

# EUROPEAN PARLIAMENT

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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 (\*): Anneli Jäätteenmäki, Committee on Constitutional Affairs

(\*): Associated committee - Rule 47 of the Rules of Procedure

(Recast - Rule 80a of the Rules of Procedure)

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

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

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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(\*) Associated committee - Rule 47 of the Rules of Procedure



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**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))**

**(Codecision procedure - recast)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0229),
  - having regard to Articles 251(2) and 255(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0184/2008),
  - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts<sup>1</sup>,
  - having regard to Rules 80a and 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Constitutional Affairs, the Committee on Legal Affairs, the Committee on International Trade and the Committee on Petitions (A6-0077/2009),
- 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,
- B. whereas, according to the competent Parliamentary committee, the recasting procedure was decided by the Commission without informing the other institutions and ignoring the letter and the spirit of Parliament's resolution of 4 April 2006 with recommendations to the Commission on access to the institutions' texts under Article 192 of the EC Treaty<sup>2</sup>, whose aim was to amend substantially Regulation 1049/01, stressing moreover the fact that in its proposal the Commission has even refused to deal with issues such as the ones highlighted in the Court of Justice's landmark "Turco" case<sup>3</sup>,
1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission (and incorporating the technical amendments approved by the

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<sup>1</sup> OJ C 77, 28.3.2002, p. 1.

<sup>2</sup> OJ C 293 E, 2.12.2006, p. 151.

<sup>3</sup> Judgment of the Court (Grand Chamber) of 1 July 2008 in joined cases C-39/05 P and C-52/05 P

Committee on Legal Affairs) and as amended below;

2. Instructs its President to forward its position to the Council and the Commission.

### **Amendment 1**

#### **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 the EU institutions as provided for by Article 41 of the Charter of Fundamental Rights of the European Union<sup>1</sup> ("the Charter"). Internal procedures should be defined accordingly and adequate financial and human resources should be made available to put the principle of openness into practice.***

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<sup>1</sup> OJ C 302, 14.12.2007, p. 1.

#### *Justification*

*The observation of the European Ombudsman in this respect should be taken into account.*

### **Amendment 2**

#### **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***

#### *Justification*

*The content of this recital is inserted in Recital 6.*

### Amendment 3

#### 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*

*Justification*

*The content of this recital is inserted in Recital 6.*

### Amendment 4

#### Proposal for a regulation Recital 6

*Text proposed by the Commission*

*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 limits on such access in accordance with Article 255(2) of the EC Treaty.

(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*** limits on ***the grounds of public or private interest which govern*** such access in accordance with Article 255(2) of the EC Treaty ***and taking into account the experience of the initial implementation of Regulation (EC) No 1049/2001 and of the resolution of the European Parliament of 4 April 2006 with recommendations to the Commission on access to the institutions' texts under***

**Article 192 of the EC Treaty\*. This Regulation is without prejudice to existing rights of access to documents for Member States, judicial authorities or investigative bodies.**

*\* OJ C 293 E, 2.12.2006, p. 151.*

#### *Justification*

*Recital 4-5-6 and 22 have been merged in one recital setting up the general principles of right to access to EU documents. Clear reference is also made to the provision of the EC Treaty (art. 192) which is the legal basis for the European Parliament's request to the European Commission about the submission of a proposal revising Regulation 1049/2001.*

### **Amendment 5**

#### **Proposal for a regulation**

##### **Recital 8**

###### *Text proposed by the Commission*

(8) In accordance with Articles 28(1) and 41(1) of the EU Treaty, the right of access also applies to documents relating to the common foreign and security policy and to police and judicial cooperation in criminal matters. ***Each institution should respect its security rules.***

###### *Amendment*

(8) In accordance with Articles 28(1) and 41(1) of the EU Treaty, the right of access also applies to documents relating to the common foreign and security policy and to police and judicial cooperation in criminal matters.

#### *Justification*

*Recital 15 is specifically dedicated to security rules to be established by each institution.*

### **Amendment 6**

#### **Proposal for a regulation**

##### **Recital 8 a (new)**

###### *Text proposed by the Commission*

###### *Amendment*

***(8a) The Council and the Commission act in their legislative capacity when, by associating the European Parliament, they adopt, even under delegated powers, rules of general scope which are legally binding in or for the Member States, by***



*means of regulations, directives, framework decisions or decisions, on the basis of the relevant provisions of the Treaties.*

## **Amendment 7**

### **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) *The Community institutions and bodies should treat personal data in a fair and transparent way and in full compliance with the rights of data subjects as defined by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 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 and by the case-law of the Court of Justice of the European Communities ("the Court of Justice"). The institutions should define their internal procedures, duly taking into account the recommendation of the European Data Protection Supervisor.*

*Since the adoption of Regulation (EC) No 1049/2001 the case-law of the Court of Justice and decisions and positions adopted by the European Ombudsman and the European Data Protection Supervisor have clarified the relationship between that Regulation and Regulation (EC) No 45/2001, to the effect that it is Regulation (EC) No 1049/2001 which is to be applied to requests for documents containing personal data and that any application of the exceptions to the rules allowing access to documents and information for the purpose of protecting personal data must be based on the need to protect the privacy and integrity of an*

*individual.*

*Justification*

*Access to documents legislation should be implemented in due respect of personal data rights covered by Regulation 45/2001 and the recommendations made in this respect by the EDPS.*

**Amendment 8**

**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 the democratic principles outlined in Article 6(1) of the EU Treaty and the case-law of the Court of Justice on the implementation of Regulation (EC) No 1049/2001, wider*** access should be granted to documents in cases where the institutions are acting in their legislative capacity, including under delegated powers. ***Legal texts should be drafted in a clear and understandable way<sup>1</sup> and published in the Official Journal of the European Union; preparatory documents and all related information, including legal opinions and the interinstitutional procedure, should be made easily accessible by citizens on the Internet in a timely manner.***

***Better law-making practices, drafting models and techniques as well as technical solutions to track the life-cycle of preparatory documents and to share them with the institutions and bodies associated in the procedure should be agreed by the European Parliament, the Council and the Commission in accordance with this Regulation and published in the Official Journal of the European Union.***

<sup>1</sup> *Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation (OJ C 73, 17.3. 1999, p. 1).*

*Justification*

*The principle of access to documents should be clearly specified as regards the various kinds of documents and information that need to be available to the public in order to make it possible for the public to follow any legislative procedure.*

**Amendment 9**

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

*Text proposed by the Commission*

*Amendment*

***(12a) Documents related to non-legislative procedures, such as binding measures without general scope or measures dealing with internal organisation, administrative or budgetary acts, or non-binding acts of a political nature (such as conclusions, recommendations or resolutions) should be easily accessible in compliance with the principle of good administration outlined in Article 41 of the Charter, while at the same time preserving the effectiveness of the institutions' decision-making process. For each category of document the institution responsible and, where appropriate, the other institutions associated should make accessible to citizens the workflow of the internal procedures to be followed, which organisational units could be in charge, as well their remit, the deadlines set and the office to be contacted. Special arrangements may be made with the interested parties in the procedure even when public access could not be granted; the institutions should duly take into account the recommendations of the European Ombudsman.***

*Justification*

*Some general principle of public access to non legislative procedures should also be enforced.*

## **Amendment 10**

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

*Text proposed by the Commission*

*Amendment*

***(12b) The institutions should agree on common guidelines as to the way in which to register their internal documents, to classify them and to archive them for historical needs according to the principles outlined in this Regulation. Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community\* should then be repealed.***

***\* OJ L 43, 15.2.1983, p. 1.***

*Justification*

*The present regulation should also constitute the legal framework for registration, classification and archiving of documents.*

## **Amendment 11**

### **Proposal for a regulation Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***(13a) An interinstitutional register of lobbyists and other interested parties is a natural tool for the promotion of openness and transparency in the legislative process.***

## Amendment 12

### Proposal for a regulation Recital 14

*Text proposed by the Commission*

(14) In order to ensure the full application of this Regulation to all activities of the Union, all agencies established by the institutions should apply the principles laid down in this Regulation.

*Amendment*

(14) In order to ensure the full application of this Regulation to all activities of the Union, all agencies established by the institutions should apply the principles laid down in this Regulation. ***All the other EU institutions are invited to adopt comparable measures in accordance with Article 1 of the EU Treaty.***

## Amendment 13

### 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*

***(15) In order to develop the activities of the institutions in areas which require a degree of confidentiality, it is appropriate to establish a comprehensive security system covering the treatment of EU classified information. The term "EU classified" should mean any information and material the unauthorised disclosure of which could cause varying degrees of prejudice to EU interests, or to one or more of its Member States, whether such information originates within the EU or is received from Member States, third countries or international organisations. In accordance with the democratic principles outlined in Article 6(1) of the EU Treaty, the European Parliament should have access to EU classified information notably when such access is necessary for the performance of legislative or non- legislative duties conferred by the Treaties.***

### *Justification*

*In order to deal with confidential information, clear rules on classified information which are common to all the institutions should be established.*

#### **Amendment 14**

##### **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, 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. A Member State may request ***the European Parliament***, the Commission or the Council not to communicate to third parties ***outside the institutions themselves*** a document originating from that State without its prior agreement. ***If such a request is not accepted, the institution which received the request should give the reasons for refusing it. According to Article 296 of the EC Treaty, no Member State is obliged to supply information the disclosure of which it considers contrary to the essential interests of its security.***

### *Justification*

*In order to ensure public access to documents in the EU, specific rules should also be drafted as regards documents that the EU institutions receive by third parties.*

#### **Amendment 15**

##### **Proposal for a regulation**

##### **Recital 17**

###### *Text proposed by the Commission*

(17) In principle, all documents ***of*** the institutions should be accessible to the

###### *Amendment*

(17) In principle, all documents ***drafted or received by*** the institutions ***and relating to***

public. However, *certain public and private interests should be protected by way of exceptions. The institutions should be entitled to protect their internal 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.*

