

# EUROPEAN PARLIAMENT

1999



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*Session document*

FINAL  
**A5-0349/2001**

15 October 2001

## **REPORT**

on the adaptation of the Rules of Procedure to the Regulation (EC)  
No.1049/2001 of the European Parliament and of the Council regarding public  
access to documents  
(2001/2135(REG))

Committee on Constitutional Affairs

Rapporteur: Hanja Maij-Weggen



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## PROCEDURAL PAGE

At the sitting of 5 July 2001 the President of Parliament announced that by letter of 29 June 2001 she had consulted the Committee on Constitutional Affairs as the committee responsible on the adaptation of the Rules of Procedure to the Regulation (EC) No 1049/2001 of the European Parliament and the Council regarding public access to documents and that the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had been asked for its opinion (2001/2135(REG)).

At its meeting of 12 June 2001 the Committee on Constitutional Affairs decided to draw up a report and appointed Hanja Maij-Weggen rapporteur.

It considered the draft report at its meetings of 11 July, 13 September and 11 October 2001 .

At the last meeting it adopted the proposal for a decision by 25 votes to 1, with no abstention.

The following were present for the vote: Giorgio Napolitano, chairman, Ursula Schleicher, vice-chairman; Hanja Maij-Weggen, rapporteur; Teresa Almeida Garrett, Jan Andersson (for Manuel António dos Santos), Enrique Barón Crespo, Pervenche Berès (for Olivier Duhamel), Georges Berthu, Guido Bodrato (for François Bayrou), Jens-Peter Bonde, Elmar Brok (for Christopher J.P. Beazley), Carlos Carnero González, Richard Corbett, Giorgos Dimitrakopoulos, Andrew Nicholas Duff, Monica Frassoni, José María Gil-Robles Gil-Delgado, Michel Hansenne (for Luigi Ciriaco De Mita), The Lord Inglewood (for Lennart Sacrédeus), Sylvia-Yvonne Kaufmann, Jo Leinen, Cecilia Malmström, , Iñigo Méndez de Vigo, Jacques F. Poos (for Hans-Peter Martin), Joachim Wuermeling (for The Earl of Stockton) and Michael Cashman (for Dimitris Tsatsos) pursuant to Rule 153(2)).

The opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs is attached.

The report was tabled on 15 October 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

# PARLIAMENT'S RULES OF PROCEDURE

Present text

Proposed new text

## Amendment 1 Rule 28 (1)

### Accountability of the Bureau, the Conference of Presidents and the Quaestors

1. The minutes of the Bureau and the Conference of Presidents shall be translated into the official languages, printed and distributed to all Members of Parliament, unless the Bureau or the Conference of Presidents exceptionally, for reasons of confidentiality, *decides otherwise*.

1. The minutes of the Bureau and the Conference of Presidents shall be translated into the official languages, printed and distributed to all Members of Parliament ***and are publicly accessible***, unless the Bureau or the Conference of Presidents exceptionally, for reasons of confidentiality, ***as enumerated in paragraphs 1-4 of Article 4 of Regulation (EC) 1049/2001 decides otherwise with regard to certain points of the minutes***.

### *Justification*

*Since the entry into force of the new rules on transparency "confidentiality" as a reason to restrict information and access to documents (the minutes concerned are "EP documents") is defined exhaustively by Article 4 of the Regulation. It does no longer exist as a reason of secrecy of its own.*

## Amendment 2 Rule 171 (1)

### Transparency of Parliament's activities

1. Parliament shall ensure the utmost transparency of its activities in line with the provisions of ***Article 1*** of the EU Treaty.

1. Parliament shall ensure the utmost transparency of its activities, in line with the provisions of ***Articles 1, 3(2), 28(1) and 41(1)*** of the EU Treaty ***Article 255 of the EC Treaty and Article 42 of the Charter of Fundamental Rights of the European Union***.

*Justification*

*The added provisions make clear that Parliament is willing to realise the constitutional principle of transparency in its broad meaning ( access to documents is one element of it ) within its competence and with respect to all three "pillars".*

(Amendment 3)

Rule 171, paragraph 3

Transparency of Parliament's activities

3. Committees shall normally meet in public. Committees may decide, however, at the latest when the agenda of the meeting in question is adopted, to divide the agenda for a particular meeting into items open to the public and items closed to the public.

