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THE EUROPEAN UNION**

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from: General Secretariat of the Council

to : Delegations

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No. prev. doc. 11782/08 INF 103 API 23 JUR 296 CODEC 964

16338/08 INF 251 API 87 JUR 531 CODEC 1658

16343/1/08 REV 1 INF 252 API 88 JUR 532 CODEC 1661

17484/08 INF 293 API 98 JUR 578 CODEC 1879

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

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**Introduction**

1. On 7 May 2008, the Commission forwarded to the Council the above-mentioned proposal (COM (2008) 229 final) for a recast of the Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents.

The recasting proposal is intended to update certain provisions of Regulation (EC) No 1049/2001 following the entry into force of Regulation (EC) No 1367/2006 (known as the "Århus Regulation") on access to environmental information<sup>1</sup>, while taking into account recent case law on transparency and access to documents as established by the CFI and the European Court of Justice. Moreover, a number of the proposed modifications aim at addressing problems linked to the handling of requests for access to documents relating to the Commission's work of inspection, investigation and auditing.

2. At the meeting of the Working Party of Information held on 16 May 2008, the Commission representative gave a first detailed presentation of the proposal, which was subsequently discussed by the Working Party at its meetings on 17 July, 22 September, 31 October, 25 November and 16 December 2008.
3. On 6 November 2008, the Consultative Working Party of the Legal Services delivered its opinion on the recasting proposal,<sup>2</sup> pursuant to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts<sup>3</sup>.
4. The purpose of this report is to summarize - in the form of footnotes - the discussions on the Commission's proposal, Article by Article, held at the meetings of the IWP on 31 October, 25 November and 16 December 2008.
5. As regards the European Parliament, altogether five parliamentary committees are involved in the examination of the recasting proposal. Mr. Michael Cashman (PSE-UK) has been appointed Rapporteur for the Committee on Civil Liberties, Justice and Home Affairs (Committee responsible). The drafters of opinion are:
  - Anneli Jäätteenmäki (ALDE - FIN) for the Constitutional Affairs Committee (associated committee);

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<sup>1</sup> Regulation (EC) No 1367/2006 of 6 September 2006 on the application of the provisions of the Århus Convention to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13). The alignment of the exceptions on the provisions of the "Århus Regulation" is reflected in Article 4 (1) (e) and 4 (2) (b).

<sup>2</sup> See doc. 16343/1/08 REV 1.

<sup>3</sup> JO C 77, 28.3.2002, p. 1

- Monica Frassoni (Verts/ALE - IT) for the Legal Affairs Committee;
  - David Hammerstein (Verts/ALE - ES) for the Committee on Petitions;
  - Rovana Plumb (PSE - RO) for the Committee on International Trade.
6. The different committees began their examination of the proposal in October 2008, and the final vote in the Committee responsible is now scheduled to take place on 17 February 2009 with a view to pave the way for the adoption of the Parliament's opinion in March 2009.
7. With a view to facilitate the Council's further work on the Commission's proposal, Delegations will find, at annex, a synoptic overview of the text of the existing Regulation 1049/2001 as well as the text of the recasting proposal. Comments and proposals from delegations are set out in the footnotes, alternative versions of the text being presented in bold. Comments and observations made by the Council's Legal Service on the proposal are set out in an addendum to this document (5671/09 ADD 1).

**Proposal for a  
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
regarding public access to European Parliament, Council  
and Commission documents  
(Recast)\*)**

**Regulation (EC) No 1049/2001**

**COM (2008) 229 final**

*Article 1*

*Article 1*

**Purpose**

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The purpose of this Regulation is:

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| <p>(a) to define the principles, conditions and limits on grounds of public or private interest governing the right of 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 ensure the widest possible access to documents,</p> <p>(b) to establish rules ensuring the easiest possible exercise of this right, and</p> <p>(c) to promote good administrative practice on access to documents.</p> | <p>(a) to define the principles, conditions and limits on grounds of public or private interest governing the right of 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 <del>ensure</del> <input checked="" type="checkbox"/> grant the public <input checked="" type="checkbox"/> the widest possible access to <input checked="" type="checkbox"/> such <input checked="" type="checkbox"/> documents<del>;</del></p> <p>(b) to establish rules ensuring the easiest possible exercise of this right, <del>and</del></p> <p>(c) to promote good administrative practice on access to documents.</p> |
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\*) In its opinion delivered on 6 November 2008, the Consultative Working Party of the Legal Services concluded that *"the proposal does not comprise any substantive amendments other than those identified as such therein or in the present opinion. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing texts, without any change in their substance."* (Cf. doc. 16343/1/08 REV 1).

**Beneficiaries and scope**

1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.

2. The institutions may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.

3. 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, in all areas of activity of the European Union.

4. 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.

**Beneficiaries<sup>1</sup> and scope**

1. Any ~~citizen of the Union, and any~~ natural or legal person ~~residing or having its registered office in a Member State,~~ ~~has~~  shall have  a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.

~~2. The institutions may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.~~

~~3.~~ 2. This Regulation shall apply to all documents held by an institution, ~~that is to say~~  namely  , 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.

~~4.~~ 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.

