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*****I**
REPORT

on the proposal for a regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (recast)
(COM(2008)0229 – C6-0184/2008 – 2008/0090(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Michael Cashman

Rapporteur for the opinion (*):
Anneli Jäätteenmäki, Committee on Constitutional Affairs

(*) Associated committee - Rule 50 of the Rules of Procedure

(Recast - Rule 87 of the Rules of Procedure)

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* alerts the relevant departments to parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act which the draft act seeks to amend includes a third and fourth line identifying respectively the existing act and the provision in that act affected by the amendment. Passages in a provision of an existing act that Parliament wishes to amend, but the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**Proposal for a regulation of the European Parliament and the Council regarding public access to European Parliament, Council and Commission documents (recast)
(COM(2008)0229) – C6-0184/2008 – 2008/0090(COD))**

(Ordinary legislative procedure: recast)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0229),
 - having regard to Article 251(2) and Article 255(2) of the EC Treaty, pursuant to which the Commission submitted its initial proposal to Parliament (C6-0184/2008),
 - having regard to the Commission Communication to Parliament and the Council entitled 'Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures' (COM(2009)0665),
 - having regard to Article 294(3) and Article 15 of the Treaty on the Functioning of the European Union,
 - having regard to the Charter of Fundamental Rights of the European Union and in particular Articles 41 and 42 thereof,
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts,
 - having regard to Rules 87 and 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions¹ of the Committee on Constitutional Affairs, the Committee on Petitions and the Committee on Legal Affairs (A7-0000/2011),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance
1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
 2. Considers that procedure 2011/0073(COD) has lapsed as a result of the incorporation into

¹ Annexed to report A6-0077/2009.

procedure 2008/0090(COD) of the contents of the Commission proposal (COM(2011)0137);

3. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
4. Instructs its President to forward its position to the Council and the Commission

Amendment 1

Proposal for a regulation Title

Text proposed by the Commission

Proposal for a regulation of the European Parliament and of the Council ***regarding public access to European Parliament, Council and Commission documents***

Amendment

Proposal for a Regulation of the European Parliament and the Council ***defining the general principles and limits governing the right of access to documents of Union institutions, bodies, offices and agencies***

Justification

The title has to reflect the new nature of the act after the application of the Lisbon Treaty as a new general framework for democratic participation, visibility, oversight and transparency covering in principle all EU entities. It is also in line with COM(2011)0137.

Amendment 2

Proposal for a regulation Recital 1

Text proposed by the Commission

(1) A number of substantive changes are to be made to Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. In the interest of clarity, that Regulation should be recast.

Amendment

(1) Following the entry into force of the TEU and of the TFEU, the right to access to documents covers all Union institutions, bodies, offices and agencies, including the European External Action Service, so that substantial changes are to be made to Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents¹, whereby the experience of the initial

implementation of that Regulation, as well as of the relevant case-law of the Court of Justice of the European Union and the European Court of Human Rights, should be taken into account.

¹ *OJ L 145, 31.5.2001, p. 43.*

Justification

The extent of the Treaty provisions has been considerably enlarged after the entry into force of the Lisbon Treaty. It now covers access of a number of EU institutions, bodies, offices and agencies and is not anymore limited to the Parliament, the Commission and the Council. At the same time the ECtHR has in its case-law on freedom of expression (Article 10 ECHR) incorporated under some conditions the right to information.

Amendment 3

Proposal for a regulation

Recital 3

Text proposed by the Commission

(3) Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system. Openness contributes to strengthening the principles of democracy *and* respect for fundamental rights as laid down in Article 6 of the **EU Treaty** and in the Charter of Fundamental Rights of the European Union.

Amendment

(3) Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system. Openness contributes to strengthening the principles of democracy, *as outlined in Articles 9 to 12 TEU, as well as* respect for fundamental rights as laid down in Article 6 **TEU** and in the Charter of Fundamental Rights of the European Union (*the Charter*).

Justification

Updated in line with the Lisbon Treaty and the new obligatory rights stemming from the Charter of Fundamental Rights.

Amendment 4

Proposal for a regulation Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) Transparency should also strengthen the principles of good administration in Union institutions, bodies, offices and agencies as provided for by Article 41 of the Charter and by Article 298 TFEU. Internal administrative procedures should be defined accordingly and adequate financial and human resources should be made available to put the principle of openness into practice.

Justification

Updated in line with the Lisbon Treaty and the new obligatory rights stemming from the Charter of Fundamental Rights enhancing the obligations for an open and efficient European administration, as stated in Article 298 TFEU.

Amendment 5

Proposal for a regulation Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) Openness enhances citizens' trust in Union institutions because it contributes to their knowledge of the Union's decision-making process and their respective rights thereunder. Openness also entails more transparency in the implementation of administrative and legislative procedures.

Amendment 6

Proposal for a regulation Recital 3 b (new)

Text proposed by the Commission

Amendment

(3b) By emphasising the normative

importance of the principle of transparency, this Regulation strengthens the Union's culture of the rule of law and therefore also contributes to the prevention of crime and criminal behaviour.

Amendment 7

Proposal for a regulation

Recital 4

Text proposed by the Commission

Amendment

(4) The general principles and the limits on grounds of public or private interest governing the public right of access to documents have been laid down in Regulation (EC) No 1049/2001, which became applicable on 3 December 2001.

deleted

Amendment 8

Proposal for a regulation

Recital 5

Text proposed by the Commission

Amendment

(5) A first assessment of the implementation of Regulation (EC) No 1049/2001 was made in a report published on 30 January 2004. On 9 November 2005, the Commission decided to launch the process leading to the review of Regulation (EC) No 1049/2001. In a Resolution adopted on 4 April 2006, the European Parliament has invited the Commission to submit a proposal amending the Regulation. On 18 April 2007, the Commission published a Green Paper on the review of the Regulation and launched a public consultation.

deleted

Amendment 9

Proposal for a regulation Recital 6

Text proposed by the Commission

(6) The purpose of this Regulation is to give the fullest possible effect to the right of public access to documents and to lay down the general principles and *limits on* such access in accordance with *Article 255(2) of the EC Treaty*.

Amendment

(6) The purpose of this Regulation is to give the fullest possible effect to the right of public access to documents and to lay down the general principles and *the exceptions to such access on grounds of public or private interest which govern* such access in accordance with *Article 15(3) TFEU and in accordance with the provisions on openness of the Union's institutions, bodies, offices and agencies as laid down in Article 15(1) TFEU. Therefore, any other rules on access to documents should comply with this Regulation, subject to special provisions relating only to the Court of Justice of the European Union, the European Central Bank and the European Investment Bank when performing non-administrative tasks.*

Amendment 10

Proposal for a regulation Recital 10

Text proposed by the Commission

(10) *With regard to the disclosure of personal data, a clear relationship should be established between this Regulation and Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.*

Amendment

(10) *Union institutions, bodies, offices and agencies should treat personal data in compliance with the rights of data subjects as defined by Article 16 TFEU as well as by Article 8 of the Charter, by relevant Union law and by the case-law of the Court of Justice of the European Union.*

Justification

A proper equilibrium has to be established between the two fundamental rights of data protection and access to documents, based on clear legislation and corresponding case law.

Amendment 11

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) Clear rules should be established regarding the disclosure of documents originating from the Member States and of documents of third parties which are part of judicial proceedings files or obtained by the institutions by virtue of specific powers of investigation conferred upon them by *EC* law.

Amendment

(11) Clear rules should be established regarding the disclosure of documents originating from the Member States and of documents of third parties which are part of judicial proceedings files or obtained by the institutions, ***bodies, offices or agencies*** by virtue of specific powers of investigation conferred upon them by ***Union*** law.

Amendment 12

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) ***Wider*** access should be granted to documents in cases where the institutions are acting in their legislative capacity, including under delegated powers, ***while at the same time preserving the effectiveness of the institutions' decision-making process. Such documents should be made directly accessible to the greatest possible extent***

Amendment

(12) ***In compliance with Article 15(3) TFEU, full*** access should be granted to documents in cases where, ***according to the Treaties***, the institutions are acting in their legislative capacity, including under delegated powers ***in accordance with Article 290 TFEU and implementing powers in accordance with Article 291 TFEU when adopting measures of general scope. Preparatory legislative documents and all related information on the different stages of the interinstitutional procedure, such as Council working group documents, names and positions of Member States delegations acting as Members of the Council and first-reading trilogue documents, should in principle be made immediately and directly accessible to the public on the Internet.***

Justification

Full, direct and timely public access should be granted in principle to documents relating to legislative acts as well as delegated and implementing acts of general scope, as the legislative procedure has to be open and visible as much as possible.

Amendment 13

**Proposal for a regulation
Recital 12 a (new)**

Text proposed by the Commission

Amendment

(12a) Legislative texts should be drafted in a clear and understandable way and published in the Official Journal of the European Union.

Justification

In accordance with the principle of the fullest possible access and transparency the legislative procedure has to be open and visible as much as possible.

Amendment 14

**Proposal for a regulation
Recital 12 b (new)**

Text proposed by the Commission

Amendment

(12b) Better law-making practices, drafting models and techniques shared by the institutions, bodies, offices and agencies should be agreed by the European Parliament, the Council and the Commission in accordance with Article 295 TFEU and with this Regulation and published in the Official Journal of the European Union in order to improve the principle of transparency by design and that of legal clarity of EU documents.

Justification

A necessary pre-condition of an effective public access is better law-making and coordinated

actions of the different institutions, bodies, offices or agencies.

