

Communication de la Commission sur les suites données aux avis et résolutions adoptés par le Parlement européen lors de la session de décembre 2011

ORDINARY LEGISLATIVE PROCEDURE – First reading

European Parliament legislative resolution on the proposal for a regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (recast)

1. **Rapporteur:** Michael CASHMAN (S&D/UK)
2. **EP reference number:** A7-0426/2011 / P7_TA-PROV(2011)0580
3. **Date of adoption of the resolution:** 15 December 2011
4. **Subject:** The Commission has proposed on 30 April 2008 an update of the Regulation as part of its "European Transparency Initiative", also taking into account a resolution from the European Parliament of April 2006, in which the Commission was invited to propose changes to the Regulation. Since the legislative procedure was stalled for a long period of time, the Commission made a second proposal on 30 March 2011, limited at making Regulation 1049/2001 compliant with the TFEU.
5. **Inter-institutional reference number:** 2008/0090(COD) and 2011/0073(COD)
6. **Legal basis:** Article 15(3) TFEU
7. **Competent Parliamentary Committee:** Committee on Civil Liberties, Justice and Home Affairs (LIBE)
8. **Commission's position:**

The Commission regrets that the Parliament did not follow its proposal to adopt the 2011 proposal in order to make the current Regulation compliant with the Treaty and to pursue in parallel discussions on further possible changes.

The Commission does not, at this stage, take a position on amendments 1 to 26, which concern the recitals, the drafting of which depends on the content of the operative part.

The following amendments touch upon parts of the Regulation which the Commission did not propose to amend. In the Commission's view, they are not compliant with the Inter-institutional Agreement on Recasting:

Amendments 31, 37, 39, 41, 42, 44, 45, 47 to 49, 51 to 57, 62 to 66, 68 and 69.

However, the Commission could be willing to take into consideration amendments 47, 48, 51, 52, 53, 56, 57, 64, 68 and 69 at a later stage, pending further developments.

The Commission can accept amendments 26, 27, 28, 33, 34, 46, 59, 60 and 61, even if subject to redrafting in some cases.

Amendments 36 and 40 deserve to be considered, but cannot be accepted in the present form. The relevant provisions should not be in contradiction with the Staff Regulations (am. 36) and the case law on personal data protection in *Commission v Bavarian Lager* (am. 40).

The Commission cannot accept the other amendments for the following reasons:

Amendment 29: the Commission's proposal intends to protect important public and private interests, notably, the integrity of investigations and the fundamental rights of third parties in such investigations; Parliament has failed to take this into account.

Amendment 30: extending the scope to external databases would include 'documents' which are neither in the institutions' possession nor within their sphere of responsibility.

Amendment 32: The protection of public security should not be limited to the interests of the EU or its Member States. In any event, EU interests can be affected in third countries (e.g. delegations and humanitarian missions).

Amendment 35: Parliament disregards the need to protect the great number of legal opinions, not related to Court proceedings; this amendment goes far beyond the case law of the Court of Justice in *Council v Turco (C-39/05 P)* and *MyTravel (C-506/08 P)*.

Amendment 38: the amendment goes far beyond the purpose of the Commission's proposal, which is to comply with the Aarhus Convention.

Amendment 43: the amendment would severely reduce the Member States' ability to object to disclosure of documents originating from them; it is contrary to the case law in *Sweden v Commission (C-64/05 P)*.

Amendment 50: time limits must be realistic; the experience of the Commission shows that, given the complexity of applications and the large volumes of documents requested, 15 working days is too short for handling confirmatory applications.

Amendment 58: pro-active disclosure of all non-legislative documents creates a disproportionate administrative burden, as many of the procedures to which such documents relate concern individual decisions.

Amendment 67: the purpose of the Commission's proposal is to increase transparency by creating the possibility for third parties to take cognizance of the content of a document which cannot be given out for reasons of the protection of intellectual property

rights; given the importance of the right to property (a fundamental right) the alternative is to deny access altogether.

9. Outlook for amendment of the proposal: the Commission intends to review its proposal after the Council will have adopted a common position.

10. Outlook for the adoption of the Council's position: given the great number of amendments, many of which are controversial for a majority of Member States, it is difficult to predict how the Council will react.