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# REPORT

on public access to documents (Rule 104(7)) for the years 2011-2013  
(2013/2155(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Sophia in 't Veld

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on public access to documents (Rule 104(7)) for the years 2011-2013 (2013/2155(INI))

*The European Parliament,*

- having regard to Articles 1, 10 and 16 of the Treaty on European Union (TEU) and to Articles 15 and 298 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Article 11 of the TEU and the obligation of the institutions to maintain an open, transparent and regular dialogue with representative associations and civil society,
- having regard to the Charter of Fundamental Rights of the European Union, and notably to its Articles 41 (right to good administration) and 42 (right of access to documents),
- having regard to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup>,
- having regard to Council Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 amending Regulation (EEC, Euratom) No 354/83 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community<sup>2</sup>,
- having regard to its resolution of 14 September 2011 on public access to documents for the years 2009-2010<sup>3</sup>,
- having regard to the case-law of the Court of Justice of the European Union and of the General Court on access to documents, and notably to the judgments of the Court of Justice in the cases *Access Info Europe* (case C-280/11 P), *Donau Chemie* (C-536/11), *IFAW v Commission* (C-135/11)<sup>4</sup>, *My Travel* (C-506/08 P), *Turco* (joined cases C-39/05 P and C-52/05 P), and to the judgments of the General Court in the cases of *In 't Veld v Council* (T-529/09), *Germany v Commission* (T-59/09), *EnBW v Commission* (T-344/08), *Sviluppo Globale* (T-6/10), *Internationaler Hilfsfonds* (T-300/10), *European Dynamics* (T-167/10), *Jordana* (T-161/04) and *CDC* (T-437/08),
- having regard to the Commission proposal of 30 April 2008 for a regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (COM(2008)0229),

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<sup>1</sup> OJ L 145, 31.5.2001, p. 43.

<sup>2</sup> OJ L 243, 27.9.2003, p. 1.

<sup>3</sup> OJ C 51E, 22.2.2013, p. 72.

<sup>4</sup> See *IFAW v Commission* (C-135/11 P), in whose paragraph 75 it is stated that, not having consulted the requested document, 'the General Court was not in a position to assess in the specific case whether the document could validly be refused on the basis of the exceptions'.

- having regard to the Commission proposal of 20 March 2011 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)0137),
  - having regard to the Council of Europe Convention on Access to Official Documents of 2008,
  - having regard to the Annual Reports for 2011 and 2012 from the Council, the Commission and the European Parliament on access to documents, submitted pursuant to Article 17 of Regulation (EC) No 1049/2001,
  - having regard to the Framework Agreement on Relations between the European Parliament and the European Commission of 2010,
  - having regard to the Interinstitutional Agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy,
  - having regard to its resolutions of 14 September 2011 on public access to European Parliament, Council and Commission documents<sup>1</sup>, 15 July 2013 on the annual report of the activities of the European Ombudsman in 2012<sup>2</sup>, and 17 December 2009 on improvements needed to the legal framework for access to documents following the entry into force of the Lisbon Treaty (Regulation (EC) No 1049/2001)<sup>3</sup>,
  - having regard to the European Ombudsman’s Annual Report for 2012,
  - having regard to Rules 48 and 104(7) of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0148/2014),
- A. whereas the Treaty of Lisbon has been in force for four years; whereas Article 15 TFEU establishes a constitutional framework for EU institutional transparency and lays down the fundamental right of access to documents of EU institutions, bodies, offices and agencies for EU citizens and any natural or legal person residing in a Member State; whereas this right should be exercised in compliance with the general principles and limits laid down by the regulations adopted by Parliament and the Council;
- B. whereas Article 298 TFEU provides for an open, efficient and independent European administration;
- C. whereas it is a general rule that access to legislative documents should be fully provided, while exceptions regarding non-legislative documents should be narrowed;
- D. whereas transparency is essential to a democratic European Union of citizens in which

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<sup>1</sup> OJ C 51E , 22.2.2013, p. 72..

<sup>2</sup> P7\_TA(2013)0369.

