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on public access to documents
(2007/2154(INI))

Committee on Civil Liberties, Justice and Home Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the Annual Report on public access to Parliament documents (2007/2154(INI))

The European Parliament,

- having regard to the Treaty establishing the European Community, and in particular Articles 254 on the obligation to publish acts and 255(2) on EU citizens and residents' right to access European Parliament, Council and Commission documents,
- having regard to the Treaty establishing the European Community, and in particular Article 207(3) on the obligation of the Council to elaborate in its rules of procedure the conditions under which the public shall have access to Council documents,
- having regard to the Treaty on the European Union, and notably to Article 1 (principle of openness as one of the general principles of the Union), Article 6 (democracy), Articles 28 (1) and 41(1) (application of the right of access to documents relating to the common foreign and security policy and to police and judicial cooperation in criminal matters),
- having regard to the Treaty of Lisbon, and notably its Articles 10, 16, 15 (new) and 298,
- having regard to the Charter of Fundamental Rights of the European Union, and notably to its articles 41 (right to good administration) and 42 (right of access to documents),
- having regard to Regulation 1049/2001 of 30 May 2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents,
- having regard to the jurisprudence of the European Court of Justice and of the Court of First Instance on access to documents, and notably to the recent Judgements of the Court of First Instance in *Bavarian Lager Co. Ltd v Commission of the European Communities* (Case T-194/04) and of the European Court of Justice on *Kingdom of Sweden and Maurizio Turco vs Council of the European Union* (joined cases C-39/05 P and C-52/05)¹,
- having regard to the activities and documents produced by the European Ombudsman on the issue of access to documents, as well as by the European Data Protection Supervisor,
- having regard to the Inter-institutional agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy²,
- having regard to the proposal by the Commission on the revision of Regulation 1049/2001 of 30.4.2008, COM(2008) 229 final, 2008/0090 (COD)³,

¹ From now on ECJ Judgment on Turco case

² OJ 2002/C 298/01

³ COM(2008)0229 of 30.04.2008

- having regard to the Draft Council of Europe Convention on Access to Documents,
 - having regard to the Annual Reports for 2006 from the Council, the Commission and the European Parliament on access to documents, as well as to article 17 of Regulation 1049/2001¹,
 - having regard to Rule 97(7) of its Rules of Procedure on the evaluation of the annual reports adopted by the other institutions pursuant to Article 17 of the regulation 1049/2001,
 - having regard to Rule 45 and rule 112, first paragraph of its Rules of Procedure,
 - having regard to the European Parliament Oral Questions to the Council and the Commission on the implementation of the European Court of Justice Judgment on the "Turco" case,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2008),
- A. whereas democracies based on the Rule of Law are bound by the principle of publicity of the norms that have effects on citizens, which implies a duty for openness and transparency for the institutions and notably of their decision-making process, so that democratic legislative bodies hold their meetings, discussions and votes in public, while draft laws and related texts are also available,
- B. whereas, also in order to ensure the accountability and legitimacy of a democratic political system, citizens have a right to know:
- how their representatives act, once elected or appointed to public bodies or representing the Member State at the European or international level (principle of accountability),
 - how the decision-making process works (including documents, amendments, timeline, actors involved, votes cast, etc),
 - how public money is attributed, spent and which (principle of traceability of funds),
- C. whereas the international community as well as the European Union, on the basis of the experiences of its Member States, have progressively recognized a veritable “right of access to documents” and a “right to information” based on the principles of democracy, publicity, transparency and openness,
- D. whereas quantitative data contained in the Annual Reports in relation to the application of Regulation 1049/2001 by the institutions suggest that access to documents has been granted in a higher number of cases (generalized decrease in the number and rate of refusals), while reasons for refusal vary among institutions (the first one being the

¹ Article 17 – Reports. 1. Each institution shall publish annually a report for the preceding year including the number of cases in which the institution refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register.

protection of the decision-making process)¹ and that as regards sensitive documents, the Commission and the Parliament did not enter in their register any such document, while the Council entered 79 sensitive documents out of 409 in its register; whereas from a qualitative analysis it appears clearly that a number of provisions of the Regulation gave rise to divergent interpretations as to the correct way of application of it, which led citizens to address the Ombudsman and the Court of Justice,