Amendment 15

Proposal for a regulation Recital 12 c (new)

Text proposed by the Commission

Amendment

(12c) Documents relating to non-legislative procedures, such as binding measures or measures dealing with internal organisation, administrative or budgetary acts, or of a political nature (such as conclusions, recommendations or resolutions) should be easily and as far as possible directly accessible in compliance with the principle of good administration outlined in Article 41 of the Charter.

Justification

Addition in accordance with the principle of the fullest possible access to documents as well as with the Charter.

Amendment 16

Proposal for a regulation Recital 12 d (new)

Text proposed by the Commission

Amendment

(12d) For each category of document the institution, body, office or agency responsible should make accessible to citizens the workflow of the internal procedures to be followed, which organisational units would be in charge, as well their remit, the deadlines set and the office to be contacted. The institutions, bodies, offices and agencies should duly take into account the recommendations of the European Ombudsman. They should agree, in compliance with Article 295 TFEU, on

common guidelines as to the way in which each organisational unit should register the internal documents, classify them in case of possible prejudice to Union interests and archive them for temporary or historical needs according to the principles outlined in this Regulation. They should inform the public in a consistent and coordinated way of the measures adopted to implement this Regulation, and train their staff to assist citizens in exercising their rights under this Regulation.

Justification

A necessary pre-condition for an effective public access is better law-making and coordinated actions of the different institutions.

Amendment 17

Proposal for a regulation Recital 13

Text proposed by the Commission

(13) Transparency in the legislative process is of utmost importance for citizens. Therefore, institutions should actively disseminate documents, which are part of the legislative process. Active dissemination of documents should also be encouraged in other fields.

Amendment

(13) Transparency in the legislative process is of utmost importance for citizens. Therefore, institutions should actively disseminate documents which are part of the legislative process ***and improve their communication with potential applicants. Union institutions should make publicly accessible by default on their websites as many categories of documents as possible.*** Active dissemination of documents should also be encouraged in other fields.

Amendment 18

Proposal for a regulation Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) In order to improve openness and

transparency in the legislative process, an interinstitutional register of lobbyists and other interested parties should be agreed by the institutions, bodies, offices and agencies.

Amendment 19

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) On account of their highly sensitive content, certain documents should be given special treatment. Arrangements for informing the European Parliament of the content of such documents should be made through interinstitutional agreement.

Amendment

deleted

Amendment 20

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) In order to bring about greater openness in the work of the institutions, access to documents should be granted *by the European Parliament, the Council and the Commission* not only to documents drawn up *by the institutions*, but also to documents received by them. *In this context, it is recalled that Declaration No 35 attached to the Final Act of the Treaty of Amsterdam provides that* a Member State may request the *Commission or the Council* not to communicate to third parties a document originating from that State without its prior agreement.

Amendment

(16) In order to bring about greater openness in the work of the institutions, *bodies, offices and agencies*, access to documents should be granted not only to documents drawn up *by them*, but also to documents received by them. A Member State may request *the institutions, bodies, offices or agencies* not to communicate to third parties *outside the institutions, bodies, offices or agencies themselves* a document originating from that State without its prior agreement.

Justification

Member States should not have a veto right regarding documents originating from them as the final decision lies with the institutions, bodies, offices or agencies.

Amendment 21

Proposal for a regulation

Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) The Court of Justice of the European Union has specified that the requirement for Member States to be consulted in relation to requests for access to documents originating from them does not give them a right of veto, or the right to invoke national laws or provisions, and that the institution, body, office or agency receiving such a request may refuse access only on the grounds of the exceptions in this Regulation.¹

¹ *Judgment of 18 December 2007 in case C-64/05 P, Sweden v Commission, ECR 2007 p. I-11389*

Justification

Member States should not have a veto right regarding documents originating from them as the final decision lies with the Institutions.

Amendment 22

Proposal for a regulation

Recital 17

Text proposed by the Commission

Amendment

(17) In principle, all documents of the institutions should be accessible to the public. ***However,*** certain public and private interests ***should be protected by way of exceptions. The institutions should be entitled to protect their internal***

(17) All documents of the institutions should be accessible to the public. ***Exceptions to this principle should be made to protect*** certain public and private interests, ***but such exceptions should be governed by a transparent system of rules***

consultations and deliberations where necessary to safeguard their ability to carry out their tasks. In assessing the exceptions, the institutions should take account of the principles in Community legislation concerning the protection of personal data, in all areas of Union activities.

and procedures, and the overall goal should be the implementation of citizens' fundamental right of access. In assessing the exceptions, the institutions should take account of the principles in Union Community legislation concerning the protection of personal data, in all areas of Union activities.

Amendment 23

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) All rules concerning access to documents of the institutions should be in conformity with this Regulation.

Amendment

(18) Due to the fact that this Regulation directly implements Article 15 TFEU as well as Article 42 of the Charter, the defined principles and limits for access to documents should prevail over any rules, measures or practices adopted under a different legal basis by an institution, body, office or agency and introducing additional or stricter exceptions than the ones provided in this Regulation.

Justification

In order to grant full effect to Article 15 TFEU and Article 42 of the Charter, it is necessary to exclude any stricter "lex specialis".

Amendment 24

Proposal for a regulation Recital 22

Text proposed by the Commission

(22) This Regulation is without prejudice to existing rights of access to documents for Member States, judicial authorities or investigative bodies.

Amendment

deleted

Amendment 25

Proposal for a regulation Recital 23

Text proposed by the Commission

(23) In accordance with **Article 255(3) of the EC Treaty**, each institution lays down specific provisions regarding access to its documents in its rules of procedure,

Amendment

(23) In accordance with **Article 15(3) TFEU and the principles and rules outlined in this Regulation**, each institution, **body, office and agency** lays down specific provisions regarding access to its documents in its rules of procedure, **as well as to documents relating to its administrative tasks**,

Justification

Article 15(3) TFEU states that each institution, body, office and agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents.

Amendment 26

Proposal for a regulation Article 1 – point a

Text proposed by the Commission

(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 grant the public the widest possible access to such documents;

Amendment

(a) to define **in accordance with Article 15 TFEU**, the principles, conditions and limits on grounds of public or private interest governing the right of access to documents **of Union institutions, bodies, offices and agencies, in such a way as** to grant the public the widest possible access to such documents;

Justification

Article 15 of the TFEU lays down that general principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the EP and the Council. Covers COM(2011)0137.

Amendment 27

Proposal for a regulation Article 1 – point c

Text proposed by the Commission

(c) to promote good administrative practice *on* access to documents.

Amendment

(c) to promote ***transparent and*** good administrative practice ***in order to improve*** access to documents, ***and in particular the overall goals of greater transparency, accountability, and democracy.***

Amendment 28

Proposal for a regulation Article 2

Text proposed by the Commission

Beneficiaries ***and scope***

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.

2. This Regulation shall apply to all documents held by an institution, 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.

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.

Amendment

Beneficiaries

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 and agencies***, subject to the principles, conditions and limits defined in this Regulation.

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.

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. 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.

7. This Regulation shall be without prejudice to rights of public access to documents held by the institutions which might follow from instruments of international law or acts of the institutions implementing them.

Amendment 29

Proposal for a regulation Article 2 a (new)

Text proposed by the Commission

Amendment

Article 2a

Scope

1. This Regulation shall apply to all documents held by a Union institution, body, office and agency, that is to say documents drawn up or received by it and in its possession, in all areas of activity of the Union. This Regulation shall apply to the Court of Justice of the European Union, the European Central Bank and

the European Investment Bank, only in the course of the performance of their administrative tasks.

2. Documents shall be made accessible to the public either in electronic form in the Official Journal of the European Union, or in an official register of an institution, body, office or agency, or following a written application. The documents drawn up or received in the course of a legislative procedure shall be made directly accessible in accordance with Article 12 of this Regulation.

3. This Regulation shall be without prejudice to enhanced rights of public access to documents held by the institutions which might derive from instruments of international law or acts of the institutions implementing them or by the law of the Member States.

Amendment 30

Proposal for a regulation Article 3

Text proposed by the Commission

For the purpose of this Regulation:

(a) "document" *means* any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) *drawn-up by an institution and formally transmitted to one or more recipients or otherwise registered, or received by an institution; 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;

Amendment

For the purpose of this Regulation:

(a) "document" *shall mean* any *data* content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) *concerning a matter falling within the sphere of responsibility of a Union institution, body, office or agency. Data* contained in electronic storage, processing and retrieval systems, *including external systems used for the institution's work, constitute a document, notably* if they can be extracted *using any reasonably* available tools for the exploitation of the system *concerned. An institution, body, office or agency that intends to create a new electronic storage system, or to*

substantially change an existing system, shall evaluate the likely impact on the right of access, ensure that the right of access as a fundamental right is guaranteed, and act so as to promote the objective of transparency. The functions for the retrieval of information stored in electronic storage systems shall be adapted in order to satisfy requests from the public;

(aa) "classified documents" shall mean documents which have been totally or partially classified in accordance with Article 3a(1) of this Regulation;

(ab) "legislative act" shall for the purposes of this Regulation include documents drawn up or received in the course of legislative procedures for the adoption of legislative acts, including measures of general application under delegated and implementing powers, and acts of general application which are legally binding in or on the Member States;

(ac) "administrative task" shall mean measures dealing with the organisational, administrative or budgetary matters of an institution, body, office or agency concerned;

(ad) "archive system" shall mean a tool or a procedure of the institutions, bodies, offices and agencies for managing in a structured way the filing of all their documents referring to an ongoing or recently concluded procedure;

(ae) "historical archives" shall mean that part of the archives of the institutions, bodies, offices or agencies which has been selected, on the terms laid down in point (a), for permanent preservation;

A detailed list of all the categories of acts covered by the definitions in points (a) to (ac) shall be published in the Official Journal of the European Union and on the Internet sites of the institutions,

(b) "third party" 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.

bodies, offices and agencies, which shall also agree and publish their common criteria for archiving.

