

Proposal for a Regulation of the European Parliament and of the Council Regarding Public Access to European Parliament, Council and Commission documents

	European Commission Proposal (30th April 2008)	European Parliament Amendment (Draft Report 12th May 2010)	ClientEarth Proposed Amendments
Recital 9	(9) The European Parliament and the Council adopted on 6 September 2006 Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters to Community institutions and bodies. With regard to access to documents containing environmental information, this Regulation should be consistent with Regulation (EC) No 1367/2006.	(9) In compliance with the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters and with the relevant European Union legislation a wider right of access should be granted to documents and information covered by that Convention.	(9) In compliance with the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters and with Regulation (EC) 1367/2006 on the application of the provisions of the Aarhus Convention to Community institutions and bodies a wider right of access should be granted to documents and information covered by that Convention and Regulation, in particular with Title II of Regulation 1367/2006.
<i>Explanation</i> The Aarhus Convention and Regulation 1367/2006 provide specific provisions on access to environmental information which should be referred to and complied with in the new regulation on access to documents.			

Recital new			<p>Institutions should provide the basis for a claim to exception and give detailed reasons during the administrative process. The failure to do so hinders issue development and judicial review. It also prevents the public and the Community judicature from determining whether the refusal is vitiated by error. For these reasons, any claims to exceptions and underlying reasons, if not stated in written reply during the administrative process, should be considered waived.</p>
<p><i>Explanation</i> This conforms to developing case law in European courts that require and promotes the prompt processing of applications. See Case T-2/03, <i>Verein für Konsumenteninformation v. Commission of the European Communities</i> (2005), paragraph 73; Case C-64/05 P, <i>Kingdom of Sweden v. Commission of the European Communities and Others</i> (2007), paragraph 89; Case T-264/04, <i>WWF European Policy Programme v. Council of the European Union</i> (2007), paragraph 36.</p>			

Article 2	<p><u>Beneficiaries and Scope</u></p> <p>1. Any natural or legal person shall have a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.</p>	<p><u>Beneficiaries</u></p> <p>1. Any natural or legal person or any association of legal or natural persons shall have a right of access to documents of the institutions, bodies, offices or agencies, subject to the principles, conditions and limits defined in this Regulation.</p>	<p><i>New:</i> This regulation applies to the Court of Justice, the European Central Bank and the European Investment Bank when exercising their administrative tasks.</p>
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Explanation Article 15 paragraph 3 of the Treaty on the Functioning of the EU provides that “the Court of Justice of the European Union, the European Central Bank and the European Investment Bank shall be subject to this paragraph only when exercising their administrative tasks”.

<p>Article 3 (c)</p>	<p><u>Definitions</u></p>	<p><u>Definitions</u></p>	<p><u>Definitions</u></p> <p><i>New:</i> ‘environmental information’ means any information in written, visual, aural, electronic or any other material form on:</p> <ul style="list-style-type: none"> (i) The state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements; (ii) Factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in point (i); (iii) Measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in points (i) and (ii) as well as measures or activities designed to protect those elements;
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			<p>(iv) reports on the implementation of environmental legislation;</p> <p>(v) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in point (iii);</p> <p>(vi) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures in as much as they are or may be affected by the state of the elements of the environment referred to in point (i)</p>
			<p>or, through those elements, by any of the matters referred to in points (ii) and (iii).</p>
<p><i>Explanation</i> For the sake of clarity and accessibility by the public to documents containing environmental information, the regulation should contain the definition of environmental information provided by Article 2 paragraph 1 (d) of Regulation 1367/2006 applying the provisions of the Aarhus Convention to Institutions and bodies.</p>			