<sup>1</sup> IT/EL/HU/PL/ES/DE/UK: objected to the proposed modification as regards the beneficiaries of the right of access on the grounds that Article 255 of the EC Treaty specifically refers to citizens of the Union and any natural or legal person residing or having its registered office in a Member State.  
FI/SE/BE/NL/DK could go along with the modification or at least with the aim of the proposal (DK).

5. Sensitive documents as defined in Article 9(1) shall be subject to special treatment in accordance with that Article.

~~5.~~ 4. Sensitive documents as defined in Article 9(1) shall be subject to special treatment in accordance with that Article.

5. This Regulation shall not apply to documents submitted to Courts by parties other than the institutions.<sup>2</sup>

<sup>2</sup> DK/FI/SE/EE thought that the Commission's proposal was too restrictive. DK recalled that notably the issue of access to court submissions was pending before the Court of Justice. FI maintained that the Commission's proposal is more restrictive than the rules regulating the practice of the Courts allows for. SV and EE considered that if access to court submissions had to be refused, such refusals should be duly motivated under Article 4 of the Regulation (exceptions to the right of access). According to these delegations, there was no need to exclude court submissions from the scope of the Regulation. NL indicated that if an application for access to a document is submitted to the courts, such a request should indeed be dealt with in accordance with the Rules of Procedure of the Courts. However, if the request is submitted to the European Parliament, the Council or the Commission, this request shall be dealt with in accordance with Regulation 1049/2001. Against that background, NL wondered whether there is any real need for the proposed provision in Article 2 (5), given that the provisions on consultations of third parties in Article 5. In addition, NL asked Cion. to clarify whether the word 'Courts' included the CFI. UK considered that it should be for the European Courts to decide as to whether or not access should (exceptionally) be granted to court submissions and argued, moreover, against disclosure by the institutions of their own submissions to the courts, since such documents might (directly or indirectly) reflect the positions of other parties to the court proceedings. AT and IT endorsed UK's position. AT, GR and IT proposed the following wording of Article 2 (5) "**This Regulation shall not apply to internal legal advice given to an institution by its own legal service and to documents submitted to Courts**", the purpose of this amendment being (a) to protect both the Governmental interests and the functioning of the legislative procedure and (b) to put on equal footing all the parties that have submitted documents to Courts (see doc. 16338/08, p. 2). Cion. pointed out that the Rules of Procedure of the Community Courts did not provide for general, public access to procedural documents. Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice, which also applies to the CFI, written submissions are only communicated to the other parties and to the institutions whose decisions are in dispute. According to the Instructions to the Registrar of the CFI, access to documents in a case file may be granted to a third party on duly substantial grounds. However, such a right of access is based on the specific interest of a third party and differs substantially from the public right of access (see also doc. 17484/08, p. 2).

6. Without prejudice to specific rights of access for interested parties established by EC law, documents forming part of the administrative file of an investigation or of proceedings concerning an act of individual scope shall not be accessible to the public until the investigation has been closed or the act has become definitive.<sup>3</sup> Documents containing information gathered or obtained from natural or legal persons by an institution in the framework of such investigations shall not be accessible to the public.

6. 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.

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<sup>3</sup> Cion. explained that the proposed modification aimed at excluding *temporarily* from the scope of the Regulation documents established within the framework of investigations or administrative procedures leading to an act of individual scope. Yet, once the investigations or administrative procedures have come to an end, the documents will be covered by the Regulation and shall therefore be examined on the basis of the general rule of access to the documents of the institutions. The only documents to be *permanently* excluded from the scope of the Regulation would be documents containing information obtained from individuals or undertakings in the course of investigations gathered solely for the purposes of the investigations. Disclosure of this information would cause serious harm to the capacity of the Commission to carry out investigations (see also doc. 17484/08, pp. 3 - 4).

A number of delegations expressed concerns or asked for clarifications of the proposed amendment. DE wondered whether documents relating to infringement procedures (Article 226 of the EC Treaty) and state aid procedures would be covered by the new provisions.

UK supported the aim of the modifications envisaged by Cion. It was important to distinguish the cases where the Commission was acting in a *legislative capacity* from those cases where it was acting in a *law enforcement capacity*.

DK/FI/SE/NL/EE took the view that the proposed amendment would effectively limit the scope of the Regulation and that any need to withhold documents relating to investigations and/or administrative procedures leading to an act of individual scope ought to be examined on a case by case basis in the light of the exceptions provided for in Article 4 of the Regulation.

BE doubted that the new provision would be compatible with the Århus Regulation, which does not allow for any category of documents to be permanently excluded from public access.

Cion. underlined, in reply to these interventions, that infringement procedures under Article 226 of the EC Treaty do not lead to the adoption of an act of individual scope. Rulings concerning failure by a Member State to comply with its obligations under the Treaty can only be given by the European Court of Justice.

## Definitions

## Definitions

For the purpose of this Regulation:

- (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) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility;

For the purpose of this Regulation:

- (a) «document» ~~shall mean~~  means  any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) ~~concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility~~ ⇒ drawn-up by an institution and formally transmitted to one or more recipients or otherwise registered, or received by an institution<sup>4</sup>;

<sup>4</sup> Cion. pointed out that the purpose of the provision set out in Article 3, point (a), first sentence, was not to limit the scope of the Regulation, but to make it more precise. It should be clearly indicated that a "document" only exists if it has been finalised by its author and transmitted to its recipients or circulated within the institution or has been otherwise registered (i.e. added to a file without being sent out).