(b) "third party" *shall* mean any natural or legal person, or any entity outside the institution, *body, office or agency* concerned, including the Member States, other *Union* or *non-Union* institutions and bodies and third countries.

Amendment 31

Proposal for a regulation

Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3a

Procedure for the classification and declassification of documents

1. When grounds of public policy under Article 4(1) exist, and without prejudice to parliamentary scrutiny at Union and national level, an institution, body, office or agency shall classify a document where its disclosure would undermine the protection of the essential interests of the Union or of one or more of the Member States, notably in public security, defence and military matters. A document may be partially or totally classified. Documents shall be classified as follows:

(a) "EU TOP SECRET": this classification shall be applied only to information and material the unauthorised disclosure of which could cause exceptionally grave harm to the essential interests of the Union or of one or more of the Member States;

(b) "EU SECRET": this classification shall be applied only to information and material the unauthorised disclosure of which could seriously harm the essential interests of the Union or of one or more of

the Member States;

(c) "EU CONFIDENTIAL": this classification shall be applied to information and material the unauthorised disclosure of which could harm the essential interests of the Union or of one or more of the Member States;

(d) "EU RESTRICTED": this classification shall be applied to information and material the unauthorised disclosure of which could be disadvantageous to the interests of the Union or of one or more of the Member States.

2. Documents shall be classified only when necessary. If possible, originators shall specify on classified documents a date or period by which or by the end of which the contents may be downgraded or declassified. Otherwise, they shall review the documents at least every five years, in order to ensure that the original classification remains necessary. The classification shall be clearly and correctly indicated, and shall be maintained only for as long as the information requires protection. The responsibility for classifying documents and for any subsequent downgrading or declassification rests with the institution, body, office or agency which originated or which received the classified document from a third party or from another institution, body, office or agency.

3. Without prejudice to the right of access by other Union institutions, bodies, offices or agencies, classified documents shall be released to third parties with the consent of the originator. When more than one institution, body, office or agency is involved in the processing of a classified document, the same classification shall be granted and mediation shall be initiated if they have a different appreciation of the protection to be granted. Documents relating to legislative procedures shall not

be classified; implementing measures shall be classified before their adoption insofar as the classification is necessary and aimed at preventing an adverse effect on the measure itself. International agreements dealing with the sharing of confidential information concluded on behalf of the Union shall not give any right to a third country or international organisation to prevent the European Parliament from having access to that confidential information.

4. Applications for access to classified 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. Those persons shall also assess which references to classified documents may be made in the public register.

5. Classified documents shall be recorded in a register of the institution, body, office or agency, or released with the consent of the originator.

6. An institution, body, office or agency which decides to refuse access to a classified document shall give the reasons for its decision in a manner which does not harm the interests protected by the exceptions laid down in Article 4(1).

7. Without prejudice to national parliamentary scrutiny, Member States shall take appropriate measures to ensure that, when handling applications for Union classified documents, the principles set out in this Regulation are respected.

8. The rules of the institutions, bodies, offices or agencies concerning classified documents shall be made public.

Justification

This Regulation should provide a framework procedure for the registration, classification, access and archiving of classified documents.

Amendment 32

Proposal for a regulation

Article 4 – paragraph 1 – point a

Text proposed by the Commission

(a) public security *including the safety of natural or legal persons*;

Amendment

(a) public security *of the Union or of one or more of the Member States*;

Amendment 33

Proposal for a regulation

Article 4 – paragraph 1 – point d

Text proposed by the Commission

(d) the financial, monetary or economic policy of the *Community* or a Member State;

Amendment

(d) the financial, monetary or economic policy of the *Union* or a Member State;

Justification

The formal correction is required by the entry into force of the TEU.

Amendment 34

Proposal for a regulation

Article 4 – introductory part – paragraph 2

Text proposed by the Commission

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

Amendment

2. The institutions, *bodies, offices and agencies* shall refuse access to a document where disclosure would undermine the protection of:

Amendment 35

Proposal for a regulation

Article 4 – paragraph 2 – point c

Text proposed by the Commission

(c) legal advice **and court, arbitration and dispute settlement proceedings**;

Amendment

(c) legal advice **relating to court proceedings**;

Justification

The Court of Justice stated in its judgement in the Turco case (Joined cases C-39/05 and C-52/05) that disclosure of legal advice outside court proceedings in legislative initiatives increases the transparency and openness of the legislative process and strengthens the democratic rights of European citizens.

Amendment 36

Proposal for a regulation

Article 4 – paragraph 2 – point e

Text proposed by the Commission

(e) the objectivity and impartiality of **selection** procedures.

Amendment

(e) the objectivity and impartiality of **public procurement** procedures **until a decision has been taken by the contracting institution, body, office or agency, or the proceedings of a selection board leading to the recruitment of staff until a decision has been taken by appointing authority.**

Amendment 37

Proposal for a regulation

Article 4 – paragraph 3

Text proposed by the Commission

3. Access to **the following** documents shall be refused if their disclosure would seriously undermine the decision-making process **of the institutions**:

Amendment

3. Access to documents **drawn up by an institution for internal use or received by an institution relating to a matter where the decision has not yet been taken by that institution** shall be refused **only** if their disclosure would, **due to their content and**

the objective circumstances of the situation, manifestly and seriously undermine the decision-making process..

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

(b) documents containing opinions for internal use as part of deliberations and preliminary consultations within the institutions concerned, even after the decision has been taken.

Amendment 38

Proposal for a regulation Article 4 – paragraph 4

Text proposed by the Commission

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.

Amendment

*4. When balancing the public interest in disclosure under paragraphs (1) to (3), an overriding public interest in disclosure shall be deemed to exist where the document requested relates to **the protection of fundamental rights and the rule of law, sound management of public funds, or the right to live in a healthy environment, including** emissions into the environment. **An institution, body, office or agency invoking one of the exceptions has to make an objective and individual assessment and show that the risk to the interest protected is foreseeable and not purely hypothetical, and define how access to the document could specifically and effectively undermine the interest protected.***

Amendment 39

Proposal for a regulation Article 4 - paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Documents the disclosure of which

would pose a risk to environmental protection, 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 bodies¹.

¹OJ L 264, 25.9.2006, p. 13.

Justification

This amendment supports taking into account the Aarhus Convention and the principles expressed in the Turco judgement (Joined cases C-39/05 and C-52/05).

Amendment 40

Proposal for a regulation Article 4 – paragraph 5

Text proposed by the Commission

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.

Amendment

5. Personal data shall not be disclosed if such disclosure would harm the privacy or the integrity of the person concerned. Such harm shall not be deemed to be caused:

- if the data relate solely to the professional activities of the person concerned unless, given the particular circumstances, there is reason to assume that disclosure would adversely affect that

person;

- if the data relate solely to a public person unless, given the particular circumstances, there is reason to assume that disclosure would adversely affect that person or other persons connected with him or her;

- if the data have already been published with the consent of the person concerned.

Personal data shall nevertheless be disclosed if an overriding public interest requires disclosure. In such a case, the institution, body, office or agency concerned shall be required to specify the public interest. It shall give reasons why, in the specific case, the public interest outweighs the interests of the person concerned.

Where an institution, body, office or agency refuses access to a document on the basis of this paragraph, it shall consider whether it is possible to grant partial access to that document.

Justification

It is up to the legislator to provide a proper balance between two fundamental right, access to documents and data protection. The decision of the Court of Justice in case C-28/08 P, Commission v. Bavarian Lager was based on the current wording of Regulation (EC) No. 1049/2001. A new regulation should provide a new equilibrium taking into account the opinion of the EDPS as regards presumptions and a proactive approach.

Amendment 41

Proposal for a regulation Article 4 – paragraph 7

Text proposed by the Commission

7. The exceptions as laid down in 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***

Amendment

7. The exceptions as laid down in this Article shall ***not apply to documents transmitted in the framework of procedures leading to a legislative act or delegated or implementing act of general application. Nor shall the exceptions***

documents covered by the exceptions relating to 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.

apply to documents provided to institutions, bodies, offices and agencies for the purpose of influencing policy-making by lobbyists and other interested parties. The exceptions shall only apply for as long as is justified by the content of the document and in any event for a maximum period of 30 years.

Amendment 42

Proposal for a regulation Article 4 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. An institution, body, office or agency may grant privileged access to documents covered by paragraphs (1) to (3) for the purpose of research. If privileged access is granted, the information shall only be released subject to appropriate restrictions regarding its use.

Justification

The idea is to give primarily academics an opportunity to have access to information which would otherwise be inaccessible, but that they must accept appropriate restrictions as to how the information can be used. In giving academics a privileged access, we improve the possibilities to scrutinise and debate the European decision-making process, thereby increasing not only transparency but also public participation in the democratic life of the EU.

Amendment 43

Proposal for a regulation Article 5

Text proposed by the Commission

Amendment

Consultations

1. As regards third-party documents, *the institution shall consult the third party with a view to assessing whether an exception referred to in Article 4 is applicable, unless it is clear that the*

Consultation of third parties

1. As regards third-party documents, the institutions, *bodies, offices and agencies*, shall consult the third party with a view to assessing whether an exception referred to in Article 4 is applicable, unless it is

document shall or shall not be disclosed.