3. Committees shall normally meet in public. Committees may decide, however, at the latest when the agenda of the meeting in question is adopted, to divide the agenda for a particular meeting into items open to the public and items closed to the public. ***If a meeting is closed, documents and minutes from the meeting may only be withheld from public access in accordance with paragraphs 1-4 of Article 4 of the Regulation.***

*Justification*

*To clarify that access to committee meetings and access to committee documents have to be distinguished.*

Amendment 4

Rule 171, paragraph 4 (new)

Transparency of Parliament's activities

***4. Consideration by the committee responsible of requests for waiver of immunity pursuant to Rule 6 shall always take place in camera.***

Amendment 5  
Rule 172(1)  
Public access to documents

**1. *The necessary measures shall be adopted by Parliament on a proposal from the Bureau to ensure that the public have access to Parliament documents in conformity with Article 255 of the EC Treaty, and any acts adopted pursuant thereto.***

**1. *European citizens and natural or legal persons residing or having its registered office in a Member State have a right of access to Parliament documents in conformity with Article 255 of the EC Treaty, subject to the principles, conditions and limits laid down in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 ( hereinafter "the Regulation") and pursuant to the specific provisions contained in these Rules of Procedure.***

***Access to Parliament documents shall as far as possible be granted to other natural or legal persons in the same way.***

***The Regulation shall be published for information alongside the Rules of Procedure.***

*Justification*

*This amendment replaces amendment 4 of the draft report. It takes into account amendment 13 Frassoni/Voggenhuber and the fact that Article 2(2) of the Regulation gives the institutions the discretionary power to grant access to documents also to non-EU-citizens. It takes on board furthermore suggestions which were made to make sure that the Regulation is accessible in the same way as the Rules of Procedure.*

Amendment 6  
Rule 172, paragraph 2  
Public access to documents

**2. *Unless a committee decides otherwise, its documents shall be made public. Their status shall be clearly indicated.***

**2. *For the purposes of access to documents, the expression "Parliament documents" means any content within the meaning of Article 3(a) of the Regulation, which has been drawn up or received by Officers of Parliament, Parliament's governing bodies, standing committees or interparliamentary delegations, or by the Secretariat of***

***Parliament.***

***Documents drawn up by individual Members or political groups are Parliament documents for the purposes of access to documents if they are tabled under the Rules of Procedures.***

***The Bureau shall lay down rules to ensure that all Parliament documents are recorded.***

*Justification*

*This amendment tabled by the rapporteur expresses in a more explicit way and without changes to the substance, what is said in Amendment 5 of the draft report with regard to Rule 172(2), first subparagraph.*

Amendment 7  
Rule 172 (3)

Public access to documents

***3. All Parliament documents covered by the provisions of paragraph 1 shall be included in a public register. The rules governing this register shall be decided by the Bureau.***

***3. The EP shall create a register of Parliament documents. Legislative documents and other documents as indicated in an Annex to these Rules shall be made directly accessible in accordance with Regulation 1049/2001 through the EP register. References for other Parliament documents shall as far as possible be included in the register.***

***Categories of documents which are directly accessible are to be set out in a list to be adopted by the Parliament and to be annexed to these Rules. This list does not restrict the right of access to documents not falling under the categories listed.***

***Parliament documents not directly accessible through the EP register shall be made available on written application.***



***The Bureau may adopt rules, consistent with the Regulation, governing the modalities of access which will be published in the Official Journal.***

#### *Justification*

*Experience shows that the bulk of documents requested are of a public nature anyway. In order to simplify procedures and also to give officials the certainty to deal in conformity with their duty of confidentiality ( Article 287 of the EC Treaty and Article 17 of the Staff Rules ) a list of generally accessible documents ( "White List" ) seems to be useful. It should be made clear however that this list is not exhaustive.*

*All documents not covered by this list would have to be dealt with along the procedure of articles 6 to 8 or the special procedure for "sensitive" = secret documents under article 9.*