BE recalled that according to the definition of "documents" set out in the Draft Council of Europe Convention on Access to Official Documents, "official documents" means *all information recorded in any form*, drawn up or received and held by public authorities.

FI/SE/DK expressed doubts as to the purpose of the envisaged modification.

FI and SE took the view that by inserting explicit conditions which should be met, before a "document" becomes a document, the institutions would invariably interpret these "additional criteria" in such a way as to *de facto* limit the scope of the Regulation

IRL and NL felt that there was a need for further clarification of the implications of the new provision.

Cion. underlined that the notion of registered documents was not limited to documents mentioned in the public document registers of the EU institutions. Thus, internal registration of documents is an obligation under the Commission's administrative rules. This means, in practice, that many documents which are not necessarily listed in the Commission's public registers are nevertheless covered by the Regulation and will therefore be examined in case of requests for access to documents on the subject matter dealt with in the documents concerned.



data contained in electronic storage, processing and retrieval systems are documents if they can be extracted in the form of a printout or electronic-format copy 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.

b) «third party» ~~shall mean~~ ☒ means ☒ 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.<sup>5</sup>

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<sup>5</sup> DE/ES/IRL/HU wondered whether or not the EU Member States were to be considered a "third party" for the purpose of the Regulation. DE argued that specific mention is required throughout the proposal when Member State documents are concerned. It should be clarified whether information obtained from Member States in the course of State aid procedures is covered in Article 2 (6). Cion. undertook to clarify these issues in a working document.

## Regulation (EC) No 1049/2001

### Article 4

#### Exceptions

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

- (a) the public interest as regards:
- public security,
  - defence and military matters,
  - international relations,
  - the financial, monetary or economic policy of the Community or a Member State;

- (b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

## COM (2008) 229 final

### Article 4

#### Exceptions

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

- (a) public security ⇒ including the safety of natural or legal persons ⇐ <sup>6</sup>
- (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, such as breeding sites of rare species.

- ~~(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.~~

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<sup>6</sup> Cion. explained that the words "*including the safety of natural and legal persons*" are added in order to clarify that the exception concerning protection of public security may apply in individual cases.

SK suggested that a provision concerning the protection of personnel participating in civilian crisis management operations should be added.

SE delegation wondered whether the specific reference to the safety of natural and legal persons suggested by Cion. was necessary.

SI would like to know what was meant by "legal persons".

Cion. pointed out that the inclusion of the words "*safety of natural and legal persons*" in this provision aimed at clarifying that the exception also covered the security of individuals (such as members of military or civilian missions working in an unsafe environment) or of legal persons (such as humanitarian associations operating in unsafe countries).

(e) the environment, such as breeding sites of rare species.<sup>7</sup>

- (b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

~~(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.~~

<sup>7</sup> Cion. recalled that the exception aimed at protecting the environment, laid down in Article 6(2) of Regulation (EC) No 1367/2006, is added under Article 4(1) of Regulation (EC) No 1049/2001 in order to align this Regulation with the provisions stemming from the Århus Convention.

DE wondered whether it would be necessary to readapt the provisions of Regulation (EC) No 1367/2006 on access to environmental legislation following the recast of Regulation No 1049/2001. Cion. explained that it would not be possible to assess the need for any modification of the "Århus Regulation" until the work on the recast of Regulation 1049/2001 had been finalised.

FI and SE were strongly in favour of the amendment of Article 4 (1) proposed by the European Commission, considering that the introduction of new exceptions into Article 4 was not *per se* in contradiction with the principle of transparency.

NL shared the view of FI and expressed its support for the introduction of specific rules on access to environmental information into Regulation 1049/2001. Considering that the wording of Regulation 1367/2006 is very clear as regards its interaction with the transparency rules, NL wondered whether the provisions of Regulation 1049/2001 could be modified in order to ensure the same clarity as regards the relationship between access to documents and access to environmental information, possibly by incorporating the relevant provisions of Regulation 1367/2006 into Regulation 1049/2001.

BE considered that the provisions of Regulation (EC) No 1367/2006 are more precise as regards access to environmental information; this delegation would therefore prefer not to insert specific provisions on this issue in the "Access to documents Regulation", but rather introduce one single reference to Regulation (EC) No 1367/2006 into Regulation 1049/2001.

ES agreed with the BE proposal, considering that the provisions of the "Århus Regulation" constituted a *lex specialis* in relation to the general rules on access to documents set out in Regulation 1049/2001. The *lex specialis* would prevail in case of conflict between the two instruments (Regulation 1367/2006 and Regulation 1049/2001).

Cion. took note of the comments made by delegations and undertook to provide further clarifications on this issue at a later stage.

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

- commercial interests of a natural or legal person, including intellectual property,
- court proceedings and legal advice,

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; ~~including intellectual property;~~

(b) intellectual property rights; <sup>8</sup>

(c)  legal advice;<sup>9</sup> and  court proceedings  
 ⇒ , arbitration and dispute settlement proceedings ⇐<sup>10</sup> ~~and~~

<sup>8</sup> Cion explained that the provision concerning the protection of "commercial interests" and "intellectual property" had been split into two separate exceptions for the following reasons: As set out in Article 4 (4) of the recasting proposal (see below), the public interest in disclosure of information concerning emissions into the environment overrides *by definition* the protection of commercial interests, but not necessarily the protection of intellectual property rights. This means in practice, that there is no need for a balancing of interests, in as far as the principle laid down in Article 4 (4) second sentence applies, whereas such a balancing should be made, where disclosure could harm the protection of intellectual property rights or other interests to be protected under Article 4 (2) and 4 (3).