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. 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.*

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

clear that the document shall or shall not be disclosed.

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 *delegated or implementing act* of general application, the authorities of that Member State shall be consulted *where there is any doubt as to whether the document is covered by one of the exceptions*. 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 *and take a decision on the basis of its own judgment as to whether the exceptions cover the document concerned.*

3. Where a Member State receives a request for a document in its possession, which originates from an institution, *body, office or agency*, 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 objectives of this Regulation. The Member State may instead refer the request to the institution.

Amendment 44

Proposal for a regulation

Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

Legislative acts

1. In compliance with the democratic principles outlined in Articles 9 to 12 TEU and with the case-law of the Court of Justice, institutions acting in their

legislative capacity, including under delegated and implementing powers, as well as Member States when acting in their capacity as Members of the Council shall grant the widest possible access to documents relating to their activities.

2. Documents relating to legislative programmes, preliminary civil society consultations, impact assessments and any other preparatory documents linked to a legislative procedure, as well as documents relating to the implementation of Union law and policies linked to a legislative procedure shall be accessible on a user-friendly and coordinated interinstitutional site and published in a special electronic series of the Official Journal of the European Union.

3. During the legislative procedure, each institution, body, office or agency associated in the decision-making process shall publish its preparatory documents and all related information, including legal opinions, in a special series of the Official Journal of the European Union as well on a common Internet site reproducing the lifecycle of the procedure concerned.

4. Once adopted, legislative acts shall be published in the Official Journal of the European Union as provided for by Article 13.

Amendment 45

Proposal for a regulation Article 6 – paragraph 1

Text proposed by the Commission

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*

Amendment

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 55(1) TEU*. The applicant is not obliged to state

manner to enable the institution to identify the document. The applicant is not obliged to state reasons for the application.

reasons for the application.

Amendment 46

Proposal for a regulation Article 6 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. If an application is not sufficiently precise or if the requested documents cannot be identified, the institution, **body, office or agency** shall **within 15 working days** 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.

Amendment 47

Proposal for a regulation Article 7 – paragraph 2

Text proposed by the Commission

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.

Amendment

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 **only once for a maximum period of** 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

Amendment 48

Proposal for a regulation Article 7 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. ***The institution shall notify the applicant whether, and if so when, partial or full access to the document is likely to be possible at a later time.***

The applicant may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.

Justification

The applicants shall be aware of the future possibility to get access to the required document.

Amendment 49

Proposal for a regulation Article 7 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Each institution shall nominate a person responsible for checking that all the time-limits laid down in this Article are duly met.

Justification

The Ombudsman recommended that an information officer be appointed to ensure that time-limits are met.

Amendment 50

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

Amendment

1. A confirmatory application shall be handled promptly. Within ***30 working days***

1. A confirmatory application shall be handled promptly. Within ***a maximum of***

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 applications:

15 working days from registration of such an application, the institution, **body, office or agency** 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, **body, office or agency** shall inform the applicant of the remedies open to him or her.

Justification

The period of 30 days is too long and lowers the existing deadline under the existing Regulation for the institutions and other bodies which is 15 days.

Amendment 51

**Proposal for a regulation
Article 8 – paragraph 2**

Text proposed by the Commission

Amendment

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.

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 **only once for a maximum period of** 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

Amendment 52

**Proposal for a regulation
Article 8 – paragraph 4**

Text proposed by the Commission

Amendment

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

4. Failure by the institution, **body, office or agency** to reply within the prescribed time limit shall be considered as a **definitive** negative reply and shall entitle the applicant to institute court proceedings



make a complaint to the Ombudsman, under the relevant provisions of the *EC Treaty*.

against the institution and/or make a complaint to the Ombudsman, under the relevant provisions of the *Treaties*.

Justification

It should be clear that 15 days is the maximum limit not the rule as an answer has to be given as soon as possible. A failure not to reply should be considered as a definitive and final negative reply giving the possibility to start a full content-based judicial evaluation.

Amendment 53

Proposal for a regulation Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a

Fresh applications

If, after receiving the documents, the applicant requests further documents from the institutions, that request shall be dealt with as a fresh application in accordance with Articles 7 and 8.

Amendment 54

Proposal for a regulation Article 9

Text proposed by the Commission

Amendment

Article 9

deleted

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.

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.

Amendment 55

Proposal for a regulation

Article 10 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The content of a document shall be available without discrimination on the grounds of visual impairment, working

language or operating system platform. Institutions shall provide for actual access by an applicant to the content of documents without technical discrimination.

Amendment 56

Proposal for a regulation Article 10 – paragraph 4

Text proposed by the Commission

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.

Amendment

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 **50 A4 pages** and direct access in electronic form or through the register shall be free of charge.

Amendment 57

Proposal for a regulation Article 11 – paragraph 3

Text proposed by the Commission

3. The institutions shall immediately take the measures necessary to establish a **register which shall be operational by 3 June 2002.**

Amendment

3. The institutions shall immediately take the measures necessary to establish a **common interface for the institutional registers in order to ensure coordination between the registers.**

Amendment 58

Proposal for a regulation Article 12-- paragraph 1

Text proposed by the Commission

1. **Documents** drawn up or received in the course of procedures for the adoption of **EU** legislative acts or non-legislative

Amendment

1. **The institutions, bodies, offices and agencies shall make documents directly accessible to the public in electronic form**

acts of general application *shall, subject to Articles 4 and 9, be made directly accessible to the public.*

or through registers, particularly those drawn up or received in the course of procedures for the adoption of Union legislative acts or non-legislative acts of general application.

Justification

To guarantee quick and most effective access to documents it is necessary to provide them in electronic form.

Amendment 59

**Proposal for a regulation
Article 12 – paragraph 4**

Text proposed by the Commission

Amendment

4. *Each institution shall define in its rules of procedure which other categories of documents are directly accessible to the public.*

4. Each institution shall define in its rules of procedure which other categories of documents *shall be proactively made* directly accessible to the public.

Justification

To guarantee a sound overview of documents received by different institutions, bodies, offices and agencies a common register has to be established.

Amendment 60

**Proposal for a regulation
Article 13 – paragraph 1 – point b**

Text proposed by the Commission

Amendment

(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;

(b) positions adopted by the Council in accordance with the *procedure* referred to in *Article 294 TFEU* and the reasons underlying those common positions, as well as the European Parliament's positions in these procedures;

Amendment 61

Proposal for a regulation

Article 13 – paragraph 1 – point f

Text proposed by the Commission

(f) international agreements concluded by the *Community or* in accordance with *Article 24 of the EU Treaty*.

Amendment

(f) international agreements concluded by the *European Union* in accordance with *Article 37 TEU and Articles 207 and 218 TFEU*.

Amendment 62

Proposal for a regulation

Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14a

Information Officer

1. Each general administrative unit within each institution, body, office and agency shall appoint an Information Officer who shall be responsible for ensuring compliance with this Regulation and good administrative practice within that administrative unit.

2. The Information Officer shall determine which information it is expedient to give the public concerning:

- (a) the implementation of this Regulation;***
- (b) good practice;***

and shall ensure the dissemination of that information in an appropriate form and manner.

3. The Information Officer shall assess whether the services within his or her general administrative unit follow good practice.

4. The Information Officer may redirect the person who requires the information to another general administrative unit if the information in question falls outside

the remit of that unit and within the remit of another unit within the same institution, body, office or agency, provided that the other unit in question is in possession of such information.

Justification

To guarantee compliance with the provisions of the proposed act ab initio an internal officer for transparency and good administrative practice should be named in each general administrative unit.

Amendment 63

Proposal for a regulation
Article 14 b (new)

Text proposed by the Commission

Amendment

Article 14b

Principle of good and open administration

In the transitional period before the adoption of the rules as envisaged by Article 298 TFEU and based on the requirements of Article 41 of the Charter, the institutions, bodies, offices and agencies shall, on the basis of the Code of Good Administrative Behaviour, adopt and publish general guidelines on the scope of the obligations of confidentiality and professional secrecy set out in Article 339 TFEU, the obligations arising from sound and transparent administration and the protection of personal data in accordance with Regulation (EC) No 45/2001. Those guidelines shall also define the sanctions applicable in the event of failure to comply with this Regulation in accordance with the Staff Regulations of Officials of the European Union, the Conditions of Employment of other servants of the European Union and in the institutions' internal rules.

Justification

An open, efficient and independent European administration, as mentioned in Article 298 TFEU, has to be based on high standards of professional behaviour, including personal data protection, and appropriate sanctions have to be provided if a violation occurs.

Amendment 64

**Proposal for a regulation
Article 15 - title**

Text proposed by the Commission

Amendment

Administrative practice in the institutions

Administrative **transparency** practice in the institutions, **bodies, offices and agencies**

Justification

It should be clearly stated that the provision rely to transparency issues.

Amendment 65

**Proposal for a regulation
Article 15 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

1a. The institutions, bodies, offices and agencies shall inform citizens, in a fair and transparent way, about their organisational chart by indicating the remit of their internal units, the internal workflow and indicative deadlines of the procedures falling within their remit, and the services to which citizens may refer to obtain support, information or administrative redress.

Justification

Updated in line with the Lisbon Treaty and the new obligatory rights stemming from the Charter of Fundamental Rights enhancing the obligations for an open, efficient European administration accessible to citizens , as stated in Articles 10 TEU and Article 298 TFEU.