*their activities* should be *registered and* accessible to the public. However, *without prejudice to the European Parliament's scrutiny, access to the entire document or to part of it could be postponed.*

#### *Justification*

*It is important to specify that all documents produced or dealt with by EU institutions should be in principle accessible to the public.*

#### **Amendment 16**

##### **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) *In accordance with Article 255(2) of the EC Treaty, this Regulation details the general principles and limits on grounds of public or private interest governing the right of access to documents with which all other EU rules should comply.*

#### **Amendment 17**

##### **Proposal for a regulation Recital 18 a (new)**

*Text proposed by the Commission*

(18a) *The institutions should ensure that the development of information technology makes it easier to exercise the right of access and does not result in a reduction in the amount of information available to the public.*

## Justification

*The progress of information technology can have positive and negative effects on public access. The institutions should try to promote the positive effects minimise the negative ones. Provisions for access to information in electronic database is made by amending the definition of documents in Article 3 and a general obligation to good information is proposed in an amendment to Article 15. These amendments serve also to take into account the right to good administration laid down in Article 41 of the Charter of Fundamental Rights.*

### Amendment 18

#### Proposal for a regulation

#### Recital 19

##### *Text proposed by the Commission*

(19) In order to ensure that the right of access is fully respected, a two-stage administrative procedure should apply, ***with the additional possibility of court proceedings or complaints to the Ombudsman.***

##### *Amendment*

(19) In order to ensure that the right of ***citizens'*** access is fully respected ***and made easier:***

***– the texts and information relating to legislative procedure should also be accessible by electronic means in the Official Journal, and preparatory documents should be accessible on an interinstitutional updated daily register providing each procedure with the relevant information/documents;***

***– the other documents or at least the relevant references should be accessible via an institution's register. A two-stage administrative procedure should apply for access to documents not directly accessible, whether or not they are classified.***

***An institution's refusal should be open to challenge in court or via a complaint to the European Ombudsman.***

***The institutions should endeavour to apply in a concerted way a policy for the re-use in the public domain of the EU institutions' related information, as is done by the Member States in compliance with Directive 2003/98/EC of the***



*European Parliament and of the Council of 17 November 2003 on the re-use of public-sector information<sup>1</sup>.*

<sup>1</sup> OJ L 345, 31.12.2003, p.90.

## Amendment 19

### Proposal for a regulation Recital 20

*Text proposed by the Commission*

(20) *Each institution should take the measures necessary to* inform the public of the *provisions in force* and to train its staff to assist citizens exercising their rights under this Regulation. *In order to make it easier for citizens to exercise their rights, each institution should provide access to a register of documents.*

*Amendment*

(20) *The institutions should in a consistent and coordinated way* inform the public of the *measures adopted to implement this Regulation* and train their staff to assist citizens exercising their rights under this Regulation.

## Amendment 20

### Proposal for a regulation Recital 21

*Text proposed by the Commission*

(21) Even though it is neither the object nor the effect of this Regulation to amend national legislation on access to documents, it is nevertheless clear that, by virtue of the principle of loyal cooperation which governs relations between the institutions and the Member States, Member States should take care not to hamper *the proper application of this Regulation and should respect the security rules of the institutions.*

*Amendment*

(21) Even though it is neither the object nor the effect of this Regulation to amend national legislation on access to documents, it is nevertheless clear that, by virtue of the principle of loyal cooperation which governs relations between the institutions and the Member States, *the Member States should grant to their citizens at national level at least the same level of transparency as is granted at EU level when implementing EU rules. By the same token and without prejudice to national parliamentary scrutiny,* Member States should take care not to hamper *the processing of EU classified documents.*

### *Justification*

*EU law and policy are mainly implemented by authorities of the Member States. The ability of citizens to understand and monitor how the Union functions could be promoted by exchange of information on best practices at the national level concerning access to EU related documents and information.*

### **Amendment 21**

#### **Proposal for a regulation Recital 22**

*Text proposed by the Commission*

*Amendment*

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

### *Justification*

*This recital is merged in recital 6.*

### **Amendment 22**

#### **Proposal for a regulation Recital 22 a (new)**

*Text proposed by the Commission*

*Amendment*

***(22a) By way of complementing this Regulation, the Commission should propose an instrument, to be adopted by the European Parliament and the Council, on common rules governing the re-use of information and documents held by the institutions which implements, mutatis mutandis, the principles outlined in Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public-sector information.***

## Amendment 23

### 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 255(3) of the EC Treaty **and the principles and rules outlined in this Regulation** each institution lays down specific provisions regarding access to its documents in its rules of procedure,

## Amendment 24

### 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 255 of the EC Treaty**, the principles, conditions and limits on grounds of public or private interest governing the right of access to **documents of the** European Parliament, Council and Commission (hereinafter referred to as «the institutions») **as well as of all the Agencies and bodies created by those institutions** to grant the widest possible access to such documents;

### *Justification*

*The present regulation is the legal framework implementing article 255 of the EC Treaty that shall therefore be mentioned and it shall also become the legal reference for access to documents practice not only for the European Parliament, European Commission and Council but also for the other institutions and bodies.*

## Amendment 25

### 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 the institutions in order to improve*** access to ***their*** documents.

## Amendment 26

### Proposal for a regulation Article 1 – point c a (new)

*Text proposed by the Commission*

*Amendment*

***(ca) to set up by a joint decision of the European Parliament and of the Council, on a proposal by the Management Committee of the Publication Office of the EU<sup>1</sup>, the Official Journal of the European Union. On an interinstitutional basis, other tools such as public registers and specific administrative procedures ensuring the easiest possible exercise of this right shall be established.***

<sup>1</sup>See Article 7 of SEC(2008)2109.

### *Justification*

*It is important to specify the tools through which the right of access to documents of the Institutions is implemented.*

## Amendment 27

### Proposal for a regulation Article 2 – title

*Text proposed by the Commission*

Beneficiaries ***and scope***

*Amendment*

Beneficiaries

## Amendment 28

### Proposal for a regulation Article 2 – paragraph 1

*Text proposed by the Commission*

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.

*Amendment*

1. Any natural or legal person **or any association of legal or natural persons** shall have a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.

*Justification*

*The reference to the associations is aiming i.e. citizens' groups.*

## Amendment 29

### 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*

*deleted*

## Amendment 30

### Proposal for a regulation Article 2 – paragraph 3

*Text proposed by the Commission*

**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,**

*Amendment*

*deleted*

*documents drawn up or received in the course of a legislative procedure shall be made directly accessible in accordance with Article 12.*

#### **Amendment 31**

##### **Proposal for a regulation Article 2 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

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

#### **Amendment 32**

##### **Proposal for a regulation Article 2 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

**5. This Regulation shall not apply to documents submitted to Courts by parties other than the institutions.** *deleted*

#### **Amendment 33**

##### **Proposal for a regulation Article 2 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

**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** *deleted*

*framework of such investigations shall not be accessible to the public.*

#### **Amendment 34**

##### **Proposal for a regulation Article 2 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

***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.***

***deleted***

#### **Amendment 35**

##### **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 an institution, that is to say documents drawn up or received by it and in its possession, in all areas of activity of the European Union.***

***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 institution's register, 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 5a.***

***3. This Regulation shall be without prejudice to enhanced 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 or by the Member States' legislation.*

## Amendment 36

### 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 institution's sphere of responsibility; information** contained in electronic storage, processing and retrieval systems **(including external systems used for the institution's work) shall constitute a document or documents. An institution 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 provided for by this Regulation and act so as to promote the objective of transparency.**

**The functions for the retrieval of information stored in electronic storage systems by the institutions shall be adapted in order to satisfy repeated requests from the public which cannot be satisfied using the tools currently available for the exploitation of the system;**



## Amendment 37

### Proposal for a regulation Article 3 – point a a (new)

*Text proposed by the Commission*

*Amendment*

***(aa) «classified documents» shall mean documents the disclosure of which could affect the protection of the essential interests of the European Union or of one or more of its Member States, notably in public security, defence and military matters, and which may be partially or totally classified;***

## Amendment 38

### Proposal for a regulation Article 3 – point a b (new)

*Text proposed by the Commission*

*Amendment*

***(ab) 'legislative documents' shall mean documents drawn up or received in the course of procedures for the adoption of acts, including under delegated powers, which are legally binding in or for the Member States and for the adoption of which the Treaty provides, even on a voluntary basis, for the intervention or association of the European Parliament;***

## Amendment 39

### Proposal for a regulation Article 3 – point a c (new)

*Text proposed by the Commission*

*Amendment*

***(ac) «non- legislative documents» shall mean documents drawn up or received in the course of procedures for the adoption of non-binding acts, such as conclusions, recommendations or resolutions or acts which are legally binding in or for the***

*Member States, but which are not of general scope as are the ones cited in point ab;*

#### **Amendment 40**

##### **Proposal for a regulation Article 3 – point a d (new)**

*Text proposed by the Commission*

*Amendment*

*(ad) «administrative documents» shall mean documents relating to the institutions' decision-making process or measures dealing with organisational, administrative or budgetary matters which are internal to the institution concerned;*

#### **Amendment 41**

##### **Proposal for a regulation Article 3 – point a e (new)**

*Text proposed by the Commission*

*Amendment*

*(ae) «archive» shall mean an institution's tool for managing in a structured way the registration of all the institution's documents referring to an ongoing or recently concluded procedure;*

#### **Amendment 42**

##### **Proposal for a regulation Article 3 – point a f (new)**

*Text proposed by the Commission*

*Amendment*

*(af) «historical archives» shall mean that part of the archives of the institutions which has been selected, on the terms laid down in Article 3(1a), for permanent preservation;*

## **Amendment 43**

### **Proposal for a regulation Article 3 – subparagraph 1a (new)**

*Text proposed by the Commission*

*Amendment*

***A detailed list of all the categories of the acts covered by the definitions in points (a) to (ad) shall be published in the Official Journal of the European Union and on the Internet sites of the institutions. The institutions shall also agree and publish their common criteria for archiving.***

