

EXPLANATORY MEMORANDUM

1. BACKGROUND

1.1. Implementation of the public right of access to documents

Article 255 of the Treaty establishing the European Community, as amended by the Treaty of Amsterdam, grants citizens of the European Union and natural or legal persons residing or having their registered office in a Member State, a right of access to European Parliament, Council and Commission documents. The principles and limits governing this right of access have been determined by Regulation (EC) No 1049/2001¹ regarding public access to European Parliament, Council and Commission documents, which became applicable on 3 December 2001.

In a report on the implementation of the Regulation, published on 30 January 2004, the Commission concluded that it had worked remarkably well. Therefore, it considered that there was no need to amend the Regulation in the short term, since it would in any case need to be reviewed after the entry into force of the Treaty establishing a Constitution for Europe.

1.2. Reasons for reviewing the existing Regulation

On 9 November 2005, the Commission decided to launch the “European Transparency Initiative”², a drive towards more transparency which included a review of the Regulation.

The European Parliament on its side has asked the Commission to come forward with proposals for amending the Regulation in a Resolution adopted on 4 April 2006³.

In the meantime, on 6 September 2006, the European Parliament and the Council adopted a new Regulation applying the Convention of Århus⁴ to the institutions and bodies of the European Community, which interacts with Regulation 1049/2001 as regards access to documents containing environmental information.

Regulation 1049/2001 has now been applied for six years, during which the institutions have gained more experience in implementing it. Furthermore, a body of case law has developed and a number of complaints have been settled by the European Ombudsman. The institutions are, therefore, in a position to reassess the working of the Regulation and to amend it accordingly.

¹ OJ L 145 of 31.5.2001, page 43

² Minutes of the Commission's meeting No 1721 of 9 November 2005, item 6; see also documents SEC(2005) 1300 and SEC(2005) 1301

³ P6_A(2006) 052

⁴ Convention on Access to Information, public Participation in Decision-making and Access to Justice in environmental Matters, done at Århus, Denmark, on 25 June 1998

Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Århus Convention to Community institutions and bodies, OJ L 264 of 25.9.2006, page 13

As a first step in the review process, the Commission published on 18 April 2007 a Green Paper, which formed the basis for a public consultation on the issue⁵. The outcome of this consultation was summarised in a report published in January 2008.

2. ISSUES CONSIDERED IN THE REVIEW PROCESS

2.1. Resolution of the European Parliament of 4 April 2006

In its above-mentioned Resolution of 4 April 2006, Parliament has formulated five recommendations, which the Commission has duly considered when drafting the present proposal.

2.1.1. Scope of the legal basis and purpose of the Regulation:

According to Parliament, the preamble of the Regulation should clarify that Article 255 EC Treaty is the legal basis for implementing the principles of openness and proximity and the pivotal legal basis for transparency and confidentiality.

Since Article 255 concerns public access to documents, the Commission proposes to clarify the purpose of the Regulation accordingly in Article 1.

2.1.2. Full legislative transparency

All preparatory documents to legal acts should be directly accessible to the public.

This recommendation is fully accepted and addressed in Article 12.

2.1.3. Rules on confidentiality

Parliament recommended to define rules for classification of documents in the Regulation and to ensure parliamentary control over the application of such rules and its access to such documents.

Classification of documents does not per se exclude them from the public right of access. Therefore, the Commission considers that specific rules on classification and on the handling of classified material should not be laid down in a Regulation on public access.

2.1.4. Access to Member State documents

Parliament asked to limit and to better define the ability of Member States to oppose disclosure of their documents.

The Court of Justice has handed down a judgment on this issue (see below point 2.3.2), which is being addressed in the new Article 5(2).

⁵ Green Paper "Public Access to Documents held by institutions of the European Community - A review" COM (2007) 185 final

2.1.5. *Registers and rules for archiving*

Parliament recommends setting up a single access point to preparatory legislation, a common interface to the institutions' registers and common rules archiving documents.

The Commission fully agrees with this recommendation. However, it can be implemented without amending the Regulation.

2.2. **Outcome of the Public Consultation**

The response to the questions submitted to the public consultation may be summarised as follows⁶. In the present proposal, the Commission has taken into account the views of the majority of the respondents for each of the issues raised in the Green Paper.