<sup>9</sup> UK/IT/IRL/DE/ES/EL considered that the Legal Service could only give independent and impartial legal advice, if the confidentiality of its legal opinions was adequately protected. UK pointed out that it was not only a question of the number of legal opinions that were circulated, but also a matter of how these opinions were drafted.

DK expressed satisfaction with the "Turco ruling", which confirmed that all categories of documents held by the institutions are covered by the transparency rules. Access to such documents can only be denied, if they are covered by one of the exceptions provided for in the Regulation. DK moreover took the view that there was no reason to give special treatment to legal advice provided by the legal services of the institutions.

FI/NL/SE/EE shared the assessment of DK as regards the "Turco judgment". FI underlined that legal opinions drawn up within the framework of a legislative procedure should not be disclosed to the public prior to, but only following the adoption of the legislative act. FI recalled that the Turco-ruling includes two exceptions relating to documents that are sensitive in nature or wide in scope. FI considered these exceptions both necessary and sufficient.

SE took the view that existing exception gives adequate protection to legal opinions.

EE pointed out that under the current regulation, legal advice is well protected, including legal opinions concerning ongoing negotiations and procedures.

Cion reminded delegations that the recasting proposal had been adopted by the Commission before the ECJ handed down its judgment in this case.

NL delegation asked Cion, whether it would not be appropriate to change the proposal in such a way that it incorporates the "Turco judgment".

<sup>10</sup> FI wondered whether the specific reference to arbitration and dispute settlement proceedings represented a mere clarification or *de facto* a widening of the scope of the exception. Cion underlined that the provision on the protection of legal proceedings laid down Article 4 (2) (2) of the current Regulation had already been deemed to apply in cases where access had been

- the purpose of inspections, investigations and audits,

(d) the purpose of inspections, investigations and audits;

(e) the objectivity and impartiality of selection procedures.<sup>11</sup>

unless there is an overriding public interest in disclosure.

~~unless there is an overriding public interest in disclosure.~~

3. Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

3. Access to  the following documents  ~~a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution,~~ shall be refused if  their  ~~disclosure of the document~~ would seriously undermine the institution's decision-making process  of the institutions:  ~~unless there is an overriding public interest in disclosure.~~

requested to documents drawn up within the framework of legal proceedings before the dispute settlement panels of the WTO.

Against this background FI asked for further clarifications as to whether the WTO dispute settlement procedure could be assimilated to "court proceedings" within the meaning of Article 4 (2), second indent, of Regulation 1049/2001. It referred, in that context, to the conclusion in the European Ombudsman's Decision on complaint 582/2005/PB according to which the said dispute settlement procedure *could not be* assimilated to "court proceedings".

AT suggested that the provision in Article 4 (2) (c) be deleted and replaced with a new Article 4 (1) (f) to the effect that the refusal of access to documents containing legal advice or relating to court, arbitration and dispute settlement proceedings (including the pre-litigation stages of infringement procedures) would become *mandatory*. The new Article 4 (1) (f) should read as follows: "**The institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards: (.....) (f) legal advice and court, arbitration and dispute settlement proceedings including the pre-litigation stages of infringement procedures;** ←" (see doc. 16338/08, p. 4).

DE, IT, EL and ES shared the concerns expressed by the AT delegation. ES pointed out that post-litigation stages of infringement procedures (Art. 228 of the EC Treaty) should also be taken into account. DE, supported by EL, proposed to introduce an additional exception in Article 4 (2) on the protection of infringement proceedings, including the preparatory stages thereof: "**The institutions shall refuse access to a document where disclosure would undermine the protection of (...) (d) infringement proceedings, including the preparatory stages thereof**" (see doc. 16338/08, pp. 6-7).

In reply to these proposals, Cion reminded delegations that the pre-litigation phases of infringement proceedings fall under the scope of the current Article 4(2), third indent, concerning the protection of the purpose of inspections investigations and audits.

<sup>11</sup> A number of delegations (DE/SE/EE/SI) took the view that the term *selection procedures* was too vague and asked for clarification of the scope of this exception (FI).

Cion recalled that the Staff Regulations as well as the Financial Regulation foresee specific

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

☒ (a) documents relating to a matter where the decision has not been taken; ☒

☒ (b) documents ☒ ~~Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institutions concerned, shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.~~<sup>12</sup>

☒ 4. The exceptions under paragraphs (2) and (3) shall apply unless there is an overriding public interest in disclosure. ☒ ⇒ As regards paragraph 2(a) an overriding public interest in disclosure shall be deemed to exist where the information requested relates to emissions into the environment. ⇐<sup>13</sup>

procedures by virtue of which the interested parties may obtain access to information which enable them to defend their legitimate interests. However, by definition, such procedures do not provide for public access to information/documents, but only for privileged access to persons who are directly concerned by a given selection procedure.

<sup>12</sup> Cion, underlined that this provision had been reworded in order to clarify its scope, but that the proposed drafting did not imply any modifications as regards the substance.

FI questioned the need for any change of this provision.

