

## **INFORMAL DRAFTING**

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## Institutional enlargement

### Article 1 - Purpose

The purpose of this Regulation is:

- (a) to define the principles, conditions and limits on grounds of public or private interest governing the right of access to (...) documents of the Union's institutions provided for in Article 15(3) of the Treaty on the Functioning of the European Union (TFEU) in such a way as to ensure the widest possible access to documents,
- (b) to establish rules ensuring the easiest possible exercise of this right, and
- (c) to promote good administrative practice ~~on~~ in order to improve access to documents, and the overall goals of greater transparency, accountability and democracy.

### Article 2 - Beneficiaries and scope

1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, or any association of legal or natural persons shall have ~~has~~ a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.
2. The institutions may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.
3. This Regulation shall apply to all documents held by an institution, namely, documents drawn up or received by it and in its possession concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility, in all areas of activity of the European Union. As regards the Court of Justice of the European Union, the European Central Bank and the European Investment Bank, this Regulation shall apply only when exercising their administrative tasks.

## Transparency officers

### Article 15

#### Administrative practice in the institutions

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

**1a. Institutions shall designate [access to documents] [transparency] officers to manage the application of this Regulation.**

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

## Member State Documents

### Article 4(5)

5. A Member State may request the institution not to disclose a document originating from that Member State without its prior agreement, setting out the reasons for its objection by reference to the exceptions referred to in Article 4. In explaining why a particular exception in Article 4 applies, a Member State may refer to any relevant provision or rule in its national law.

### Article 3(b)

(b) "third party" means any natural or legal person, or any entity outside the institution concerned, including the Member States, other Union or non-Union institutions (...) and third countries. Member States are not considered as third parties when their representatives act in their capacity as members of the Council or when their delegates act in the framework of the Council decision-making process or of the control of the Commission's exercise of implementing powers.

[NB: 10 days reserved for Member States in 7(1a) and 8(1a)]

## Environmental information/Århus alignment

### Article 2(6)

6. This Regulation shall be without prejudice to rights of public access to documents held by the institutions which might follow from:

**a) the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters done at Århus, Denmark, on 25 June 1998 and Regulation (EC) No 1367/2006<sup>1</sup>; or**

**b) other** instruments of international law or acts of the institutions implementing them.

### Article 4(1)

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

(a) the public interest as regards:

- public security,
- defence and military matters,
- international relations,
- the financial, monetary or economic policy of the Union or a Member State,
- the environment, such as breeding sites of rare species;

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<sup>1</sup> **Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Århus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13.).**

## Selection procedures

[No changes, possible temporal limitation - 'until a decision has been taken']

Article 4(2). The institutions shall refuse access to a document when disclosure would undermine the protection of:

- commercial interests of a natural or legal person, including intellectual property,
- court proceedings and legal advice,
- the purpose of inspections, investigations and audits,
- **the objectivity and impartiality of selection procedures for the award of contracts or grants under the Financial Regulation, or involving the comparative assessment of the merits of candidates or members of the staff of an institution, or involving the assessment of the merits of candidates for public offices.**

## Definition of a document - Council Article 3, 3a; COM 3, EP 3

### Article 3 - definitions

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), **including data contained in electronic storage, processing and retrieval systems that is held by an institution, if they can be extracted using the available tools for the exploitation of the system;**

[...]

### **Article 3a - Documents subject to this Regulation**

**A document becomes subject to this Regulation:**

**1) when it has been drawn up by an institution and either formally transmitted to one or more recipients, submitted for filing or registration, approved by the competent official, or otherwise completed for the purposes for which it was intended, or**

**2) when it has been received by an institution.**

Move EP's new system requirement from Article 3a to political declaration

***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 is guaranteed as a fundamental right, 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;***

## Data protection

### *Article 4 (1)(b)*

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


(b) privacy and integrity of the individual (...)

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.







## Legislative Transparency

### Article 4

6a. The exceptions as laid down in this Article shall apply to documents drawn up or received in the course of procedures for the adoption of EU legislative acts or non-legislative acts of general application only where disclosure would, for specific reasons, cause particular and serious harm to one or more of the interests protected by the exceptions.