2.2.1. *Active dissemination:*

Registers and websites should be easier to access and more harmonised. The scope of the Commission's registers should be extended. Citizens would welcome a more proactive disclosure policy.

Active transparency on legislation is being addressed in Article 12. Article 11 and the amended Article 12 provide an appropriate legal basis for registers and websites that are more comprehensive and easier to access.

2.2.2. *Aligning Regulation 1049/2001 with the Århus Convention:*

The proposal to align the Regulation with the provisions on access to environmental information (Regulation 1367/2006 implementing the Århus Convention) has widely been supported. Reservations were voiced mainly by environmental NGOs and by the chemical and biotechnological sectors.

The alignment is reflected in the amended Articles 4(2) and 5 (2).

2.2.3. *The protection of personal data:*

The current practice, blanking out names and other personal data in documents to be disclosed, has been perceived as too restrictive, in particular where persons act in a public capacity. The Court of First Instance has ruled on this issue (see below point 2.3.1).

The relevant provision has been redrafted accordingly in the new Article 4(4).

⁶ A full report on the outcome of the consultation has been published on 16 January 2008 in a Commission Staff Working Document [SEC(2008) 29/2]; all contributions are posted on the dedicated website http://ec.europa.eu/transparency/revision/index_en.htm

2.2.4. *The protection of commercial interests:*

The general feeling is that the current rules strike the right balance. Journalists, NGOs and a majority of citizens claim that more weight should be given to the interest in disclosure.

Therefore, the Commission does not propose to amend this provision.

2.2.5. *The handling of excessive requests:*

A slight majority of Member States and the private sector support specific measures derogating from the normal rules when dealing with excessive requests. Member States insist that such measures should be based on objective criteria. The Ombudsman, an important minority of Member States and NGOs are opposed to specific rules on excessive requests.

The Commission does not propose a provision for rejecting requests that may be qualified as excessive. Instead, it is proposed to extend the ability to request clarifications under Article 6(2) to cases where the requested documents cannot be easily identified.

2.2.6. *The concept of "document"*

As regards the general feeling is that the current wide definition should be maintained. A clarification with regard to databases as suggested in the Green Paper would be welcomed.

A more precise definition is given in the amended Article 3(a).

2.2.7. *Time frames for the application of exceptions*

The suggestion to define events before which documents would not be accessible has not given much support. On the other hand, systematic disclosure of documents after specific events and well before the 30-year limit for opening the archives has been welcomed. Experience has shown, however, that access must systematically be refused to documents pertaining to judicial or quasi-judicial proceedings before a public hearing has taken place or a final decision has been adopted. This has also been confirmed by the case law (see point 2.3.3).

The Commission proposes to adjust Article 2

2.2.8. *Scope of the Regulation*

Many respondents to the Green Paper called for an extension of the scope of the Regulation to all EU institutions, bodies and agencies.

Such an extension is not possible under the current Treaty, but will be achieved when the Treaty on the Functioning of the Union will enter into force.

2.2.9. *Access to Documents originating from Member States*

This issue was also raised by some respondents, as it was in Parliament's Resolution (see above point 2.1.4). It has, in the meantime, been clarified by a judgment of the Court of Justice (see point 2.3.2).

2.3. **Recent Case Law**

In a series of judgments, the Court of First Instance and the Court of Justice have ruled on some major issues regarding the application of the Regulation, which are being addressed in this proposal.

2.3.1. *Access to personal data*

In its judgment of 8 November 2007 in the Bavarian Lager case⁷, the Court of First Instance interpreted the exception regarding the protection of personal data and considered the relationship between Regulation 1049/2001 and the Regulation on data protection⁸.

The relation between the Regulations on public access and on the protection of personal data is being clarified in the new Article 4(4).

2.3.2. *Access to documents originating from a Member State*

On 18 December 2007, the Court of Justice annulled the judgment of the Court of First Instance of 30 November 2004 in a case concerning the right of Member States to oppose disclosure by the institutions of documents originating from them⁹.

The existing provision in Article 4(5) is replaced by the new Article 5(2).

2.3.3. *Applicability of exceptions before and after a specific event*

In its judgment of 13 April 2005 in a case concerning access to a cartel file¹⁰, the Court of First Instance ruled that, in principle, an institution receiving an application for access to documents must carry out a concrete, individual assessment of the content of the documents referred to in the request. However, such an individual assessment might not be required if, due to the particular circumstances of the case, the documents requested are manifestly covered by an exception to the right of access. In a recent judgment, the Court considered that written submission to the Courts were manifestly covered by the exception aimed at protecting court proceedings before an oral hearing has taken place¹¹.