SE, supported by NL, considered that the current wording of Article 4 (3), first subparagraph, should be maintained (:"documents *drawn up by an institution for internal use or received by an institution*", which relates to a matter where the decision has not been taken *by the institution*") in order to avoid that the scope of this exception became too wide.

<sup>13</sup> Cion referred to the explanations given during the examination of Article 4 (2), points (a) and (b), i.e. that the public interest in disclosure of information concerning emissions into the environment overrides *by definition* the protection of commercial interests, but *not automatically* the protection of *intellectual property rights* nor of any of the other interests covered by the remaining exceptions mentioned in paragraph 2.

SE and FI considered that the wording of Article 4 (4) was incomplete as compared to the wording of Article 6 (1) of the "Århus Regulation"

DE recalled that the principle of an overriding public interest in disclosure of information concerning emissions into the environment did only apply to *environmental information*.

Cion reminded delegations of the difficulties linked to the handling of specific requests for access to environmental information and for access to documents in general and stressed the need for a modification of Regulation 1049/2001 which made it possible to handle both types of requests, bearing in mind that most documents which contain environmental information also contain information on other issues.

4. As regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed.

5. A Member State may request the institution not to disclose a document originating from that Member State without its prior agreement

5. Names, titles and functions of public office holders, civil servants and interest representatives in relation with their professional activities shall be disclosed unless, given the particular circumstances, disclosure would adversely affect the persons concerned. Other personal data shall be disclosed in accordance with the conditions regarding lawful processing of such data laid down in EC legislation on the protection of individuals with regard to the processing of personal data.<sup>14</sup>

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

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<sup>14</sup> Cion referred to the CFI judgment of 8 November 2007 in case T-194/04 (*Bavarian Lager v. Commission*), where the CFI had held that disclosure of names of representatives of a collective body would not jeopardise the protection of their privacy and integrity, and pointed out that while the said judgment is under appeal there would be a need for a practical solution which does not prejudice the final judgment of the ECJ.

UK saw no need to codify the CFI judgment, which it considered to be in contradiction with the current wording of Article 4 (1) (b), according to which the specific rules on data protection (Regulation 45/2001) should apply. The UK delegate therefore proposed the following wording of Article 4 (5): **"Personal data shall be disclosed in accordance with the conditions regarding lawful processing of such data laid down in EC legislation on the protection of individuals with regard to the processing of personal data."** (see doc. 16338/08, p. 5).

DE/AT/IT/EL supported the UK position.

SE/NL/SI/DK/FI would prefer not to modify the current provisions on data protection while awaiting the outcome of the appeal case before the EJC.

PL and HU indicated that they shared the views of the EDPS on this matter (as set out in doc. 11782/08).

Cion noted that two different approaches had emerged from the discussion on Article 4 (5). Certain delegations considered that disclosure of personal data should be subject to the specific rules on data protection, whereas others preferred not to modify the existing legislation, until the ECJ has handed down its final judgment on this matter. Against this background, the recasting proposal seemed to offer a compromise solution, since it foresees only disclosure of names, titles and functions of public office holders, civil servants in relation with their professional activities.

**Regulation (EC) No 1049/2001**

7. 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.

**COM (2008) 229 final**

7. The exceptions as laid down in ~~paragraphs 1 to 3~~ this Article 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~~  the protection of personal data  or commercial interests and in the case of sensitive documents, the exceptions may, if necessary, continue to apply after this period.



**Documents in the Member States**

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.

☒ Consultations ☒

~~4~~1. As regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception ☒ referred to ☒ in ~~paragraph 1 or 2~~ Article 4 is applicable, unless it is clear that the document shall or shall not be disclosed.

~~5. A Member State may request the institution not to disclose a document originating from that Member State without its prior agreement.~~

2. Where an application concerns a document originating from a Member State, other than documents transmitted in the framework of procedures leading to a legislative act or a non-legislative act of general application, the authorities of that Member State shall be consulted. The institution holding the document shall disclose it unless the Member State gives reasons for withholding it, based on the exceptions referred to in Article 4 or on specific provisions in its own legislation preventing disclosure of the document concerned.<sup>15</sup>

<sup>15</sup> IT referred to the proposal for an amendment of Article 5 (2) which it had submitted together with the EL delegation (see doc. 16338/08, pp. 2 - 3), which reads as follows: **“The institution holding the document shall disclose it unless the Member State →, within the time limit provided for in Article 7,← gives reasons for withholding it, based on the exceptions referred to in Article 4 or on specific provisions in its own legislation preventing disclosure of the document concerned” .**

IT pleaded for an extension of the current time-limit of 5 working days to 15 working days and was, moreover, opposed to the principle of assigning the task of assessing the reasons for a refusal given by a MS to an EU institution. If the applicant requesting access to the MS' document disagreed with the reasons given, he might apply for a judicial remedy. Hence the last sentence of Article 5 (2) should be deleted.

Cion. pointed out that the existing five days time-limit had been established in order to enable the EU institutions to respect the general time-limit for processing a request for public access to documents provided for in Article 7 (1). If the time-limit for MS was extended to 15 working days (instead of five), the overall time-limit for the institutions to handle requests for access concerning documents originating from the Member States should be extended accordingly.