Amendment 66

Proposal for a regulation

Article 15 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Documents relating to the European Union budget, its implementation and beneficiaries of Union funds and grants shall be public and accessible to citizens.

Such documents shall also be accessible via a specific website and database, and on a database dealing with financial transparency in the Union.

Justification

An important aspect of transparency is the visibility of the budgetary procedure and the implementation of the EU budget.

Amendment 67

Proposal for a regulation

Article 16

Text proposed by the Commission

Amendment

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.

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.

Amendment 68

Proposal for a regulation

Article 17 – heading (new)

Text proposed by the Commission

Amendment

Title V - Final provisions

Amendment 69

Proposal for a regulation Article 17 – paragraph 1a (new)

Text proposed by the Commission

Amendment

1a. By ...*, at the latest, the Commission shall publish a report on the implementation of this Regulation and shall make recommendations, including, if appropriate, proposals for the revision of this Regulation which are necessitated by changes in the current situation and an action programme of measures to be taken by the institutions, bodies, offices and agencies.

**** Two years after the entry into force of this Regulation.***

Justification

The implementation of the legal act requires a post facto evaluation and an integral report including possible revision proposals.

EXPLANATORY STATEMENT

As Rapporteur on the proposal for revision of Regulation (EC) No 1049/2001, I have put forward some crucial modifications to the European Commission's proposal presented on 30 April 2008. The European Parliament has voted on and supported those on 11 March 2009. After the EP's election in June 2009 I was reappointed as Rapporteur on the dossier. On December 1st, the Lisbon Treaty entered into force and to a large extent modified the legal framework for the revision of this Regulation.

When the current Regulation came into force in 2001, I was also Rapporteur in charge of this dossier.

Already in 2006 I drafted the resolution of the European Parliament approved overwhelmingly by MEPs, containing a list of recommendations for improvements of the current Regulation.

In this perspective, when the Commission presented its proposal for revision in 2008, my expectations were very high as how the standards on public access to EU documents could be improved.

However, despite some positive modifications inserted in the proposal which are clearly justifiable, like the extension of the beneficiaries of this regulation, and the conformity with the Aarhus Convention, others would, in my view, represent a step backwards for transparency, especially if we consider that most of the European Parliament's requests of 2006 have not been taken into account.

On top of this now, with the Lisbon Treaty in force, the Commission is called upon to show a clearer message to the citizens that it is ready to provide for a more transparent way in which the EU institutions, offices, bodies and agencies operate.

In my view, we the legislators must also take this opportunity to try to make this regulation the real and unique legal framework of public accessibility to all documents handled by institutions, offices, bodies and agencies bearing in mind that final users are the citizens. It is our duty and obligation to make access as easy and user-friendly as possible.

Furthermore, we need to take this opportunity to try to order the different provisions in a more consistent and reasonable way so that institutions can finally work together to define common rules and guidelines to handle different kind of documents. We do not start from scratches because there are a lot of initiatives which already exist, on a soft law basis, which try to reach the same objective. Tools like the Official Journal, the Celex system or the several interinstitutional agreements on codification, legislative drafting are aiming the same objective to make the European decision-making process more understandable.

When I refer to EU decision-making process, I consider that it should be extended also to delegated acts and implementing measures as these are the real texts that affect European citizens.

My approach will be much more ambitious than the Commission's proposal and probably of the Council's willingness. My report intends to build on our common experience by sharing as

much as possible, in an interinstitutional perspective, our duties and remits according to the treaties.

In this perspective, I try to complete the lack of common rules on "classified information" (the so-called sensitive documents cited in the current Regulation (EC) No 1049/2001) by taking at Regulation level some good principles taken by the internal security rules of the Council and Commission as far as these principles can be also applicable to a parliamentary body.

A second challenge has been to make a difference between legislative and administrative transparency by grasping this occasion for detailing some principles of transparent and good administration as foreseen by article 41 of the EU Charter of Fundamental rights.

We should also empower independent bodies such as the European Ombudsman and the EDPS to help the institutions in the accomplishment of the reform of their internal procedure. As the institutions already have data protection officers it is consistent with the aim of the regulation to appoint in each organisational unit, such as general directorates, an information officer who could be the interlocutor for citizens as well as the other administrative units dealing with institutions documents. Transparency is not just an attribute but a principle to which all the institutions procedures should be designed upon.

The impact on the officials' duties to draft, register, negotiate, classify and archive EU documents should be aligned by protecting at the same time the efficiency and transparency of the EU institutions.

We need to respond as soon as possible to increasing demands from the European citizens but also from national institutions and regional authorities, primarily the national parliaments.

I have decided to put forward a series of amendments which will touch upon:

- The separation of the beneficiaries from the scope of this regulation.
- In the article dealing with definitions, I decided to reinsert the old definition of document that is in the current regulation since it seems more comprehensive and I also modified, for the purpose of clarity, the definition of database by referring to information contained in those databases that should also be made available to the public if requested. Specific tools to make this information available shall be foreseen by the institutions.
- I have also inserted new definitions on classified and legislative documents, as well as administrative tasks, archive systems and historical archives.
- I modify the article on the exceptions differentiating between protection of public and private interests.
- I also attempt to specify the regime to use for documents of third parties that usually caused many problems in the institutions practices.
- I also modify the article on documents to be published in the Official Journal of the EU.
- I have inserted an amendment on the role and responsibility of the Information officer mentioned above by enhancing the role of the European Ombudsman as a point of

reference for Information officers in the institutions who could be consulted in case of doubts.

- Finally, I inserted an amendment on Sanctions encountered for failing to comply with this regulation.

My goal is of course to modify this regulation in order to increase transparency without making this instrument too specific and difficult to implement. Therefore, I worked on the general principles that were still missing in the current regulation with regards to legislative and administrative activities of the institutions. At the same time, it is my aspiration that this instrument will be used to improve the institutions practices by learning from the past experiences which have been my main source of inspiration when drafting my amendments.

MINORITY OPINION

pursuant to Rule 52(3) of the Rules of Procedure

Roberta Angelilli, Simon Busuttil, Kinga Gál, Lívia Járóka, Véronique Mathieu, Georgios Papanikolaou, Csaba Sógor, Renate Sommer, Wim van de Camp, Axel Voss, Manfred Weber, Elena Oana Antonescu, Petru Constantin Luhan, Marian-Jean Marinescu, Bogusław Sonik, Esther Herranz García

Nach Artikel 52, Absatz 3 der Geschäftsordnung bittet die EVP-Fraktion um die Aufnahme folgender Minderheitenansicht als Anlage in die Begründung des angenommenen Berichtsentwurf über den Vorschlag für eine Verordnung des Europäischen Parlaments und des Rates über den Zugang der Öffentlichkeit zu Dokumenten des Europäischen Parlaments, des Rates und der Kommission
2008/0090(COD), KOM(2008)0229

Als größte Fraktion im Europäischen Parlament hat sich die EVP-Fraktion immer für die verbesserte Transparenz der EU-Gesetzgebung sowie der EU-Entscheidungsmechanismen und damit für einen sehr weitgehenden Zugang der Bürger zu EU-Dokumenten ausgesprochen. Der vorliegende Bericht geht weit über dieses Ziel hinaus und greift Punkte auf, die gar nicht Gegenstand einer solchen Verordnung sein können.

Insbesondere folgende Punkte des Berichts haben eine Zustimmung durch die EVP-Fraktion unmöglich gemacht:

- Als Dokument sollen unabhängig von ihrer Form alle Daten oder Inhalte gelten, die in irgendeinem Zusammenhang mit den Politiken, Maßnahmen oder Entscheidungen der EU stehen. Dies schließt auch vorbereitende, vertrauliche und geheime Dokumente mit ein, deren Schutz, ebenso wie der "space to think", minimiert werden soll.
- Durch einen uneingeschränkten Zugang zu Dokumenten und den vorbereitenden legislativen Dokumenten sowie aller damit zusammenhängenden Informationen über die verschiedenen Stadien des interinstitutionellen Verfahrens kommt es zu einem Zugang zum Verfahren, der nicht mit dem Zugang zu Dokumenten gleichzusetzen ist und eine Entscheidungsfindung erheblich erschweren würde.

Die EVP-Fraktion spricht sich ausdrücklich für Privatsphäre, Datenschutz und den Schutz von Geschäftsgeheimnissen und sensiblen Informationen im Rahmen von Gerichtsverhandlungen, Wettbewerbsverfahren und Personalunterlagen der EU Institutionen aus.

In den Verhandlungen hat sich die EVP-Fraktion immer konstruktiv verhalten. Im Sinne der Bürger hat sie sich sofort dafür ausgesprochen, den zweiten Vorschlag der Kommission (KOM(2011) 137) rasch umzusetzen, um den rechtlichen Anforderungen des EuGH und des Lissabon Vertrags gerecht zu werden.

30.11.2010

OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (recast) (COM(2008)0229 – C6-0184/2008 – 2008/0090(COD))

Rapporteur (*): Anneli Jäätteenmäki

(*): Associated committee – Rule 50 of the Rules of Procedure

SHORT JUSTIFICATION

The present regulation 1049/2001 on public access to EU documents was a significant step towards greater openness within the Union. In the eight years since its implementation, it has contributed to the creation of a more transparent culture of administration within the European Institutions.

The Treaty of Lisbon brings the importance of transparency to a new level by virtue of Article 10/TEU, Paragraph 3 which states that: "*Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen*".

