

**Public access to European Parliament, Council and Commission documents  
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**European Parliament legislative resolution of 15 December 2011 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))**

**(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 of the European Union 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<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 of the Committee on Constitutional Affairs, the Committee on Petitions and the Committee on Legal Affairs (A7-0426/2011),
- 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 recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;
  2. Considers that procedure 2011/0073(COD) has lapsed as a result of the incorporation into procedure 2008/0090(COD) of the contents of the Commission proposal

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

(COM(2011)0137);

3. 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;
4. Instructs its President to forward its position to the Council and the Commission

**Position of the European Parliament adopted at first reading on 15 December 2011 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council ~~regarding public access to European Parliament, Council and Commission documents~~ *defining the general principles and limits governing the right of access to documents of Union institutions, bodies, offices and agencies* [Am. 1]**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 15 thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the ordinary legislative procedure<sup>1</sup>,

Whereas:

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<sup>1</sup> Position of the European Parliament of 15 December 2011.

- (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<sup>1</sup>. In the interest of clarity, that Regulation should be recast.~~ ***Following the entry into force of the amended Treaty on the European Union (TEU) and of the Treaty on the Functioning of the European Union (TFEU), the right to access to documents covers all Union institutions, bodies, offices and agencies, including the European External Action Service, so that substantial changes are to be made to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>2</sup>, whereby the experience of the initial implementation of that Regulation, as well as of the relevant case-law of the Court of Justice of the European Union and the European Court of Human Rights, should be taken into account. [Am. 2]***
- (2) The second subparagraph of Article 1 TEU enshrines the concept of openness, stating that the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.
- (3) Openness enables citizens to participate more closely in the decision-making process and ensures 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, as outlined in Articles 9 to 12 TEU, as well as*** respect for fundamental rights as laid down in Article 6 of the EU Treaty ***TEU*** and in the Charter of Fundamental Rights of the European Union ***(the Charter)***. [Am. 3]

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

<sup>2</sup> ***OJ L 145, 31.5.2001, p. 43.***

- (3a) *Transparency should also strengthen the principles of good administration in 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. [Am. 4]*
- (3b) *Openness enhances citizens' trust in Union institutions, bodies, offices and agencies because it contributes to their knowledge of the Union's decision-making process and their respective rights thereunder. Openness also entails more transparency in the implementation of administrative and legislative procedures. [Am. 5]*
- (3c) *By emphasising the normative importance of the principle of transparency, this Regulation strengthens the Union's culture of the rule of law and therefore also contributes to the prevention of crime and criminal behaviour. [Am. 6]*
- ~~(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<sup>1</sup>. [Am. 7]~~
- ~~(5) — A first assessment of the implementation of Regulation (EC) No 1049/2001 was made in a report published on 30 January 2004<sup>2</sup>. 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<sup>3</sup>. On 18 April 2007, the Commission published a Green Paper on the review of the Regulation<sup>4</sup> and launched a public consultation. [Am. 8]~~

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

<sup>2</sup> — COM(2004) 45.

<sup>3</sup> — [...]

<sup>4</sup> — COM(2007) 185.

- (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 which govern and ~~limits on the exceptions to such access on grounds of public or private interest~~, in accordance with ~~Article 255(2) of the EC Treaty~~ **Article 15(3) TFEU and in accordance with the provisions on openness of the Union's institutions, bodies, offices and agencies as laid down in Article 15(1) TFEU. Therefore, any other rules on access to documents should comply with this Regulation, subject to special provisions relating only to the Court of Justice of the European Union, the European Central Bank and the European Investment Bank when performing non-administrative tasks. [Am. 9]**
- (7) Since the question of access to documents is not covered by provisions of the Treaty establishing the European Atomic Energy Community, the institutions, offices, agencies and bodies should, as was already expressed in Declaration No 41 attached to the Final Act of the Treaty of Amsterdam, draw guidance from this Regulation as regards documents concerning the activities covered by that Treaty.
- (9) On 6 September 2006 the European Parliament and the Council adopted 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<sup>1</sup>. With regard to access to documents containing environmental information, this Regulation should be consistent with Regulation (EC) No 1367/2006.

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

- (10) ~~With regard to the disclosure of personal data, a clear relationship should be established between this Regulation and Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>†</sup>. *Union institutions, bodies, offices and agencies should treat personal data in compliance with the rights of data subjects as defined by Article 16 TFEU as well as by Article 8 of the Charter, by relevant Union law and by the case-law of the Court of Justice of the European Union.* [Am. 10]~~
- (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 ~~EC~~*Union* law. [Am. 11]
- (12) ~~Wider~~*In compliance with Article 15(3) TFEU, full* 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, while at the same time preserving the effectiveness of the institutions' decision-making process. ~~Such documents should be made directly accessible to the greatest possible extent. *in accordance with Article 290 TFEU, and under implementing powers in accordance with Article 291 TFEU when adopting measures of general scope. Preparatory legislative documents and all related information on the different stages of the interinstitutional procedure, such as Council working group documents, names and positions of Member States' delegations acting as Members of the Council and first-reading trilogue documents, should in principle be made immediately and directly accessible to the public on the internet.*~~ [Am. 12]

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<sup>†</sup> — OJ L 8, 12.1.2001, p. 1.

