



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 19 January 2010

5461/10

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

INF 7
API 7
CODEC 24

NOTE

from : General Secretariat of the Council
to : Delegations

No. prev. doc.: 9200/08 + COR 1 INF 103 API 23 JUR 192 CODEC 946 (COM(2008) 229 final)

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

Delegations will find attached an explanatory note from the Commission concerning the alignment of the proposal for a Recast of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents with the provisions of Article 15(3) of the Treaty on the Functioning of the European Union.

EXPLANATORY NOTE

Subject: Recast of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents - Alignment with the Treaty on the Functioning of the European Union

With the entry into force of the Lisbon Treaty, the legal base of Regulation (EC) No 1049/2001 has changed as well as the institutional scope of the public right of access to documents.

The Commission has included its proposal for a recast of Regulation (EC) No 1049/2001 [COM(2008) 229 final] in its Communication on the consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures [COM(2009) 665] in order to reflect the changes introduced by the new Treaty, namely:

- the legal base is now Article 15(3) of the Treaty on the Functioning of the European Union;
- the public right of access shall apply to documents of all institutions, bodies, offices and agencies of the EU; however, the Court of Justice, the European Central Bank and the European Investment Bank shall be subject to this provision only when exercising their administrative tasks.

On the basis of the abovementioned Communication, the legislator (Parliament and Council) may amend the legislative proposal presented by the Commission in 2008 accordingly in their future work and in particular in Parliament's resolution or the Council's common position. Since the changes are of a formal nature, they do not otherwise affect the Commission's proposal. Therefore, the Commission holds the view that there is no need to present an amended proposal in order to align it to the Lisbon Treaty. If, however, it appears that the legislative procedure for the adoption of the Commission's recast proposal cannot be concluded within a reasonable time frame, the Commission will consider the possibility to submit a limited proposal amending the current Regulation (EC) No 1049/2001 only with regard to the changes introduced by Article 15(3) of the Treaty on the Functioning of the European Union.
