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from: General Secretariat of the Council
to : Delegations

No. Cion prop.: 9200/08 INF 103 API 23 JUR 192 CODEC 946 + COR 1 (COM(2008) 229 final)
No. prev. doc. 5671/09 ADD 1 JUR 26 INF 5 CODEC 74 API 4
5671/1/09 REV 1 INF 5 API 4 CODEC 74 + COR 1 + COR 2
7791/09 INF 58 API 32 CODEC 380

Subject: Proposal for a Regulation of the European Parliament and of the Council
regarding public access to European Parliament, Council and Commission
documents (recast)

Following the thorough examination by the Information Working Party of Articles 2, 3, 4 and 5 of the Commission's proposal for a recast of Regulation (EC) No 1049/2001, the discussion at the forthcoming IWP meeting, to be held on 25 June, will be dedicated to the modifications proposed by the Commission regarding Articles 6, 8, 10, 12 and 16 of the Regulation.

The outcome of the discussions on the recasting proposal held at the IWP meetings on 2 and 21 April, 14 May and 3 and 25 June will be summarized in a progress report to be distributed to delegations by the end of June.

The following documents will serve as a basis for the work of the IWP on 25 June:

- the Commission's proposal for a recast of Regulation 1049/2001 (doc. 9200/08)
- the comments made by delegations during the first examination (doc. 5671/1/09 REV 1 + COR 1 + COR 2)

- the observations made by the Council's Legal Service on the recasting proposal (doc. 5671/09 ADD 1)
- the admissible amendments adopted by the EP at its plenary session on 11 March 2009 (as listed in annexes I and II to document 7791/09).

In line with the thematic approach applied during the previous examination of the Commission's proposal, it is suggested to structure the discussion on the provisions of Articles 6, 8, 10, 12 and 16 of the recasting proposal around the following themes:

- (1) the amendment of Article 6, paragraphs 2 and 3, which cater for situations where **documents requested** by a Member of the public **can not be easily identified**;
- (2) **the extension of the time-limit for the processing of a confirmatory request from 15 to 30 working days**, with a possibility for a further extension by 15 working days (Article 8, paragraph 1);
- (3) the insertion of a new paragraph in Article 10, clarifying that **access to documents may in certain cases be subject to the payment of a fee** (Article 10, paragraph 5);
- (4) the redrafting of Article 12 with a view to ensure that **direct access be granted to documents which are part of procedures leading to the adoption of EU legislative acts or non-legislative acts of general application** (Article 12, (new) paragraph 1);
- (5) the insertion of an additional provision in Article 16 which clarifies that when **the information contained in a document** (held by an institution) **is covered by the existing rules on copyright**, possible access granted to the document concerned **will be limited to a right to consult the document "in situ"** without any possibility to copy, reproduce or exploit the content of the document.

The table at annex sets out

- in its first column: the text proposed by the Commission
 - in its second column: the relevant amendments tabled by the European Parliament
 - in its third column: references to the comments and observations made by delegations and the European Commission during the first examination of the recasting proposal as set out in document 5671/1/09 REV 1 + COR 1 + COR 2.
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COM (2008) 229 final	Technically admissible EP amendments	Observations
<p style="text-align: center;"><i>Article 6</i></p> <p style="text-align: center;">Applications</p> <p>1. Applications for access to a document shall be made in any written form, including electronic form, in one of the languages referred to in Article 314 of the EC Treaty and in a sufficiently precise manner to enable the institution to identify the document. The applicant is not obliged to state reasons for the application.</p> <p>2. If an application is not sufficiently precise ⇒ or if the requested documents cannot be 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. ⇒ The time limits provided for under Articles 7 and 8 shall start to run when the institution has received the requested clarifications. ⇐</p>	<p>Amendment 62 Article 6 – paragraph 2 (Art. 16(2))</p> <p>2. If an application is not sufficiently precise the institution shall <i>within 15 working days</i> 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.</p>	<p>For comments and observations made by delegations, see document 5671/09 REV 1, page 19, footnote 17.</p>

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<p>3. In the event of an application relating to a very long document or to a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair ⇒ and practical ⇐ solution.</p> <p>4. The institutions shall provide information and assistance to citizens on how and where applications for access to documents can be made.</p>		<p>For comments and observations made by delegations, see document 5671/09 REV 1, page 19, footnote 18.</p>