⁷ Case 194/04, *The Bavarian Lager Company Ltd v Commission*, not yet reported

⁸ 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, OJ L 8 of 12.1.2001, p. 1

⁹ Case C-64/05 P, *Sweden and others v Commission*, not yet reported, appeal against the judgment of the CFI in case T-168/02, *International Fund for Animal Welfare v Commission*, [2004] ECR, p. II-4135

¹⁰ Case T-2/03, *Verein für Konsumenteninformation v Commission*, [2005] ECR, p. II-1121

¹¹ Judgment of the CFI of 12 September 2007, case T-36/04, *Association de la Presse Internationale asbl v Commission*, not yet reported

New provisions have been added under Article 2 (5) and (6).

3. PROPOSED AMENDMENTS TO REGULATION 1049/2001

3.1. Purpose and Beneficiaries of the Regulation - Articles 1 and 2

The wording in Article 1(a) is slightly modified to clarify that the purpose of the Regulation is to grant public access to documents. This is consistent with the legal base and has been confirmed by the case law of the Court of First Instance¹².

The right of access will be granted to any natural or legal person, regardless of nationality or State of residence. This makes the Regulation consistent with the provisions of Regulation 1367/2006 on access to information in environmental matters¹³. Article 2(1) is amended accordingly and Article 2(2) is repealed.

3.2. Scope and Definitions – Articles 2 and 3

It is specified in Article 2(3) that the Regulation applies to all documents held by an institution concerning a matter relating to the policies, activities and decisions falling within its sphere of responsibility. In the present text this precision is mentioned under the definition of "document" in Article 3(a). However, this is related to the scope of the Regulation rather than to the definition of the concept of "document".

A new paragraph 6 is added to Article 2 defining the status of documents submitted to Courts in the course of judicial proceedings. Such submissions are not accessible to the public before a public oral hearing has taken place. Furthermore, institutions will only grant access to their own submissions. It is worth noting that judicial activities are excluded from the right of public access under Article 255 of the EC Treaty and will remain excluded under the relevant provisions of the Lisbon Treaty.

Access to documents related to the exercise of the Commission's quasi-judicial powers should be excluded until the relevant decision has become definitive. During this investigation phase, only the specific rules in this field will apply. The Regulations governing competition and antidumping proceedings contain provisions regarding privileged rights of access for interested parties and provisions on publicity¹⁴. These rules would be undermined if the public were to be granted wider access under Regulation 1049/2001. Information obtained from undertakings in the course of such investigations continues to be protected after the relevant decision has become definitive.

The wide definition of the concept of "document" in Article 3(a) is maintained. However, a "document" only exists if it has been sent to recipients or circulated within the institution and has been entered in the institutions' records. On the other

¹² Judgment of 6 July 2006, joined cases T-391/03 and T-70/04, *Franchet and Byk v Commission*, ECR [2006], p. II-2023

¹³ see footnote 5

¹⁴ see Articles 27, 28 and 30 of Regulation 1/2003 (competition) and Articles 6(7) and 14(2) of Regulation 384/96 (antidumping)

hand, the definition of "document" should also include data contained in electronic systems insofar as these can be extracted in readable form.

In view of the particular status afforded to documents originating from Member States, a definition of such documents is given in a new paragraph (c).

3.3. Exceptions – Article 4

The exception aimed at protecting the environment, laid down in Article 6(2) of Regulation 1367/2006 is added under Article 4(1) of Regulation 1049/2001 in order to align this Regulation with the provisions stemming from the Aarhus Convention. For reasons of clarity the indents are replaced with letters.

Also with a view of aligning the Regulation with the Aarhus Convention, the exception aimed at protecting commercial interests in Article 4(2) will not apply to information on emissions which is relevant for the protection of the environment. As a consequence, the protection of intellectual property rights is mentioned as a separate exception.

The concept of "court proceedings" is reformulated as "proceedings in litigation", thus clarifying that the exception aims at protecting proceedings of a judicial nature before an independent body with dispute settlement powers. Since the protection of legal advice is not only related to litigation, this exception is mentioned separately for reasons of clarity.