The new Treaty clearly enlarges the scope of the regulation. Previously, the Treaty demanded openness only from the Parliament, Council and Commission, and now Article 15/TFEU states that "*Any citizen...shall have a right of access to documents of the Union **institutions, bodies, offices and agencies**, whatever their medium*".

The Parliament has made several requests to the Commission to put forward a new proposal for the recasting of Regulation 1049/2001 taking into account the change to its legal basis brought about by the Lisbon Treaty. Last December, the Parliament adopted a resolution whereby it stated that the Regulation should be urgently updated, and also deplored the fact that the Commission had not made a modified proposal.

Furthermore, since the Commission gave its proposal in 2008, the Court of Justice has made

some very important decisions concerning access to documents. The most significant of these is the Turco case (T-84/03 Turco v. Council), in which the Court decided that access to the opinions of legal services should also be made available. In its conclusion, the Court stated that: "*openness...contributes to conferring greater legitimacy on the institutions in the eyes of European citizens and increases their confidence in them*".

However, the Commission has refused to make a new proposal. The only change that the Commission has in fact made is the modification of the legal base/basis of the regulation which was made in the Omnibus communication last December.

In this situation, the leading Committee, the Committee on Civil Liberties, has decided that the Parliament should take over the Commission's role and make the necessary amendments that would "lisbonize" the regulation.

The Commission proposal

We are now obliged to proceed on the basis of the Commission proposal from 2008. Unfortunately, this proposal does not enhance the transparency of the Union to the level that would be required by the new Treaty. On the contrary, many of the amendments proposed by the Commission would even reduce the present standard.

The most severe of these is the amendment that the Commission is proposing to Article 3 which would significantly limit the definition of a document. In the Rapporteur's opinion, the present definition should remain, covering all relevant documents - not only registered ones.

Another amendment that the Rapporteur finds worrying concerns the right of the Member States to withhold documents under Article 5. The formulation proposed by the Commission would give the Member States an unlimited right to refer back to their own legislation to justify refusing access to a document originating from a Member state. The institutions will only be able to consider grounds based on the Regulation, and not based on national law. Such a right would 'water down' the principle of transparency and leave it completely to the discretion of Member States. The exceptions listed in Article 4 of the Regulation should be sufficient. If they are not, changes should be made in Article 4 and not by giving the Member States unlimited rights.

The purpose of the regulation

As the title of the Regulation states, it concerns *public* access to documents. Our main objective is to guarantee the rights of citizens to participate in the democratic life of the Union by granting the widest possible access to EU documents.

According to the rapporteur, there should be a clear distinction between 'public access to documents' and 'information and participation of citizens', on the one hand, and the institutions' right of access, even to confidential documents, on the other. The latter may be settled via inter-institutional agreement.

AMENDMENTS

The Committee on Constitutional Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation Article 3 – point a

Text proposed by the Commission

(a) «document» *means* any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) ***drawn-up by an institution and formally transmitted to one or more recipients or otherwise registered, or received by an institution;*** ***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;

Amendment

(a) “document” ***shall mean*** any ***data or*** 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 sphere of responsibility of an institution, body, office or agency;*** ***information*** contained in electronic storage, processing and retrieval systems ***(including external systems used for the work of an institution, body, office or agency)*** ***shall constitute a document or*** documents if ***it*** can be extracted in the form of ***one or more printouts*** or electronic-format ***copies*** using the available tools for the exploitation of the system;

Justification

The amendment proposed by the Commission would limit public access to only a small number of documents. This would be a clear lowering of standards of openness compared to the present situation.

Amendment 2

Proposal for a regulation Article 4 – paragraph 2 – point c

Text proposed by the Commission

(c) legal advice ***and court, arbitration and dispute settlement*** proceedings;

Amendment

(c) legal advice ***dealing with court*** proceedings;

Justification

The Court of Justice stated in its judgment of the *Turco* case that disclosure of legal advice in legislative initiatives increases the transparency and openness of the legislative process and strengthens the democratic rights of European citizens.

Amendment 3

Proposal for a regulation Article 4 – paragraph 3

Text proposed by the Commission

Amendment

3. Access to the following documents shall be refused if their disclosure would seriously undermine the decision-making process of the institutions:

deleted

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

(b) documents containing opinions for internal use as part of deliberations and preliminary consultations within the institutions concerned, even after the decision has been taken.

Amendment 4

Proposal for a regulation Article 4 – paragraph 4

Text proposed by the Commission

Amendment

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.*

4. The exceptions under *paragraph (2)* shall apply unless there is an overriding public interest in disclosure. *When assessing the public interest in disclosure, special weight shall be given to the fact that the requested documents relate to the protection of fundamental rights, environment, or human health.*

Justification

Regulation 1367/2006 establishes an overriding public interest in the release of information concerning emissions to the environment. There should be a similar presumption in favour of

an overriding public interest in the release of information concerning protection of fundamental rights or risks to human health.

Amendment 5

Proposal for a regulation Article 4 – paragraph 5

Text proposed by the Commission

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.

Amendment

5. Personal data shall not be disclosed if such disclosure would harm the privacy or the integrity of the person concerned. Such harm does not arise:

– if the data relate solely to the professional activities of the person concerned unless, given the particular circumstances, there is reason to assume that disclosure would adversely affect that person;

– if the data relate solely to a public person unless, given the particular circumstances, there is reason to assume that disclosure would adversely affect that person or other persons related to him or her;

– if the data have already been published with the consent of the person concerned.

Personal data shall nevertheless be disclosed if an overriding public interest requires disclosure. In such cases, the institution, body, office or agency shall be required to specify the public interest. It shall give reasons why, in the specific case, the public interest outweighs the interests of the person concerned.

Where an institution, body, office or agency refuses access to a document on the basis of this paragraph, it shall consider whether partial access to that document is possible.

Justification

The Commission proposal does not do justice to the need for a right balance between the fundamental rights at stake.

Amendment 6

**Proposal for a regulation
Article 4 – paragraph 7**

Text proposed by the Commission

7. The exceptions as laid down in 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 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.***

Amendment

7. The exceptions as laid down in this Article ***shall not apply to documents transmitted in the framework of procedures leading to a legislative act or a non-legislative act of general application.*** *The exceptions* 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.

Justification

The Court of Justice stated in its judgment of the Turco case that disclosure of legal advice in legislative initiatives increases the transparency and openness of the legislative process and strengthens the democratic rights of European citizens.

Amendment 7

**Proposal for a regulation
Article 7 – paragraph 4 a (new)**

Text proposed by the Commission

Amendment

4a. Each institution shall nominate a person responsible for checking that all

*the time-limits laid down in this Article
are duly met.*

Justification

The Ombudsman recommended that an information officer be appointed to ensure that time-limits are met.

Amendment 8

Proposal for a regulation

Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a

Fresh applications

If, after receiving the information, the applicant requests further documents from the institutions, that request shall be dealt with as a fresh application in accordance with Articles 7 and 8.

PROCEDURE

Title	Public access to European Parliament, Council and Commission documents
References	COM(2008)0229 – C6-0184/2008 – 2008/0090(COD)
Committee responsible	LIBE
Opinion by Date announced in plenary	AFCO 19.10.2009
Rapporteur Date appointed	Anneli Jäätteenmäki 22.2.2010
Discussed in committee	6.4.2010 4.5.2010 2.6.2010
Date adopted	30.11.2010
Result of final vote	+: 13 -: 10 0: 0
Members present for the final vote	Andrew Henry William Brons, Andrew Duff, Ashley Fox, Matthias Groote, Roberto Gualtieri, Enrique Guerrero Salom, Zita Gurmai, Gerald Häfner, Stanimir Ilchev, Constance Le Grip, Morten Messerschmidt, Potito Salatto, Algirdas Saudargas, György Schöpflin, Indrek Tarand, Rafał Trzaskowski
Substitute(s) present for the final vote	Elmar Brok, Anneli Jäätteenmäki, Alain Lamassoure, Íñigo Méndez de Vigo, Helmut Scholz
Substitute(s) under Rule 187(2) present for the final vote	Francesca Balzani, Maria do Céu Patrão Neves

3.12.2010

OPINION OF THE COMMITTEE ON PETITIONS

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (COM(2008)0229 – C6-0184/2008 – 2008/0090(COD))

Rapporteur: Ágnes Hankiss

SHORT JUSTIFICATION

According to Article 1(2) of the Treaty on European Union (TEU) Community institutions and bodies must take decisions as openly as possible and as closely as possible to the citizens. In order to enable them to effectively participate in the political process and call public authorities to account, citizens and elected bodies should therefore have the widest possible access to documents held by the European institutions.

The actual amendments the Commission has brought to the Regulation, however, are disappointing as in a number of cases the Commission's proposals represent a step backwards rather than a bold step ahead in "a drive towards more transparency".

First and foremost, the Commission should have completely reviewed its earlier proposal as the entry into force of the Treaty on the Functioning of the European Union provides a new legal framework based on Article 15(3). The Commission should have included its proposal in COM(2009)0665 on the consequences of the entry into force of the Treaty of Lisbon. The Commission did not formally withdraw the proposal and never replaced it with a new proposal that takes account of the new framework of the Treaty of Lisbon.

The most notable step backwards is the Commission's reformulated definition (Article 3) of "document", the concept that lies at the very heart of the Regulation. Your rapporteur is of the opinion that instead of narrowing down the definition, as the Commission in fact proposes, the term "document" should be opened up to focus on "official information" as access to pieces of information by applicants would make it possible to ask for specific information in a more precise, targeted and comprehensive way, avoiding the receipt of masses of unnecessary data, possibly generating extra costs. The new definition could also make it easier to get partial access to certain classified documents, and would make it possible to clearly

differentiate unofficial and official information.