### Article 12 (or new article 3a) - Direct access to documents

1. The institutions shall as far as possible make documents directly accessible to the public **on a user friendly and coordinated interinstitutional website**, in electronic form or through a register in accordance with the rules of the institution concerned.
  2. (...) 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 on the interinstitutional website. Such documents include
    - *preparatory documents, including legal advice, documents from consultations and impact assessments*
    - *documents produced during all stages of decision-making, including legal advice, Council working party documents indicating Member State positions, committee documents in the European Parliament, compromise proposals, and documents from trilogues*
    - *information concerning Member State representatives in Council preparatory bodies*
    - *documents provided for the purpose of influencing decision-making by lobbyists and other interested parties.*
  3. Where possible, other documents, notably documents relating to the development of policy or strategy ~~shall~~ be made directly accessible.
- 3a/ In addition to documents under 1-3, the interinstitutional website shall also contain related information on the different stages of the interinstitutional procedure. The website shall be operable within two years of the entry into force of this Regulation.
4. Where direct access is not given through the register, the register shall as far as possible indicate where the document is located.

Special protection - Council Art 2 (5a), (5b) and 4a; COM 2(5), (6); no EP

#### Article 4 a - Presumptions

The exceptions in Article 4 may be applied as follows:

1. The disclosure of [certain categories of] documents forming part of specific investigations and inspections carried out with a view to the enforcement of competition, state aid and anti-dumping policy may be presumed to undermine the protection of the purposes of investigation and inspection activities under Article 4(2), until the relevant administrative procedure is closed or the act has become definitive.

???[Documents containing information gathered or obtained from third parties by an institution in the framework of such investigations shall not be accessible to the public.]???

2. The disclosure of pleadings lodged in court proceedings may be presumed to undermine the protection of court proceedings under Article 4(2), while the proceedings are pending.

3. The disclosure of documents forming part of the procedure under Article 258 TFEU may be presumed to undermine the protection of the purposes of investigation and inspection activities under Article 4(2), until the relevant administrative procedure is closed. if Member States disclose such documents, they shall inform the Commission.

4. The presumption in para. 1-3 shall not apply, if disclosure will not compromise the achievement of the objective of such activities or if there is an overriding public interest justifying disclosure.

5. Documents, which have already been made public by the institutions, shall be disclosed.

[No paragraph on legal advice]

## Extension of time limits

[no addition to 6(3) on cooperation with the applicant, but add 'and practical' to 6(3)]

### Article 6(3)

3. In the event of an application relating to a very long document or to a very large number of documents, the institution concerned shall confer with the applicant informally, with a view to finding a fair and practical solution.

### Article 7 - Processing of initial applications

1. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. As soon as possible and at the latest within 15 working days from registration of the application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application in accordance with paragraph 2 of this Article.

1a. The time-limit provided for in paragraph 1 shall be extended by a further 5 working days in respect of an application for access to a document originating from a Member State. Within that time-limit, the Member State consulted according to Article 4(5) shall be given a period of 10 working days for its reply.

2. In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.

3. Where a third party other than a Member State is consulted according to Article 4 (4), or in exceptional cases, such as in the event of an application relating to a very long document or to a very large number of documents, the time-limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

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

### Article 8 - Processing of confirmatory applications

1. A confirmatory application shall be handled promptly. As soon as possible and at the latest within 30 working days from registration of such an application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal. In the event of a total or partial refusal, the institution shall inform the applicant of the remedies open to him or her, namely instituting court proceedings before the General Court against the institution and/or making a complaint to the Ombudsman, under the conditions laid down in Articles 263 and 228 TFEU, respectively.

1a. Within the time-limit provided for in paragraph 1, the Member States consulted according to Article 4(5) shall be given 10 working days to reply.

2. Where a third party other than a Member State is consulted according to Article 4(4), or in exceptional cases, such as 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 5 working days, provided that the applicant is notified in advance and that detailed reasons are given.

3. Failure by the institution to reply within the prescribed time-limit shall be considered as a negative reply and entitle the applicant to institute court proceedings before the General Court against the institution and/or make a complaint to the Ombudsman, under the relevant provisions of the Treaty on the Functioning of the European Union.