*Rule 172 (3) concerning a register of documents has to be developed and adapted to the more ambitious goals of the Regulation. The Regulation puts a deadline for the register to become operational on the 3 June 2002. Having this in mind and given the large definition of the "document" it seems appropriate to limit the documents to be registered in the way suggested here.*

#### Amendment 8 Rule 172 (4) (new)

#### Public access to documents

***4. The Bureau shall determine the authorities in charge of handling initial applications ( Article 7 of the Regulation), and the Bureau shall adopt decisions on confirmatory applications (Article 8 of the Regulation) and applications for sensitive documents (Article 9 of the Regulation).***

#### *Justification*

*These questions have to be settled in order to comply with the Regulation and to make the new system work. They should be settled in the form of Bureau decisions and not in the Rules themselves.*

Amendment 9  
Rule 172(5) (new)

Public access to documents

***5. The Conference of Presidents shall designate Parliament representatives to the interinstitutional committee to be established pursuant to Article 15(2) of the Regulation.***

*Justification*

*The Conference of Presidents is the authority responsible for the matters relating to relations with the other institutions of the European Union (Rule 24).*

Amendment 10  
Rule 172, paragraph 6 (new)

***6. One of the Vice-Presidents shall be responsible for supervision of the handling of applications for access to a document.***

Amendment 11  
Rule 172 (7) (new)

Public access to documents

***7. The committee responsible shall, on the basis of information provided by the Bureau and other sources, prepare the annual report mentioned in Article 17 of the Regulation and submit it to the plenary.***

***The committee responsible shall also examine and evaluate the reports adopted by the other institutions and agencies***

*pursuant to Article 17 of the Regulation.*

*Justification*

*Implementation of Article 17 of the Regulation.*

Amendment 12

Rule 173

Confidentiality

***On the basis of a proposal from the committee responsible, and without prejudice to Rules 28, 151, and 179 and Annexes VII and VIII, Parliament shall adopt criteria for the definition of confidential information and documents.***

***Delete***

*Justification*

*The "criteria for the definition of confidential information and documents" are laid down in Articles 2, 3 and 4 of Regulation 1049/2001. These provisions are exhaustive, binding in their entirety and directly applicable (Article 249 TEC).*

*Rule 173 is therefore superseded.*

Amendment 13

ANNEX VII

Procedure for the consideration of confidential documents communicated to the European Parliament

Public access to documents

1. When information or documents are communicated to Parliament under cover of confidentiality, the chairman of the committee responsible shall automatically apply the confidential procedure laid down in paragraph 3 below.

***1. Confidential documents shall mean documents and information which may be excluded from public access by virtue of Article 4 of Regulation (EC) 1049/2001 and shall include sensitive documents as defined in Article 9 of that Regulation.***

***Where the confidential nature of documents received by the Parliament is questioned by one of the European institutions, the matter shall be referred to the interinstitutional committee established pursuant to Article 15(2) of Regulation (EC) 1049/2001.***

When *confidential* documents are communicated to Parliament under cover of confidentiality, the chairman of the committee responsible shall automatically apply the confidential procedure laid down in paragraph 3 below.

***Further rules concerning the protection of confidential information shall be adopted by the plenary on the basis of a proposal from the Bureau and shall be annexed to the Rules of Procedure. These rules shall take account of contacts with the Commission and Council.***

#### *Justification*

*The procedure laid down in Annex VII applies in the first place to the handling of documents "communicated under the cover of confidentiality" in Parliament and not to the access of the public to such documents. Given the restrictions for making copies etc. and the sanctions foreseen for Members and staff in case of "breach of confidentiality, this annex in reality prohibits also to give access to the documents concerned to the public.*

*The annex is however not in conformity with the Regulation which allows restrictions of access only by way of reference to the exceptions enumerated in Article 4 and does not allow a special restrictive treatment of documents for the mere reason that they are communicated "under the cover of confidentiality".*

*The same considerations apply mutatis mutandis to annex III to the framework agreement on relations with the Commission which covers "confidential information", qualified by the Commission as such, without any restriction or reference to criteria. This agreement, adopted on 5 July 2000 by a simple majority vote in plenary and "appended" to the Rules pursuant to Rules 54 and 186(c), could be and would have to be renegotiated.*