COM (2008) 229 final	Technically admissible EP amendments	Observations
<p style="text-align: center;"><i>Article 8</i></p> <p style="text-align: center;">Processing of confirmatory applications</p> <p>1. A confirmatory application shall be handled promptly. Within 15 ⇒ 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; namely instituting court proceedings against the institution and/or making a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively.</p>	<p style="text-align: center;">Amendment 66</p> <p style="text-align: center;">Article 8 – paragraph 1 (Art. 18(1))</p> <p>1. A confirmatory application shall be handled promptly. Within 15 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.</p>	<p>For comments and observations made by delegations, see document 5671/09 REV 1, page 21, footnote 19.</p>

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<p data-bbox="331 276 584 304"><i>Article 8 (continued)</i></p> <p data-bbox="147 344 775 544"><u>22.</u> 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.</p> <p data-bbox="147 584 775 783">3. 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 EC Treaty, respectively.</p> <p data-bbox="147 823 775 1023"><u>24.</u> Failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and <input checked="" type="checkbox"/> shall <input type="checkbox"/> 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.</p>		

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<p data-bbox="394 244 517 268"><i>Article 10</i></p> <p data-bbox="264 312 658 336">Access following an application</p> <p data-bbox="147 379 775 711">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. 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.</p> <p data-bbox="147 751 775 951">2. If a document has already been released by the institution concerned <input checked="" type="checkbox"/> is publicly available <input type="checkbox"/> and is easily accessible to the applicant, the institution may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document.</p>		

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<p data-bbox="309 228 577 256"><i>Article 10 (continued)</i></p> <p data-bbox="147 277 775 408">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</p> <p data-bbox="147 448 775 644">☒ 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. ☒</p> <p data-bbox="147 684 775 783">5. This Regulation shall not derogate from specific modalities governing access laid down in EC or national law, such as the payment of a fee.</p>		<p data-bbox="1451 684 1962 783">For comments and observations made by delegations, see document 5671/09 REV 1, page 26, footnote 20.</p>

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<p style="text-align: center;"><i>Article 12</i></p> <p style="text-align: center;">Direct access in electronic form or through a register <input checked="" type="checkbox"/> to documents <input checked="" type="checkbox"/></p> <p>1. The institutions shall as far as possible make documents directly accessible to the public in electronic form or through a register in accordance with the rules of the institution concerned.</p> <p>2.1. In particular, legislative documents, that is to say, documents drawn up or received in the course of procedures for the adoption of <input checked="" type="checkbox"/> EU legislative <input checked="" type="checkbox"/> acts which are legally binding in or for the Member States, should <input checked="" type="checkbox"/> or non-legislative acts of general application shall <input checked="" type="checkbox"/> , subject to Articles 4 and 9, be made directly accessible <input checked="" type="checkbox"/> to the public <input checked="" type="checkbox"/> .</p> <p>2.2. Where possible, other documents, notably documents relating to the development of policy or strategy, should <input checked="" type="checkbox"/> shall <input checked="" type="checkbox"/> be made directly accessible <input checked="" type="checkbox"/> in electronic form <input checked="" type="checkbox"/> .</p> <p>4.3 Where direct access is not given through the register, the register shall as far as possible indicate where the document is located.</p> <p>4. Each institution shall define in its rules of procedure which other categories of documents are directly accessible to the public.</p>	<p style="text-align: center;">(Title III - Method of access) (Article 14)</p> <p>Amendement 71 Article 12, paragraph -1 (Art. 14(1))</p> <p><i>1. The institutions shall as far as possible make documents directly accessible to the public in electronic form or through a register in accordance with the rules of the institution concerned.</i></p> <p>Amendement 72 (Cappato) Article 12, paragraph 1 (Art. 14(2))</p> <p><i>2. The institutions shall make all documents directly accessible to the public in electronic form or through a register, particularly those drawn up or received in the course of procedures for the adoption of EU legislative acts or non-legislative acts of general application.</i></p>	<p>For comments and observations made by delegations, see document 5671/09 REV 1, page 28, footnote 22.</p>

COM (2008) 229 final	Technically admissible EP amendments	Observations
<p data-bbox="398 256 524 284"><i>Article 16</i></p> <p data-bbox="286 325 636 352">Reproduction of documents</p> <p data-bbox="147 394 775 523">This Regulation shall be without prejudice to any existing rules on copyright which may limit a third party's right to obtain copies of documents or to reproduce or exploit released documents.</p>	<p data-bbox="1048 225 1173 252">(Article 8)</p> <p data-bbox="797 252 1048 341">Amendment 82 (Svensson, Liotard) Article 16</p> <p data-bbox="797 384 1397 512">This Regulation shall be without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents.</p>	<p data-bbox="1447 293 1957 389">For comments and observations made by delegations, see document 5671/09 REV 1, page 31, footnote 23.</p>