<sup>3</sup> OJ C 286E , 22.10.2010, p. 12.

they can fully participate in the democratic process and exercise public scrutiny; whereas transparent administration benefits the interests of citizens, the fight against corruption and the legitimacy of the Union's political system and legislation;

- E. whereas broad public access to documents is a key element of a lively democracy;
- F. whereas in a healthy democracy citizens should not have to rely on whistleblowers in order to ensure transparency of their governments' competences and activities;
- G. whereas citizens have a right to know how the decision-making process works and how their representatives act, to hold them accountable and to know how public money is allocated and spent;
- H. whereas the EU legislation on access to documents is still not being properly applied by the Union's administration; whereas the exceptions of Regulation (EC) No 1049/2001 are being applied routinely rather than exceptionally by the administration;
- I. whereas, according to case-law, if an institution decides to refuse access to a document which it has been asked to disclose, it must, in principle, explain how disclosure of that document could specifically and actually undermine the interest protected by the exception – among those provided for in Article 4 of Regulation No 1049/2001 (see *In 't Veld v Council*<sup>1</sup>);
- J. whereas a specific and foreseeable threat to the interest in question may not be established by a mere fear of disclosing to EU citizens differences of opinion between the institutions regarding the legal basis for the international activity of the European Union and, thus, of creating doubts as to the lawfulness of that activity (see *In 't Veld v Council*<sup>2</sup>);
- K. whereas six out of the ten European Ombudsman's 'star case' investigations of 2012 concerned transparency;
- L. whereas the statistics for the application of Regulation (EC) No 1049/2001 show a decrease in the number of initial requests in all three institutions;
- M. whereas the number of specified documents requested has decreased in Parliament (from 1 666 in 2011 to 777 in 2012); whereas, however, the percentage of requests for unspecified documents, e.g. 'all documents relating to ...', has increased in Parliament (from 35.5 % in 2011 to 53.5 % in 2012); whereas the number of Council documents requested has decreased (from 9.641 in 2011 to 6.166 in 2012)<sup>3</sup>;
- N. whereas the quantitative data presented in the Annual Reports of 2012 indicate that both the Commission (from 12 % in 2011 to 17 % in 2012) and the Council (from 12 % in 2011 to 21 % in 2012) have increasingly fully refused access, while Parliament shows stable figures for full refusal of access (5 % in both 2011 and 2012);

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<sup>1</sup> *In 't Veld v Council* (T-529/09), paragraph 19.

<sup>2</sup> *In 't Veld v Council* (T-529/09), paragraph 75.

<sup>3</sup> The Commission does not specify the number of documents requested. The numbers of initial applications for Commission documents are 6447 in 2011 and 6014 in 2012.

- O. whereas the Commission shows a significant increase in confirmatory applications (from 165 in 2011 to 229 in 2012), resulting in a slight increase in fully revised decisions, a decrease in partially revised decisions and an increase in confirmed decisions, while both the Council and Parliament show relatively stable figures for confirmatory applications (Council: from 27 in 2011 to 23 in 2012; Parliament: from 4 in 2011 to 6 in 2012);
- P. whereas a number of applications have resulted in complaints being lodged with the European Ombudsman (Commission: from 10 in 2011 to 20 in 2012; Council: from 2 in 2011 to 4 in 2012; Parliament: 1 in both 2011 and 2012);
- Q. whereas the European Ombudsman closed a number of complaints in 2011 and 2012 with critical remarks or suggesting further action (Commission: from 10 out of 18 in 2011 to 8 out of 10 in 2012; Council: no information; Parliament: from 0 out of 0 in 2011 to 1 out of 1 in 2012);
- R. whereas a number of applications for access to documents have resulted in cases being lodged with the General Court or taken on appeal to the Court of Justice (Commission: from 15 cases and 3 appeals in 2011 to 14 cases and 1 appeal in 2012; Council: from 1 case and 2 appeals in 2011 to 1 appeal in 2012<sup>1</sup>; Parliament: none in 2011 or 2012);
- S. whereas the General Court has largely ruled in favour of more transparency, or else has delivered clarification to Regulation (EC) 1049/2001 in a number of cases (Commission: 5 out of 6<sup>2</sup> in 2011 and 5 out of 5 in 2012<sup>3</sup>; Council: 1 out of 1 in 2011 (*Access Info Europe*, T-233/09) and 1 out of 4 in 2012 (*In 't Veld*, T-529/09); Parliament: 1 out of 2 in 2011<sup>4</sup> (*Toland*, T-471/08) and 1 out of 1 in 2012 (*Kathleen Egan and Margaret Hackett*, T-190/10));
- T. whereas the Court of Justice has largely ruled in favour of more transparency in the following cases: Commission: 1 out of 1 in 2011 (*My Travel*, C-506/08) and 1 out of 3 in 2012 (*IFAW*, C-135/11 P)<sup>5</sup>; Council and Parliament: no rulings in 2011 or 2012;
- U. whereas the annual reports of the Commission, the Council and Parliament do not provide comparable statistics; whereas the three institutions do not observe the same standards of completeness in presenting statistics;
- V. whereas the reason most often invoked for exception is 'the protection of the decision-making process', as used by the Commission and the Council following initial requests (Commission: 17 % in 2011 and 20 % in 2012; Council: 41 % in both 2011 and 2012); whereas 'the protection of international relations' was the second reason most often