- E. whereas the Council does not systematically insert the legislative procedure references in its documents, hereby making it difficult to associate a document to a procedure, while it also either declassifies documents to "session documents" that are not registered, or treats them as "diplomatic" documents, hereby nullifying citizens' right of access to documents,
- F. whereas Internet has become the main way for citizens to consult EU documents, while the number of documents made available by institutions on-line has increased, which creates a need now for further improving the user-friendliness of EU institutions and documents websites, their interconnection and the creation of a single EU portal to access all EU documents, procedures and institutions,
- G. whereas EU institutions should now make further steps towards greater transparency, openness and democracy by going towards a "EU freedom of information act", as in the application of Regulation 1049/2001 a series of shortcomings have been brought to public attention, recent judgments have to be analysed and implemented urgently by the institutions, while the Commission has issued its proposal for a revision of Regulation 1049/2001,
1. Underlines that the landmark ECJ ruling on the Turco case (joined cases C-39/05 P and C-52/05) concluded that "*Regulation 1049/2001 imposes, in principle, an obligation to disclose the opinion of the Council's legal service relating to a legislative process*"² and that in the judgment, the Court made the following considerations:
- the public right of access to documents of the institutions derives from the democratic character of those institutions, as foreseen by recital 4 and article 1 of Regulation 1049/2001,
 - exceptions contained in the Regulation (such as the protection of the decision-making process) shall be examined strictly and balanced against the overriding public interest in disclosure as it is linked to democracy, participation of the citizen more closely in the decision-making process, legitimacy of the administration, effectiveness and accountability to the citizens³,

¹ see Working Documents 1 and 2 parts A and B

² Par. 68 of ECJ Judgment on Turco case

³ A document that could be covered by an exception (such as a "legal opinion") shall be examined in its content to evaluate which parts of it are covered by the exception; the risks linked to disclosure has to be "reasonably foreseeable and not purely hypothetical"; a balancing between such a risk and "the public interest in the document being made accessible in the light of the advantages stemming ...from increased openness, in that enabled citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and accountable to the citizen in a democratic system".

- that these considerations are even more important when institutions act in their legislative capacity¹,
 - openness in regard to different views concerning an act (and its legality) "*contributes to conferring greater legitimacy on the institutions in the eyes of the European citizens and improving their confidence in them by allowing divergences between various points of view to be openly debated*"²,
 - detailed statement of reasons for a refusal shall be given by the institution³;
 - the exception can only apply for the period during which protection is justified on the basis of the content of the document⁴;
2. Underlines that the ECJ judgment further strengthens in the EU the principle by which democratic institutions have a duty to ensure publicity of their activities, documents and decisions, which is a condition for their legality, legitimacy and accountability, on the basis of art. 6 TUE and of art. 254 and 255 TEC and that consequently documents shall be published and anyway accessible and that any exception to this principle should be limited and interpreted strictly;
 3. Urgently calls all EU institutions to apply the Regulation in the view of the recent jurisprudence and notably of the Turco case in all its implications (publication of legal service opinions, strict interpretation of exceptions, obligation to provide a detailed statement of reasons for refusal, etc) and calls on the Council to ensure also publicity of all documents and information including the identity of the Member States' delegations in the Council, as well as in its working groups, since the ECJ considerations concerning the fact that the exception on the protection of the decision-making process is outweighed by the public interest for openness - as different views on a legislative act allow for a greater legitimacy for the institutions - apply also in this case;
 4. Believes that the European Parliament should be at the forefront of publicity, transparency and openness in the EU, and that before the European Parliament elections of 2009, it should launch an extraordinary action plan to ensure that more and easily-accessible information is made available, notably on its website, on:
 - MEPs activities, participation in and attendance of parliamentary works, in absolute, relative and % terms, available and accessible to citizens also through search criteria⁵,

¹ as "*the possibility for citizens to find out the considerations underpinning legislative action is a precondition for the effective exercise of their democratic rights*", Paragraph 46 of ECJ Judgment on Turco case, and that an overriding public interest underlined in Regulation 1049/2001 is that of "*disclosure of documents... arising when legislative initiatives are debated increases the transparency and openness of the legislative process and strengthens the democratic right of European citizens*", Paragraph 67 of ECJ Judgment on Turco case

² Paragraph 59 of ECJ Judgment on Turco case

³ Paragraph 69 of ECJ Judgment on Turco case

⁴ Paragraph 70 of ECJ Judgment on Turco case

⁵ such as: how many days each MEP has been present in the EP and where he has signed and/or voted, as well how when roll call votes take place, in plenary and in committee; to which institutional bodies' meetings he has participated, plenary and/or committee and/or delegation, etc; data should be available also through search criteria, such as name of the MEP / plenary / committee / delegation / votes / presence / day / month / year /