## **Amendment 44**

### **Proposal for a regulation Article 3 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 3a***

##### ***Classified documents***

***1. When public grounds exist under Article 4(1), and without prejudice to parliamentary scrutiny at EU and national level, an institution shall classify a document where its disclosure would undermine the protection of the essential interests of the European Union or of one or more of its Member States. Information 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 prejudice to the essential interests of the European Union or of one or more of its 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 European Union or of one***

*or more of its 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 European Union or of one or more of its 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 European Union or of one or more of its Member States;*

*2. Information shall be classified only when necessary.*

*If possible, the originators shall specify on classified documents a date or period when 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 information and for any subsequent downgrading or declassification rests solely with the originating institution or that which received the classified document from a third party or another institution.*

*3. Without prejudice to the right of access by other EU institutions, classified documents shall be released to third parties only with the consent of the originator.*

*However, the institution refusing such access shall give reasons for its decision in a manner which does not harm the interest protected under Article 4(1).*

*When more than one institution is involved in the processing of a classified*

*document, the same ground of classification shall be granted and mediation shall be initiated if the institutions 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 European Union or of the Community cannot give any right to a third country or international organisation to prevent the European Parliament from having access to 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 could be made in the public register.*

*5. Classified documents shall be recorded in an institution's register or released only with the consent of the originator.*

*6. An institution 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 EU classified documents, the principles set out in this Regulation are respected.*

*8. The security rules of the institutions concerning classified documents shall be made public.*

**9. The European Parliament shall have access to classified documents through a special oversight committee composed of members appointed by its**

**Conference of Presidents. These Members shall comply with a specific clearance procedure and solemnly swear not to reveal in any way the content of the information accessed.**

**The European Parliament shall establish in its internal rules and in compliance with the obligations conferred by the Treaties, security standards and sanctions equivalent to the ones outlined in the Council and Commission Internal Security rules.**

*Justification*

*Classified documents shall be defined and the handle of those documents shall be considered separate provisions before the exceptions. (NB see the case of the establishment of terrorists lists).*

**Amendment 45**

**Proposal for a regulation  
Article 4 – title**

*Text proposed by the Commission*

*Amendment*

Exceptions

**General exceptions to the right of access**

**Amendment 46**

**Proposal for a regulation  
Article 4 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

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

**1. Without prejudice to the cases dealt with in Article 3a, the institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards:**

## Amendment 47

### 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) *internal* public security *of the European Union or of one or more of its Member States*;

## Amendment 48

### Proposal for a regulation

#### Article 4 – paragraph 2 – introductory part

*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 shall refuse access to a document where disclosure would undermine the protection of *public or private interests linked to*:

## Amendment 49

### Proposal for a regulation

#### Article 4 – paragraph 2 – point b a (new)

*Text proposed by the Commission*

*Amendment*

*(ba) privacy and the integrity of the individual, in accordance with the relevant rules for the protection of personal data applicable to the institutions as laid down in Article 286 of the EC Treaty as well the principle of transparent and good administration outlined in Article 1(c);*

## Amendment 50

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

*Text proposed by the Commission*

*Amendment*

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

(c) legal advice and court proceedings, ***except for legal advice in connection with procedures leading to a legislative act or a non-legislative act of general application;***

*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 51**

**Proposal for a regulation**  
**Article 4 – paragraph 2 – point e**

*Text proposed by the Commission*

*Amendment*

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

(e) the objectivity and impartiality of ***public procurement*** procedures ***until a decision has been taken by the contracting institution, or of a Selection Board in proceedings leading to the recruitment of staff until a decision has been taken by appointing authority.***

**Amendment 52**

**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 53

##### 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. The exceptions under paragraphs (2) and (3) shall apply unless there is an overriding public interest in disclosure. *A strong* public interest in disclosure *exists* where *the requested documents have been drawn up or received in the course of procedures for the adoption of EU legislative acts or of non-legislative acts of general application. When balancing the public interest in disclosure, special weight shall be given to the fact that the requested documents relate to the protection of fundamental rights or the right to live in a healthy* environment.

#### Amendment 54

##### 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 values, such as the breeding sites of rare species, shall only be disclosed in conformity with Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community*

*institutions and bodies*<sup>1</sup>.

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<sup>1</sup> OJ L 264, 25.9.2006, p. 13.

### *Justification*

*Article 4a (new) is created in order to take full account of the Aarhus Convention and the principles expressed in the Turco judgement (C-39/05 P and C-52/05).*

## **Amendment 55**

### **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 within 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. In the case of documents covered by the *exception relating to privacy and the integrity of the individual*, the *exception* may, if necessary, continue to apply after this period.

## **Amendment 56**

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

*Text proposed by the Commission*

*Amendment*

***(7a) The exceptions as laid down in this Article shall not be interpreted as referring to information of public interest relating to the beneficiaries of European***

*Union funds that is available within the framework of the financial transparency system.*

*Justification*

*Such information could be interpreted as being commercial in nature where the beneficiaries are commercial companies.*

**Amendment 57**

**Proposal for a regulation  
Article 5 – title**

*Text proposed by the Commission*

*Amendment*

*Consultations*

*Consultation of third parties*

**Amendment 58**

**Proposal for a regulation  
Article 5 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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 document shall or shall not be disclosed.***

1. As regards third-party documents, ***they shall be disclosed by the institutions without consulting the originator if it is clear that none of the exceptions in this Regulation are applicable.*** A third party ***shall be consulted if that party has requested, when handing in the document, that it be treated in a specific way,*** with a view to assessing whether an exception ***provided for in this Regulation*** is applicable. ***Documents provided to the institutions for the purpose of influencing policy-making should be made public.***

**Amendment 59**

**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 exceptions laid down in this Regulation.***

*Amendment*

2. Where an application concerns a document originating from a Member State:

**- which has not been transmitted by that Member State in its capacity as a member of the Council, or**

**- which does not concern information submitted to the Commission concerning the implementation of EC legislation**

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 **in equivalent provisions of its own legislation, or objects on the basis of Article 296(1)(a) of the EC Treaty that the disclosure would be contrary to its essential security interests.**

**Amendment 60**

**Proposal for a regulation**  
**Article 5 – paragraph 3**

*Text proposed by the Commission*

3. **Where** a Member State receives a

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*Amendment*

3. **Without prejudice to national**

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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.

***parliamentary scrutiny, 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.

## **Amendment 61**

### **Proposal for a regulation Article 5 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 5a***

##### ***Legislative Transparency***

- 1. In compliance with the democratic principles outlined in Article 6 (1) of the EU Treaty and with the case-law of the Court of Justice on the implementation of Regulation (EC) No 1049/2001, institutions acting in their legislative capacity, including under delegated powers, shall grant the widest possible access to their activities.***
- 2. Documents relating to their legislative programmes, preliminary civil society consultations, impact assessments and any other preparatory document linked to a legislative procedure shall be accessible on a user-friendly interinstitutional site and published in a special series of the Official Journal of the European Union.***
- 3. In implementing this Regulation, legislative proposals as well other EU legal texts shall be drafted in a clear and understandable way and the institutions shall agree common drafting guidelines and models improving legal certainty in accordance with the relevant case-law of the Court of Justice.***
- 4. During the legislative procedure, each***

*institution or body 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.*

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

*6. By virtue of the principle of loyal cooperation which governs relations between the institutions and the Member States, the Member States shall grant to their citizens at national level at least the same level of transparency as is granted at EU level by timely and clearly publishing in their respective official journals the texts or the references of the national measures implementing acts of the institutions of the European Union.*

*7. Any initiative or documents provided by any interested parties with a view to influencing the decision-making process in any way shall be made public.*

## Amendment 62

### 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 the institution 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.

## Amendment 63

### Proposal for a regulation Article 7 – paragraph 1

*Text proposed by the Commission*

1. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within 15 working days from registration of the application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application in accordance with paragraph 4 of this Article.

*Amendment*

1. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within **a maximum of 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 4 of this Article.

*Justification*

*The various timeframes should be interpreted as maximum time limits.*

## Amendment 64

### 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 by **a maximum of 15** working days, provided that the applicant is notified in advance and that detailed reasons are given.

*Justification*

*The various timeframes should be interpreted as maximum time limits.*

## Amendment 65

### 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. In the event of a total or partial refusal, ***where the applicant calls into question whether any actual harm will be caused to the relevant interests and/or argues that there is an overriding interest in disclosure, the applicant may request the European Ombudsman to give an independent and objective view on the question of harm and/or overriding public interest. If, following delivery of the European Ombudsman's opinion, the total or partial refusal is upheld by the institution,*** the applicant may, within ***a maximum of*** 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.

*Justification*

*Article 7(3) is amended to include a procedure in cases where an applicant has doubts concerning the question whether interests are harmed and/or argues that there is an overriding interest in disclosure. The Ombudsman could assess the question of harm or an overriding public interest and report to the institution and the applicant.*

## Amendment 66

### Proposal for a regulation Article 8 – paragraph 1

*Text proposed by the Commission*

1. A confirmatory application shall be handled promptly. 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

*Amendment*

1. A confirmatory application shall be handled promptly. Within **15** working days from registration of such an application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal. In



the event of a total or partial refusal, the institution shall inform the applicant of the remedies open to him or her.

the event of a total or partial refusal, the institution shall inform the applicant of the remedies open to him or her.

