessible to the public until the investigation has been closed or the act has become definitive. Documents containing information gathered or obtained from natural or legal persons by an institution in the framework of such investigations shall not be accessible to the public.~~

~~7. This Regulation shall be without prejudice to rights of public access to documents held by the institutions which might follow from instruments of international law or acts of the institutions implementing them.~~

## Article 2a

### Scope

1. This Regulation shall apply to all documents held by an institution, that is to say documents drawn up or received by it and in its possession, in all areas of activity of the European Union.

2. Documents shall be made accessible to the public either in electronic form in the Official Journal of the European Union, or in an official institution's register or following a written application.

The documents drawn up or received in the course of a legislative procedure shall be made directly accessible in accordance with Article 5a.

**3. This Regulation shall be without prejudice to enhanced rights of public access to documents held by the institutions which might follow from instruments of international law or acts of the institutions implementing them or by the Member States' legislation.**

### **Article 3**

#### **Definitions**

**(a) 'document' shall mean any data or content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility; information contained in electronic storage, processing and retrieval systems (including external systems used for the institution's work) shall constitute a document or documents. An institution that intends to create a new electronic storage system, or to substantially change an existing system, shall evaluate the likely impact on the right of access provided for by this Regulation and act so as to promote the objective of transparency.**

**The functions for the retrieval of information stored in electronic storage systems by the institutions shall be adapted in order to satisfy repeated requests from the public which cannot be satisfied using the tools currently available for the exploitation of the system;**

**(aa) «classified documents» shall mean documents the disclosure of which could affect the protection of the essential interests of the European Union or of one or more of its Member States, notably in public security, defence and military matters, which may be classified, and which may be partially or totally classified;**

**(ab) 'legislative documents' shall mean documents drawn up or received in the course of procedures for the adoption of acts, including under delegated powers, which are of general scope, which are legally binding in or for the Member States and for the adoption of which the Treaty provides, even on a voluntary basis, for the intervention or association of the European Parliament;**

**(ac) «non- legislative documents» shall mean documents drawn up or received in the course of procedures for the adoption of non-binding acts, such as conclusions, recommendations or resolutions or acts which are legally binding in or for the Member States, but which are not of general scope as are the ones cited in point ab;**

**(ad) «administrative documents» shall mean documents relating to the institutions' decision-making process or measures dealing with organisational, administrative or budgetary matters which are internal to the institution concerned;**

**(ae) «archive» shall mean an institution's tool for managing in a structured way the registration of all the institution's documents referring to an ongoing or recently concluded procedure;**

**(af) «historical archives» shall mean that part of the archives of the institutions which has been selected, on the terms laid down in Article 3(1a), for permanent preservation;**

**(1 a) A detailed list of all the categories of the acts covered by the definitions in points (a) to (ad) shall be published in the Official Journal of the European Union and on the Internet sites of the institutions. The institutions shall also agree and publish their common criteria for archiving.**

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*be published in the Official Journal of the European Union and on the Internet sites of the institutions. The institutions shall also agree and publish their common criteria for archiving.*

(b) «third party» means any natural or legal person, or any entity outside the institution concerned, including the Member States, other Community or non-Community institutions and bodies and third countries.

### *Article 3a*

#### *Classified documents*

*1. When public grounds exist, and without prejudice to parliamentary scrutiny at European and national level, an institution shall classify a document where its disclosure would undermine the protection of the essential interests of the European Union or of one or more of its Member States.*

*Information shall be classified as follows:*

*(a) " EU TOP SECRET": this classification shall be applied only to information and material the unauthorised disclosure of which could cause exceptionally grave prejudice to the essential interests of the European Union or of one or more of its Member States;*

*(b) "EU SECRET ": this classification shall be applied only to information and material the unauthorised disclosure of which could seriously harm the essential interests of the European Union or of one or more of its Member States;*

*(c) "EU CONFIDENTIAL ": this classification shall be applied to information and material the unauthorised disclosure of which could harm the essential interests of the European Union or of one or more of its Member States;*

*(d) "EU RESTRICTED": this classification shall be applied to information and material the unauthorised disclosure of which could be disadvantageous to the interests of the European Union or of one or more of its Member States;*