## PROPOSAL FOR A DECISION

### European Parliament decision amending Parliament's Rules of Procedure

*The European Parliament,*

- having regard to the letter of 29 June 2001 from its President,
  - having regard to Article 255 of the EC Treaty, Articles 28 (1) and 41 (1) of the EU Treaty and Articles 42 and 52 (2) of the Charter of Fundamental Rights of the European Union,
  - having regard to Rule 181 of its Rules of Procedure,
  - having regard to the report of the Committee on Constitutional Affairs and the opinion of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0349/2001),
1. Decides to amend its Rules of Procedure as indicated above;
  2. Decides to revoke Bureau decisions of 10 July 1997 on public access to Parliament documents and of 17 April 1998 on fees to be paid for delivery of very large documents;
  3. Instructs its President to forward this decision to the Council and Commission, for information.

## EXPLANATORY STATEMENT

As a result of demands formulated by the European Parliament and others earlier, the Amsterdam Treaty has explicitly introduced the concept of openness into the EU Treaty, both by guaranteeing that there is a right of access to EU documents, and by stating that EU decisions must be taken as openly as possible and as closely as possible to the citizen.

The Treaties in their present form contain a provision expressing this concept . It is Article 255 par. 1 of the EC Treaty introduced by the Treaty of Amsterdam:

"Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3."

The concept has been incorporated with the same wording in the Charter of Fundamental Rights of the European Union<sup>1</sup>, chapter V, Citizen's Rights, as Article 42.

The "principles and conditions" referred to in Article 255, paragraph 2 of the EC Treaty have been defined by Parliament and Council just in time<sup>2</sup>. They shall be applicable from 3 December 2001<sup>3</sup>

### **1. Scope and general content of the report**

The mandate for this report derives directly from the EC-Treaty, Article 255(3):

"Each institution referred above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents."  
and

from the Regulation 1049/2001, article 18 (1):

"Each institution shall adapt its rules of procedure to the provisions of this Regulation. The adaptation shall take effect from 3 December 2001."<sup>4</sup>

The report therefore will have to deal with matters which are currently covered by the following provisions:

1. Chapter XXII of the Rules "Openness and Transparency" (Rules 171-173);

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<sup>1</sup> as signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission at the European Council meeting in Nice on 7 Decmeber 2000

<sup>2</sup> Regulation (EC) No.1049/2001 of 30 May 2001 regarding public access to European parliament, Council and Commission documents, OJ L 145 of 31 May 2001, page 43

<sup>3</sup> Article19 of the Regulation

<sup>4</sup> This applies in the same way to the Council as the relevant provision, Article 207 (3) of the EC-Treaty, refers expressly to Article 255 (3) of the EC-Treaty.

2. Bureau decision of 10 July 1997 on public access to Parliament documents (published as "decision of the EP" in the Official Journal L 263 of 25.9.1997);
3. Bureau decision of 17 April 1998 on fees to be paid for delivery of very large documents (OJ L 135/46 of 8.5.1998);
4. Annex VII to the Rules "Procedure for the consideration of confidential documents communicated to the EP" and
5. Framework Agreement on the Relations between the EP and the Commission of 5 July 2000, annex 3 (doc. C5-0349/2000).

The report has to contain a "proposal for a decision on amendments to Parliament's Rules of Procedure" to be adopted with the votes of a majority of the component Members of Parliament (Art. 199 (1) TEC, Rule 181 (2) ).

These amendments are to constitute the "foundation and the shell of the building", the "completion of the interior" will have to follow.

## **2. Points to be addressed**

### **2.1 Definition of "European Parliament"**

It has to be made clear which bodies and parts of Parliament are covered and have to abide by the new rules.

It could be argued that individual Members should be generally excluded, but the specificity of Parliament is that it "consists of representatives of the peoples of the States" (art. 189(1) TEC), that the Members are the "constituents" of Parliament.

On the other hand the mandate of the Members is independent, their independence emphasised and protected by Article 4 (1) of the Act concerning the election of the representatives of the European Parliament by direct universal suffrage of 1976: "Representatives shall vote on an individual and personal basis. They shall not be bound by any instructions and shall not receive a binding mandate", principle repeated by Rule 2 of the Rules of Procedure.