The institution shall appreciate the adequacy of reasons given by the Member State insofar as they are based on exceptions laid down in this Regulation.<sup>16</sup>

3. Where a Member State receives a request for a document in its possession, ~~originating~~  which originates  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.

<sup>16</sup> ES indicated its reservation with regard to the present wording of Article 5 (2). While supporting the amendment proposed by IT and EL, it did not agree with the interpretation of the judgment of the Court of Justice in case C-64/05 P which was reflected in the recasting proposal.

SK/DE/PL/UK/IRL/CZ supported the position of IT and EL.

UK underlined that it should be a matter for the Courts to rule on decisions taken by MS to refuse access to documents originating from them.

FI indicated that at the moment of its adoption in 2001, it was decided that Regulation 1049/2001 should apply to all documents held by the EU institutions. Requests for access to documents held by the institutions, but originating from MS should be examined on the basis of the exceptions provided for in the Regulation and in a spirit of loyal co-operation between the institutions and the MS concerned. The latter should be consulted, but the final decision should be left to the institution holding the requested document.

SI/SE/EE/DK/NL favoured the position of FI. NL could nevertheless agree to the extension of the time-limit for Member States to examine requests for access originating from them (from 5 to 15 working days) as proposed by the IT and EL delegations.

Cion noted that the discussions had reflected two different approaches to this issue: A number of delegations wanted the decisions on requests for access to MS documents held by the institutions to be taken by the Member States on the basis of their national legislation and without any subsequent assessment to be made by the EU institutions holding the documents, whereas others considered that the documents concerned should be examined on the basis of the Community Regulation (currently Regulation 1049/2001) and the final decision should be taken by the institution holding the document(s). In this context, the Commission's proposal constituted some sort of a middle ground.

## Regulation (EC) No 1049/2001

### Article 6 Applications

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.

2. If an application is not sufficiently precise, 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.

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 solution.

4. The institutions shall provide information and assistance to citizens on how and where applications for access to documents can be made.

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### Article 6 Applications

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.

2. If an application is not sufficiently precise  $\Rightarrow$  or if the requested documents cannot be identified  $\Leftarrow$ , 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.  $\Rightarrow$  The time limits provided for under Articles 7 and 8 shall start to run when the institution has received the requested clarifications.  $\Leftarrow$ <sup>17</sup>

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  $\Rightarrow$  and practical  $\Leftarrow$  solution.<sup>18</sup>

4. The institutions shall provide information and assistance to citizens on how and where applications for access to documents can be made.

<sup>17</sup> SI thought that this provision was too open-ended and raised the question of remedies available to applicants in case an application is found unclear.

FI considered that the amendments proposed in Articles 6, 7 and 8 gave the impression of enhancing the margin of discretion of the institutions and weakening the rights of the applicants. While in favour of practical solutions, FI was concerned not to send the wrong signal to the public.

CZ pointed out that the envisaged wording of Article 6 (2) did not foresee any time-limit for the institution to consult the applicant, and that such a time-limit should be established in order to ensure that the institutions take swift action following the reception of a request.

<sup>18</sup> SE expressed doubts as to the need for any modification of the provisions of the current Article 6 of the Regulation, and wondered what was meant by the word "practical" in Article 6 (3).

Cion indicated that the amendments proposed reflected the need for the institutions to be able to find a fair and feasible solution in a dialogue with the applicant in the event of very large or excessive requests. The alternative would be to refuse to handle excessive requests/requests for a very large number of documents.

**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 2 of this Article.

2. 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.

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

**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 ~~2~~ 4 of this Article.

~~3~~ 2. 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.

~~3~~ 3. 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.

~~4~~ 4. Failure by the institution to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

**Processing of confirmatory applications**

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, 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.

2. 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.

**Processing of confirmatory applications**

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.<sup>19</sup>

22. 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.

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<sup>19</sup> FI supported by DK could in general support the view of Cion and GSC of a need for an extension of the time-limit provided for in the current Regulation in so far the current time-limit had proved itself impossible to respect in practice. Both delegations doubted however that a doubling of the time-limit could be substantiated and thought that the institutions hereby would send the wrong message to the public.  
DK asked for statistics that proved that the current time-limit in practice has proved itself impossible to respect.

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.

3. 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.

~~3~~4. Failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and  shall  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.

**Treatment of sensitive documents**

1. Sensitive documents are documents originating from the institutions or the agencies established by them, from Member States, third countries or International Organisations, classified as "TRÈS SECRET/TOP SECRET", "SECRET" or "CONFIDENTIEL" in accordance with the rules of the institution concerned, which protect essential interests of the European Union or of one or more of its Member States in the areas covered by Article 4(1)(a), notably public security, defence and military matters.

2. Applications for access to sensitive documents under the procedures laid down in Articles 7 and 8 shall be handled only by those persons who have a right to acquaint themselves with those documents. These persons shall also, without prejudice to Article 11(2), assess which references to sensitive documents could be made in the public register.

3. Sensitive documents shall be recorded in the register or released only with the consent of the originator.

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2. Applications for access to sensitive documents under the procedures laid down in Articles 7 and 8 shall be handled only by those persons who have a right to acquaint themselves with those documents. These persons shall also, without prejudice to Article 11(2), assess which references to sensitive documents could be made in the public register.

3. Sensitive documents shall be recorded in the register or released only with the consent of the originator.

4. An institution which decides to refuse access to a sensitive document shall give the reasons for its decision in a manner which does not harm the interests protected in Article 4.