## **Amendment 67**

### **Proposal for a regulation Article 8 – 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 by **a maximum of** 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

*Justification*

*The various timeframes should be interpreted as maximum time limits.*

## **Amendment 68**

### **Proposal for a regulation Article 9**

*Text proposed by the Commission*

**Article 9**

***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),***

*Amendment*

***deleted***

*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 69**

### **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

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

than 20 A4 pages and direct access in electronic form or through the register shall be free of charge. *In the case of printouts or documents in electronic format based on information contained in electronic storage, processing and retrieval systems, the actual cost of searching for and retrieving the document or documents may also be charged to the applicant. No additional charge shall be made if the institution has already produced the document or documents concerned. The applicant shall be informed in advance of the amount and method of calculating any charge.*

## Amendment 70

### 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. Without prejudice to the internal rules of the institutions, the register or system of registers (in the case of multiple registers for the same institution) of each institution shall in particular contain references to:**

**– incoming and outgoing documents, as well as the official mail of the institution where such mail falls within the definition set out in Article 3(a),**

**– agendas and summaries of meetings and documents prepared before meetings for circulation, as well as other documents circulated during meetings.**

**Each institution shall:**

**– by ... \*, adopt and publish internal rules concerning the registration of documents,**

**– by ... \*\*, ensure that its register is fully operational.**

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*\* Six months from the date of entry into force of this Regulation.*

*\*\* One year from the date of entry into force of this Regulation.*

*Justification*

*It is unnecessary and impractical to register everything that falls within the broad definition of "document" contained in Article 3. The new text lays down principles as to what kinds of documents must be registered and requires each institution to adopt and publish more specific internal rules to implement those principles.*

**Amendment 71**

**Proposal for a regulation  
Article 12 – paragraph -1 (new)**

*Text proposed by the Commission*

*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 concerned.***

*Justification*

*The present standard should not be lowered with regard to non-legislative documents.*

**Amendment 72**

**Proposal for a regulation  
Article 12 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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.***

***1. The institutions shall make all documents directly accessible to the public in electronic form or through a register, particularly those*** drawn up or received in the course of procedures for the adoption of EU legislative acts or non-legislative acts of general application.

## Amendment 73

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

*Text proposed by the Commission*

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

*Amendment*

4. *The institutions shall establish a common interface for their registers of documents, and shall in particular ensure a single point of access for direct access to documents drawn up or received in the course of procedures for the adoption of legislative acts or non-legislative acts of general application.*

*Justification*

*Article 12(4) is amended to include recommendation 5 of the Cashman resolution with a view to improving current standards.*

## Amendment 74

### Proposal for a regulation Article 13

*Text proposed by the Commission*

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

*(a) Commission proposals;*

*(b) common positions adopted by the*

*Amendment*

1. *In accordance with the principles outlined in this Regulation, the institutions shall agree on the structure and presentation of the Official Journal of the European Union by taking into account the pre-existing interinstitutional agreement.*

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

*(a) common positions adopted by the*

Council in accordance with the procedures referred to in Articles 251 and 252 of the EC Treaty and the reasons underlying those common positions, as well as the European Parliament's positions in these procedures;

***(c) framework decisions and decisions referred to in Article 34(2) of the EU Treaty;***

***(d) conventions established by the Council in accordance with Article 34(2) of the EU Treaty;***

***(e) conventions signed between Member States on the basis of Article 293 of the EC Treaty;***

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

***2. As far as possible, the following documents shall be published in the Official Journal:***

***(a) initiatives presented to the Council by a Member State pursuant to Article 67(1) of the EC Treaty or pursuant to Article 34(2) of the EU Treaty;***

***(b) common positions referred to in Article 34(2) of the EU Treaty;***

***(c) directives other than those referred to in Article 254(1) and (2) of the EC Treaty, decisions other than those referred to in Article 254(1) of the EC Treaty, recommendations and opinions.***

***3. Each institution may in its rules of procedure establish which further documents shall be published in the Official Journal.***

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) Directives other than those referred to in Article 254(1) and (2) of the EC Treaty, decisions other than those referred to in Article 254(1) of the EC Treaty, recommendations and opinions;***

***(c) conventions signed between Member States on the basis of Article 293 of the EC Treaty;***

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

***(e) common positions referred to in Article 34(2) of the EU Treaty;***

***(f) framework decisions and decisions referred to in Article 34(2) of the EU Treaty;***

***(g) conventions established by the Council in accordance with Article 34(2) of the EU Treaty;***

***2. Each institution shall agree the way in which other institutions and bodies shall publish documents other than the ones mentioned above.***

## **Amendment 75**

### **Proposal for a regulation Article 14 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 14a*

##### *Information Officer*

- 1. Each directorate-general within each institution shall appoint an Information Officer who shall be responsible for ensuring compliance with the provisions of this Regulation and good administrative practice within that directorate-general.***
- 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 directorate-general follow good practice.***
- 4. The Information Officer may redirect the person who requires the information to another directorate if the information in question falls outside its remit and within the remit of a different directorate within the same institution, provided that he or she is in possession of such information.***
- 5. When needed, the Information Officer may consult the European Ombudsman in relation to the proper and sound implementation of this Regulation.***

## Amendment 76

### Proposal for a regulation Article 14 b (new)

*Text proposed by the Commission*

*Amendment*

#### **Article 14b** **Sanctions**

***Any failure to comply with the obligations under this Regulation, whether intentionally or through negligence on his or her part, shall make an official or other servant of the institutions liable to disciplinary action, in accordance with the rules and procedures laid down in the Staff Regulations of Officials of the European Communities and the Conditions of Employment of other servants of the European Communities and in the institutions' internal rules.***

## Amendment 77

### Proposal for a regulation Article 15 – title

*Text proposed by the Commission*

*Amendment*

Administrative practice in the institutions

Administrative **transparency** practice in the institutions

## Amendment 78

### Proposal for a regulation Article 15 – paragraph 1

*Text proposed by the Commission*

*Amendment*

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

1. The institutions shall develop good administrative practices in order to facilitate the exercise of the right of access guaranteed by this Regulation. ***The institutions shall organise and maintain the information in their possession in such a way that the public may be granted***



***access to the information without additional effort.***

*Justification*

*The amendment to Article 15 (1) is based on the right to good administration laid down in Article 41 of the Charter of Fundamental Rights and corresponds to the legislation, for instance, in Finland. It also would mean a step in the direction of a genuine freedom of information act of the EU, while serving, simultaneously, the objective set out in the new recital 18, that the development of information technology should make it easier to exercise the right of access and not reduce the amount of information available to the public.*

**Amendment 79**

**Proposal for a regulation**

**Article 15 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. In order to ensure that the principles of transparency and good administration are effectively applied, the institutions concerned shall agree on common implementing rules and procedures for the presentation, classification, declassification, registration and dissemination of documents.***

***In order to facilitate a genuine debate among the players involved in the decision-making process and without prejudice to the principle of transparency, the institutions shall make clear to citizens if and when, during the specific phases of the decision-making process, direct access to documents may not be granted. These limitations shall not apply once that decision has been taken.***

## Amendment 80

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

*Text proposed by the Commission*

*Amendment*

***1 b. The institutions 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, to which services may citizens refer to obtain support, information or administrative redress.***

## Amendment 81

### Proposal for a regulation Article 15 – paragraph 2

*Text proposed by the Commission*

*Amendment*

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

2. The institutions shall establish an interinstitutional ***Article 255*** committee to examine ***and exchange*** best practice, ***identify access and usability barriers and unpublished data sources***, address possible conflicts, ***promote interoperability, re-use and merger of registers, standardise document coding through a European standards organisation, create a single EU portal to ensure access to all EU documents*** and discuss future developments on public access to documents.

## Amendment 82

### Proposal for a regulation Article 16

*Text proposed by the Commission*

*Amendment*

This Regulation shall be without prejudice

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.

to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents.

*Justification*

*The current wording of Article 16 is better than the changes proposed by the Commission.*

**Amendment 83**

**Proposal for a regulation**

**Article 17 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. At the latest by ....., the Commission shall publish a report on the application of the principles 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.***

*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. The exclusion of a provision signifies a de facto amendment to the Regulation.*

## EXPLANATORY STATEMENT

As rapporteur on the proposal for revision of Regulation 1049/2001, I have put forward some crucial modifications to the European Commission's proposal presented on 30 April 2008. When the current regulation came into force in 2001, I was also rapporteur in charge of this dossier.

In 2006 I drafted the resolution of the European Parliament approved unanimously 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 regulations 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 requests of 2006 have not been taken into account.

In my view, we the legislators must take this opportunity for the revision of Regulation 1049/2001, to try to make this regulation the real and unique legal framework on public accessibility as regards all documents and information handled by EU institutions and bodies 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 scratch because there are a lot of initiatives which already exist, on a soft law basis, 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 at the same objective to make the European Decision-making process more understandable.

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

My approach will be much more ambitious than the Commission proposal and probably of the Council 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 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.

By the same token, we should 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, bearing in mind the long waited ratification of the Lisbon Treaty.

A reasonable agenda could be for the Parliament to adopt its first reading beginning of March, asking the Commission to modify its proposal and negotiate a possible common position with the Council under the Swedish presidency. Should in the meantime it becomes clear that the Lisbon Treaty could come into force, it will be rather easy to build on the work already done, and update a new text which could be finalised immediately after the entry into force of the Lisbon Treaty itself (as it was the case for the Olaf Regulation immediately after the entry into force of the Maastricht Treaty).

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, legislative, and administrative documents, archive 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 as regards 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.

**ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION**



GRUPE CONSULTATIF  
DES SERVICES JURIDIQUES

Brussels,

**OPINION**

**FOR THE ATTENTION OF      THE EUROPEAN PARLIAMENT  
THE COUNCIL  
THE COMMISSION**

**Proposal for a regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents  
COM(2008) 229 final of 30.4.2008 - 2008/0090 (COD)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 20 May 2008 and 4 June for the purpose of examining the aforementioned proposal submitted by the Commission.

At those meetings<sup>1</sup>, an examination of the proposal for a regulation of the European Parliament and of the Council recasting Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents resulted in the Consultative Working Party's establishing, by common accord, as follows.

- 1) In Article 7(1), the reference made to "*paragraph 4 of this Article*" should be adapted so as to read "*paragraph 3 of this Article*".
- 2) In Article 9(1), the reference made to "*Article 4(1)(a)*" should be adapted so as to read "*Article 4(1)*".
- 3) In Article 12(1), the adding of the wording "*EU legislative acts or non-legislative acts of general application shall*" should have been identified by using the grey shaded type generally used for identifying substantive changes.
- 4) In Article 12(2), the adding of the final words "*in electronic form*" should have been

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<sup>1</sup> The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

identified by using the grey shaded type generally used for identifying substantive changes.

