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# **DRAFT REPORT**

on public access to documents (Rule 116(7)) in 2014 and 2015  
(2015/2287(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Laura Ferrara

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on public access to documents (Rule 116(7)) in 2014 and 2015 (2015/2287(INI))

*The European Parliament,*

- having regard to Articles 1, 10, 11, and 16 of the Treaty on European Union (TEU) and Articles 15 and 298 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Articles 41 and 42 of the EU Charter of Fundamental Rights,
- having regard to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup>,
- having regard to the judgment of 17 October 2013 in Case C-280/11 P, *Council of the European Union v Access Info Europe*,
- having regard to the Commission’s ‘Better Regulation’ package submitted in May 2015,
- having regard to President Juncker’s Political Guidelines for the Commission,
- having regard to the Commission, Council, and Parliament reports on the application of Regulation (EC) No 1049/2001 in 2013 and 2014,
- having regard to Rule 52 and Rule 116(7) of its Rules of Procedure,
- having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A8-0000/2015),

### **Transparency and democracy**

1. Points out that the actions of the institutions and EU policies have to be based on participatory democracy, thus ensuring compliance with the principles of full transparency, sharing, and informing citizens accurately and in good time;
2. Points out that it is the duty of the institutions to carry on a continuing open, transparent dialogue with civil society so as to enable citizens to bring scrutiny directly to bear on the different stages of decision-taking – allowing them to become more actively involved in the decision-making process – and on the legitimacy and effectiveness of governance and measures taken;
3. Points out that transparency and full access to documents held by the institutions have to be the rule, in accordance with Regulation (EC) No 1049/2001, and that, as has already been laid down by the precedents consistently set by the EU Court of Justice, exceptions to that rule have to be properly interpreted, taking into account that there is an overriding public interest in disclosure;

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<sup>1</sup> OJ L 145, 31.5.2001, p. 43.

4. Notes that in order to bring about a legitimate, accountable democratic political system complying with the rule of law, citizens must have the right to know about, and scrutinise, the actions of their representatives, the decision-making process, the way in which public money is apportioned and spent, and the ensuing outcomes;
5. Deplores the fact that it is still difficult for citizens to gain access to information held by EU institutions, the reason being that there is no effective citizen-oriented interinstitutional policy based on complete transparency, communication, and direct democracy; urges the institutions to take a proactive attitude by disclosing as many of their documents as possible in as simple and accessible a way as possible for the public, having documents translated into all of the EU official languages, and establishing proper information access arrangements allowing for the needs of people with disabilities;
6. Urges all the institutions, pending its desired revision, to apply Regulation (EC) No 1049/2001 in the proper manner; calls on the Council in particular to revise its rules, with a view to ensuring that all discussions, documents, and information are made public, and to produce transcripts of its public meetings;

#### **Revision of Regulation (EC) No 1049/2001**

7. Points out that, as a result of the entry into force of the TEU and the TFEU, the right of access to documents covers all EU institutions, bodies, and agencies; believes, therefore, that the substance of Regulation (EC) No 1049/2001 should be amended in the light of the relevant case law of the EU Court of Justice and the European Court of Human Rights;
8. Notes that the Treaty of Lisbon has done away with the reference to safeguarding the efficiency of legislative decision-taking;
9. Deplores the failure to implement Regulation (EC) No 1049/2001 as regards the obligation for the institutions to keep complete registers of documents; calls for a European policy on registers to be established and for implementing measures to standardise the classification and presentation of the institutions' documents;
10. Considers it regrettable that the revision of Regulation (EC) No 1049/2001 is stalled in the Council and hopes that progress will be achieved as soon as possible;

#### **Transparency of the legislative process**

##### *'Trilogues'*

11. Points out that transparent law-making is of the utmost importance to citizens; calls on the institutions actively to circulate documents forming part of, or related to, legislative procedures and to improve communication with persons who might wish to obtain them; considers in particular that the EU institutions should, by default, make as many documents as possible accessible to the public via a single publicly accessible common portal making for ease of consultation;
12. Welcomes the Ombudsman's inquiry into 'trilogues', the established practice by which

most EU legislation is adopted; urges the Ombudsman to make full use of her powers of investigation under the Treaties;

13. Points out that the use of trilogues is not consistent with the legislative procedure laid down in the Treaty and that conciliation committees may be used only at third reading as a last resort;
14. Deplores the fact that citizens have no power to supervise trilogue negotiations; expresses concern at the abuses to which this legislative practice might lead, in particular as regards the role of lobbies and possible disparities in the treatment of persons seeking to keep abreast with developments in European legislation;
15. Calls on the institutions involved to ensure in future that negotiations will be transparent and, to that end, to allow meetings to be held in public and webstreamed and to arrange for agendas, minutes, and the main issues discussed to be published;

#### *Mandatory lobby register*

16. Welcomes the Commission's intention of proposing an interinstitutional agreement establishing a mandatory interinstitutional register of interest group representatives operating within the institutions and calls for that matter to be given the highest priority;
17. Also calls on Parliament and the Council to follow the Commission practice, as established by the decision of 25 November 2014, by publishing information about contacts between lobbyists and Members of Parliament, their office staff, and their advisers, and between lobbyists and Member State representatives working at the Council;

#### *Delegated acts*

18. Points out that, in accordance with Regulation (EC) No 1049/2001 and in order to guarantee full democratic and transparent parliamentary control, access should likewise be granted to documents produced when powers are delegated (delegated acts), since these make up a substantial portion of European legislation; considers it disappointing that no register of delegated acts has yet been established and calls on the Commission to set one up without delay;

#### *International agreements*

19. Notes that international agreements have binding force and an impact on EU legislation and points to the need for negotiations to be transparent throughout the entire process, implying that the institutions should be obliged to publish the negotiating brief conferred on the Commission; considers it regrettable that negotiations are secret and citizens have no access to information, but only to documents communicated to the press, thus giving rise to speculation and misconceptions about the negotiations; maintains that the public should be given access to all of the parties' relevant negotiating documents, in keeping with Regulation (EC) No 1049/2001;
20. Points out to the Commission that it is required to inform Parliament fully and immediately at every stage while negotiations are taking place;

### **Transparency of the administrative process**

21. Points out that transparency strengthens, and helps to give effect to, the principle of good administration, as set out in Article 41 of the Charter and Article 298 TFEU; calls, therefore, for internal administrative procedures to be laid down in order to achieve that aim;
22. Calls on the EU institutions to draw up common rules governing the conduct of administrative procedures and the procedures for presenting, classifying, declassifying, registering, and disclosing administrative documents;

### **Infringement procedures**

23. Deplores the lack of transparency regarding infringement procedures; calls in particular for documents sent by the Commission to Member States in connection with such procedures, and the related replies, to be made accessible to the public;

### **Management of the Structural Funds**

24. Maintains that information about negotiations on national and regional operational programmes has to be made fully accessible and genuinely transparent;
25. Calls on the Commission to tighten up its supervision in order to make managing authorities comply with the information and reporting obligations set out in Regulation (EU) No 1303/2013 and, if necessary, to impose the penalties applicable for non-fulfilment of those obligations;
26. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States, the Ombudsman, the Data Protection Supervisor, and the Council of Europe.