Article 4 (1) of the draft Statute for Members of the European Parliament adopted by Parliament pursuant to Article 190 (5) TEC on 3 December 1998<sup>1</sup> expresses the same idea in the following terms: "Members of the European Parliament shall vote independently. They shall not be bound by instructions or by any mandate".

The Member does not "owe" Parliament any services comparable to a civil servant and does not have to render account for them. Under the national law of the Member States,

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<sup>1</sup> Resolution A4-0426/1998, confirmed by resolutions of 5 May and 27 October 1999

Members of Parliament may regularly refuse to give evidence concerning persons who have confided facts to them in their capacity as Members, or to whom they have confided facts in such capacity, as well as concerning these facts themselves.<sup>1</sup>

The right of access to documents held or drawn up by individual Members and, *mutatis mutandis*, by political groups has therefore to be construed in a restrictive way. The solution suggested in this report is to limit it to the point where the Member's activity enters into the "sphere of Parliament" falling under the Rules of Procedure (Amendment 6).

## 2.2 Definition of "document"

The definition given in article 3(a) of the Regulation is extremely large. The original proposal excluded "texts for internal use".

The AFCO opinion contained the following restriction:

"document shall not mean informal information which serves the provision of personal opinion or the free exchange of ideas ("brain storming") within the institutions;"<sup>2</sup>

The EP position taken on the 16. November 2000<sup>3</sup> was similar:

"document shall not mean informal information in the form of written messages designed to enable personal opinions to be given or ideas to be freely exchanged ("brain storming") within the institutions;"

The definition in the Regulation is however in the world and has to be observed. It cannot be restricted by way of "specific provisions" in the Rules of procedure because these Rules are to implement not to "correct" the provisions of the Regulation.

## 2.3 Handling of "applications"

There are two options with regard to the internal organisation of Parliament: Create a central fonction to deal with all demands coming in or leave the first decision with the service which holds the document concerned.

Experience shows that a centralised solution tends to lengthen the procedure and create additional administrative burdens. The initial decision could therefore be left with the services (head of division) which are in the possession of the document concerned. "Confirmatory applications" in the sens of article 8 should be dealt with by the Bureau (Amendment 8).

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<sup>1</sup> See as an example Article 47 of the German Basic Law

<sup>2</sup> PE 286.966 of 18 October 2000

<sup>3</sup> amendments adopted in plenary without final vote A5-0318/2000, Minutes of the sitting, part two; see also "consolidated legislative document" PE 297.811 (draft), Article 5;



## **2.4 Treatment of "sensitive documents" in the area covered by exception 4(1) a) "public interest" of the Regulation (Article 9 of the Regulation)**

Requests concerning this type of documents should be handled from the beginning by the Bureau (Amendment 8).

This issue is connected to but not identical with the questions dealt with in annex 3 to the Framework Agreement with the Commission. This text deals with the transmission to and handling of confidential Commission documents within Parliament. It says however under 3.2 that the publication or transmission of such information to "other addressees" is prohibited. On the other hand the annex does not define or restrict the right of the Commission to declare documents "confidential" which is incompatible with article 9 of the Regulation. Article 9 allows for a classification as "secret" or other only in the areas covered by the exception mentioned in article 4 (1) a) whereas annex 3 to the framework agreement covers "confidential information" of the Commission without any restriction.

The framework agreement has been attacked by Members before the Court of first instance (case Stauner a.o. v EP and COM of 6.9.2000, still pending). If it is annulled the problem is resolved. If not, Parliament would have to ask for an adaptation of the agreement to the new legal situation. As it stands, the agreement places the EP in a less favorable situation than the common citizen.

The agreement could be modified without modifying the Rules themselves because it does not form a part of them.

It has been adopted by a simple majority vote and "appended" to the Rules pursuant to Rules 54 and 186 (c).

## **2.5. Annex VII, "consideration of confidential documents communicated to the EP"**

Similar considerations as in the preceding point are relevant here:

The procedure applies at first glance only to the handling of documents "communicated to Parliament under cover of confidentiality" within the Parliament.