<sup>1</sup> *Council v In 't Veld* (intervention by European Parliament in support of In 't Veld).

<sup>2</sup> Cases *Batchelor* (T-362/08), *IFAW II* (T-250/08), *Navigazione Libera del Golfo* (T-109/05 and T-444/05), *Jordana* (T-161/04), *CDC* (T-437/08) and *LPN* (T-29/08).

<sup>3</sup> *Germany v Commission* (T-59/09), *EnBW v Commission* (T-344/08), *Sviluppo Globale* (T-6/10), *Internationaler Hilfsfonds* (T-300/10), *European Dynamics* (T-167/10).

<sup>4</sup> The other case is *Dennekamp* (T-82/08), in which the General Court confirmed Parliament's decision on grounds of protection of personal data.

<sup>5</sup> See the *IFAW* case concerning documents originating from a Member State and the obligation of the General Court to assess the documents concerned; and two other cases relating to merger control proceedings, *Agrofert* (C-477/10 P) and *Éditions Odile Jacob* (C-404/10 P). These three Court rulings are not described in the Commission's annual report.

invoked by the Council; whereas in the case of Parliament, ‘the protection of privacy and integrity of the individual’ was the commonest exception;

- W. whereas the institutions have failed to implement Articles 15(2) and 15(3), subparagraph 5 of the TFEU, regarding the obligation for the European Parliament and the Council to meet in public when considering a draft legislative act, and to publish the documents relating to the legislative procedures under the terms laid down by the regulations referred to in Article 15(3), subparagraph 2;
- X. whereas Article 4(3) of Regulation (EC) No 1049/2001 provides for an exception to transparency ‘if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure’; whereas this provision predates the Treaty of Lisbon and needs to be brought in line with Article 15 TFEU;
- Y. whereas the ruling of the Court of Justice in the *Access Info Europe* case<sup>1</sup> has confirmed that publishing the names of Member States and their proposals is not harmful to the decision-making process; whereas the General Court had ruled in its earlier decision in this case that ‘if citizens are to be able to exercise their democratic rights, they must be in a position to follow in detail the decision-making process’;
- Z. whereas international agreements have binding effects and impact on EU legislation; whereas documents related to them should be public in principle, without prejudice to legitimate exceptions; whereas the application of the exception for the protection of international relations applies as stated in paragraph 19 of In *‘t Veld v Council* (T-529/09);
- AA. whereas trilogues between the Commission, Parliament and the Council are defining for the formation of EU legislation; whereas trilogues are not public and documents regarding informal trilogues, including agendas and summary reports, are by default made available neither to the public nor to Parliament, which is in contradiction with Article 15 TFEU;
- AB. whereas documents produced or possessed by the Presidency of the Council in relation to its work in that role should be accessible according to EU transparency rules;
- AC. whereas the negotiations on the revision of Regulation (EC) No 1049/2001 have been in deadlock; whereas the new instrument will need to provide for significantly more transparency than the status quo;
- AD. whereas requests for in camera meetings in Parliament should, in principle, be considered along the lines of Regulation (EC) 1049/2001; whereas such requests shall be evaluated by Parliament on a case-by-case basis, and shall not be granted automatically;
- AE. whereas the classification of documents into levels of confidentiality falling under the scope of the 2010 Framework Agreement on relations between Parliament and the Commission, or as ‘sensitive documents’ under Article 9 of Regulation (EC) No 1049/2001, should be made on the basis of careful and specific consideration;