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such therein or in the present opinion. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing texts, without any change in their substance.

C. PENNERA  
Jurisconsult

J.-C. PIRIS  
Jurisconsult

C.-F.DURAND  
actg. Director General



26.1.2009

## **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 47 of the Rules of Procedure

### **SHORT JUSTIFICATION**

Transparency is a fundamental principle of the European Union. This is clearly stated in the Article 255 of the Treaty establishing the European Community (TEC):

*"Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents".*

The Lisbon Treaty states in addition:

*"Decisions shall be taken as openly and as closely as possible to the citizen".* (Article 10-3 of the TEU)

Furthermore

*"In order to promote good governance and ensure the participation of civil society, the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible."* (Article 15-1 of the TFEU)

The present regulation 1049/2001 was a significant step towards greater openness. In the six years since its implementation, it has contributed to the creation of a more transparent culture of administration in the European Institutions.

The decisions that the Court of Justice has made on the basis of Regulation 1049/2001 have

been important to this process. The last of these was the very significant judgment that the Court made in the so-called Turco case (T-84/03 Turco v. Council). The Court decided that the Council should also give access to the advice of its legal service, when this advice concerns a legislative act. The Court believes that the principles of transparency and openness in the decision-making process constitute an "overriding public interest" that justifies the disclosure of the legal advice. In its conclusions the Court states that: "openness...contributes to conferring greater legitimacy on the institutions in the eyes of European citizens and increases their confidence in them".

### **The Commission proposal**

The Commission gave its proposal for amending Regulation 1049/2001 on 30 April 2008. The European Parliament asked for a review of the Regulation in its resolution of 4 April 2006. In the Explanatory Statement of the Proposal, the Commission tries to give the impression that it has made the changes for which the Parliament has been asking.

Regrettably this is not at all the case. Where the Parliament asked for more openness, on the contrary, many amendments suggested by the Commission would lower the present standard.

The most severe of these is the amendment the Commission is proposing to Article 3 which would significantly limit the definition of a document. If this change were realised, it would mean that only a part of the documents currently open to the public would continue to be so in the future. In the Rapporteur's opinion, the present definition should remain unchanged as it covers all the relevant documents - not only the registered ones.

Another amendment that the Rapporteur finds worrying concerns the right of the Member States to withhold documents in Article 5. The formulation proposed by the Commission would give the Member States an unlimited right to appeal to their own legislation. The institutions could only consider reasons based on the Regulation. Such a right would water down the principle of transparency and leave it completely at the discretion of Member States. Here again, 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 Commission has totally ignored the proposals made by the Parliament in the resolution of 4 April 2006 concerning the possibilities for the Parliament to exercise its right for democratic scrutiny. The Parliament must have access to sensitive documents in order to fully discharge its duties - the arrangements on handling such documents can be agreed between the institutions.

There are, however, amendments made by the Commission that the Parliament can welcome. These are above all: the broadening of the right of access to any natural or legal person and not just EU citizens as in the present regulation; the environmental provisions stemming from the Aarhus Convention and improved direct access to legislative documents.

These positive amendments are regrettably outweighed by those the parliament considers to be negative. Given these negative amendments, the Rapporteur believes it would be preferable to remain with the present Regulation rather than adopt changes that would water it

down.

## 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 Recital 18 a (new)

*Text proposed by the Commission*

*Amendment*

***(18a) The institutions should ensure that the development of information technology makes it easier to exercise the right of access and does not result in a reduction in the amount of information available to the public.***

*Justification*

*The progress of information technology can have positive and negative effects on public access. The institutions should try to promote the positive effects and minimise the negative ones. Provisions for access to information in electronic database is made by amending the definition of documents in Article 3 and a general obligation to good information is proposed in an amendment to Article 15. These amendments serve also to take into account the right to good administration laid down in Article 41 of the Charter of Fundamental Rights.*

### Amendment 2

#### Proposal for a regulation Article 3 – point a

*Text proposed by the Commission*

*Amendment*

(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;***

(a) “document” means any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) ***concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of***

**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;

**responsibility; information** contained in electronic storage, processing and retrieval systems **(including external systems used for the institution's work) shall constitute a document or documents if it** can be extracted in the form of **one or more printouts** or electronic-format **copies** using **any reasonably** available tools for the exploitation of the system;

#### *Justification*

*The amendment restores the present formulation of the basic definition of a document, as the Commission's proposal would allow for arbitrary limitation of the right to access. The additional wording makes provision for access to information in electronic databases in order to meet the objective described in the new recital 18.*

### **Amendment 3**

#### **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 and court, arbitration and dispute settlement proceedings, **except as regards legal advice in connection with procedures leading to a legislative act or a non-legislative act of general application;**

#### *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 4**

#### **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**

##### *Amendment*

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

*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.*

*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 those cases, the institution or body 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 or body refuses access to a document on the basis of paragraph 1, 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 neither does it reflect the judgement of the Court of First Instance in Bavarian Lager.*

## Amendment 5

### 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. 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.

#### *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 6

### 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

#### *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, 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*.

exceptions referred to in Article 4. The institution shall appreciate the adequacy of reasons given by the Member State.

#### *Justification*

*The Member States should not be given the absolute right to invoke their own legislation. The exceptions of Article 4 should be sufficient reason for denying access.*

### **Amendment 7**

#### **Proposal for a regulation Article 8 – paragraph 1**

##### *Text proposed by the Commission*

1. A confirmatory application shall be handled promptly. 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.

##### *Amendment*

1. A confirmatory application shall be handled promptly. Within **15** working days from registration of such an application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal. In the event of a total or partial refusal, the institution shall inform the applicant of the remedies open to him or her.

#### *Justification*

*Extending this timeline to 30 days, as foreseen in the Commission proposal, constitutes a setback. 30 working (!) days, as proposed by the Commission, would constitute a negative example compared to all national access to information laws within the EU.*

### **Amendment 8**

#### **Proposal for a regulation Article 9 – paragraph 7**

##### *Text proposed by the Commission*

7. The Commission and the Council shall

##### *Amendment*

7. The Commission and the Council shall

**inform** the European Parliament regarding sensitive documents in accordance with arrangements agreed between the institutions.

**ensure adequate supervision by** the European Parliament regarding sensitive documents in accordance with arrangements agreed between the institutions, **which shall be made public**.

*Justification*

*The Parliament must be granted access to sensitive documents to be able fully to perform its duty of democratic scrutiny.*

**Amendment 9**

**Proposal for a regulation**  
**Article 12 – paragraph -1 (new)**

*Text proposed by the Commission*

*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 concerned.**

*Justification*

*The present standard should not be lowered with regard to non-legislative documents.*

**Amendment 10**

**Proposal for a regulation**  
**Article 12 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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.

1. **In particular**, 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 **Article 9**, be made directly accessible to the public.

*Justification*

*A logical consequence of the previous amendment.*



## Amendment 11

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

*Text proposed by the Commission*

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

*Amendment*

4. *The institutions shall establish a common interface for their registers of documents and shall, in particular, ensure a single point of access for direct access 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.*

*Justification*

*There should be a single point of access for the public.*

## Amendment 12

### Proposal for a regulation Article 15 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

1. The institutions shall develop good administrative practices in order to facilitate the exercise of the right of access guaranteed by this Regulation. ***The institutions shall organise and maintain the information in their possession in such a way that the public can be granted access to the information without additional effort.***

*Justification*

*The amendment to Article 15 (1) is based on the right to good administration laid down in Article 41 of the Charter of Fundamental Rights and corresponds to the legislation, for instance, in Finland. It also would mean a step in the direction of a genuine freedom of information act of the EU, while serving, simultaneously, the objective set out in the new recital 18, that the development of information technology should make it easier to exercise the right of access and not reduce the amount of information available to the public.*

## PROCEDURE

|  |   |
|--|---|
| <b>Title</b>   | Public access to European Parliament, Council and Commission documents  |
| <b>References</b>  | COM(2008)0229 – C6-0184/2008 – 2008/0090(COD)   |
| <b>Committee responsible</b>                               | LIBE  |
| <b>Opinion by</b><br>Date announced in plenary             | AFCO<br>22.5.2008   |
| <b>Associated committee(s) - date announced in plenary</b> | 20.11.2008  |
| <b>Rapporteur</b><br>Date appointed                        | Anneli Jäätteenmäki<br>24.6.2008  |
| <b>Discussed in committee</b>                              | 10.9.2008                      4.11.2008  |
| <b>Date adopted</b>  | 22.1.2009   |
| <b>Result of final vote</b>                                | +:                      20<br>-:                      0<br>0:                      1  |
| <b>Members present for the final vote</b>                  | Enrique Barón Crespo, Richard Corbett, Jean-Luc Dehaene, Andrew Duff, Anneli Jäätteenmäki, Aurelio Juri, Sylvia-Yvonne Kaufmann, Timothy Kirkhope, Jo Leinen, Íñigo Méndez de Vigo, Ashley Mote, Adrian Severin, József Szájer, Riccardo Ventre, Johannes Voggenhuber, Andrzej Wielowieyski |
| <b>Substitute(s) present for the final vote</b>            | Costas Botopoulos, Klaus-Heiner Lehne, Gérard Onesta, Sirpa Pietikäinen, Mauro Zani   |

8.12.2008

## **OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE**

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: Rovana Plumb

### **SHORT JUSTIFICATION**

The Committee on International Trade (INTA) welcomes the Commission's proposal, which has been drawn up with the aim of establishing more flexible rules and simpler procedures for public access to the documents of the European institutions.

The subject of this revision falls essentially within the area of civil liberties and legal and constitutional affairs, i.e. matters not within INTA's remit.