By way of the prohibitions to make copies etc. and the sanctions foreseen for Members and staff in case of "breach of confidentiality" (paragraphs 4. and 5.) this annex prohibits however also to give access to the documents concerned to the public.

This however is not in conformity with the Regulation which allows restrictions of access only by way of a specific reference to the exceptions enumerated in Article 4 and does not allow a special treatment of documents for the mere reason that they have been communicated "under cover of confidentiality".

The annex has to be adapted to the new legal situation (Amendment 13).

## **2.6. Register ( art. 11 and 12 of the Regulation )**

This register has to be operational by 3 June 2002. The Rules should mandate the Bureau with the necessary technical preparations. At least all types of documents contained in the white list mentioned before, should appear in the electronically accessible register. Rule 172 (3) has to be reworded accordingly (Amendment 7).

## **2.7. Interinstitutional committee ( art.15(2) of the Regulation)**

Under Article 15(2) of the Regulation, an interinstitutional committee must be established. It must be set up as soon as possible and be tasked with examining best practice for addressing possible conflicts and discussing future developments on public access to documents (Amendment 9).

## **2.8. Reports (art. 17 of the Regulation)**

The Rules could charge the committee responsible with the preparation of the annual report pursuant to article 17(1). It has to be noted however that the number of formal applications might be limited. Since the entry into force of the existing decision of 10 July 1997 the services of Parliament in no single case had to take a formal decision. The annual report therefore should deal also with the overall situation in the Union (Amendment 11).

## **2.9. Existing decisions**

The existing Bureau decisions of 10. July 1997 and 17. April 1998 have to be revoked by the decision of Parliament modifying its Rules because they do not correspond to the new legal situation. Parliament can revoke decisions taken by internal bodies of a lower level (Proposal for a decision, point 2.).

10 October 2001

**OPINION OF THE COMMITTEE ON CITIZENS' FREEDOMS AND RIGHTS,  
JUSTICE AND HOME AFFAIRS**

for the Committee on Constitutional Affairs

on the adaptation of the Rules of Procedure to the Regulation (EC) No.1049/2001 of the European Parliament and of the Council regarding public access to documents (2001/2135(REG))

Draftsman: Michael Cashman

**PROCEDURE**

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Michael Cashman draftsman at its meeting of 11 July 2001.

It considered the draft opinion at its meetings of 27 August 2001, 12 September, 2001 and 10 October 2001.

At the last meeting it adopted the following amendments by 25 votes to 0, with 1 abstention.

The following were present for the vote: Graham R. Watson chairman; Robert J.E. Evans vice-chairman; Michael Cashman draftsman; Charlotte Cederschiöld, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Jorge Salvador Hernández Mollar, Anna Karamanou, Margot Keßler, Ole Krarup, Rodi Kratsa-Tsagaropoulou (for Thierry Cornillet), Alain Krivine (for Pernille Frahm), Hartmut Nassauer, Elena Ornella Paciotti, Hubert Pirker, Martine Roure (for Martin Schulz), Gerhard Schmid, Ilka Schröder (for Alima Boumediene-Thiery pursuant to Rule 153(2)), Patsy Sørensen, Sérgio Sousa Pinto, Joke Swiebel, Anna Terrón i Cusí, Astrid Thors (for Baroness Sarah Ludford pursuant to Rule 153(2)), Gianni Vattimo and Christian Ulrik von Boetticher .

## AMENDMENTS

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following amendments in its report:

Present text of Rules

Proposed new text

### Amendment 1 Rule 28 (1)

#### Accountability of the Bureau, the Conference of Presidents and the Quaestors

1. The minutes of the Bureau and the Conference of Presidents shall be translated into the official languages, printed and distributed to all Members of Parliament, unless the Bureau or the Conference of Presidents exceptionally, for reasons of confidentiality, *decides otherwise*.

1. The minutes of the Bureau and the Conference of Presidents shall be translated into the official languages, printed and distributed to all Members of Parliament ***and are publicly accessible***, unless the Bureau or the Conference of Presidents exceptionally, for reasons of confidentiality, ***as enumerated in paragraphs 1-4 of Article 4 of Regulation (EC) 1049/2001 decides otherwise with regard to certain points of the minutes***.