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<sup>1</sup> *Council v Access Info Europe*, Case C-280/11 P.

whereas overclassification leads to unnecessary and disproportionate secrecy of documents and to meetings being held in camera without proper justification;

AF. whereas transparency remains the rule, including in relation to a cartel leniency programme; whereas an automatic ban on disclosure is a violation of the rule of transparency, as laid down in the Treaties; whereas secrecy is the exception, and must be justified on a case-by-case basis by national judges with regard to actions for damages;

AG. whereas it is recommended that EU guidelines be drawn up as a helpful tool for judges; whereas such guidelines need to distinguish between company documents and cartel files held by the Commission;

### **Right of access to documents**

1. Recalls that transparency is the general rule and that the Treaty of Lisbon lays down the fundamental right of access to documents;
2. Recalls that the widest possible public access to documents is needed to effectively allow citizens and civil society to comment on all aspects of EU activity;
3. Recalls that transparency enhances public trust in the European institutions by allowing citizens to be informed and to participate in the Union's decision-making process and, in this way, contribute to making the EU more democratic;
4. Recalls that any decision denying access to documents must be based on clearly and strictly defined legal exceptions, accompanied by reasoned and specific justification, allowing the citizen to understand the denial of access and to make effective use of the legal remedies available;
5. Recalls the need to establish an appropriate equilibrium between transparency and data protection, as made clear by the *Bavarian Lager* case-law, and stresses that data protection should not be 'misused', especially not for the purpose of covering conflicts of interest and undue influence in the context of EU administration and decision-making; points out that the judgment of the Court of Justice in the *Bavarian Lager* case is based on the current wording of Regulation (EC) No 1049/2001 and does not prevent the wording from being changed, which is necessary and urgent, notably after the clear proclamation in the Treaties and in the Charter of Fundamental Rights of the right of access to documents;
6. Calls on the institutions, bodies and agencies to strictly apply Regulation (EC) No 1049/2001, taking full account of the body of case-law relating thereto, and harmonising their existing internal rules to the letter and the spirit of the regulation, particularly with regard to deadlines to respond to requests for access to documents, while ensuring that this does not result in longer deadlines; calls on the Council to publish minutes of the meetings of Council working groups, including, in the light of the *Access Info Europe* case, the names of Member States and their proposals;
7. Calls on the institutions, bodies and agencies, when applying Regulation (EC) No 1049/2001, to strictly assess the possibilities for partial disclosure of a document, table, graphic, paragraph or phrase;