*2. Information shall be classified only when necessary.*

*If possible, the originators shall specify on classified documents a date or period when the contents may be downgraded or declassified.*

*Otherwise, they shall review the documents at least every five years, in order to ensure that the original classification remains necessary.*

*The classification shall be clearly and correctly indicated, and shall be maintained only for as long as the information requires protection.*

*The responsibility for classifying information and for any subsequent downgrading or declassification rests solely with the originating institution or that which received the classified document from a third party or another institution.*

*3. Without prejudice to the right of access by other EU institutions, classified documents shall be released to third parties only with the consent of the originator.*

*However, the institution refusing such access shall give reasons for its decision in a manner which does not harm the interest protected under Article 4(1). When more than one institution is involved in the processing of a classified document, the same ground of classification shall be granted and mediation shall be initiated if the institutions have a different appreciation of the protection to be granted.*

*Documents relating to legislative procedures shall not be classified; implementing measures shall be classified before their adoption insofar as the classification is necessary and aimed at preventing an adverse effect on the measure itself. International agreements dealing with the sharing of confidential information are concluded on behalf of the European Union or of the Community and could not give any right to a third country or international organisation to*

*prevent the access from the European Parliament to confidential information.*

*4. Applications for access to classified documents under the procedures laid down in Articles 7 and 8 shall be handled only by those persons who have a right to acquaint themselves with those documents. Those persons shall also assess which references to classified documents could be made in the public register.*

*5. Classified documents shall be recorded in an institution's register or released only with the consent of the originator.*

*6. An institution which decides to refuse access to a classified document shall give the reasons for its decision in a manner which does not harm the interests protected by the exceptions laid down in Article 4(1).*

*7. Without prejudice to national parliamentary scrutiny, Member States shall take appropriate measures to ensure that, when handling applications for EU classified documents, the principles set out in this Regulation are respected.*

*8. The security rules of the institutions concerning classified documents shall be made public.*

*9. The European Parliament shall have access to classified documents through a special oversight committee composed of members appointed by its Conference of Presidents. These Members shall comply with a specific clearance procedure and solemnly swear not to reveal in any way the content of the information.*

*The European Parliament shall establish in its internal rules and in compliance with the obligations conferred by the Treaties, security standards and sanctions equivalent to the ones outlined in the Council and Commission Internal Security rules.*

#### **Article 4**

##### ***General exceptions to the right of access***

*1. Without prejudice to the cases dealt with in Article 3a, the institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards:*

*(a) internal public security of the European Union or of one or more of its Member States;*

*(b) defence and military matters;*

*(c) international relations;*

*(d) the financial, monetary or economic policy of the Community or a Member State;*

*(e) the environment, such as breeding sites of rare species.*

*2. The institutions shall refuse access to a document where disclosure would undermine the protection of **public or private interest linked to:***

*(a) commercial interests of a natural or legal person;*

*(b) intellectual property rights;*

*(b a) privacy and the integrity of the individual, in accordance with the relevant rules for the protection of personal data applicable to the institutions as laid down in Article 286 of the EC Treaty as well the principle of transparent and good administration outlined in Article 1(c);*

(c) legal advice and court proceedings, *except for legal advice in connection with procedures leading to a legislative act or a non-legislative act of general application*;

(d) the purpose of inspections, investigations and audits;

(e) the objectivity and impartiality of *public procurement* procedures *until a decision has been taken by the contracting institution, or of a Selection Board in proceedings leading to the recruitment of staff until a decision has been taken by appointing authority*.

~~3. Access to the following documents shall be refused if their disclosure would seriously undermine the decision-making process of the institutions:~~

~~(a) documents relating to a matter where the decision has not been taken;~~

~~(b) documents containing opinions for internal use as part of deliberations and preliminary consultations within the institutions concerned, even after the decision has been taken.~~

4. The exceptions under paragraphs (2) and (3) shall apply unless there is an overriding public interest in disclosure. *A strong public interest in disclosure exists where the requested documents have been drawn up or received in the course of procedures for the adoption of EU legislative acts or of non-legislative acts of general application. When balancing the public interest in disclosure, special weight shall be given to the fact that the requested documents relate to the protection of fundamental rights or the right to live in a healthy environment.*

*4a. Documents the disclosure of which would pose a risk to environmental protection values, such as the breeding sites of rare species, shall only be disclosed in conformity with Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies<sup>1</sup>.*

<sup>1</sup> OJ L 264, 25.9.2006, p. 13.