A new exception is added aimed at protecting procedures leading to the selection of staff or of contracting parties. Transparency in these areas is regulated by the Staff Regulations and by the Financial Regulation. The proper functioning of selection boards and evaluation committees should be safeguarded.

Article 4(3) is reworded for reasons of clarity but is not altered on substance.

Articles 4(4) and 4(5) are moved to Article 5, since they contain procedural rules rather than exceptions.

Article 4(1) (b) regarding access to personal data is moved to a new Article 4(4) and reformulated in order to clarify the relationship between Regulations 1049/2001 and 45/2001 (protection of personal data).

3.4. Consultations with Third Parties – Article 5

The new Article 5(2) lays down the procedure to be followed where access is requested to documents originating from a Member State. The Member State must be consulted; if it gives reasons for not disclosing the requested documents, based on Regulation 1049/2001 or on relevant similar and specific rules in its national legislation, the institution will deny access to these documents. This new provision takes into account the judgment of the Court of Justice in the appeal case C-64/05 P (see section 1.5.2 above).

3.5. Procedural Rules – Articles 6, 7, 8 and 10

Article 6(2) is amended in order to take into account cases where the requested documents cannot be easily identified.

A provision is added to Article 7 and 8, specifying that the time limit for a reply starts to run when the institutions has received the clarifications requested under Article 6(2).

In Article 8, the time limit for handling a confirmatory application is extended to 30 working days, with a possibility for a further extension with 15 working days. Experience has shown that it is almost impossible to handle a confirmatory application within 15 working days. The handling of a confirmatory application requires more time since such an application leads to a formal decision of the institution, for which strict procedural rules apply.

A new paragraph is added to Article 10, clarifying that, where specific modalities for access are laid down in EU or national law, these must be respected. This is particularly the case where access is submitted to the payment of a fee, which is a source of income for the body that produced the documents or if documents can only be consulted in a "reading room" in order to safeguard intellectual property rights.

3.6. Active Dissemination – Article 12

This provision is redrafted with the purpose of granting direct access to documents, which are part of procedures leading to the adoption of EU legislative acts or non-legislative acts of general application. Such documents should be made accessible by the institutions from the outset, unless an exception to the public right of access clearly applies.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EC) No 1049/2001 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 Commission¹⁵,

Having regard to the opinion of the European Economic and Social Committee¹⁶,

Having regard to the opinion of the Committee of the Regions¹⁷,

Acting in accordance with the procedure laid down in Article 251 of the Treaty¹⁸,

Whereas:

- (1) Article 255 of the Treaty establishing the European Community grants any citizen of the Union and any natural or legal person residing or having its registered office in a Member State a right of access to European Parliament, Council and Commission documents, subject to principles and conditions to be defined.
- (2) 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 2001¹⁹.
- (3) A first assessment of the implementation of this Regulation was made in a report published on 30 January 2004²⁰. 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 the Regulation²¹.

¹⁵ OJ C [...], [...], p. [...].

¹⁶ OJ C [...], [...], p. [...].

¹⁷ OJ C [...], [...], p. [...].

¹⁸ OJ C [...], [...], p. [...].

¹⁹ OJ L 145, 31.5.2001, p. 43

²⁰ COM(2004) 45 final

²¹ [...]

- (4) 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 bodies²². With regard to access to documents containing environmental information, Regulation 1049/2001 should be consistent with this new Regulation.
- (5) With regard to the disclosure of personal data, a clear relationship should be established between the Regulation and Regulation (EC) No 45/2001 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 data²³.
- (6) Clear rules should be established regarding the disclosure of documents originating from the Member States and of documents which are part of judicial or quasi-judicial proceedings.
- (7) 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.
- (8) On 18 April 2007, the Commission published a Green Paper on the review of the Regulation²⁴ and launched a public consultation.

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1049/2001 is hereby amended as follows:

1. Article 1 (a) shall be replaced by the following:

'Article 1

Purpose

The purpose of this Regulation is:

(a) to define the principles, conditions and limits on grounds of public or private interest governing the right of public access to European Parliament, Council and Commission (hereinafter referred to as "the institutions") documents provided for in Article 255 of the EC Treaty in such a way as to grant the public the widest possible access to such documents.'

