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*Committee on Civil Liberties, Justice and Home Affairs*

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**2008/0090(COD)**

12.5.2010

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## **DRAFT REPORT**

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

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Michael Cashman

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

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

(Recast - Rule 87 of the Rules of Procedure)

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

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

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

### ***Amendments to a draft act***

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

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

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

#### (Ordinary legislative procedure: recast)

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0229)),
  - having regard to Article 251(2) and Article 255(2) of the EC Treaty, pursuant to which the Commission submitted its initial proposal to Parliament (C6-0184/2008),
  - having regard to the Commission Communication to Parliament and the Council entitled 'Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures' (COM(2009)0665)
  - having regard to Article 294(3) and Article 15 of the Treaty on the Functioning of the European Union,
  - having regard to the Charter of Fundamental Rights (the Charter) and in particular Articles 41 and 42 thereof,
  - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts,
  - having regard to the letter of [...] from the Committee on Legal Affairs to the Committee on Committee on Civil Liberties, Justice and Home Affairs in accordance with Rule 87(3) of its Rules of Procedure<sup>1</sup>,
  - having regard to Rules 87 and 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions<sup>2</sup> of the Committee on Constitutional Affairs, the Committee on Legal Affairs, the Committee on International Trade and the Committee on Petitions (A7-0000/2010),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance

1. Adopts its position at first reading hereinafter set out, taking into account the

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<sup>1</sup> Annexed to report A6-0077/2009.

<sup>2</sup> Annexed to report A6-0077/2009.

recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;

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

## Amendment 1

### Proposal for a regulation

#### Title

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

#### *Justification*

*The title has to reflect the new nature of the act after the application of the Lisbon Treaty as a new general framework for democratic participation, visibility, oversight and transparency covering in principle all EU entities.*

## Amendment 2

### Proposal for a regulation

#### Recital 1

*Text proposed by the Commission*

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

*Amendment*

**(1) Following the entry into force of the TEU and of the TFEU the right to access to documents has been extended to a number of European Union institutions, bodies, offices or agencies so that substantial changes are to be made to Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European**

*Parliament, Council and Commission documents<sup>1</sup>, whereby the experience of the initial implementation of the mentioned Regulation as well as of the relevant case-law of the Court of Justice of the European Union should be taken into account.*

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

Or. en

#### *Justification*

*The extent of the Treaty provisions has been considerably enlarged after the entry into force of the Lisbon treaty. It now covers access of a number of EU institutions, bodies, offices and agencies and is not anymore limited to the Parliament, Commission and Council.*

### **Amendment 3**

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

##### **Recital 3**

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

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

###### *Amendment*

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

Or. en

#### *Justification*

*Updated in line with the Lisbon Treaty and the new obligatory rights stemming from the Charter of Fundamental Rights enhancing the obligations for an open, efficient European*

*administration, as stated in Article 298 TFEU.*

#### **Amendment 4**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

#### *Justification*

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

#### **Amendment 5**

##### **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*

Or. en



## Amendment 6

### Proposal for a regulation

#### Recital 5

*Text proposed by the Commission*

*(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.*

*Amendment*

*deleted*

Or. en

## Amendment 7

### Proposal for a regulation

#### Recital 6

*Text proposed by the Commission*

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

*Amendment*

(6) The purpose of this Regulation is to give the fullest possible effect to the right of public access to documents and to lay down the general principles and ***the*** limits on ***the grounds of public or private interest which govern*** such access in accordance with ***Article 15(3) TFEU and with which all the other European Union rules should comply, subject to special provisions relating to the Court of Justice of the European Union, the European Central Bank and the European Investment Bank. In order to bring about greater openness in the work of the institutions, bodies, offices or agencies the right of access should be extended also to***

*Justification*

*The change reflects the enhanced scope of the proposed legal act and its framework valid in general for all EU institutions, bodies, offices and agencies, based on the principle of the fullest possible access to documents.*