#### *Justification*

*Since the entry into force of the new rules on transparency "confidentiality" as a reason to restrict information and access to documents (the minutes concerned are "EP documents") is defined exhaustively by Article 4 of the Regulation. It no longer exists as a reason of secrecy of its own.*

### Amendment 2 Rule 171 (1)

#### Transparency of Parliament's activities

1. Parliament shall ensure the utmost transparency of its activities in line with the provisions of **Article 1** of the EU Treaty.

1. Parliament shall ensure the utmost transparency of its activities, in line with the provisions of **Articles 1, 3(2), 28(1) and 41(1)** of the EU Treaty **Article 255 of the EC Treaty and Article 42 of the**

***Charter of Fundamental Rights of the European Union.***

*Justification*

*The additional provisions make it clear that Parliament is willing to realise the constitutional principle of transparency in its broad meaning ( access to documents is one element of it ) within its competence, and with respect to all three "pillars".*

Amendment 3

Rule 171, paragraph 3 (new)

3. Committees shall normally meet in public. Committees may decide, however, at the latest when the agenda of the meeting in question is adopted, to divide the agenda for a particular meeting into items open to the public and items closed to the public.

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*Justification*

*To clarify that access to committee meetings and access to committee documents have to be distinguished.*

Amendment 4

Rule 172 (1)

Public access to documents

***1. The necessary measures shall be adopted by Parliament on a proposal from the Bureau to ensure that the public have access to Parliament documents in conformity with Article 255 of the EC Treaty, and any acts adopted pursuant thereto.***

***1. European citizens and natural or legal persons residing or having its registered office in a Member State have a right of access to Parliament documents in conformity with Article 255 of the EC Treaty , subject to the principles, conditions and limits laid down in Regulation (EC) No 1049/2001 of the***

**Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 (" Regulation") and pursuant to the specific provisions contained in these Rules.**

**Access to Parliament documents shall as far as possible be granted to other natural or legal persons in the same way.**

**The Regulation shall be published for information alongside the Rules of Procedure.**

### *Justification*

*New wording because the "act adopted", referred to in Rule 172(1) exists now. The idea that the implementation measures should be taken "on a proposal from the Bureau" has been dropped; the Bureau will be charged instead of the elaboration of more detailed rules concerning the internal organisation of Parliament with regard to access to documents.* Amendment 5

### *Rule 172 (2)*

**2. Unless a committee decides otherwise, its documents shall be made public. Their status shall be clearly indicated.**

**2. For the purposes of access to documents, the expression "Parliament document" means any content within the meaning of Article 3(a) of the Regulation which has been drawn up or received by Officers of Parliament, Parliament's Governing Bodies, standing committees or interparliamentary delegations or by the Secretariat of Parliament.**

**Documents drawn up by individual Members or political groups are Parliament documents for the purposes of access to documents if they are tabled under the Rules of Procedure.**

**The Bureau shall lay down rules to ensure that all Parliament documents are recorded.**

*Justification*

*As neither the Treaty nor the Regulation give a definition, for the sake of clarity and legal certainty, the "specific provisions" have to contain one.*

*As this definition is a key element for the internal application of the Regulation it should be formulated and appear in the Rules themselves.*

Amendment 6  
Rule 172 (3)

***3. All Parliament documents covered by the provisions of paragraph 1 shall be included in a public register. The rules governing this register shall be decided by the Bureau.***

***3. The EP shall create a register of Parliament documents. Legislative documents and other documents as indicated in an Annex to these Rules shall be made directly accessible in accordance with Regulation 1049/2001 through the EP register. References for other Parliament documents shall as far as possible be included in the register.***

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***The Bureau may adopt rules, consistent with the Regulation 1049/2001, governing the modalities of access which will be published in the Official Journal.***

*Justification*

*Experience shows that the bulk of documents requested are of a public nature anyway. In order to simplify procedures and also to give officials the certainty to deal in conformity with*

*their duty of confidentiality ( Article 287 of the EC Treaty and Article 17 of the Staff Rules ) a list of generally accessible documents ( "White List" ) seems to be useful. It should be made clear however that this list is not exhaustive.*