- EP activities in plenary and committee: the Legislative Observatory should be improved by including references and links to all relevant documents¹; committee works should be streamed on the European Parliament website as plenary works are, recorded and available and accessible to citizens also through search criteria,

- MEPs allowances and spending, in conformity with the position taken by the European Ombudsman in relation to the fact that access to information should apply also to this data²,

and calls upon Member States, national parliaments as well as other elected bodies to do the same by establishing such a Register of parliaments' and parliamentarians' activities;

5. Urges the Commission to follow the recommendation of the European Ombudsman (Complaint 3208/2006/GG) on the Commission register as regards its obligation to "include references to all documents within the meaning of article 3(a) that are in its possession in the register foreseen by article 11 of regulation 1049/2001, to the extent that this has not yet been done";
6. Believes that EU institutions should create a single EU register / portal of information and documents, that should allow citizens to follow a certain procedure and access all documents related to it³; this plan shall go from simplifying and completing their registers and webpages and interconnecting them between institutions, to integrating them in a EU single portal; calls for the creation of an inter-institutional daily follow-up bulletin collecting information and documents related to EU legislative and non-legislative activities and agendas, as it was planned with the Trans-Jai project founded on an inter-institutional agreement in 2004 and unfortunately not yet operational, before the beginning of next parliamentary term;
7. Calls on the EU institutions to ensure that, at least before the beginning of the next parliamentary term:
 - all the preparatory documents show the legislative procedure reference,
 - all the agendas and outcome of proceedings of the Council and preparatory bodies make clear reference to the background documents and should be timely registered and published in the Council Register (included the so called "room documents"),
 - bearing in mind that the transparency principle being deeply interlinked with the

legislative term / etc, and links to this webpage should be included in MEPs webpages and in other relevant websites; MEPs webpages should include this information as well as the name of the assistants, opinions made, amendments tabled in committee and plenary to reports and other acts, explanations of vote, audio-video interventions, etc

¹ procedures and documents in committee such as first report and amendments, opinions from other committees, legal service opinions, amendments tabled in plenary, roll call votes, inter-institutional letters, notably those related to legislative procedures, at committee and plenary level, etc

² Draft recommendation of the European Ombudsman to the European Parliament in complaint 3643/2005/(GK)WP

³ such as the original proposal, minutes of meetings, reports, amendments, votes, result of votes, debates, text into force, implementation in Member States, evaluation reports, etc

principle of good administration as proclaimed by the European Parliament, Council and Commission in article 41 of the Charter of fundamental rights, calls EU institutions to make clear to the citizens in a fair and transparent way their organizational chart by indicating the remit of their internal units, the internal workflow and indicative deadlines of the dossier falling in their remit, to which services should the citizen refer to obtain support, information or administrative redress;

8. Calls upon institutions to ensure improved transparency in relation to comitology procedures, as well as to first-reading agreements negotiated between institutions in co-decision procedures (so-called "dialogues"), to make sure that inter-institutional agreements are fully in line with the duties of publicity, transparency and openness in legislative procedures, involving a parliamentary assembly that has a statutory duty to hold meetings in public and to publish the documents examined;
9. Believes that the principle of loyal cooperation between institutions implies an obligation for institutions, notably when working on legislative dossiers or on international treaties (for instance, EU-US cooperation in the JHA area, PNR and data protection) or appointment procedures (for instance, the appointment of the Fundamental Rights Agency Director), to exchange all the relevant documents and information, also if sensitive or confidential, and that current practices should be urgently improved;
10. Praises the work of the European Ombudsman to ensure greater transparency of EU institutions, and shares the views expressed together with the European Data Protection Supervisor on the balance between data protection and the right to privacy covered by Regulation (EC) No 45/2012 and the regulation 1049/2001 on the right to access to documents; asks the European Ombudsman to prepare a report on access to documents for the newly elected Parliament addressing also the issues raised in this report;
11. Calls the European Union institutions to work towards an ambitious European "Freedom of Information Act", also on the basis of the current proposed revision of Regulation 1049/2001;
12. Instructs its President to forward this resolution to the Council, the Commission, Member States governments and national parliaments, the European Ombudsman, the Council of Europe.