**Amendment 8**

**Proposal for a regulation**

**Recital 8**

*Text proposed by the Commission*

*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. Each institution should respect its security rules.***

***deleted***

**Amendment 9**

**Proposal for a regulation**

**Recital 8 a (new)**

*Text proposed by the Commission*

*Amendment*

***(8a) This Regulation expresses a common desire to contribute to putting in place a coherent and comprehensive general framework for the protection of classified information originating from the European Union, or European Union institutions, bodies, offices or agencies. In accordance with the democratic principle outlined in Articles 9 to 12 TEU, the European Parliament as the citizens' representative shall have access to EU***

*classified information.*

Or. en

*Justification*

*A common Inter-institutional framework for classified documents should be set up to provide the required level of legality, legal certainty and the rule of law with special provisions regarding the EP in fulfilling its prerogatives as a democratically elected EU body.*

**Amendment 10**

**Proposal for a regulation**

**Recital 9**

*Text proposed by the Commission*

***(9) The European Parliament and the Council adopted on 6 September 2006 Regulation (EC) No 1367/2006 on the application of the provisions 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. With regard to access to documents containing environmental information, this Regulation should be consistent with Regulation (EC) No 1367/2006.***

*Amendment*

***(9) In compliance with the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters and with the relevant European Union legislation a wider right of access should be granted to documents and information covered by that Convention.***

Or. en

**Amendment 11**

**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***

*Amendment*

***(10) The European Union institutions, bodies, offices or agencies should treat personal data in a fair and transparent way and in full compliance with the rights***

*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.*

*of data subjects as defined by Article 16 TFEU as well as by Article 8 of the Charter, the relevant European Union legislation and by the case-law of the Court of Justice of the European Union.*

Or. en

#### *Justification*

*A necessary pre-condition for access to documents is data protection.*

### **Amendment 12**

#### **Proposal for a regulation Recital 11**

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

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

##### *Amendment*

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

Or. en

### **Amendment 13**

#### **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

##### *Amendment*

(12) Access should be granted to documents in cases where ***according to the Treaties*** the institutions are acting in their legislative capacity, including under delegated powers ***according to Article 290 and implementing powers according to Article 291 TFEU as well by Protocol 1 on the role of national parliaments in the***

extent.

***EU. Preparatory documents and information should be made directly accessible to the public on the Internet.***

*Justification*

*In accordance with the principle of the fullest possible access to documents to the legislative acts as well as delegated and implementing acts, direct and timely public access should be granted.*

Or. en

**Amendment 14**

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

*Text proposed by the Commission*

*Amendment*

***(12a) Legal texts should be drafted in a clear and understandable way and published in the Official Journal of the European Union. Preparatory documents and all related information, including legal opinions and the information on the different stages of the interinstitutional procedure, should be made easily accessible by citizens on the Internet in a timely manner.***

Or. en

*Justification*

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

**Amendment 15**

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

*Text proposed by the Commission*

*Amendment*

***(12b) 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, offices or agencies associated in the procedure should be agreed by the European Parliament, the Council and the Commission in accordance with Article 295 TFEU and of this Regulation and published in the Official Journal of the European Union.*

Or. en

*Justification*

*A necessary pre-condition of an effective public access is better law-making and coordinated actions of the different institutions, bodies, offices or agencies.*

**Amendment 16**

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

*Text proposed by the Commission*

*Amendment*

***(12c) Documents related to non-legislative procedures, such as binding measures or measures dealing with internal organisation, administrative or budgetary acts, or of a political nature (such as conclusions, recommendations or resolutions) should be easily accessible in compliance with the principle of good administration outlined in Article 41 of the Charter. For each category of document the institution, body, office or agency responsible should make accessible to citizens the workflow of the internal procedures to be followed, which organisational units could be in charge, as well their remit, the deadlines set and the office to be contacted. Special arrangements may be made with the citizens even when public access could not be granted. The institutions, bodies, offices or agencies shall duly take into account the recommendations of the***