While easier public access to documents of EU institutions, bodies, offices and agencies remains the goal of this Regulation, making intermediary documents, such as draft notes or memoranda publicly available could shift official information flow to informal and/or intergovernmental channels resulting in less transparency and a weaker European Union.

Search and duplication fees should be limited to reasonable standard charges for document search and duplication. The Commission should make proposals on the aforementioned points.

For citizens it is of particular importance that, e.g. in the case of infringement procedures which often result from citizens' petitions, full access should be provided to all documents of closed infringement proceedings. This includes documents provided by Member States. Your rapporteur points out that the Commission's proposal to give Member States a right to refuse access to documents (Article 5) based on their own legislation is contrary to the jurisprudence of the European Court of Justice and therefore not acceptable. With regard to Article 9 ("Treatment of sensitive documents") it is important that the institutions, bodies, offices and agencies of the Union should lay down common rules for the classification of such documents and that these rules should be made public.

The Committee on Petitions considers the maintenance and increase of the trust of citizens in the EU institutions, bodies, offices and agencies of high importance. The EU must protect personal data and privacy at the highest possible standards and should not create rules allowing measures that are difficult to apply objectively. While EU case law exists regarding the interpretation of "overriding public interest", it would be desirable for the Commission to provide an exact and concrete definition of the term.

Classified information shall not be transmitted from the recipient to a third party without prior consent of the originator. The Committee on Petitions would welcome a common framework and procedure for declassification rules, including a possibility for the Union institutions, bodies, offices and agencies to review and reset the classification category of a document upon a request for public access to it. Thus formerly classified documents could be disclosed in a more flexible way.

In case an institution rejects an application for a document based on the provisions in this Regulation, the institution shall be obliged to provide notification as to whether and when partial or full access is likely to be possible at a later stage.

Your rapporteur is of the opinion that for the European Transparency Initiative to succeed applicants must be able to easily find and retrieve the information they want. In the context of this Regulation therefore the institutions should ensure that documents are supplied either through a common interface for their registers of documents or through an interface with direct links to each institution's own register.

Furthermore, as was the case with the current Regulation, the Commission should be requested to provide a report on the implementation of the revised Regulation and make recommendations, where required, for improvements.

AMENDMENTS

The Committee on Petitions calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation

Article 2 – paragraph 2

Text proposed by the Commission

2. This Regulation shall apply to all documents held by an institution, ***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.

Amendment

2. This Regulation shall apply to all documents held by an institution, ***body, office or agency of the European Union*** concerning a matter relating to the policies, activities, ***closed procedures concerning infringements of EU law*** and decisions falling within its sphere of responsibility, in all areas of activity of the European Union.

Justification

The Regulation should apply to all documents (as defined in Article 3) held by an institution, body, office or agency of the European Union. Specific reference is made to documents concerning investigations into infringements of EU law that may be requested by parties (e.g. petitioners) to exercise their rights to redress or remedy.

Amendment 2

Proposal for a regulation

Article 3 – point a

Text proposed by the Commission

(a) "document" means ***any content*** whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) ***drawn-up by an institution and formally transmitted to one or more recipients or otherwise registered, or received by an institution; 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***

Amendment

(a) "document" means ***a record, or set of records, serving official purposes*** whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) ***concerning a matter which falls within the sphere of responsibility of the European Union's institutions, bodies, offices or agencies. This shall not include drafts, notes and memoranda which are not intended to form part of a file;***

copy using the available tools for the exploitation of the system;

Justification

The definition of "document" as proposed by the Commission is too narrow. A document would only be a "document" in the sense of the Regulation if it is formally transmitted or otherwise registered. This would be a step backwards for transparency. Making intermediary documents, such as draft notes or memoranda publicly available could shift official information flow to informal and/or intergovernmental channels resulting in less transparency and a weaker European Union which would be counter-productive.

Amendment 3

Proposal for a regulation
Article 3 – point b

Text proposed by the Commission

(b) "third party" 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.

Amendment

(b) "third party" means any natural or legal person, or any entity outside the institution concerned, other **Union** or non-**Union** institutions and bodies and third countries.

Justification

Member States should not be considered third parties in their relations with the institutions or their communications on matters relating to the field of activities of the Union.

Amendment 4

Proposal for a regulation
Article 4 – paragraph 1 – point d

Text proposed by the Commission

(d) the financial, monetary or economic policy of the **Community** or a Member State;

Amendment

(d) the financial, monetary or economic policy of the **European Union** or a Member State;

Justification

The formal correction is required by the entry into force of the TEU.

Amendment 5

Proposal for a regulation

Article 4 – paragraph 2 – point c

Text proposed by the Commission

(c) legal advice and court, **arbitration and dispute settlement** proceedings;

Amendment

(c) legal advice, **except when provided in connection with procedures for the adoption of legal acts**, and court proceedings;

Justification

The Commission's amendment to Article 4 § 2(c) would lower standards compared to current rules. To improve standards and to take into account the Turco judgement (Cases C-39/05 P and C-52/05 P) this point is amended.

Amendment 6

Proposal for a regulation

Article 4 – paragraph 2 – point d

Text proposed by the Commission

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

Amendment

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

Justification

Disclosure of documents on competition proceedings shall be refused as it can undermine the protection of such proceedings.

Amendment 7

Proposal for a regulation

Article 4 – paragraph 5

Text proposed by the Commission

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

Amendment

5. Names, titles and functions of public office holders, civil servants and interest representatives in relation with their professional activities shall be disclosed **solely with the consent of the originator**, unless, given the particular circumstances,

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.

disclosure would adversely affect *the privacy and integrity of* the persons concerned. Other personal data shall be disclosed in accordance with the conditions regarding lawful processing of such data laid down in *Union* legislation on the protection of individuals with regard to the processing of personal data.

Consent shall be requested from public office holders, civil servants and interest representatives prior to having their names, titles and functions included in a document.

Where an institution, body, office or agency refuses access to a document on the basis of paragraph 1, it shall consider whether partial access to that document is possible.

Justification

Wording should be in line with the recent ruling of the ECJ in the Bavarian Lager case (C-28/08P). Making future access to newly drafted documents should be made easier.

Amendment 8

Proposal for a regulation Article 5 – paragraph 2

Text proposed by the Commission

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.*** The institution shall appreciate the adequacy of reasons given by the Member State ***insofar as they are based on***

Amendment

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, ***or information submitted to the Commission concerning the implementation of Union legislation, until such time as any court proceedings relating to it have begun,*** 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. The institution

exceptions laid down in this Regulation.

shall appreciate the adequacy of *such* reasons given by the Member State.

Justification

Member States may request EU institutions, bodies, offices or agencies to refuse access to their documents only if such a request is based on the exceptions laid down in Article 4 (IFAW case C-64/05). Member States do not have a right of veto with respect to documents emanating from them, nor the right to refer to provisions in their own legislation in order to justify confidentiality. Access should also be granted to MS information submitted to the Commission concerning the implementation of EU law, until proceedings before a Court commence (recommendation 4 Cashman resolution).

Amendment 9

**Proposal for a regulation
Article 7 – paragraph 3**

Text proposed by the Commission

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.

Amendment

3. The institution shall notify the applicant whether, and if so when, partial or full access to the document is likely to be possible at a later point in time.

The applicant may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.

Justification

The applicants shall be aware of the future possibility to get access to the required document.

Amendment 10

**Proposal for a regulation
Article 9 – paragraph 1**

Text proposed by the Commission

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»,

Amendment

1. Sensitive documents are documents originating from the institutions or the **bodies, offices or** 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.

«SECRET» or «CONFIDENTIEL» in accordance with *common* rules *laid down by the institutions, bodies, offices and agencies* which protect essential interests of the European Union or of one or more of its Member States in the areas covered by **points (a) and (b) of Article 4(1)**, notably public security, defence and military matters.

Justification

The Commission's proposal not to amend Article 9 is not consistent with the changes proposed to Article 4, which at present makes the reference in paragraph 1 of this article incoherent and incorrect. According to Article 15 TFEU also the conditions and limits to access to documents shall be laid down in co-decision. Therefore, it is imperative and in conformity with the legal base that the institutions, bodies, offices and agencies adopt common rules on classification.

Amendment 11

Proposal for a regulation Article 9 – paragraph 6

Text proposed by the Commission

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

Amendment

6. The **common** rules of the institutions, **bodies, offices and agencies** concerning sensitive documents shall be made public.

Justification

The Commission's proposal not to amend Article 9 is not consistent with the changes proposed to Article 4, which at present makes the reference in paragraph 1 of this article incoherent and incorrect. According to Article 15 TFEU also the conditions and limits to access to documents shall be laid down in co-decision. Therefore, it is imperative and in conformity with the legal base that the institutions, bodies, offices and agencies adopt and make public common rules on classification.

Amendment 12

Proposal for a regulation Article 11 – paragraph 3

Text proposed by the Commission

3. The institutions shall immediately take

Amendment

3. The institutions shall immediately take

the measures necessary to establish a *register which shall be operational by 3 June 2002.*

the measures necessary to establish a *common interface for the institutional registers in order to ensure coordination between the registers.*

Amendment 13

Proposal for a regulation Article 12 – paragraph 1

Text proposed by the Commission

1. *Documents drawn up or received in the course of procedures for the adoption of EU legislative acts or non-legislative acts of general application shall, subject to Articles 4 and 9, be made* directly accessible to the public.