8. Calls on the EU institutions, bodies, offices and agencies to develop further a more proactive approach on transparency by making publicly accessible on their internet websites as many categories of documents as possible, including internal administrative documents, and by including these in their public registries; considers that this approach helps ensure effective transparency as well as prevent unnecessary litigation that may cause unnecessary costs and burdens for both the institutions and the citizens;
9. Calls on the institutions, bodies and agencies to implement fully Article 11 of Regulation (EC) No 1049/2001, and to put in place public document registers with clear and accessible structures, good search functionality, regularly updated information on new documents produced and registered, inclusion of references to non-public documents and, to assist public users, guidance on the types of documents held in a given registry;
10. Calls on the institutions, bodies and agencies to publish systematically and without delay in their document registers all documents previously not available to the public that have been disclosed via public access to documents requests;
11. Calls on the administrations to provide full indication of all documents falling within the scope of a request for access to documents under Regulation (EC) No 1049/2001, following the initial application;
12. Stresses that resort to the European Ombudsman represents a valuable option where denial of access to a document has been confirmed by the administration concerned; recalls, however, there is no means of enforcing the Ombudsman's decisions;
13. Stresses that litigation entails extremely lengthy processes, the risk of high, even prohibitive costs, and an uncertain outcome, putting an unreasonable burden on citizens who wish to challenge a decision to refuse (partial) access; emphasises that this means, in practice, that there is no effective legal remedy against a negative decision on a request for access to documents;
14. Calls upon the EU institutions, bodies and agencies urgently to adopt faster, less cumbersome and more accessible procedures for handling complaints against refusals to grant access, so as to reduce the need for litigation and create a true culture of transparency;
15. Stresses that the annual reports of the three institutions and of the bodies and agencies should present figures in a comparable format, which should include, for example, the number of documents requested, the number of applications, the number of documents to which (partial) access is granted, the number of applications granted before and after confirmatory application, and the figures for access granted by the Court, partial access granted by the Court and access denied;
16. Calls on the EU institutions to refrain from calling for the opposing party having to bear the costs of court cases, and to ensure that citizens are not prevented from challenging decisions for want of means;
17. Notes that Member States need to adapt to the new transparency framework established by the Treaty of Lisbon, as illustrated by the *Germany v Commission* case (T-59/09), in

which Germany opposed the disclosure of documents relating to a formal notice to it, invoking the protection of the public interest in the context of ‘international relations’, while the General Court ruled that ‘international relations’ is to be considered a term of EU law and therefore not applicable to communications between the Commission and a Member State;

18. Calls on the EU institutions to improve their timeliness of response to requests for access to documents and confirmatory applications;
19. Resolves to examine how the deliberations in its Bureau and its Conference of Presidents can be made more transparent, such as by keeping detailed minutes and by disclosing these to the public;

### **Revision of Regulation 1049/2001**

20. Expresses its disappointment with the fact that since December 2011, when it adopted its first reading position on the revision of Regulation (EC) No 1049/2001, no progress has been made, as the Council and the Commission do not appear to have been ready to embark on substantive negotiations; calls, therefore, on the Council finally to move forward with the revision of Regulation (EC) No 1049/2001; calls on the Council and Parliament to agree on a new instrument that provides significantly more transparency, including the effective implementation of Article 15 TFEU;
21. Calls on all EU institutions, bodies, offices and agencies to apply Regulation (EC) No 1049/2001 in a way that is coherent with the provisions of the Aarhus Convention; fully supports the policy of the European Medicine’s Agency to publish clinical trial reports of pharmaceuticals on the European market upon request, once the decision-making process for the medicine in question has been completed; stresses that any revision of Regulation (EC) No 1049/2001 should fully respect the Aarhus Convention and should define any exemption in full compliance with it;
22. Recommends that each EU institution or body appoint from within its management structures a Transparency Officer, to be responsible for compliance and for improving practices;
23. Calls on all the institutions to evaluate and, where necessary, review their internal arrangements for reporting wrongdoing, and calls for the protection of whistleblowers; calls, in particular, on the Commission to report to Parliament on its experiences with the new rules on whistleblowing for EU staff adopted in 2012 and with their implementing measures; calls on the Commission to come forward with a proposal to protect whistleblowers, not only morally but also financially, in order to properly protect and support whistleblowers as part of the democratic system;

### **Reporting**

24. Calls on the EU institutions, bodies and agencies to harmonise their Annual Reports on access to documents, and to present similar statistics, in a compatible form and to the fullest and most inclusive extent possible (e.g. in tables in the Annex which allow for direct comparison);

25. Calls on the EU institutions, bodies and agencies to adopt the recommendations put forward by Parliament in its previous resolution on public access to documents;
26. Calls on the EU institutions to include in their annual transparency reports a reply to Parliament's recommendations;