*Justification*

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

**Amendment 17**

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

*Text proposed by the Commission*

*Amendment*

***(12d) The Court of Justice of the European Union has specified that the requirement for Member States to be consulted in relation to requests for access to documents originating from them does not give them a right of veto, or the right to invoke national laws or provisions and that the institution, body, office or agency receiving a request may refuse access only on the grounds of the exceptions in this Regulation.***

*Justification*

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

**Amendment 18**

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

*Text proposed by the Commission*

*Amendment*

***(12e) The institutions should agree, in accordance with Article 295 TFEU, 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.*

Or. en

*Justification*

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

**Amendment 19**

**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.*

Or. en

**Amendment 20**

**Proposal for a regulation  
Recital 15**

*Text proposed by the Commission*

*Amendment*

*(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.*

*deleted*

Or. en



## Amendment 21

### Proposal for a regulation

#### Recital 16

*Text proposed by the Commission*

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

*Amendment*

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

***If such a request is not accepted, the institution, body, office or agency which received the request should give the reasons for refusing it. According to Article 346 TFEU, no Member State is obliged to supply information the disclosure of which it considers contrary to the essential interests of its security.***

Or. en

*Justification*

*Member States should not have a veto right regarding documents originating from them as the final decision lies with the institutions, bodies, offices or agencies. Transmission of documents containing information regarding national security remains out of scope.*

## Amendment 22

### Proposal for a regulation

#### Recital 17

*Text proposed by the Commission*

(17) In principle, all documents **of the**

*Amendment*

(17) In principle, all documents **drafted or**

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

***received by the institutions, bodies, offices or agencies and relating to 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.***

Or. en

#### *Justification*

*Access to certain documents or their parts could be temporarily postponed.*

#### **Amendment 23**

##### **Proposal for a regulation Recital 18**

*Text proposed by the Commission*

*Amendment*

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

***deleted***

Or. en

#### **Amendment 24**

##### **Proposal for a regulation Recital 20**

*Text proposed by the Commission*

*Amendment*

***(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,***

***(20) The institutions, bodies, offices or agencies should in a consistent and coordinated way inform the public of the measures adopted to implement this Regulation, creating an internal register of documents and procedures and training***

*each institution should provide access to a register of documents.*

their staff to assist citizens exercising their rights under this Regulation.

Or. en

*Justification*

*Raising public awareness about the public access to EU documents is an essential tool to fight democratic deficit felt by citizens. It can contribute to a greater public interest and involvement of the public.*

**Amendment 25**

**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*

Or. en

**Amendment 26**

**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 Council, on common rules governing the re-use of information and documents held by the institutions, bodies, offices or agencies 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*<sup>1</sup>.

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

Or. en

*Justification*

*Public sector bodies should be encouraged to make available for re-use any documents held by them. Public sector bodies should promote and encourage re-use of documents, including official texts of a legislative and administrative nature in those cases where the public sector body has the right to authorize their re-use.*

**Amendment 27**

**Proposal for a regulation**  
**Recital 23**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

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

**Amendment 28**

**Proposal for a regulation**  
**Article 1 – point a**

*Text proposed by the Commission*

(a) to define the principles, conditions and

*Amendment*

(a) to define **in accordance with Article 15**

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;

**of the TFEU**, the principles, conditions and limits on grounds of public or private interest governing the right of access to documents **of the European Union institutions, bodies, offices and agencies**, to grant **them** the widest possible access to such documents;

Or. en

### *Justification*

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

### **Amendment 29**

#### **Proposal for a regulation Article 1 – point c**

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

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

##### *Amendment*

(c) to promote **transparent and** good administrative practice **in order to improve** access to **their** documents.