The rapporteur for this opinion nonetheless takes the view that, while the Commission proposal includes within the category of 'sensitive documents' documents on trade and industry matters related to trade disputes or trade negotiations, this class of document should be considered separately.

The amendments proposed in this opinion are aimed at bringing the content of the new proposals closer into line with the intentions and objectives of the reform. Preferential treatment for users is necessary, provided it is not used to camouflage business interests in such a way as to infringe consumers' rights and interests in the name of an 'overriding public interest'.

Your rapporteur believes that this option of removing business interests needs to be more clearly spelt out in the text, since the primary purpose of revising the rules is to serve the interests of the public and strengthen the rights of the citizen.

The objectives of the proposal for a regulation include that of clarifying the procedures concerning the exceptions, i.e. those cases to which the rules on transparency and publicisation do not apply. The text includes among these exceptions business interests, as in

the previous version. However, the proposal also specifically refers to the circumstances in which business secrets must not be divulged, i.e. until such cases have been brought before the tribunal for resolving bilateral disputes or the WTO's Dispute Settlement Mechanism.

The Commission's proposed modification clarifies the text: the commercial interest remains protected, including where it serves as an obvious justification for the EU's demands vis-à-vis the resolution of disputes by the WTO tribunal.

Otherwise, the proposal maintains the rules on confidential documents related to trade negotiations. Documents forwarded by the 133 Committee (responsible for defining the EU's trade policies) to the higher public authorities are by their nature sensitive. INTA is aware of the need to maintain the confidentiality of '133' documents, while reserving the right to monitor trade policy as implemented by the Commission and the Council. For sensitive documents of this type, the rules governing classification and interinstitutional and public access are defined in the Commission's Decision of 29 November 2007 amending its internal rules (C(2001)3031).

The last time the Commission revised the rules on public access to documents was in 2001, immediately after the revision of the classification rules on sensitive documents. Meanwhile, if the Commission is genuinely concerned to enhance public access to all types of document, it will have to revise all of its internal rules.

INTA itself must certainly practise strict respect for the rules on communicating restricted-access information, even among its members. These rules, however, date from 2001, i.e. from before the creation of the committee.

Your rapporteur accordingly stresses the need for the regular revision of the rules on the classification and transmission of sensitive Commission documents to the other institutions, Parliament included.

The present proposal for revising the rules on public access must not be allowed to remain a mere formality. The whole process governing access to all types of document for all legal persons and all citizens must be examined very closely so that the revision is enabled to succeed. In this connection, your rapporteur believes that proper information of the citizens with a view to their participation in the EU's legislative process is a fundamental right. It follows that trade documents must not be excluded from the present reform.

In the light of the above, your rapporteur proposes the amendments which follow.

## **AMENDMENTS**

The Committee on International Trade 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 9 – point 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», «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.

#### *Amendment*

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 ***rules which shall be drawn up by the institution concerned and shall be reviewed by it regularly and*** 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, ***international and trade relations, and*** defence and military matters.

#### *Justification*

*Each institution needs to draw up and revise its own rules establishing the criteria for classifying documents, within a clearly established deadline. Documents forwarded to other public bodies by the 133 Committee, which is responsible for defining EU trade policy, fall within the category of sensitive documents. INTA, while aware of the need to preserve the confidentiality of documents drawn up by that committee, reserves the right to monitor the trade policy implemented by the Commission and Council in the citizens' interest.*

## Amendment 2

### Proposal for a regulation Article 10 – point 1

#### *Text proposed by the Commission*

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, including, where available, an electronic copy, according to the applicant's preference.

#### *Amendment*

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, including, where available, an electronic copy, according to the applicant's preference. ***The cost of producing and sending copies shall be charged to the applicant. This***

***charge shall not exceed the real cost of producing and sending the copies. Consultation on the spot, copies not exceeding 20 A4 pages and direct access in electronic form or through the register shall be free of charge.***

*Justification*

*The Commission's aim is to draw up simpler procedures for public access to documents, yet it wishes to eliminate the explicit mention of its obligation to make documents available for a fee where their number exceeds a certain limit. The paragraph in question needs to be detained and improved: if it is the citizen's obligation to pay for the copies requested, that same citizen should nonetheless be aware of that obligation and of the method of calculation of the fees charged for copying. The citizen should be able to consult documents free of charge where it is not necessary to copy them.*

**Amendment 3**

**Proposal for a regulation  
Article 11 – point 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 register which shall be operational **no later than six months from the entry into force of this Regulation**.

*Justification*

*In the interests of consistency, the date should be altered in line with the present amendments and the new calendar. A more ambitious deadline is needed than that originally proposed. The documents to which the present revision applies are such as to have an immediate and significant impact on citizens and enterprises (where trade or business are concerned), and the EU institutions must therefore act rapidly to improve the services offered and make the registers available to the public as swiftly as possible after the entry into force of the new Regulation.*

## PROCEDURE

|   |   |
|---|---|
| <b>Title</b>  | Public access to European Parliament, Council and Commission documents  |
| <b>References</b>   | COM(2008)0229 – C6-0184/2008 – 2008/0090(COD)   |
| <b>Committee responsible</b>                                      | LIBE  |
| <b>Opinion by</b><br>Date announced in plenary                    | INTA<br>23.9.2008   |
| <b>Rapporteur</b><br>Date appointed                               | Rovana Plumb<br>15.7.2008   |
| <b>Discussed in committee</b>                                     | 9.9.2008                      5.11.2008   |
| <b>Date adopted</b>   | 2.12.2008   |
| <b>Result of final vote</b>                                       | +:                      16<br>-:                      1<br>0:                      1  |
| <b>Members present for the final vote</b>                         | Daniel Caspary, Glyn Ford, Béla Glattfelder, Ignasi Guardans Cambó, Syed Kamall, Caroline Lucas, Helmuth Markov, Vural Öger, Georgios Papastamkos, Peter Šťastný, Gianluca Susta, Daniel Varela Suanzes-Carpegna, Iuliu Winkler, Corien Wortmann-Kool |
| <b>Substitute(s) present for the final vote</b>                   | Bastiaan Belder, Rovana Plumb, Zbigniew Zaleski   |
| <b>Substitute(s) under Rule 178(2) present for the final vote</b> | Armando França, Glennis Willmott  |

21.1.2009

## **OPINION OF THE COMMITTEE ON LEGAL 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: Monica Frassoni

### **SHORT JUSTIFICATION**

According to Article 1(2) of the Treaty on European Union Community institutions and bodies must take decisions as openly as possible and as closely as possible to the citizens. Transparency and citizens' right to information are widely recognised as the most cost-efficient way of fighting and preventing corruption. In order to enable citizens to effectively participate in the political process and call public authorities to account, citizens should therefore have the widest possible access to documents held by the European institutions.

The European Parliament has constantly reminded the importance of this fundamental principle of democracy, as in the Casham Resolution. The consultation on the revision of the Regulation, showed broad support from civil society for the call from the European Parliament for the introduction of a genuine freedom of information act applicable to the institutional framework of the European Union, in accordance with the right to good administration laid down in Article 41 of the Charter of Fundamental Rights.

Your rapporteur regrets that the other Institutions are not following the same committed approach. The actual amendments the Commission has brought to the Regulation are indeed disappointing as in a number of cases the Commission's proposals represent a step backwards in "a drive towards more transparency". Furthermore, your rapporteur considers the Commission's choice to use the re-cast procedure for the revision of the regulation unfortunate and not in conformity with the objectives of the Interinstitutional Agreement (IIA) on the re-cast procedure. The unsuitability of the re-cast procedure for a complex revision, where changes in some elements have implications for other provisions in the text, in practical terms means that Parliament must make extensive use of the derogation provided for in the IIA.



Your rapporteur has in several cases reinstated the current provisions of the Regulation as they offer a definitely higher standard of access and transparency.

Your rapporteur has also referred to the question of the relationship between access to documents and data protection as one of the most controversial issues relating to the application of Regulation 1049/2001. The shared position of the European Ombudsman, the European Data Protection Supervisor and the Court of First Instance (in the Bavarian Lager case) is that data protection may not be used to prevent access to information when such access would not risk harming the right to privacy and personal integrity of an individual and your rapporteur has reminded the Commission of that consolidated position.

Inspired by the Mexican Freedom of Information and bearing in mind that bringing an action before the European Courts can be an unreasonable alternative for citizens in case of refusal of disclosure of a document, your rapporteur suggests that the European Ombudsman should be empowered to take decisions on requests for access to documents with final effect on the administration concerned, while the applicants should retain the right to bring an action before the Court of First Instance against a refusal of disclosure.

## AMENDMENTS

The Committee on Legal 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

##### 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) 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 interests of clarity, that Regulation should be recast, ***this being a legislative technique which should be applied in accordance with the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts<sup>1</sup>.***

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<sup>1</sup> OJ C 77, 28.3.2002, p. 1.