²² OJ L 264 , 25.9.2006, p. 13

²³ OJ L 8, 12.1.2001, p. 1

²⁴ COM(2007) 185 final

2. Article 2 shall be replaced by the following:

'Article 2

Beneficiaries and scope

1. Any natural or legal person has 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, that is to say, 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. Documents submitted to Courts in the course of judicial proceedings are not accessible to the public before a public hearing has taken place. Access can only be granted to the Institutions' own submissions.
6. Without prejudice to specific rights of access for interested parties established by EU law, documents forming part of the file of law enforcement proceedings leading to an administrative act of individual scope are not accessible to the public until such act has become definitive. Information obtained from undertakings in the framework of such proceedings is not 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.'

3. Article 3 shall be replaced by the following:

'Article 3

Definitions

- (a) "document" shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) drafted or received by an institution and transmitted to one or more recipients or circulated within the institution or otherwise recorded; data contained in electronic storage, processing and retrieval systems are documents if they can be printed or extracted in readable form in an electronic file using the available tools for the exploitation of the system;

(b) "third party" shall mean 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.

(c) "document originating from a Member State" shall mean a document transmitted to an institution by a public authority in that Member State, unless it was transmitted in the framework of procedures leading to a legislative act or a non-legislative act of general application.'

4. Article 4 shall be replaced by the following:

'Article 4

Exceptions

1. The institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards:

- (a) public security,
- (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, in particular breeding sites of rare species.

2. The institutions shall refuse access to a document where disclosure would undermine the protection of:

- (a) commercial interests of a natural or legal person; this ground for refusal does not apply to information on emissions which is relevant for the protection of the environment;
 - (b) intellectual property rights;
 - (c) proceedings in litigation,
 - (d) legal advice,
 - (e) the purpose of inspections, investigations and audits,
 - (f) the objectivity and impartiality of selection procedures,
- unless there is an overriding public interest in disclosure.

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 institution concerned, even after the decision has been taken,

unless there is an overriding public interest in disclosure.

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

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

6. The exceptions as laid down in paragraphs 1 to 3 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 exceptions relating to privacy or commercial interests and in the case of sensitive documents, the exceptions may, if necessary, continue to apply after this period.'

5. Article 5 shall be replaced by the following:

'Article 5

Consultations

1. As regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in Article 4 is applicable, unless it is clear that the document shall or shall not be disclosed.

2. Where an application concerns a document originating from a Member State, as defined in Article 3(3), the authorities of that Member State will be consulted, unless the document is already lawfully in the public domain. The institution holding the document will disclose it unless the Member State gives reasons for withholding it, based on exceptions laid down in Article 4 of this Regulation or on specific provisions in its own legislation preventing disclosure of the document concerned.

3. Where a Member State receives a request for a document in its possession, originating 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 attainment of the objectives of this Regulation. The Member State may instead refer the request to the institution.'

6. Article 6(2) shall be replaced by the following:

'Article 6

Applications

2. If an application is not sufficiently precise or if the requested documents cannot be easily identified, the institution shall 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.'

7. Article 7 shall be replaced by the following:

'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 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 case Article 6(2) applies, the time limit starts to run when the institution has received the requested clarifications.

3. 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 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

4. In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.

5. Failure by the institution to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

8. Article 8 shall be replaced by the following:

'Article 8

Processing of confirmatory applications

1. A confirmatory application shall be handled promptly. Within 30 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 case Article 6(2) applies, the time limit starts to run when the institution has received the requested clarifications.

3. 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 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

4. 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 Treaty establishing the European Community, respectively,

5. Failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and 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.'

9. Article 10 shall be replaced by the following:

'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 fulfill 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.

5. Documents will be made accessible in accordance with specific modalities laid down in EU or national law, such as the payment of a fee or a consultation without the right to take copies.'

10. Article 12 shall be replaced by the following:

'Article 12

Direct access to documents

1. Documents drawn up or received in the course of procedures for the adoption of EU legislative acts or non-legislative acts of general application shall, subject to Articles 4 and 9, be made directly accessible to the public.
2. Where possible, other documents, notably documents relating to the development of policy or strategy, should 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. Each institution shall define in its rules of procedure which other categories of documents are directly accessible to the public.'

Article 2

This Regulation shall enter into force on the third 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, [...]

For the European Parliament
The President
[...]

For the Council
The President
[...]