Or. en

### **Amendment 30**

#### **Proposal for a regulation Article 2**

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

##### **Beneficiaries and scope**

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

**2. This Regulation shall apply to all**

##### *Amendment*

##### **Beneficiaries**

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

**2. Persons who are Members of or who**

*documents held by an institution, namely, documents drawn up or received by it and in its possession concerning a matter relating to the policies, activities and decisions falling within its sphere of responsibility, in all areas of activity of the European Union.*

*3. Without prejudice to Articles 4 and 9, documents shall be made accessible to the public either following a written application or directly in electronic form or through a register. In particular, documents drawn up or received in the course of a legislative procedure shall be made directly accessible in accordance with Article 12.*

*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.*

*work for a European Union institution, body, office or agency should use in principle the internal means available to them when looking for a document, unless they are acting as citizens without any connection with their professional duties.*

Or. en

*Justification*

*In line with Article 15(3) TFEU.*

## **Amendment 31**

### **Proposal for a regulation Article 2 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 2a*

##### *Scope*

***1. This Regulation shall apply to all documents held by a European Union institution, agency, office or body, 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 register of an institution, body, office or agency, or following a written application. The documents drawn up or received in the course of a legislative procedure shall be made directly accessible in accordance with Article 12 of this Regulation.***

***3. This Regulation shall be without prejudice to enhanced rights of public access to documents held by the institutions, bodies, offices or agencies which might follow from instruments of international law or acts of the institutions implementing them or by the Member States' legislation.***

Or. en

#### *Justification*

*The proposed act presents in general a framework for all EU institutions, bodies, offices and agencies.*

## Amendment 32

### Proposal for a regulation

#### Article 3

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

For the purpose of this Regulation:

(a) "document" **means** any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) **drawn-up by an institution and formally transmitted to one or more recipients or otherwise registered, or received by an institution; data** contained in electronic storage, processing and retrieval systems **are** documents if **they** can be extracted in the form of **a printout** or electronic-format **copy** using **the** available tools for the exploitation of the system;

##### *Amendment*

For the purpose of this Regulation:

(a) "document" **shall mean** any **data or** content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) **concerning a matter relating to the policies, activities and decisions falling within the sphere of responsibility of a European Union institution, body, office or agency; information** contained in electronic storage, processing and retrieval systems **(including external systems used for the work of an institution, body, office or agency) shall constitute a document or** documents if **it** can be extracted in the form of **one or more printouts** or electronic-format **copies** using **any reasonably** available tools for the exploitation of the system. **An institution, body, office or agency that intends to create a new electronic storage system, or to substantially change an existing system, shall evaluate the likely impact on the right of access guaranteed 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 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;**

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

**(ab) "legislative act" shall for the purposes of this Regulation include documents drawn up or received in the course of legislative procedures for the**



*adoption of legislative acts, including under delegated and implementing powers, and acts which are legally binding in or for the Member States;*

*(ac) "administrative task" shall mean measures dealing with organisational, administrative or budgetary matters which are internal to the institution, body, office or agency concerned;*

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

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

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

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

Or. en

#### *Justification*

*The proposed act should include definitions of different categories of documents whereby the institutions, agencies, bodies and offices have to provide specific rules for the application of these general definitions according to their specific working procedure.*

## Amendment 33

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

*Text proposed by the Commission*

*Amendment*

#### *Article 3a*

##### *Categories of classified documents*

*1. When grounds of public policy under Article 4(1) exist, and without prejudice to parliamentary scrutiny at EU and national level, an institution, body, office or agency shall classify a document where its disclosure would undermine the protection of the essential interests of the 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. 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, 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, body, office or agency or that which received the classified document from a third party or another institution, body, office or agency.*

*3. Without prejudice to the right of access by other European Union institutions, bodies, offices or agencies classified documents shall be released to third parties only with the consent of the originator. When more than one institution, body, office or agency is involved in the processing of a classified document, the same ground of classification shall be granted and mediation shall be initiated if they have a different appreciation of the protection to be granted. Documents relating to legislative procedures shall not be classified; implementing measures shall be classified before their adoption insofar as the classification is necessary and aimed at preventing an adverse effect on the measure itself. International agreements dealing with the sharing of confidential information concluded on behalf of the European Union 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 a register of the institution, body, office or agency, or released only with the consent of the originator.***