### *Justification*

*The Commission's choice to use the re-cast procedure, for the revision of this regulation is inappropriate and not in conformity with the objectives of the Interinstitutional Agreement on the re-cast procedure, which foresees its use under quite different conditions. The unsuitability of the re-cast procedure for a complex revision, where changes in some elements have implications for other provisions in the text, in practical terms means that Parliament must make extensive use of the derogation provided for in the IIA.*

## **Amendment 2**

### **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 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. ***Any progress towards opening administrative authorities up to public scrutiny is also likely to advance anti-corruption efforts.***

### *Justification*

*Transparency and citizens' right to information are widely recognised as the most cost-efficient way of fighting and preventing corruption.*

## **Amendment 3**

### **Proposal for a regulation**

#### **Recital 5 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

***(5a) That consultation has shown that there is broad support within civil society for the European Parliament's call for the***

***introduction, in accordance with the right to good administration laid down in Article 41 of the Charter of Fundamental Rights, of a genuine freedom of information act applicable to the institutional framework of the European Union.***

#### *Justification*

*While the concept of freedom of information is broader than the concept of access to documents it must, first, be noted that, as the Court of Justice has stated (in e.g. Hautal v Council) the content of the right to access to documents is the right to the information contained in documents. The broader concept of freedom of information is also already reflected in Regulation 1367/2006 which implements the Aarhus Convention. Furthermore, citizens' right to good administration must include, as a matter of principle, right to information. This is also clearly laid down in Article 22 of the Code of Good Administrative Behaviour, presented by the European Ombudsman and approved by Parliament.*

#### **Amendment 4**

##### **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) 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.

***Since the adoption of Regulation (EC) No 1049/2001 the case-law of the Court of Justice and decisions and positions adopted by the European Ombudsman and the European Data Protection Supervisor have clarified the relationship between that Regulation and Regulation (EC) No 45/2001, to the effect that it is the regulation on access to documents which is to be applied to requests for documents containing personal data and that application of the exceptions to the rules allowing access to documents and***

***information for the purpose of protecting personal data must be based on the need to protect the privacy and integrity of an individual.***

#### *Justification*

*The question of the relationship between access to documents and data protection has been one of the most controversial issue relating to the application of Regulation 1049/2001. The cause of this has been, on the one hand, an unfortunate formulation of the exception for data protection which tends to lead to circular arguments concerning the relationship between the regulations mentioned. However, the shared position of the European Ombudsman, the European Data Protection Supervisor and the Curt of First Instance (in the Bavarian Lager case) is that data protection may not be used to prevent access to information when such access would not risk harming the right to privacy and personal integrity of an individual. However, the Commission's proposal does not take this into account.*

### **Amendment 5**

#### **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 by virtue of specific powers of investigation conferred upon them by EC law.

***The Court of Justice has made it clear that the obligation to consult Member States as regards requests for access to documents originating from them does not give the Member States a right to veto such access or to invoke national laws or provisions and that the institution to which the request is made may refuse access only on the basis of the exceptions laid down in Regulation (EC) No 1049/2001. However, there is still a need to clarify the status of documents emanating from third parties in order to ensure that, in particular, information relating to legislative procedures is not***

*shared more broadly with the parties, including administrative authorities of third countries, than with the European citizens to whom the legislation will apply.*

#### *Justification*

*The European Commission, in particular, has interpreted the obligation to consult member states as granting these a right to veto access to documents coming from them. However, this interpretation has been struck down by the Court of Justice in the IFAV case. The Commissions proposal does not, unfortunately, genuinely reflect this jurisprudence and would, if accepted, mean a clear step back from the present legal state of affairs. However, there is still need for clarification of the status of third party documents, in particular, in order to avoid that information relating to legislative dossiers is not shared more broadly with, for instance, foreign administration than with the European citizens concerned and bound by the legislation,*

### **Amendment 6**

#### **Proposal for a regulation Article 2 – paragraph 1**

##### *Text proposed by the Commission*

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.

##### *Amendment*

1. Any natural or legal person **or any association of legal or natural persons** shall have a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.

#### *Justification*

*The reference to the associations is aiming i.e. citizens' groups.*

### **Amendment 7**

#### **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

##### *Amendment*

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

institutions and bodies and third countries.                      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 8**

**Proposal for a regulation**

**Article 4 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) the privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data;***

*Justification*

*Reference to EU legislation on personal data is included. In this context as well, paragraph 3.3 of rule 80a of the rules of procedures should apply.*

**Amendment 9**

**Proposal for a regulation**

**Article 5 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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 document shall or shall not be disclosed.

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 document shall or shall not be disclosed. ***Documents provided to institutions for the purpose of influencing policy-making should be made public.***

*Justification*

*In order to guarantee transparency of the policy making process, documents provided by third parties and aiming at influencing the political decisions should be made public.*

## Amendment 10

### Proposal for a regulation Article 9 – paragraph 7

*Text proposed by the Commission*

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

*Amendment*

7. The Commission and the Council shall **ensure adequate control by** the European Parliament regarding sensitive documents in accordance with arrangements agreed between the institutions, **which shall be made public**.

*Justification*

*The arrangements agreed between the institutions regarding sensitive documents should be made public.*

## Amendment 11

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

*Text proposed by the Commission*

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

*Amendment*

4. **The institutions shall establish a common interface for their registers of documents, and shall in particular ensure a single point of access for direct access to documents drawn up or received in the course of procedures for the adoption of Community legislative acts or non-legislative acts of general application.**

*Justification*

*Article 12(4) is amended to include recommendation 5 of the Cashman resolution with a view to improving current standards.*

## PROCEDURE

|   |  |
|---|--|
| <b>Title</b>                                    | Public access to European Parliament, Council and Commission documents   |
| <b>References</b>                               | COM(2008)0229 – C6-0184/2008 – 2008/0090(COD)  |
| <b>Committee responsible</b>                    | LIBE   |
| <b>Opinion by</b><br>Date announced in plenary  | JURI<br>22.5.2008  |
| <b>Rapporteur</b><br>Date appointed             | Monica Frassoni<br>25.6.2008   |
| <b>Discussed in committee</b>                   | 15.12.2008   |
| <b>Date adopted</b>                             | 20.1.2009  |
| <b>Result of final vote</b>                     | +: 15<br>-: 2<br>0: 4  |
| <b>Members present for the final vote</b>       | Carlo Casini, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Neena Gill, Klaus-Heiner Lehne, Katalin Lévai, Antonio López-Istúriz White, Manuel Medina Ortega, Hartmut Nassauer, Aloyzas Sakalas, Eva-Riitta Siitonen, Francesco Enrico Speroni, Diana Wallis, Rainer Wieland, Jaroslav Zvěřina, Tadeusz Zwiefka |
| <b>Substitute(s) present for the final vote</b> | Brian Crowley, Eva Lichtenberger, József Szájer, Jacques Toubon  |



22.1.2009

## 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 (recast) (COM(2008)0229 – C6-0184/2008 – 2008/0090(COD))

Rapporteur: David Hammerstein

### SHORT JUSTIFICATION

According to Article 1(2) of the Treaty on European Union (as amended by the Treaty of Amsterdam in 1997) 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.

Although the European institutions have been making progress with regard to openness and transparency the situation is by no means perfect and the current recast of Regulation 1049/2001 on public access to documents held by the European institutions should be considered as another step towards achieving an administrative environment in which availability and ease of access to information is the norm rather than the exception.

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". Your rapporteur feels that real integration and consolidation of the accrued case law and other relevant texts, such as the Aarhus Convention, into the Regulation should already have led to a different approach to the revision.

Furthermore, you rapporteur considers the Commission's choice to use the re-cast procedure, for the revision is unfortunate and not in conformity with the objectives of the interinstitutional agreement on the re-cast procedure, which foresees its use under quite different conditions. As the procedure *a priori* limits Parliament's possibilities to amend the proposal to only the elements amended by the Commission, its use should be carefully

evaluated. The unsuitability of the re-cast procedure for a complex revision, where changes in some elements have implications for other provisions in the text, in practical terms means that Parliament must make extensive use of the derogation provided for in the IIA.

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, this definition should be broadened to include all content, irrespective of its medium or the phase of the decision-making process, concerning matters which fall within the institutions' sphere of responsibility.

The Committee on petitions keeps the finger on the pulse of the Union with regard to failings and shortcomings in the application of Community law, policies and programmes and it continues to note that citizens are very conscious of such shortcomings, because they affect them directly and because they have a direct interest in ending infringements and/or seeking redress.

For citizens it is of particular importance that for instance in the case of infringement procedures, which often result from citizens' petitions, full access should be provided to all documents at all stages of investigations in the course of such procedures. This includes documents provided by Member States. Therefore 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 not acceptable. No other exceptions than laid down in Articles 4 ("Exceptions") should be applicable to citizens' rights of access to documents. With regard to Article 9 ("Sensitive documents") it is important that the institutions should lay down common rules for the classification of such documents and that these rules should be made public.

Your rapporteur also considers that it would be worthwhile to integrate into the Regulation the European Ombudsman's suggestion to act as an objective intermediary in cases where access to a document is wholly or partially refused by an institution and the applicant questions the reality of harm to the affected interest and/or argues that there is an overriding public interest in disclosure. In such cases the Ombudsman could inspect the document, take an independent view on the question of harm and/or an overriding public interest and - without disclosing the document - give his opinion to the institution and the applicant. If after the Ombudsman has been consulted the refusal is upheld, the applicant can make a confirmatory application if he or she so wishes.

This procedure would not diminish the applicant's rights under the Regulation in any way but would offer practical help and guidance to the institution, which may consider that it is under a legal obligation to refuse access, and increase the applicant's trust that, when an application is rejected, the likelihood of harm is real and the possibility of an overriding public interest in disclosure has been seriously and objectively examined. Another advantage of this procedure would be that refusal cases from different institutions put before the Ombudsman would be dealt with in a coherent and equitable way.

Your rapporteur is of the opinion that it is hardly imaginable that the European Transparency Initiative will succeed if applicants cannot easily find and retrieve the information they want.

In the context of this Regulation therefore the institutions should ensure that documents are supplied through a common interface for their registers of documents, and they should provide for a single point of access.

When supplied electronically, documents should be in formats adhering to Open Standards. The drive for transparency is sure to fail if citizens are obliged to make use of specific proprietary software which is compatible with the institutions' IT environment. Your rapporteur has introduced amendments (Articles 10 and 11) including a deadline for institutions to ensure that documents are supplied in formats adhering to Open Standards and to ensure that the institutions' IT environments does not form a barrier to public access to documents.