### **Legislative documents**

27. Calls on the Commission to enhance the transparency of expert groups and comitology groups, by holding their meetings in public and publishing the recruitment procedure for members, as well as information regarding membership, proceedings, documents considered, votes, decisions and minutes of meetings, all of which should be published online in a standard format; stresses that members of experts groups and comitology must declare in advance if they have a personal interest in the subjects discussed; calls on the Commission to improve and fully implement internal guidelines for all DGs for the recruitment procedure (concerning i.e. balanced composition, conflict of interest policy, public calls) and the rules for reimbursement, and to report on this matter not only in the annual access to documents report but also in the annual activity reports of DGs; calls on the Commission to report, in particular, on the Transatlantic Trade and Investment Partnership (TTIP) Stakeholder Advisory Group;
28. Calls on the Commission, the Council and Parliament to ensure the greater transparency of informal trilogues, by holding the meetings in public, publishing documentation including calendars, agendas, minutes, documents examined, amendments, decisions taken, information on Member State delegations and their positions and minutes, in a standardised and easy accessible online environment, by default and without prejudice to the exemptions listed in Article 4(1) of Regulation (EC) No 1049/2001;
29. Recalls that Article 9 of Regulation (EC) 1049/2001 on sensitive documents is a compromise that no longer reflects the new constitutional and legal obligations in place since the Treaty of Lisbon entered into force;
30. Calls on the institutions, bodies and agencies of the EU to maintain up-to-date public figures on the number of classified documents they hold, according to their classification;

### **Classification of documents**

31. Calls on the Commission to propose a regulation laying down clear rules and criteria for the classification of documents by the EU institutions, bodies and agencies;
32. Calls on the institutions to assess and justify requests for in camera meetings in accordance with Regulation (EC) No 1049/2001;
33. Calls on the Union institutions to set up an independent EU oversight authority for the classification of documents and the examination of requests for holding sessions in camera;

### **Financial information**

34. Calls on the institutions to make publicly available and accessible to citizens documents relating to the European Union budget, its implementation and the beneficiaries of Union funds and grants, and stresses that such documents shall also be accessible via a specific website and database, and on a database dealing with financial transparency in the Union;

### **International negotiations**

35. Expresses concern at the routine application of the exception for the protection of international relations as a justification for the classification of documents;
36. Recalls that when an institution decides to refuse access to a document which it has been asked to disclose, it must, in principle, explain how disclosure of that document could specifically and actually undermine the public interest as to international relations;
37. Emphasises that, regardless of these principles, this is still not implemented in practice, as shown by the General Court ruling in Case T-529/09 (*In 't Veld v Council*) regarding the refusal by the Council to provide access to an opinion of its legal service on the EU-US TFTP agreement;

### **Legal services' opinions**

38. Emphasises that opinions of the institutions' legal services must, in principle, be disclosed, as underlined by the Court's ruling in *Turco* that 'Regulation No 1049/2001 seeks, as indicated in recital 4 of the preamble and Article 1, to give the public a right of access to documents of the institutions which is as wide as possible'<sup>1</sup>;
39. Recalls that, before assessing whether or not the exception of Article 4(2), second indent on the protection of legal advice applies, the institution concerned must satisfy itself that the document it is asked to disclose does indeed relate to legal advice and, if so, must decide which parts of it are actually concerned and may therefore be covered by the exception (*Turco*, paragraph 38);
40. Calls on the institutions to abide by the *Turco* judgment on legal service opinions drafted in the framework of the legislative process, which ruled that 'it is precisely openness in this regard that contributes to conferring greater legitimacy on the institutions in the eyes of European citizens and increasing their confidence in them by allowing divergences between various points of view to be openly debated' and that 'it is in fact rather a lack of information and debate which is capable of giving rise to doubts in the minds of citizens, not only as regards the lawfulness of an isolated act, but also as regards the legitimacy of the decision-making process as a whole'<sup>2</sup>;
41. Stresses that, as ruled in the *In 't Veld v Council* case (T-529/09)<sup>3</sup>, a specific and foreseeable threat to the interest in question may not be established by a mere fear of disclosing to EU citizens differences of opinion between the institutions regarding the legal basis for the international activity of the European Union and, thus, of creating

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<sup>1</sup> Joined cases *Sweden and Turco v Council and Commission* (C-39/05 P and C-52/05 P), paragraph 35.