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

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

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

***9. The European Parliament shall have access to classified documents through a special oversight committee composed of 7 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.***

Or. en

## Justification

*The present Regulation should constitute a framework for registration, classification, access and archiving of classified documents.*

### Amendment 34

#### Proposal for a regulation

##### Article 4 - title

*Text proposed by the Commission*

*Amendment*

*Exceptions*

*General exceptions to the right of access*

Or. en

### Amendment 35

#### Proposal for a regulation

##### Article 4 - introductory phrase - paragraph 1

*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 5, the institutions, bodies, offices or agencies shall refuse access to a document where disclosure would undermine the protection of the public interest as regards:***

Or. en

### Amendment 36

#### Proposal for a regulation

##### Article 4 – paragraph 1 – point a

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

## Amendment 37

### 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 accordance with the Union's legislation regarding the protection of personal data in particular the rules applicable to the institutions, bodies, offices or agencies as laid down in Article 16 TFEU as well as the principle of transparent and good administrative practice outlined in Article 1(c) of this Regulation as well as in Article 298 TFEU and Article 41 of the Charter;***

Or. en

#### *Justification*

*Access to documents legislation should be implemented in due respect of personal data rights covered by Regulation (EC) No 45/2001 and the recommendations made in this respect by the EDPS.*

## Amendment 38

### Proposal for a regulation

#### Article 4 – introductory phrase – paragraph 2

*Text proposed by the Commission*

*Amendment*

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

2. The institutions, ***bodies, offices or agencies*** shall refuse access to a document where disclosure would undermine the protection of ***public or private interests linked to:***

Or. en

## Amendment 39

### Proposal for a regulation

#### Article 4 – paragraph 2 – point c

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

#### *Justification*

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

## Amendment 40

### Proposal for a regulation

#### Article 4 – paragraph 2 – point e

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 41

### Proposal for a regulation

#### Article 4 – paragraph 3

*Text proposed by the Commission*

**3. Access to the following documents shall be refused if their disclosure would**

*Amendment*

**deleted**

*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.*

Or. en

## Amendment 42

### 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 *paragraph (2)* shall apply unless there is an overriding public interest in disclosure. *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.*

Or. en

### *Justification*

*Living in a healthy environment is a right as played down in the Article 37 of the Charter, Article 1 of the Aarhus Convention and the different Constitutions of the Member States which include provisions on environmental protection.*

## Amendment 43

### 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.

Or. en

### *Justification*

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

## **Amendment 44**

### **Proposal for a regulation Article 4 – paragraph 5**

#### *Text proposed by the Commission*

*5. Names, titles and functions of public office holders, civil servants and interest representatives in relation with their professional activities shall be disclosed unless, given the particular circumstances, disclosure would adversely affect the persons concerned. Other personal data shall be disclosed in accordance with the conditions regarding lawful processing of such data laid down in EC legislation on the protection of individuals with regard to the processing of personal data.*

#### *Amendment*

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

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

*person;*

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

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

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

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

Or. en

#### *Justification*

*Access to documents should be implemented in due respect of personal data rights covered by Regulation (EC) No 45/2001 and the recommendations made in this respect by the EDPS.*

#### **Amendment 45**

##### **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***

###### *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. The exceptions*** shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions

*or commercial interests and in the case of sensitive documents, the exceptions may, if necessary, continue to apply after this period.*

may apply for a maximum period of 30 years.