<p>Article 4 (para 1)</p>	<p><u>Exceptions</u></p> <p>1. The institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards:</p> <p>...</p> <p>(e) the environment, such as breeding sites of rare species</p>	<p><u>General Exceptions to the Right of Access</u></p> <p>Article 4 paragraph 4 a (new)</p> <p>Documents the disclosure of which would pose a risk to environmental protection values, such as the breeding sites of rare species, shall only be disclosed in conformity with Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in environmental Matters to Community institutions and bodies.</p>	<p>Delete paragraph (e)</p> <p><i>New: In addition to the exceptions set out in this Article 4, Community institutions and bodies may refuse access to environmental information where disclosure of the information would adversely affect the protection of the environment to which the information relates, such as the breeding sites of rare species.</i></p>
<p><i>Explanation</i> This wording would refer in a correct way to Article 6 paragraph 2 of Regulation 1367/2006 which provides for this exception.</p>			

<p>Article 4 (para 2)</p>	<p>2. The institutions shall refuse access to a document where disclosure would undermine the protection of:</p> <p>...</p> <p>(c) Legal advice and court , arbitration and dispute settlement proceedings;</p>	<p>2. The institutions, bodies, offices or agencies shall refuse access to a document where disclosure would undermine the protection of public or private interests linked to:</p> <p>...</p> <p>(c) Legal advice dealing with court proceedings and court , arbitration and dispute settlement proceedings;</p>	<p>2. The institutions, bodies, offices or agencies shall refuse access to a document where disclosure would undermine the protection of public or private interests linked to:</p> <p>(c) Legal advice dealing with court proceedings and court proceedings arbitration and dispute settlement proceedings;</p> <p><i>New: Infringement proceedings initiated by the Commission under Article 258 of the Treaty do not constitute court proceedings until the matter is brought before the Court. In order to ensure that the principle of institutional transparency is fully applied, official documents drawn up by the Commission within infringement proceedings, namely letters of formal notice and reasoned opinions, shall be publicly accessible.</i></p>
<p><i>Explanation</i> Although the correspondence exchange between Member States and the Commission within infringement proceedings under article 258 of the TFEU should be kept confidential, official documents drawn up within these proceedings by the Commission, namely letters of formal notice and reasoned opinions, should be publicly accessible.</p>			

<p>Article 4 (para 4)</p>	<p>4. The exceptions under paragraphs (2) and (3) shall apply unless there is an overriding public interest in disclosure.</p>	<p>4. The exceptions under paragraph (2) shall apply unless there is an overriding public interest in disclosure.</p>	<p>4. The exceptions under paragraph (2) shall apply unless there is an overriding public interest in disclosure.</p> <p><i>New:</i> The examination required for the purpose of processing an application for access to documents must be specific in nature. The mere fact that a document concerns an interest protected by an exception under this Article is not sufficient to justify application of that exception.</p> <p>Such application may be justified only if the institution, body, office, agency has previously assessed whether access to the document could specifically and effectively undermine the protected interest.</p> <p>Institutions must provide the basis for the claim to exception and give detailed reasons for the refusal during the administrative process or waive their ability to raise them in subsequent proceedings.</p>
<p><i>Explanation</i> This wording would correctly incorporate settled case-law of the Court of Justice of the EU (Case T-2/03 <i>Verein fur Konsumenteninformation v Commission</i> [2005] ECR II-1121, paragraph 69; Joined cases T-110/03, T-150-03 and T-405/03 <i>Sison v Council</i> [2005] ECR II-1429, paragraph 75; Joined cases C-39/05P and C-52/05 P <i>Sweden and Turco v Council</i> [2008] ECR I-0000, paragraph 35.)</p>			

<p>Article 4 (para 4)</p>	<p>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.</p>	<p>4. The exceptions under paragraph (2) shall apply unless there is an overriding public interest in disclosure. When balancing the public interest in disclosure, special weight shall be given to the fact that the requested documents relate to the protection of fundamental rights or the right to live in a healthy environment.</p>	<p>As regards paragraph 2 (a) and (d) with the exception of investigations, an overriding public interest in disclosure shall be deemed to exist where the information requested relates to emissions unto the environment.</p> <p><i>New:</i> As regards the other exceptions set out in this article, the grounds for refusal shall be interpreted in a restrictive way whenever the document requested contains environmental information, taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment.</p>
<p><i>Explanation</i> This wording would correctly refer to the content of Article 6 paragraph 1 of Regulation 1367/2006 applying the Aarhus Convention to Community institutions and bodies.</p>			

