

Brussels, 26 SEP. 2011
CL/gS ARES(2011) 101487A

Dear President,

Dear Members,

As you know Regulation No 1049/2001, adopted just over ten years ago, has proven to be a good instrument to foster transparency in the EU, while at the same time safeguarding legitimate interests, such as the protection of personal data or of commercial interests. The Commission receives numerous requests for access to files regarding competition cases, which obviously contain sensitive business information. The annual reports on the implementation of the Regulation show a significant increase in the number of requests as well as a high disclosure rate.

I hope you will share my view that it is good practice to review legislation periodically to make sure that it remains relevant and fit for purpose. Over the past ten years, each of our institutions have gathered practical experience on public access to documents, the European Courts have interpreted a number of provisions of the Regulation and information technology has revolutionised the way in which information is made available. In April 2006 the European Parliament adopted a Resolution aimed at launching a review of the Regulation on public access. The Commission followed up on this Resolution and held a public consultation on the basis of a Green Paper from April to August 2007. In April 2008, a proposal for a recast of Regulation 1049/2001 was submitted to Parliament and Council. This proposal aims at clarifying certain issues that have arisen in implementing the Regulation, such as the definition of a "document" or the scope of the right of access. The Commission considers that such clarifications would simplify the handling of future applications.

The report presented by the rapporteur, the Hon. Michael Cashman, addresses a number of issues which are not directly related to the public right of access to documents. While it is clear that these issues should be addressed, the question arises whether the Regulation on public access is the most appropriate instrument for achieving the objectives pursued by the rapporteur. I attach, for your consideration, a table listing amendments tabled by Mr Cashman which in the Commission's view could be discussed

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in another context or are already being addressed in a different framework. This is the case, for example, as regards Parliament's access to confidential information. This issue has been settled some years ago between the Parliament and the Commission and has been reviewed last year. A similar arrangement is now being set up between the Parliament and the Council.

The Parliament has not yet adopted its position at first reading on the Commission's proposal of April 2008. The report submitted by Mr Cashman contains very substantial amendments to the proposal and the discussions in Council at working party level show that the three institutions have significantly divergent views on the subject. In the meantime, the Lisbon Treaty entered into force and the Regulation needed to be adapted to the new legal base. In particular, the scope of the Regulation must be extended to all institutions, bodies, offices and agencies, albeit limited to the administrative tasks as regards the Court of Justice, the European Central Bank and the European Investment Bank.

Since the revision of the Regulation is taking more time than we anticipated, the Commission decided to submit an additional proposal, aimed exclusively at ensuring compliance with the new Treaty by extending the institutional scope of the Regulation. With this second proposal, the Commission is seeking to grant citizens the benefit of this extension of the right of access as soon as possible. The Commission would be pleased to see the legislative process on its proposal of April 2008 continue, but also considers that this should not further delay the extension of the scope, which is a clear and undisputed legal obligation. It is unclear for the moment how citizens can obtain access to documents of the Court of Justice or the European Council. Further amendments to the Regulation are more a matter of political appreciation and it will require more time to reach agreement among the three institutions. I would, therefore, plead for a swift adoption of this additional proposal.

I note that Mr Cashman is submitting a new version of his draft report in which he integrates the Commission's second proposal with the first recast proposal. This leads to an unnecessary delay in extending the scope of Regulation 1049/2001 to all institutions, bodies, offices and agencies in accordance with Article 15(3) of the Treaty on the Functioning of the EU. As this extension of the scope is an undisputed legal obligation, the Commission considers that it should not be made dependent on agreement between the three institutions on other amendments to the current Regulation.

I sincerely hope that we can break the current deadlock, which is detrimental to the image of the European Union as a whole, through a swift adoption of the proposal extending the scope of the Regulation. I am committed to pursuing a constructive dialogue with the rapporteurs in the European Parliament with a view to adopting a modernised, streamlined new legal text regarding the citizens' fundamental right of access to documents of the EU institutions and bodies.

Yours sincerely,



Annex

AMENDMENTS WHICH COULD BE DISCUSSED IN ANOTHER CONTEXT

*(reference is made to the amendments in the report
voted by the European Parliament on 11 March 2009)*

<i>Amendment</i>	<i>Subject matter</i>	<i>Possible context</i>
37, 44, 68	<i>Classification of documents</i>	<i>Rules on security and protection of sensitive material</i>
41, 42	<i>Opening of the historical archives of the Institutions</i>	<i>Regulation 1700/2001</i>
44 (in part)	<i>Privileged access by Parliament to confidential information</i>	<i>This question is actually being addressed in the framework of Inter-institutional agreements</i>
60	<i>National parliamentary scrutiny</i>	<i>This is not within the remit of the EU</i>
61 (in part)	<i>Access to documents at national level</i>	<i>This is not within the remit of the EU</i>
65	<i>Intervention of the European Ombudsman before the institution has taken a final decision</i>	<i>Statute of the European Ombudsman</i>
73	<i>Common interface for public registers; single access point for access</i>	<i>Technical arrangements between institutions</i>
76	<i>Sanctions</i>	<i>Staff Regulations and relevant implementing rules</i>