Or. en

#### *Justification*

*In accordance with the extended transparency principle under the new treaties all documents leading to legal acts shall be disclosed.*

#### **Amendment 46**

##### **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.*

Or. en

#### **Amendment 47**

##### **Proposal for a regulation Article 5**

*Text proposed by the Commission*

*Amendment*

#### *Consultations*

1. As regards third-party documents, *the institution shall consult the third party with a view to assessing whether an exception referred to in Article 4 is applicable, unless it is clear that the document shall or shall not be disclosed.*

#### *Consultation of third parties*

1. As regards third-party documents, *they shall be disclosed by the institutions, bodies, offices or agencies 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*

2. Where an application concerns *a document* originating from a Member State, *other than documents transmitted in the framework of procedures leading to a legislative act or a non-legislative act of general application*, the authorities of that Member State shall be consulted. The institution holding the document shall disclose it unless the Member State gives reasons for withholding it, based on the exceptions referred to in Article 4 or *on specific provisions in its own legislation preventing disclosure of the document concerned. The institution shall appreciate the adequacy of reasons given by the Member State insofar as they are based on exceptions laid down in this Regulation.*

3. *Where* a Member State receives a request for a document in its possession, which originates from an institution, unless it is clear that the document shall or shall not be disclosed, the Member State shall consult with the institution concerned in order to take a decision that does not jeopardise the objectives of this Regulation. The Member State may instead refer the request to the institution.

*treated in a specific way, with a view to assessing whether an exception provided for in this Regulation is applicable. Documents provided to institutions, bodies, offices or agencies for the purpose of influencing policy-making should be made public.*

*The third-party must give its answer in a reasonable time within the deadlines. In the absence of reply, it will be considered that the third-party agrees to the disclosure of the document.*

2. Where an application concerns *one of the following documents* originating from a Member State:

*- which has not been transmitted by the 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 European Union policies and legislation,*

the authorities of that Member State shall be consulted. The institution, *body, office or agency* holding the document shall disclose it unless the Member State gives reasons for withholding it, based on the exceptions referred to in Article 4 or *in equivalent provisions of its own legislation or objects on the basis of Article 346 (1)(a) TFEU that the disclosure would be contrary to its essential security interests. The institution, body, office or agency shall assess the adequacy of reasons given by the Member State.*

3. *Without prejudice to national parliamentary scrutiny, where* a Member State receives a request for a document in its possession, which originates from an institution, *body, agency or office*, unless it is clear that the document shall or shall not be disclosed, the Member State shall consult with the institution, *body, office or agency* 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, **body, office or agency**.

Or. en

#### Justification

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

#### Amendment 48

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

*Text proposed by the Commission*

*Amendment*

#### **Article 5a**

#### **Legislative acts**

- 1. In compliance with the democratic principles outlined in Articles 9-12 TEU and with the case-law of the Court of Justice, institutions acting in their legislative capacity, including under delegated and implementing powers, shall grant the widest possible access to their activities, in compliance with the TFEU and Protocol 1.***
- 2. Documents relating to their legislative programmes, preliminary civil society consultations, impact assessments and any other preparatory documents 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. Legislative proposals as well other European Union 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 of the European Union.***

***4. During the legislative procedure, each institution or body, office or agency associated in the decision-making process shall publish its preparatory documents and all related information, including legal opinions, in a special series of the Official Journal of the European Union as well on a common Internet site reproducing the lifecycle of the procedure concerned, in compliance with Article 5 of Protocol 1. This includes also the Agendas of the Council, also when acting at a Working Group level. The same treatment applies to the Commission and the Parliament.***

***5. 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.***

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

***7. By virtue of the principle of loyal cooperation which governs relations between the institutions and the Member States, in order not to undermine the attainment of the objectives of this Regulation, the Member States shall seek to ensure that an equivalent level of transparency is granted in relation to national measures implementing acts of the European Union, in particular by clearly publishing the references of the national measures. The objective is to give citizens a clear and precise understanding of their rights and obligations deriving from specific European Union rules and enable national courts to ensure that those rights and obligations are respected in accordance with the principles of legal certainty and the protection of individual.***

Or. en

## *Justification*

*Under the new treaties (TEU and TFEU) the principles of transparency and access to documents should be substantially extended. This applies specially to the legislative procedure and legislative acts and their preparatory documents, including legal opinion of the different institutions, bodies, offices and agencies in accordance with the case-law of the Court of Justice of the European Union. Per analogy the same level of transparency should be provided for national transposition measures.*

### **Amendment 49**

#### **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, ***body, office or agency*** shall ***within 15 working days*** ask the applicant to clarify the application and shall assist the applicant in doing so, for example, by providing information on the use of the public registers of documents.