5. Member States shall take appropriate measures to ensure that when handling applications for sensitive documents the principles in this Article and Article 4 are respected.

6. The rules of the institutions concerning sensitive documents shall be made public.

7. The Commission and the Council shall inform the European Parliament regarding sensitive documents in accordance with arrangements agreed between the institutions.

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5. Member States shall take appropriate measures to ensure that when handling applications for sensitive documents the principles in this Article and Article 4 are respected.

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7. The Commission and the Council shall inform the European Parliament regarding sensitive documents in accordance with arrangements agreed between the institutions.



*Article 10*

*Article 10*

**Access following an application**

**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. 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.

2. If a document has already been released by the institution concerned 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.

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.

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2. If a document ~~has already been released by the institution concerned~~  is publicly available  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.

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☒ 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. This Regulation shall not derogate from specific modalities governing access laid down in EC or national law, such as the payment of a fee.<sup>20</sup>

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<sup>20</sup> SE/FI/SI/EE/CZ requested further clarification of the scope and consequences of this provision.

Cion. pointed out that the purpose was not to create a new exception, but to ensure that Regulation 1049/2001 is not used to circumvent specific rules on payment for documents that are made available to the public on demand, but which are not free of charge. - If for instance a document originating from the Office for Harmonisation in the Internal Market (OHIM) in Alicante or the European Air Safety Agency (EASA) in Cologne is held by an EU Institution and subsequently requested by a Member of the Public, the Institution concerned should invite the applicant to address himself to the Agency, which issued the document. The same would apply where access to documents produced by national authorities is subject to a fee.

**Regulation (EC) No 1049/2001**

*Article 11*

**Registers**

1. To make citizens' rights under this Regulation effective, each institution shall provide public access to a register of documents. Access to the register should be provided in electronic form. References to documents shall be recorded in the register without delay.
2. For each document the register shall contain a reference number (including, where applicable, the interinstitutional reference), the subject matter and/or a short description of the content of the document and the date on which it was received or drawn up and recorded in the register. References shall be made in a manner which does not undermine protection of the interests in Article 4.
3. The institutions shall immediately take the measures necessary to establish a register which shall be operational by 3 June 2002.

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*Article 11*

**Registers**

1. To make citizens' rights under this Regulation effective, each institution shall provide public access to a register of documents. Access to the register should be provided in electronic form. References to documents shall be recorded in the register without delay.
2. For each document the register shall contain a reference number (including, where applicable, the interinstitutional reference), the subject matter and/or a short description of the content of the document and the date on which it was received or drawn up and recorded in the register. References shall be made in a manner which does not undermine protection of the interests in Article 4.
3. The institutions shall immediately take the measures necessary to establish a register which shall be operational by 3 June 2002.<sup>21</sup>

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<sup>21</sup> FI pointed out that the reference date mentioned in Article 11 (3), which had become obsolete, ought to be deleted in order to bring this Article in line with Articles 17, 18 and 19, where a series of obsolete reference dates had already been deleted. Cion agreed with this observation and undertook to adapt its text accordingly.

**Direct access in electronic form or through a register**

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.

2. In particular, legislative documents, that is to say, documents drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States, should, subject to Articles 4 and 9, be made directly accessible.

3. Where possible, other documents, notably documents relating to the development of policy or strategy, should be made directly accessible.

**Direct access ~~in electronic form or through a register~~  to documents** 

~~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.~~

~~2.1. In particular, legislative documents, that is to say, documents drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States, should~~  or non-legislative acts of general application shall  , subject to Articles 4 and 9, be made directly accessible  to the public  .<sup>22</sup>

~~2.2. Where possible, other documents, notably documents relating to the development of policy or strategy, should~~  shall  be made directly accessible  in electronic form  .

<sup>22</sup> The chairman recalled that, according to the opinion, which the Consultative Working Party of the Legal Services had recently delivered on the recasting proposal the Legal Service of the European Parliament disagrees with the notion of *EU legislative acts or non-legislative acts of general application*, on the grounds that "*the terminology of the proposed text is unknown in the current treaties and specific to the Treaty of Lisbon*". (see doc. 16343/1/08 REV 1, p. 3). Cion explained that the wording "*acts of general application*" had in fact been taken from the Lisbon Treaty, since it was much clearer than the current definition of documents. The overall purpose of the redrafting was to highlight the principle that documents, which are part of procedures leading to the adoption of *EU legislative acts or non-legislative acts of general application*, should be made available to the public from the very outset. SI/EST/DK/IRL/CZ/FI/SE would prefer to maintain the current wording of Article 12 (1). DK and IRL pointed out that the current wording of Article 12 (1) covers all categories of documents. SI underlined that the existing Article 12 (1) sets out a *general principle* : "*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)*", and that this general principle should be maintained. DK reminded delegations that the European Parliament had called for the creation of a common database which should allow the public to follow the document flow within and between the institutions during the legislative process.

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4. Where direct access is not given through the register, the register shall as far as possible indicate where the document is located.

~~3.~~ 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.