Amendment

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, body, office or agency concerned.*

Justification

In order to maintain current standards the text of the current Article 12(1) is reinstated.

Amendment 14

Proposal for a regulation Article 17 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

At the latest by, the Commission shall publish a report on the implementation of the principles underlying this Regulation and shall make recommendations, including, inter alia, a definition of the term “overriding public interest” and, if appropriate, proposals for revision of this Regulation and an action programme of measures to be taken by the institutions, bodies, offices and agencies.

Justification

As was the case with the current Regulation a report on the implementation of the Regulation should be presented in which recommendations and proposals for improvements, where needed, should be made.

PROCEDURE

Title	Public access to European Parliament, Council and Commission documents
References	COM(2008)0229 – C6-0184/2008 – 2008/0090(COD)
Committee responsible	LIBE
Opinion by Date announced in plenary	PETI 19.10.2009
Rapporteur Date appointed	Ágnes Hankiss 4.5.2010
Date adopted	1.12.2010
Result of final vote	+: 17 -: 1 0: 1
Members present for the final vote	Victor Boştinaru, Michael Cashman, Pascale Gruny, Ágnes Hankiss, Roger Helmer, Carlos José Iturgaiz Angulo, Erminia Mazzoni, Judith A. Merkies, Willy Meyer, Chrysoula Paliadeli, Ernst Strasser, Diana Wallis, Angelika Werthmann, Tatjana Ždanoka
Substitute(s) present for the final vote	Zoltán Bagó, Tamás Deutsch
Substitute(s) under Rule 187(2) present for the final vote	Inés Ayala Sender, Petru Constantin Luhan, Bogdan Kazimierz Marcinkiewicz

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

réf. D(2011)51887

Juan Fernando López Aguilar
Chair, Committee on Civil Liberties, Justice and Home Affairs
ASP 11G306
Brussels

Subject: Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (COM (2011) 137 final)

Dear Mr López Aguilar,

The Committee on Legal Affairs has been asked for an Opinion on the above proposal. In order to be able to meet the timetable of the main committee, the present letter constitutes that Opinion.

1. As a background, it should be recalled that the proposal for a recast of Regulation (EC) No 1049/2001 (COM(2008)0229) has been pending for several years (hereinafter, the "first proposal"). In 2009 the plenary of the European Parliament adopted amendments but the vote on a legislative resolution was postponed as the matter was referred back to the responsible Committee.¹ With the entry into force of the Lisbon Treaty, a new legal framework with regards to access to documents was set up. Nevertheless, the Commission decided not to withdraw the proposal² ("first proposal") and not to present a revised proposal, which would fully take into account the requirements for greater transparency enshrined in the Lisbon Treaty and stated in the case-law of the Court of Justice.

¹ Texts Adopted, P6_TA(2009)0114.

² Commission Communication to Parliament and the Council entitled 'Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures' (COM(2009)0665).

2. In the meanwhile, the Hautala-Sargentini resolution dealing with the implementation of Regulation 1049/01 was adopted with an overwhelming majority in the September 2011 plenary session. The Hautala-Sargentini resolution reiterates that with the Lisbon Treaty, transparency has become a legally binding fundamental right of citizens and, "in the light of ten years of experience with the application of the Regulation and taking into account the case-law of the Court of Justice"¹, it is necessary to revise that regulation in order to clarify some of its provisions, narrow the scope of its exceptions and ensure that the transparency promised by the Treaties becomes a reality". It calls therefore once more on the Commission "to present a revised proposal for a revision of the Regulation (EC) No 1049/2001".

3. Despite those important steps towards greater transparency and despite several meetings and debates organised with the Council and the Commission², the only answer from the Commission was to introduce in March 2011 a new legislative proposal for a regulation amending Regulation 1049/2001³ (hereinafter the "second proposal", which is the object of this letter) and providing a minor update to the current Regulation extending the public right of access to documents of all the Union Institutions, bodies, offices and agencies, in accordance with Article 15 TFEU.

4. As the coexistence of two Commission proposals ("first proposal" and "second proposal") to amend the same legislative act has created an unclear legal situation, clarification was requested from the European Parliament Legal Service as to the "direct effect" of Article 15 TFEU and the possibility of considering the Commission proposal ("second proposal") as a sufficient amendment of Regulation 1049/2011 as regards the obligations contained in the Lisbon Treaty. A clear answer was provided by the Legal Service (Opinion attached) confirming that Article 15(3) subparagraphs 3 and 4 "directly" provide that the Union's institutions, bodies' offices' and agencies must comply with the law provided for in regulations on access to documents. Furthermore, having regard to its content, the proposed amendment of Regulation 1049/2001 (the "second proposal") cannot be regarded as a sufficient amendment of regulation 1049/2001 to comply with the Union's new legal context, following the entry into force of the Lisbon Treaty.

5. The Legal Service has also referred to Rule 44(4) of Parliament's Rules of Procedure which provides that "*when two or more proposals originating from the Commission and/or the Member States with the same legislative objective have been submitted to Parliament simultaneously or within a short period of time, Parliament shall deal with them in a single*

¹ As for the case-law of the Court of Justice of the European Union and of the General Court on access to documents, the report refers to the judgments of the Court in the cases of *Turco* (joined cases C-39/05 P and C-52/05 P)¹, *Bavarian Lager* (case C-28/08)¹, *Volker und Marcus Schecke* (joined cases C-92/09 and C-93/09)¹, *Technische Glaswerke Ilmenau - TGI* (C-139/07 P)¹ and *API* (joined cases C-514/07 P, C-528/07 P and C-532/07 P)¹, and to the judgments of the General Court in the cases of *Access Info Europe* (T-233/09)¹, *MyTravel* (case T-403/05)¹, *Borax* (cases T-121/05 and T-166/05)¹, *Joséphidès* (case T-439/08)¹, *Co-Frutta* (joined cases T-355/04 and T-446/04)¹, *Terezakis* (case T-380/04)¹, *Agrofert Holdings* (case T-111/07)¹ and *Editions Jacob* (case T-237/05)

² The last meeting organised by the LIBE Committee between the rapporteur, shadow rapporteurs and draftspersons with Commission Vice President Šefčovič took place on 28 June 2011

³ COM (2011)137 final, 2011/0073 (COD)

report. In its report, the committee responsible shall indicate to which text it has proposed amendments and it shall refer to all other texts in the legislative resolution" and has concluded that it would be legally appropriate to consider this proposal as a modification of the first Commission proposal.

In conclusion, after examining the issue at its meeting of 10-11 October 2011 and in line with the Opinion of the Legal Service, the Committee on Legal Affairs, by 10 votes in favour, 5 against and no abstentions¹, recommends that your Committee, as the committee responsible, incorporates the proposal under examination into the first Commission proposal.

Yours sincerely,

Klaus-Heiner Lehne

Annex: Opinion of the Legal Service

¹ The following Members were present: Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Marielle Gallo, Sajjad Karim, Kurt Lechner, Eva Lichtenberger, Toine Manders, Antonio Masip Hidalgo, Jiří Maštálka, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Dimitar Stoyanov, Diana Wallis, Pablo Zalba Bidegain.

PROCEDURE

Title	Public access to European Parliament, Council and Commission documents			
References	COM(2008)0229 – C6-0184/2008 – 2008/0090(COD)			
Date submitted to Parliament	30.4.2008			
Committee responsible Date announced in plenary	LIBE 19.10.2009			
Committee(s) asked for opinion(s) Date announced in plenary	INTA 19.10.2009	JURI 19.10.2009	AFCO 19.10.2009	PETI 19.10.2009
Not delivering opinions Date of decision	INTA 17.3.2010			
Rapporteur(s) Date appointed	Michael Cashman 22.7.2009			
Legal basis disputed Date of JURI opinion	JURI 5.7.2010			
Discussed in committee	6.10.2009	4.11.2009	4.2.2010	31.5.2010
	1.2.2011	19.9.2011	3.10.2011	7.11.2011
	23.11.2011			
Date adopted	23.11.2011			
Result of final vote	+	33		
	-	17		
	0	2		
Members present for the final vote	Jan Philipp Albrecht, Alexander Alvaro, Roberta Angelilli, Vilija Blinkevičiūtė, Mario Borghezio, Emine Bozkurt, Simon Busuttil, Carlos Coelho, Tanja Fajon, Kinga Gál, Nathalie Griesbeck, Sylvie Guillaume, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Livia Járóka, Timothy Kirkhope, Monica Luisa Macovei, Véronique Mathieu, Georgios Papanikolaou, Carmen Romero López, Judith Sargentini, Birgit Sippel, Csaba Sógor, Renate Sommer, Rui Tavares, Valdemar Tomaševski, Kyriacos Triantaphyllides, Wim van de Camp, Axel Voss, Tatjana Ždanoka			
Substitute(s) present for the final vote	Elena Oana Antonescu, Michael Cashman, Anna Maria Corazza Bildt, Cornelis de Jong, Leonidas Donskis, Franziska Keller, Petru Constantin Luhan, Marian-Jean Marinescu, Joanna Senyszyn, Bogusław Sonik, Manfred Weber, Cecilia Wikström, Glenis Willmott			
Substitute(s) under Rule 187(2) present for the final vote	Nessa Childers, Sergio Gaetano Cofferati, Ismail Ertug, Esther Herranz García, Stephen Hughes, Kent Johansson, Marit Paulsen, Ivo Vajgl			