Or. en

## *Justification*

*An institution has a deadline of 15 working days to ask for clarifications.*

### **Amendment 50**

#### **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

##### *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, ***body, office or***

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.

**agency** shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application in accordance with paragraph 4 of this Article.

Or. en

#### *Justification*

*It should be clear that 15 days is the maximum limit not the rule as an answer has to be given as soon as possible.*

### **Amendment 51**

#### **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.

Or. en

#### *Justification*

*It should be clear that 15 days is the maximum limit not the rule as an answer has to be given as soon as possible.*



## Amendment 52

### 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 applications:

*Amendment*

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

Or. en

*Justification*

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

## Amendment 53

### 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.

Or. en

## Amendment 54

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

*Text proposed by the Commission*

4. Failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and shall entitle the applicant to institute court proceedings against the institution and/or make a complaint to the Ombudsman, under the relevant provisions of the *EC Treaty*.

*Amendment*

4. Failure by the institution, **body, office or agency** to reply within the prescribed time limit shall be considered as a **definitive** negative reply and shall entitle the applicant to institute court proceedings against the institution and/or make a complaint to the Ombudsman, under the relevant provisions of the **Treaties**.

Or. en

*Justification*

*It should be clear that 15 days is the maximum limit not the rule as an answer has to be given as soon as possible. A failure not to reply should be considered as a definitive and final negative reply.*

## Amendment 55

### 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), notably public security, defence and**

*Amendment*

**deleted**

*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.*

Or. en

## **Amendment 56**

### **Proposal for a regulation Article 10 – paragraph 4**

*Text proposed by the Commission*

4. The cost of producing and sending copies may be charged to the applicant. This charge shall not exceed the real cost of producing and sending the copies.

*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.

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. ***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, body, office or agency has already produced the document or documents concerned. The applicant shall be informed in advance of the amount and method of calculating any charge.***

Or. en

#### *Justification*

*An interested party shall participate only in the real costs relating to searching and retrieving of a certain document, and has to be beforehand informed of any possible costs that may occur in connection with the production and sending of documents.*

#### **Amendment 57**

##### **Proposal for a regulation Article 11 – paragraph 3**

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

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

###### *Amendment*

***3. Without prejudice to the internal rules of the institutions, bodies, offices or agencies, the register or system of registers (in the case of multiple registers for the same entity) of each institution, body, office or agency shall in particular contain references to:***

- incoming and outgoing documents, as well as the official mail of the institution, body, office or agency 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, body, office or agency 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.*

Or. en

#### *Justification*

*To guarantee a sound and coherent overview of processed documents the registration system should contain certain obligatory references.*

#### **Amendment 58**

##### **Proposal for a regulation Article 12— paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. **The institutions, bodies, offices or agencies shall make documents directly accessible to the public in electronic form or through registers, particularly those** drawn up or received in the course of procedures for the adoption of **European Union** legislative acts or non-legislative acts of general application.