5. Names, titles and functions of public office holders, civil servants and interest representatives in relation with their professional activities shall be disclosed unless, given the particular circumstances, disclosure would adversely affect the persons concerned. Other personal data shall be disclosed in accordance with the conditions regarding lawful processing of such data laid down in EC legislation on the protection of individuals with regard to the processing of personal data.

6. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.

7. The exceptions as laid down in this Article *shall not apply to documents transmitted within the framework of procedures leading to a legislative act or a non-legislative act of general application. The exceptions* shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. In the case of documents covered by the *exception* relating to *privacy and the integrity of the individual*, the *exception* may, if necessary, continue to apply after this period.

*(7a) The exceptions as laid down in this Article shall not be interpreted as referring to information of public interest relating to the beneficiaries of European Union funds that is available within the framework of the financial transparency system.*

## **Article 5**

### ***Consultation of third parties***

1. As regards third-party documents, ***they shall be disclosed by the institutions without consulting the originator if it is clear that none of the exceptions in this Regulation are applicable. A third party shall be consulted if that party has requested, when handing in the document, that it be treated in a specific way, with a view to assessing whether an exception provided for in this Regulation is applicable. Documents provided to the institutions for the purpose of influencing policy-making should be made public.***

2. Where an application concerns a document originating from a Member State:

***- which has not been transmitted by that Member State in its capacity as a member of the Council, or***

***- which does not concern information submitted to the Commission concerning the implementation of EC legislation***

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 ***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.***

3. ***Without prejudice to national parliamentary scrutiny, where*** a Member State receives a request for a document in its possession, which originates 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 objectives of this Regulation. The Member State may instead refer the request to the institution.

## **Article 5 a**

### ***Legislative Transparency***

1. ***In compliance with the democratic principles outlined in Article 6 (1) of the EU Treaty and with the case-law of the Court of Justice on the implementation of Regulation (EC) No 1049/2001, institutions acting in their legislative capacity, including under delegated powers, shall grant the widest possible access to their activities.***

2. ***Documents relating to their legislative programmes, preliminary civil society consultations, impact assessments and any other preparatory document linked to a legislative procedure shall be accessible on a user-friendly interinstitutional site and published in a special series of the Official Journal of the European Union.***

3. ***In implementing this Regulation, legislative proposals as well other EU legal texts shall be drafted in a clear and understandable way and the institutions shall agree common drafting guidelines and models improving legal certainty in accordance with the relevant case-law of the Court of Justice.***

4. ***During the legislative procedure, each institution or body associated in the decision-making process shall publish its preparatory documents and all related information, including legal opinions, in a special series of the Official Journal of the European Union as well on a common Internet site reproducing the lifecycle of the procedure concerned***

5. ***Once adopted, legislative acts shall be published in the Official Journal of the European Union as provided for by Article 13***

6. ***By virtue of the principle of loyal cooperation which governs relations between the institutions and the Member States, the Member States shall grant to their citizens at national level at least the***

*same level of transparency as is granted at EU level by timely and clearly publishing in their respective official journals the texts or the references of the national measures implementing acts of the institutions of the European Union.*

*7. Any initiative or documents provided by any interested parties with a view to influencing the decision-making process in any way shall be made public.*

## **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 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.
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.
4. The institutions shall provide information and assistance to citizens on how and where applications for access to documents can be made.

## **Article 7**

### Processing of initial applications

1. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within ***a maximum of 15*** working days from registration of the 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 and inform the applicant of his or her right to make a confirmatory application in accordance with paragraph 4 of this Article.
2. 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 ***a maximum of 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, ***where the applicant calls into question whether any actual harm will be caused to the relevant interests and/or argues that there is an overriding interest in disclosure, the applicant may request the European Ombudsman to give an independent and objective view on the question of harm and/or overriding public interest. If, following delivery of the European Ombudsman's opinion, the total or partial refusal is upheld by the institution,*** the applicant may, within ***a maximum of 15*** working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.