*All documents not covered by this list would have to be dealt with along the procedure of articles 6 to 8 or the special procedure for "sensitive" = secret documents under article 9.*

*Rule 173 (3) concerning a register of documents has to be developed and adapted to the more ambitious goals of the Regulation. The Regulation puts a deadline for the register to become operational on the 3 June 2002. Having this in mind and given the large definition of the "document" it seems appropriate to limit the documents to be registered in the way suggested here.*

Amendment 7  
Rule 172 (4) (new)

***4. The Bureau shall determine the authorities in charge of handling initial applications ( Article 7 of the Regulation), and the Bureau shall adopt decisions on confirmatory applications (Article 8 of the Regulation) and applications for sensitive documents (Article 9 of the Regulation).***

*Justification*

*These questions have to be settled in order to comply with the Regulation and to make the new system work. They should be settled in the form of Bureau decisions and not in the Rules themselves.*

Amendment 8  
Rule 172(5) (new)

***5. One of the Vice-Presidents shall be responsible for supervision of the handling of applications for access to documents.***



*Justification*

*Responsibility for access to documents should be established at a high political level.*

Amendment 9  
Rule 172 (6) (new)

***6. The committee responsible shall, on the basis of information provided by the Bureau and other sources, prepare the annual report mentioned in Article 17 of the Regulation and submit it to the plenary.***

***The committee responsible shall also examine and evaluate the reports adopted by the other institutions and agencies pursuant to Article 17 of the Regulation.***

*Justification*

*Implementation of Article 17 of the Regulation.*

Amendment 10

ANNEX VII Procedure for the consideration of confidential documents communicated to the European Parliament

1. When information or documents are communicated to Parliament under cover of confidentiality, the chairman of the committee responsible shall automatically apply the confidential procedure laid down in paragraph 3 below.

***1. Confidential documents shall mean documents and information which may be excluded from public access by virtue of Article 4 of Regulation (EC) 1049/2001 and shall include sensitive documents as defined in Article 9 of that Regulation.***

***Where the confidential nature of documents received by the Parliament is questioned by one of the European institutions, the matter shall be referred to the interinstitutional committee.***

***established pursuant to Article 15(2) of Regulation (EC) 1049/2001.***

When ***confidential*** documents are communicated to Parliament under cover of confidentiality, the chairman of the committee responsible shall automatically apply the confidential procedure laid down in paragraph 3 below.

***Further rules concerning the protection of confidential information shall be adopted by the plenary by simple majority on the basis of a proposal from the Bureau and shall be annexed to the Rules of Procedure. These rules shall take account of contacts with the Commission and Council.***

#### *Justification*

*The procedure laid down in Annex VII applies in the first place to the handling of documents "communicated under the cover of confidentiality" in Parliament and not to the access of the public to such documents. Given the restrictions for making copies etc. and the sanctions foreseen for Members and staff in case of "breach of confidentiality", this annex in reality prohibits also to give access to the documents concerned to the public.*

*The annex was however not in conformity with the Regulation which allows restrictions of access only by way of reference to the exceptions enumerated in Article 4 and does not allow a special restrictive treatment of documents for the mere reason that they are communicated "under the cover of confidentiality".*

*The same considerations apply mutatis mutandis to annex III to the framework agreement on relations with the Commission which covers "confidential information", qualified by the Commission as such, without any restriction or reference to criteria. This agreement, adopted on 5 July 2000 by a simple majority vote in plenary and "appended" to the Rules pursuant to Rules 54 and 186(c), could be and would have to be renegotiated.*

Amendment 11

Rule 173

Confidentiality

***Delete***

***On the basis of a proposal from the committee responsible, and without prejudice to Rules 28, 151, and 179 and Annexes VII and VIII, Parliament shall adopt criteria for the definition of confidential information and documents.***

### *Justification*

*The "criteria for the definition of confidential information and documents" are laid down in Articles 2, 3 and 4 of Regulation 1049/2001. These provisions are exhaustive, binding in their entirety and directly applicable (Article 249 TEC).*

*Rule 173 is therefore superseded.*