<sup>2</sup> Joined cases *Sweden and Turco v Council and Commission* (C-39/05 P and C-52/05 P), paragraph 59.

<sup>3</sup> *In 't Veld v Council* (T-529/09), paragraph 75.

doubts as to the lawfulness of that activity;

***Cartel leniency***

42. Stresses that the Court of Justice has ruled in Case C-536/11, paragraph 43 that ‘any request for access to the [cartel file] must be assessed on a case-by-case basis [by the national courts], taking into account all the relevant factors of the case’;
43. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, the European Ombudsman, the European Data Protection Supervisor and the Council of Europe.

## EXPLANATORY STATEMENT

Transparency is essential to a democratic political union of citizens, in which citizens can fully participate in the democratic process. Secrecy and discretion belong to an era when Europe was built by diplomats and civil servants. Transparent administration benefits the interests of citizens, the fight against corruption and the legitimacy of the Union's political system and legislation. The EU needs to take further steps to increase the transparency of its administration and its legislative process. The citizens are clamouring for more transparency. There are many interesting new initiatives, made possible by new technologies, creating insight into the activities of the EU institutions. However, too often the public have to rely on leaks and whistleblowers to learn about wrongdoing by the institutions. That seriously undermines trust.

Current legislation, notably the Regulation (EC) No 1049/2001 (on public access to documents), is not properly applied by the Union's institutions. As case law reveals, the institutions often still apply the exceptions to transparency in a general, rather than in a specifically motivated, manner. Partial access to documents is too often not considered. Similarly, official documents are frequently overclassified, and institutions call for *in camera* meetings without proper justification. An independent authority should be tasked with oversight of the classification of documents and requests for meetings to be held *in camera*. A quick and light procedure must be foreseen for challenging a refusal for access to documents, so as to reduce lengthy and costly litigation. All EU institutions should appoint a transparency officer.

Regulation (EC) No 1049/2001 is in urgent need of revision, but the Commission and the Council are not making progress towards adopting an instrument that allows for more transparency, as is desired by the Parliament.

Regarding international agreements, the Commission and the Council routinely classify as confidential or secret all documents relating to the negotiations, while referring to the protection of the public interest as to international relations. The documents are kept secret at the request of the negotiating counterpart; a practice that, by default, sets aside EU transparency legislation. As international agreements impact EU legislation, negotiating documents and legal advice in relation to the agreement should in principle be public.

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	20.2.2014
<b>Result of final vote</b>	+: 26 -: 18 0: 7
<b>Members present for the final vote</b>	Jan Philipp Albrecht, Edit Bauer, Emine Bozkurt, Arkadiusz Tomasz Bratkowski, Salvatore Caronna, Philip Claeys, Carlos Coelho, Ioan Enciu, Frank Engel, Kinga Gál, Kinga Göncz, Nathalie Griesbeck, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Teresa Jiménez-Becerril Barrio, Timothy Kirkhope, Juan Fernando López Aguilar, Svetoslav Hristov Malinov, Véronique Mathieu Houillon, Anthea McIntyre, Louis Michel, Antigoni Papadopoulou, Georgios Papanikolaou, Carmen Romero López, Judith Sargentini, Birgit Sippel, Renate Sommer, Wim van de Camp, Axel Voss, Renate Weber, Cecilia Wikström, Tatjana Ždanoka, Auke Zijlstra
<b>Substitute(s) present for the final vote</b>	Michael Cashman, Birgit Collin-Langen, Cornelis de Jong, Mariya Gabriel, Franziska Keller, Petru Constantin Luhan, Ulrike Lunacek, Marian-Jean Marinescu, Jan Mulder, Juan Andrés Naranjo Escobar, Salvador Sedó i Alabart, Janusz Wojciechowski
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Zdravka Bušić, Tamás Deutsch, Constanze Angela Krehl, Catherine Stihler, József Szájer