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*Article 13*

*Article 13*

**Publication in the Official Journal**

**Publication in the Official Journal**

1. In addition to the acts referred to in Article 254(1) and (2) of the EC Treaty and the first paragraph of Article 163 of the Euratom Treaty, the following documents shall, subject to Articles 4 and 9 of this Regulation, be published in the Official Journal:

1. In addition to the acts referred to in Article 254(1) and (2) of the EC Treaty and the first paragraph of Article 163 of the Euratom Treaty, the following documents shall, subject to Articles 4 and 9 of this Regulation, be published in the Official Journal:

- (a) Commission proposals;
- (b) common positions adopted by the Council in accordance with the procedures referred to in Articles 251 and 252 of the EC Treaty and the reasons underlying those common positions, as well as the European Parliament's positions in these procedures;
- (c) framework decisions and decisions referred to in Article 34(2) of the EU Treaty;
- (d) conventions established by the Council in accordance with Article 34(2) of the EU Treaty;
- (e) conventions signed between Member States on the basis of Article 293 of the EC Treaty;

- (a) Commission proposals;
- (b) common positions adopted by the Council in accordance with the procedures referred to in Articles 251 and 252 of the EC Treaty and the reasons underlying those common positions, as well as the European Parliament's positions in these procedures;
- (c) framework decisions and decisions referred to in Article 34(2) of the EU Treaty;
- (d) conventions established by the Council in accordance with Article 34(2) of the EU Treaty;
- (e) conventions signed between Member States on the basis of Article 293 of the EC Treaty;

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- (f) international agreements concluded by the Community or in accordance with Article 24 of the EU Treaty.
2. As far as possible, the following documents shall be published in the Official Journal:
- (a) initiatives presented to the Council by a Member State pursuant to Article 67(1) of the EC Treaty or pursuant to Article 34(2) of the EU Treaty;
- (b) common positions referred to in Article 34(2) of the EU Treaty;
- (c) directives other than those referred to in Article 254(1) and (2) of the EC Treaty, decisions other than those referred to in Article 254(1) of the EC Treaty, recommendations and opinions.
3. Each institution may in its rules of procedure establish which further documents shall be published in the Official Journal.

**Regulation (EC) No 1049/2001****COM (2008) 229 final***Article 14**Article 14***Information****Information**

1. Each institution shall take the requisite measures to inform the public of the rights they enjoy under this Regulation.
2. The Member States shall cooperate with the institutions in providing information to the citizens.

*Article 15*

*Article 15*

**Administrative practice in the institutions**

**Administrative practice in the institutions**

1. The institutions shall develop good administrative practices in order to facilitate the exercise of the right of access guaranteed by this Regulation.

1. The institutions shall develop good administrative practices in order to facilitate the exercise of the right of access guaranteed by this Regulation.

2. The institutions shall establish an interinstitutional committee to examine best practice, address possible conflicts and discuss future developments on public access to documents.

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*Article 16*

*Article 16*

**Reproduction of documents**

**Reproduction of documents**

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.

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.<sup>23</sup>

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<sup>23</sup> Cion. indicated in a reply to a question from SE, that also information covered by national rules on intellectual property or the TRIPS agreement is covered by this provision.

*Article 17**Article 17***Reports****Reports<sup>24</sup>**

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.

~~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.~~

2. At the latest by 31 January 2004, the Commission shall publish a report on the implementation of the principles of this Regulation and shall make recommendations, including, if appropriate, proposals for the revision of this Regulation and an action programme of measures to be taken by the institutions.

~~2. At the latest by 31 January 2004, the Commission shall publish a report on the implementation of the principles of this Regulation and shall make recommendations, including, if appropriate, proposals for the revision of this Regulation and an action programme of measures to be taken by the institutions.~~

*Article 18**Article 18***Application measures****Application measures**

1. Each institution shall adapt its rules of procedure to the provisions of this Regulation. The adaptations shall take effect from 3 December 2001.

~~1. Each institution shall adapt its rules of procedure to the provisions of this Regulation. The adaptations shall take effect from 3 December 2001.~~

2. Within six months of the entry into force of this Regulation, the Commission shall examine the conformity of Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community with this Regulation in order to ensure the preservation and archiving of documents to the fullest extent possible.

~~2. Within six months of the entry into force of this Regulation, the Commission shall examine the conformity of Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community with this Regulation in order to ensure the preservation and archiving of documents to the fullest extent possible.~~

3. Within six months of the entry into force of this Regulation, the Commission shall examine the conformity of the existing rules on access to documents with this Regulation.

3. Within six months of the entry into force of this Regulation, the Commission shall examine the conformity of the existing rules on access to documents with this Regulation.

<sup>24</sup> NL would prefer to maintain the provision in Article 17 (2) which foresees the publication of a report on the implementation of the principles of the Regulation. In addition, NL would prefer to maintain Article 18, which requires the Commission to examine the implementation of the application measures.  
Cion pointed out that Article 17 (2) provides for the publication of one single evaluation report, but that a periodic evaluation could be considered.



*Article 18*

**Repeal**

Regulation (EC) No 1049/2001 is repealed with effect from [...].

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

*Article 19*

**Entry into force**

This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Communities.

It shall be applicable from 3 December 2001.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at

For the European Parliament  
The President

For the Council  
The President

*Article 19*

**Entry into force**

This Regulation shall enter into force on the ~~third~~  twentieth  day following that of its publication in the *Official Journal of the European ~~Communities~~*  Union .

~~It shall be applicable from 3 December 2001.~~

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*