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*Committee on Petitions*

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**2008/0090(COD)**

12.11.2010

# **AMENDMENTS**

## **14 - 27**

**Draft opinion**  
**Ágnes Hankiss**  
(PE441.376v01-00)

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

Proposal for a regulation  
(COM(2008)0229 – C6-0184/2008 – 2008/0090(COD))

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PE452.759v01-00

**EN**

*United in diversity*

**EN**

AM\_Com\_LegOpinion

**Amendment 14**  
**Margrete Auken**

**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 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*

*Amendment*

**Beneficiaries**

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

*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.*

Or. en

#### *Justification*

*In line with Article 15(3) TFEU. Clarifies that the beneficiaries and the scope of the Regulation are different issues, which preferably should be laid down separately.*

**Amendment 15**  
**Margrete Auken**

**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 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 institution's official register or following a written application. The documents drawn up or received in the course of a legislative procedure shall be*

*made directly accessible in accordance with Article 12.*

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

Or. en

*Justification*

*See above. Clarifies that the proposed act presents a general framework for all EU institutions, agencies and bodies.*

**Amendment 16**  
**Margrete Auken**

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

*Text proposed by the Commission*

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

*Amendment*

(a) "document" ***shall mean*** any ***data or*** content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) ***concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility;*** ***information*** contained in electronic storage, processing and retrieval systems ***(including external systems used for the institution's work)*** ***shall constitute a document or*** documents 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 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 by the institutions shall be adapted in order to satisfy repeated requests from the public which cannot be satisfied using the tools currently available for the exploitation of the system;*

Or. en

*Justification*

*The proposed formulation takes into account the growing importance of electronic storage of data, which should not be used as a means to circumvent public access to information which earlier would have been contained in ordinary documents.*

**Amendment 17**  
**Margrete Auken**

**Proposal for a regulation**  
**Article 4 – paragraph 1 – point a**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*The concept internal public security is not in need of a new EU definition.*

**Amendment 18**  
**Margrete Auken**

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

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

*Justification*

*The European Court of Justice in its judgement in the Turco case stated that disclosure of legal advice in legislative initiatives increases the transparency and openness of the legislative process and strengthens the democratic rights of European citizens.*

**Amendment 19**  
**Margrete Auken**

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

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

*Justification*

*The Regulation must make clear that the exception only concerns ongoing procedures.*

**Amendment 20**  
**Margrete Auken**

**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*

*The respect for fundamental rights is a cornerstone of the EU and living in a healthy environment is a right which has been laid down in Article 37 of the Charter of Fundamental Rights and in Article 1 of the Aarhus Convention.*

**Amendment 21**  
**Margrete Auken**

**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**

*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 be deemed not to arise:**



*of personal data.*

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

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

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

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

Or. en

#### *Justification*

*In line with the recommendations of the European Data Protection Supervisor.*

#### **Amendment 22** **Ágnes Hankiss**

#### **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,

##### *Amendment*

5. Names, titles and functions of public office holders, civil servants and interest representatives in relation with their professional activities shall be disclosed ***solely with the consent of the originator,***

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.

unless, given the particular circumstances, disclosure would adversely affect ***the privacy and integrity of*** the persons concerned. Other personal data shall be disclosed in accordance with the conditions regarding lawful processing of such data laid down in ***Union*** legislation on the protection of individuals with regard to the processing of personal data.

***Consent shall be requested from public office holders, civil servants and interest representatives prior to having their names, titles and functions included in a document.***

***Where an institution, body, office or agency refuses access to a document on the basis of paragraph 1, it shall consider whether partial access to that document is possible.***

Or. en

#### *Justification*

*Wording should be in line with the recent ruling of the ECJ in the Bavarian Lager case (C-28/08P). Making future access to newly drafted documents should be made easier.*

### **Amendment 23** **Margrete Auken**

#### **Proposal for a regulation** **Article 4 – paragraph 7**

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

7. The exceptions ***as*** laid down in this Article shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. ***In the case of documents covered by the exceptions relating to the protection of personal data or commercial interests and in the case of***

##### *Amendment*

7. The exceptions laid down in this Article shall ***not apply to documents transmitted in the context of procedures leading to the adoption of a legislative act or a non-legislative act of general application. The exceptions shall*** only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum

*sensitive documents, the exceptions may, if necessary, continue to apply after this period.*

period of 30 years.

Or. en

*Justification*

*Takes into account the Turco judgement, which emphasises the importance of transparency in the legislative procedure as a pre-requisite for democracy.*

**Amendment 24**  
**Margrete Auken**

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

*Text proposed by the Commission*

*Amendment*

Consultations

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.*

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

Or. en

**Amendment 25**  
**Margrete Auken**

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

*Text proposed by the Commission*

*Amendment*

2. Where an application concerns a

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***.

document originating from a Member State:

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

***– which does not concern information submitted to the Commission concerning the implementation of EU policies and legislation,***

the authorities of that Member State shall be consulted. The institution holding the document shall disclose it unless the Member State gives reasons for withholding it, based on the exceptions referred to in Article 4 or ***in equivalent*** provisions in 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 shall ***assess*** the adequacy of reasons given by the Member State.

Or. en

**Amendment 26**  
**Margrete Auken**

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

*Text proposed by the Commission*

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.

*Amendment*

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, 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.

Or. en

*Justification*

*In line with the judgement by the European Court of Justice in the IFAW case, which clarified that Member States neither have a right of veto concerning documents originating from them nor - with the exception of national security - the right to invoke national provisions, unless these are equal in substance to the exceptions in this Regulation.*

**Amendment 27**  
**Angelika Werthmann**

**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. The institutions shall immediately take the measures necessary to establish a ***common interface for the institutional registers in order to ensure coordination between the registers.***

Or. de