Or. en

#### *Justification*

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

## Amendment 59

### Proposal for a regulation

#### Article 12 – paragraph 4

*Text proposed by the Commission*

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, bodies, offices or agencies shall establish a common interconnected 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 European Union legislative acts or non-legislative acts of general application.***

Or. en

*Justification*

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

## Amendment 60

### Proposal for a regulation

#### Article 13 – introductory part

*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:

*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 297 TFEU*** the following documents shall, subject to ***Articles 3a and 4*** of this Regulation, be published in the Official Journal:

Or. en

## Amendment 61

### Proposal for a regulation

#### Article 13 – paragraph 1 – point b

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 62

### Proposal for a regulation

#### Article 13 – paragraph 1 – point f

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 63

### Proposal for a regulation

#### Article 13 – paragraph 3

*Text proposed by the Commission*

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

*Amendment*

**3. Other documents to be published in the Official Journal of the European Union shall be determined 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 European**

*Justification*

*An enhanced principle of transparency has to be reflected in the number of documents published in the Official Journal.*

**Amendment 64**

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

*Text proposed by the Commission*

*Amendment*

**Article 14a**

***Information Officer***

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

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

***(a) the implementation of this Regulation;***

***(b) good practice;***

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

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

***4. The Information Officer may redirect the person who requires the information to another general administrative unit if the information in question falls outside the remit of that unit and within the remit of a different unit within the same institution, body, office or agency,***



*provided that he or she is in possession of such information.*

Or. en

*Justification*

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

**Amendment 65**

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

*Text proposed by the Commission*

*Amendment*

***Article 14b***

***Principle of good administration***

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

Or. en

*Justification*

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

**Amendment 66**

**Proposal for a regulation**

**Article 15 - title**

*Text proposed by the Commission*

*Amendment*

Administrative practice in the institutions

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

Or. en

*Justification*

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

**Amendment 67**

**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, **bodies, offices and agencies** shall develop good administrative practices in order to facilitate the exercise of the right of access guaranteed by this Regulation. **They 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.**

Or. en

*Justification*

*Updated in line with the Lisbon Treaty and the new obligatory rights stemming from the Charter of Fundamental Rights enhancing transparency and good administration. It would also serve the objective 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 68**

### **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, they shall agree on common implementing rules and procedures on 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, bodies, offices or agencies shall make clear to the citizens if and when, during the specific phases of decision-making process, direct access to the documents may not yet be granted. These limitations shall not apply once that decision has been taken.***

Or. en

#### *Justification*

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

## **Amendment 69**

### **Proposal for a regulation**

#### **Article 15 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. The institutions, bodies, offices or agencies shall inform citizens, in a fair***

*and transparent way, about their organisational chart by indicating the remit of their internal units, the internal workflow and indicative deadlines of the procedures falling within their remit, to which services may citizens refer to obtain support, information or administrative redress.*

Or. en

*Justification*

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

**Amendment 70**

**Proposal for a regulation  
Article 15 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

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

***Such information shall also be accessible via a specific website and database, searchable on the basis of the above information, dealing with financial transparency in the EU.***

Or. en

*Justification*

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

## Amendment 71

### Proposal for a regulation Article 16

*Text proposed by the Commission*

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.

*Amendment*

This Regulation shall be without prejudice to any existing rules on copyright which may limit a third party's **right to reproduce** or exploit released documents.

Or. en

## Amendment 72

### Proposal for a regulation Article 17 – heading (new)

*Text proposed by the Commission*

*Amendment*

***Title V - Final provisions***

Or. en

## Amendment 73

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

*Text proposed by the Commission*

*Amendment*

***1a. By ..., at the latest, the Commission shall publish a report on the implementation of 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, bodies, offices or agencies.***

*Justification*

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

## EXPLANATORY STATEMENT

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

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

Already in 2006 I drafted the resolution of the European Parliament approved 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 regulation, and the conformity with the Aarhus Convention, others would, in my view, represent a step backwards for transparency, especially if we consider that most of the European Parliament's requests of 2006 have not been taken into account.

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

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

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

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

My approach will be much more ambitious than the Commission's proposal and probably of the Council's willingness. My report intends to build on our common experience by sharing as much as possible, in an interinstitutional perspective, our duties and remits according to the treaties.

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

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

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

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

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

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

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



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

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