With a view to ensuring parliamentary scrutiny your rapporteur emphasises that the Parliament must have adequate control with regard to sensitive documents. Bilateral agreements with third countries or international organisations should not prohibit the Council and the Commission from sharing information with the Parliament. In this context it is important that deadlines be set for the adaptation of the rules of procedure of the institutions and that the Commission should verify the conformity of these rules with the revised Regulation. 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

#### Recital 2

##### *Text proposed by the Commission*

(2) The second subparagraph of Article 1 of the Treaty on European Union enshrines the concept of openness, stating that the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

##### *Amendment*

(2) The second subparagraph of Article 1 of the Treaty on European Union enshrines the concept of openness, stating that the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen. ***This is reaffirmed in Article 42 of the Charter of Fundamental Rights of the European Union and Declaration No 17 annexed to the Treaty of Maastricht and the Laeken Declaration, which linked improved transparency of the decision-making process to improved public access to information as set out in Article 255 of the EC Treaty, which in turn confirms the democratic nature of the institutions and the public's confidence in the administration. Adequate resources should be made available to put the principle of openness into practice, thereby achieving greater legitimacy, effectiveness and accountability to the citizen, as well as strengthening the principles of democracy and respect for fundamental rights.***

##### *Justification*

*Managing information and documents, administering the right of public access and communicating with citizens are resource-intensive activities. The provision of adequate resources for these purposes should be regarded as a necessary investment to ensure the efficiency, effectiveness and transparency of the Union's institutions and bodies.*

## Amendment 2

### Proposal for a regulation Article 1

#### *Text proposed by the Commission*

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 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;  
(b) to establish rules ensuring the easiest possible exercise of this right;  
(c) to **promote** good administrative practice on access to documents.

#### *Amendment*

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 European Parliament, Council and Commission (hereinafter referred to as “the institutions”) documents provided for in Article 255 of the EC Treaty in such a way as to **ensure that** the public **is given** the widest possible access to such documents;  
(b) to establish rules ensuring the easiest possible exercise of this right;  
(c) to **ensure** good administrative practice on access to documents.

#### *Justification*

*The institutions are under an obligation to ensure openness and transparency as well as good administrative practice.*

## Amendment 3

### Proposal for a regulation Article 2

#### *Text proposed by the Commission*

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.

#### *Amendment*

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, **investigations** and decisions falling within its sphere of **direct and indirect** responsibility **and competence**, in all areas

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.

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.

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.

***The various application forms shall be identical for all bodies covered by this Regulation and shall be duly translated into all the official languages of the European Union.***

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 **broader** public access to documents held by the institutions which might follow from instruments of international law or acts of the institutions implementing them.

#### *Justification*

*As regards rights of access resulting from instruments of international law such as the Aarhus Convention and acts implementing them, with the insertion of "broader" in paragraph 7 no legal change is sought, only improvement of the clarity of the text.*

## Amendment 4

### Proposal for a regulation

#### Article 4 – paragraph 1 – point (e)

*Text proposed by the Commission*

*Amendment*

*(e) the environment, such as breeding sites of rare species.*

*deleted*

## Amendment 5

### 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:.

(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.

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

(a) documents relating to a matter where the decision has not been taken ***and the rules of transparency are complied with;***

(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 ***and within a reasonable time-frame.***

## Amendment 6

### 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 values, such as the breeding sites of rare species, shall only be disclosed in conformity with Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6***

*September 2006 on the application of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies<sup>1</sup>.*

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<sup>1</sup> OJ L 264, 25.9.2006, p. 13.

#### *Justification*

*Article 4a (new) is created in order to take full account of the Aarhus Convention and the principles expressed in the Turco judgement (C-39/05 P and C-52/05).*

#### **Amendment 7**

##### **Proposal for a regulation Article 9 – paragraph 7**

###### *Text proposed by the Commission*

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

###### *Amendment*

7. The Commission and the Council shall **ensure adequate control by** the European Parliament regarding sensitive documents in accordance with arrangements agreed between the institutions, **which shall be made public**.

#### *Justification*

*Recommendation 3 of the Cashman resolution states that, in the context of parliamentary scrutiny, the regulation should ensure adequate control by the European Parliament with regard to sensitive documents.t.*

#### **Amendment 8**

##### **Proposal for a regulation Article 10 – paragraph 3**

###### *Text proposed by the Commission*

3. Documents shall be supplied in an

###### *Amendment*

3. Documents shall be supplied in an



existing version and format (including electronically or in an alternative format such as Braille, large print or tape) with full regard to the applicant's preference.

existing version and format (including electronically or in an alternative format such as Braille, large print or tape) with full regard to the applicant's preference **and in one of the official languages of the European Union. Access to documents shall not be limited by any software or operating system used in the institution's information technology environment.**

#### *Justification*

*The institutions should take the opportunity this revision of the Regulation offers to introduce Open Standards. It follows from the basic principles of the regulation and its legal base that access to documents should not be limited by any software or operating system that is used by an institution.*

### **Amendment 9**

#### **Proposal for a regulation Article 12 – paragraph 2**

##### *Text proposed by the Commission*

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

##### *Amendment*

2. **In particular, 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.**

#### *Justification*

*See justification in amendment to article 12, paragraph 4.*

### **Amendment 10**

#### **Proposal for a regulation Article 12 - paragraph 4**

##### *Text proposed by the Commission*

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

##### *Amendment*

4. **The institutions shall establish a common interface for their registers of documents, and shall in particular ensure that there is a single point of direct access 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.*

*Justification*

*Article 12(2) and (4) are amended to include recommendation 2 and 5 of the Cashman resolution with a view to improving current standards.*

**Amendment 11**

**Proposal for a regulation**

**Article 13 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) initiatives presented to the Council by a Member State ***pursuant to Article 67(1) of the EC Treaty or*** pursuant to Article 34(2) of the EU Treaty;

*Amendment*

(a) initiatives presented to the Council by a Member State pursuant to Article 34(2) of the EU Treaty;

*Justification*

*Initiatives presented by Member States pursuant to Article 67(1) of the EC Treaty are no longer possible.*

**Amendment 12**

**Proposal for a regulation**

**Article 17 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

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

*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. The exclusion of a provision signifies a de facto amendment to the Regulation.*

## PROCEDURE

|   |   |
|---|---|
| <b>Title</b>                                    | Public access to European Parliament, Council and Commission documents  |
| <b>References</b>                               | COM(2008)0229 – C6-0184/2008 – 2008/0090(COD)   |
| <b>Committee responsible</b>                    | LIBE  |
| <b>Opinion by</b><br>Date announced in plenary  | PETI<br>4.9.2008  |
| <b>Rapporteur</b><br>Date appointed             | David Hammerstein<br>15.7.2008  |
| <b>Date adopted</b>                             | 19.1.2009   |
| <b>Result of final vote</b>                     | +: 20<br>-: 0<br>0: 1   |
| <b>Members present for the final vote</b>       | Sir Robert Atkins, Margrete Auken, Inés Ayala Sender, Victor Boştinaru, Simon Busuttil, Alexandra Dobolyi, Glyn Ford, Cristina Gutiérrez-Cortines, David Hammerstein, Marian Harkin, Carlos José Iturgaiz Angulo, Marcin Libicki, Miguel Angel Martínez Martínez, Manolis Mavrommatis, Mairead McGuinness, Marie Panayotopoulos-Cassiotou, Nicolae Vlad Popa, Kathy Sinnott |
| <b>Substitute(s) present for the final vote</b> | Carlos Carnero González, Marie-Hélène Descamps, Henrik Lax  |

## PROCEDURE

|   |   |                   |                   |                  |
|---|---|-------------------|-------------------|------------------|
| <b>Title</b>  | Public access to European Parliament, Council and Commission documents  |                   |                   |                  |
| <b>References</b>   | COM(2008)0229 – C6-0184/2008 – 2008/0090(COD)   |                   |                   |                  |
| <b>Date submitted to Parliament</b>                                   | 30.4.2008   |                   |                   |                  |
| <b>Committee responsible</b><br>Date announced in plenary             | LIBE<br>22.5.2008   |                   |                   |                  |
| <b>Committee(s) asked for opinion(s)</b><br>Date announced in plenary | INTA<br>23.9.2008   | JURI<br>22.5.2008 | AFCO<br>22.5.2008 | PETI<br>4.9.2008 |
| <b>Associated committee(s)</b><br>Date announced in plenary           | AFCO<br>20.11.2008  |                   |                   |                  |
| <b>Rapporteur(s)</b><br>Date appointed                                | Michael Cashman<br>28.5.2008  |                   |                   |                  |
| <b>Discussed in committee</b>   | 7.10.2008   | 5.11.2008         | 20.1.2009         | 29.1.2009        |
|   | 10.2.2009   | 17.2.2009         |                   |                  |
| <b>Date adopted</b>   | 17.2.2009   |                   |                   |                  |
| <b>Result of final vote</b>   | +:<br>-:<br>0:  | 26<br>5<br>15     |                   |                  |
| <b>Members present for the final vote</b>                             | Alexander Alvaro, Emine Bozkurt, Philip Bradbourn, Mihael Brejc, Kathalijne Maria Buitenweg, Michael Cashman, Carlos Coelho, Esther De Lange, Panayiotis Demetriou, Gérard Deprez, Armando França, Urszula Gacek, Roland Gewalt, Jeanine Hennis-Plasschaert, Magda Kósáné Kovács, Wolfgang Kreissl-Dörfler, Stavros Lambrinidis, Roselyne Lefrançois, Baroness Sarah Ludford, Claude Moraes, Javier Moreno Sánchez, Maria Grazia Pagano, Martine Roure, Inger Segelström, Csaba Sógor, Ioannis Varvitsiotis, Manfred Weber, Tatjana Ždanoka |                   |                   |                  |
| <b>Substitute(s) present for the final vote</b>                       | Edit Bauer, Simon Busuttil, Marco Cappato, Charlotte Cederschiöld, Sylvia-Yvonne Kaufmann, Metin Kazak, Jean Lambert, Marian-Jean Marinescu, Antonio Masip Hidalgo, Bill Newton Dunn, Hubert Pirker, Nicolae Vlad Popa, Eva-Britt Svensson, Charles Tannock   |                   |                   |                  |
| <b>Substitute(s) under Rule 178(2) present for the final vote</b>     | Costas Botopoulos, Luis de Grandes Pascual, Anneli Jäätteenmäki, Jelko Kacin  |                   |                   |                  |