<p>Article 5 (para 2)</p>	<p>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 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.</p> <p>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.</p>	<p>Where an application concerns one of the following documents originating from a Member States:</p> <ul style="list-style-type: none"> -which has not been transmitted by the Member States in its capacity as a member of the Council, or -which does not concern information submitted to the Commission concerning the implementation of the European Union policies and legislation, <p>the authorities of that Member State shall be consulted. The institution, body, office or agency, 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 in equivalent provisions of its own legislation or objects on the basis of Article 346 (1)(a) TFEU that the disclosure would be contrary to its essential security interests. The institution, body, office or agency shall assess the adequacy of reasons given by the Member State.</p>	<p>Where an application concerns one of the following documents originating from a Member States:</p> <ul style="list-style-type: none"> -which has not been transmitted by the Member States in its capacity as a member of the Council, or -which does not concern information submitted to the Commission concerning the implementation of the European Union policies and legislation, <p>the authorities of that Member State shall be consulted. The institution, body, office or agency, 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. The institution, body, office or agency shall assess the adequacy of reasons given by the Member State insofar as they are based on exceptions laid down in this Regulation.</p>
<p><i>Explanation</i> According to the Court of Justice in case C-64/05P, the power of the Member States to refuse granting access to the requested document is delimited by the exceptions set out in Article 4(1) to (3) of the regulation and not by its national legislation and the final decision lies with the institution holding the document.</p>			

<p>Article 7 (para 1)</p>	<p><u>Processing of initial applications</u></p> <p>1. An application for access to a document shall be handled promptly.</p>	<p>1. An application for access to a document shall be handled promptly.</p>	<p>An application for access to a document shall be handled and registered promptly.</p>
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Explanation Applications should be registered as promptly as possible to be handled swiftly and within the 15 working days limit.

Article 8 (para 1)	<u>Processing of confirmatory applications</u> 1. A confirmatory application shall be handled promptly.	1. A confirmatory application shall be handled promptly.	A confirmatory application for access to a document shall be handled and registered promptly.
<i>Explanation</i> Applications should be registered as promptly as possible to be handled swiftly and within the 15 working days limit.			

<p>Article 12 new</p>			<p><u>Collection and dissemination of environmental information</u></p> <p>Institutions, bodies, offices and agencies shall organise the collection and dissemination of environmental information in compliance with Article 4 of Regulation 1367/2006 applying the Aarhus Convention to institutions and bodies.</p> <p>In particular, the environmental information to be made available and disseminated shall be updated as appropriate. In addition to the documents listed in article 12(2) and (3) and in Article 13(1) and (2) of this regulation, the databases or registers shall include the following:</p> <ul style="list-style-type: none">(a) texts of international treaties, conventions or agreements, and of Community legislation on the environment or relating to it, and of policies, plans and programmes relating to the environment;(b) progress reports on the implementation of the items referred to under (a) where prepared or held in electronic form by Community institutions and bodies;(c) steps taken in proceedings for infringements of Community law from the stage of the reasoned opinion pursuant to article 258 of the Treaty;(d) reports on the state of the environment;(e) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;
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			<p>(f) authorisations with a significant impact on the environment, and environmental agreements, or a reference to the place where such information can be requested or accesses;</p> <p>(g) environmental impact studies and risk assessments concerning environmental elements, or a reference to the place where such information can be requested or accessed.</p>
<p><i>Explanation</i> The regulation should specify the documents containing environmental information the institutions, bodies, offices and agencies shall hold in their registers and databases in compliance with article 4 of Regulation 1367/2006.</p>			