## 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.
2. 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 **a maximum of 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.
4. 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.

## Article 9

### *Treatment of sensitive documents*

- ~~1. Sensitive documents are documents originating from the institutions or the agencies established by them, from Member States, third countries or International Organisations, classified as «TRÈS SECRET/TOP SECRET», «SECRET» or «CONFIDENTIEL» in accordance with the rules of the institution concerned, which protect essential interests of the European Union or of one or more of its Member States in the areas covered by Article 4(1)(a), notably public security, defence and military matters.~~
- ~~2. Applications for access to sensitive documents under the procedures laid down in Articles 7 and 8 shall be handled only by those persons who have a right to acquaint themselves with those documents. These persons shall also, without prejudice to Article 11(2), assess which references to sensitive documents could be made in the public register.~~
- ~~3. Sensitive documents shall be recorded in the register or released only with the consent of the originator.~~
- ~~4. An institution which decides to refuse access to a sensitive document shall give the reasons for its decision in a manner which does not harm the interests protected in Article 4.~~
- ~~5. Member States shall take appropriate measures to ensure that when handling applications for sensitive documents the principles in this Article and Article 4 are respected.~~
- ~~6. The rules of the institutions concerning sensitive documents shall be made public.~~

~~7. The Commission and the Council shall inform the European Parliament regarding sensitive documents in accordance with arrangements agreed between the institutions.~~

## Article 10

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.
2. If a document 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.
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.
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. *In the case of printouts or documents in electronic format based on information contained in electronic storage, processing and retrieval systems, the actual cost of searching for and retrieving the document or documents may also be charged to the applicant. No additional charge shall be made if the institution has already produced the document or documents concerned. The applicant shall be informed in advance of the amount and method of calculating any charge.*

## Article 11

Registers

1. To make citizens' rights under this Regulation effective, each institution shall provide public access to a register of documents. Access to the register should be provided in electronic form. References to documents shall be recorded in the register without delay.
2. For each document the register shall contain a reference number (including, where applicable, the interinstitutional reference), the subject matter and/or a short description of the content of the document and the date on which it was received or drawn up and recorded in the register. References shall be made in a manner which does not undermine protection of the interests in Article 4.
3. *Without prejudice to the internal rules of the institutions, the register or system of registers (in the case of multiple registers for the same institution) of each institution shall in particular contain references to:*
  - *incoming and outgoing documents, as well as the official mail of the institution where such mail falls within the definition set out in Article 3(a),*
  - *agendas and summaries of meetings and documents prepared before meetings for circulation, as well as other documents circulated during meetings.**Each institution shall:*
  - *by ... \*, adopt and publish internal rules concerning the registration of documents,*
  - *by ... \*\*, ensure that its register is fully operational.*

*\* Six months from the date of entry into force of this Regulation.*

*\*\* One year from the date of entry into force of this Regulation.*

## **Article 12**

Direct access to documents

***-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***

***1. 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.***

***2. Where possible, other documents, notably documents relating to the development of policy or strategy, shall be made directly accessible in electronic form .***

***3. Where direct access is not given through the register, the register shall as far as possible indicate where the document is located.***

***4. The institutions shall establish a common interface for their registers of documents, and shall in particular ensure a single point of access for direct access to documents drawn up or received in the course of procedures for the adoption of legislative acts or non-legislative acts of general application.***

## **Article 13**

Publication in the Official Journal

***1. In accordance with the principles outlined in this Regulation, the institutions shall agree on the structure and presentation of the Official Journal of the European Union by taking into account the pre-existing interinstitutional agreement.***

In addition to the acts referred to in Article 254(1) and (2) of the EC Treaty and the first paragraph of Article 163 of the Euratom Treaty, the following documents shall, subject to Articles 4 of this Regulation, be published in the Official Journal:

***(a)*** common positions adopted by the Council in accordance with the procedures referred to in Articles 251 and 252 of the EC Treaty and the reasons underlying those common positions, as well as the European Parliament's positions in these procedures;

***(b)*** Directives other than those referred to in Article 254(1) and (2) of the EC Treaty, decisions other than those referred to in Article 254(1) of the EC Treaty, recommendations and opinions;

***(c)*** conventions signed between Member States on the basis of Article 293 of the EC Treaty;

***(d)*** international agreements concluded by the Community or in accordance with Article 24 of the EU Treaty.

***(e)*** common positions referred to in Article 34(2) of the EU Treaty;

*(f) framework decisions and decisions referred to in Article 34(2) of the EU Treaty;*

*(g) conventions established by the Council in accordance with Article 34(2) of the EU Treaty;*

*2. Each institution shall agree the way in which other institutions and bodies shall publish documents other than the ones mentioned above.*

## **Article 14**

### **Information**

1. Each institution shall take the requisite measures to inform the public of the rights they enjoy under this Regulation.
2. The Member States shall cooperate with the institutions in providing information to the citizens.

### *Article 14 a*

#### *Information Officer*

- 1. Each directorate-general within each institution shall appoint an Information Officer who shall be responsible for ensuring compliance with the provisions of this Regulation and good administrative practice within that directorate-general.*
- 2. The Information Officer shall determine which information it is expedient to give the public concerning:*
  - a) the implementation of this Regulation;*
  - b) good practice**and shall ensure the dissemination of that information in an appropriate form and manner.*
- 3. The Information Officer shall assess whether the services within his or her directorate-general follow good practice.*
- 4. The Information Officer may redirect the person who requires the information to another directorate if the information in question falls outside its remit and within the remit of a different directorate within the same institution, provided that he or she is in possession of such information.*
- 5. When needed, the Information Officer may consult the European Ombudsman in relation to the proper and sound implementation of this Regulation*

### *Article 14 b*

#### *Sanctions*

*Any failure to comply with the obligations under this Regulation, whether intentionally or through negligence on his or her part, shall make an official or other servant of the institutions liable to disciplinary action, in accordance with the rules and procedures laid down in the Staff Regulations of Officials of the European Communities and the Conditions of Employment of other servants of the European Communities and in the institutions' internal rules.*

## **Article 15**

**Administrative *transparency* practice in the institutions**

1. The institutions shall develop good administrative practices in order to facilitate the exercise of the right of access guaranteed by this Regulation. ***The institutions shall organise and maintain the information in their possession in such a way that the public may be granted access to the information without additional effort.***

***1a. In order to ensure that the principles of transparency and good administration are effectively applied, the institutions concerned shall agree on common implementing rules and procedures for the presentation, classification, declassification, registration and dissemination of documents.***

***In order to facilitate a genuine debate among the players involved in the decision-making process and without prejudice to the principle of transparency, the institutions shall make clear to citizens if and when, during the specific phases of the decision-making process, direct access to documents may not be granted. These limitations shall not apply once that decision has been taken.***

***1b. The institutions shall inform citizens, in a fair and transparent way, about their organisational chart by indicating the remit of their internal units, the internal workflow and indicative deadlines of the procedures falling within their remit, to which services may citizens refer to obtain support, information or administrative redress.***

2. The institutions shall establish an interinstitutional *Article 255* committee to examine ***and exchange*** best practice, ***identify access and usability barriers and unpublished data sources***, address possible conflicts, ***promote interoperability, re-use and merger of registers, standardise document coding through a European standards organisation, create a single EU portal to ensure access to all EU documents*** and discuss future developments on public access to documents.

## **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.

## **Article 17**

### Reports

Each institution shall publish annually a report for the preceding year including the number of cases in which the institution refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register.

***1a. At the latest by ....., the Commission shall publish a report on the application of the principles of this Regulation and shall make recommendations including, if appropriate, proposals for the revision of this Regulation which are necessitated by changes in the current situation and an action programme of measures to be taken by the institutions.***

## **Article 18**

### Repeal

Regulation (EC) No 1049/2001 is repealed with effect from [...].

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,