- (12a) *Legislative texts should be drafted in a clear and understandable way and published in the Official Journal of the European Union. [Am. 13]*
- (12b) *Better law-making practices, drafting models and techniques shared by the institutions, bodies, offices and agencies should be agreed by the European Parliament, the Council and the Commission in accordance with Article 295 TFEU and with this Regulation, and published in the Official Journal of the European Union, in order to improve the principle of transparency by design and that of legal clarity of Union documents. [Am. 14]*
- (12c) *Documents relating 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 and as far as possible directly accessible in compliance with the principle of good administration outlined in Article 41 of the Charter. [Am. 15]*
- (12d) *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 would be in charge, as well their remit, the deadlines set and the office to be contacted. The institutions, bodies, offices and agencies should duly take into account the recommendations of the European Ombudsman. They should agree, in compliance with Article 295 TFEU, on common guidelines as to the way in which each organisational unit should register the internal documents, classify them in case of possible prejudice to Union interests and archive them for temporary or historical needs according to the principles outlined in this Regulation. They should inform the public in a consistent and coordinated way of the measures adopted to implement this Regulation, and train their staff to assist citizens in exercising their rights under this Regulation. [Am. 16]*



- (13) Transparency in the legislative process is of utmost importance for citizens. Therefore, institutions should actively disseminate documents which are part of the legislative process *and improve their communication with potential applicants. Union institutions, bodies, offices and agencies should make publicly accessible by default on their websites as many categories of documents as possible.* Active dissemination of documents should also be encouraged in other fields. [Am. 17]
- (13a) *In order to improve openness and transparency in the legislative process, an interinstitutional register of lobbyists and other interested parties should be agreed by the institutions, bodies, offices and agencies.* [Am. 18]
- ~~(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. [Am. 19]~~

- (16) In order to bring about greater openness in the work of the institutions, ***bodies, offices and agencies***, access to documents should be granted by the European Parliament, the Council and the Commission not only to documents drawn up by the institutions ***by them***, 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 ***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. [Am. 20]
- (16a) ***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 such a request may refuse access only on the grounds of the exceptions in this Regulation<sup>1</sup>.*** [Am. 21]
- (17) In principle, ***All*** documents of the institutions should be accessible to the public. However, ***Exceptions to this principle should be made to protect*** 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, ***but such exceptions should be governed by a transparent system of rules and procedures, and the overall goal should be the implementation of citizens' fundamental right of access.*** In assessing the exceptions, the institutions should take account of the principles in Community ***Union*** legislation concerning the protection of personal data, in all areas of Union activities. [Am. 22]
- (18) All rules concerning access to documents of the institutions should be in conformity with this Regulation. ***Due to the fact that this Regulation directly implements Article 15 TFEU as well as Article 42 of the Charter, the defined principles of and limits on access to documents should prevail over any rules, measures or practices adopted under a different legal basis by an institution, body, office or agency and introducing additional or stricter exceptions than the ones provided for in this Regulation.*** [Am. 23]
- (19) In order to ensure that the right of access is fully respected, a two-stage administrative procedure should apply, with the additional possibility of court proceedings or complaints to the European Ombudsman.

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<sup>1</sup> ***Judgment of 18 December 2007 in case C-64/05 P, Sweden v Commission, ECR 2007 p. I-11389.***

- (20) Each institution, body, office and agency should take the measures necessary to inform the public of the provisions in force and to train its staff to assist citizens exercising their rights under this Regulation. In order to make it easier for citizens to exercise their rights, each institution, body, office or agency should provide access to a register of documents.
- (21) Even though it is neither the object nor the effect of this Regulation to amend national legislation on access to documents, it is nevertheless clear that, by virtue of the principle of loyal cooperation which governs relations between the institutions and the Member States, Member States should take care not to hamper the proper application of this Regulation and should respect the security rules of the institutions.
- ~~(22) This Regulation is without prejudice to existing rights of access to documents for Member States, judicial authorities or investigative bodies. [Am. 24]~~
- (23) In accordance with ~~Article 255(3) of the EC Treaty~~**Article 15(3) TFEU and the principles and rules outlined in this Regulation**, each institution, *body, office and agency* should lay down specific provisions regarding access to its documents in its rules of procedure, *as well as to documents relating to its administrative tasks*, [Am. 25]

HAVE ADOPTED THIS REGULATION:

## Article 1

### Purpose

The purpose of this Regulation is:

- (a) to define, ***in accordance with Article 15 TFEU***, the principles, conditions and limits on grounds of public or private interest governing the right of access to ~~European Parliament, Council and Commission (hereinafter referred to as «the institutions»)~~ documents provided for in Article 255 of the EC Treaty in such a way as ***of Union institutions, bodies, offices and agencies, in such a way as*** to grant the public the widest possible access to such documents; [Am. 26]
- (b) to establish rules ensuring the easiest possible exercise of this right;
- (c) to promote ***transparent and*** good administrative practice ~~on~~ ***in order to improve*** access to documents, ***and in particular the overall goals of greater transparency, accountability, and democracy.*** [Am. 27]

## Article 2

### Beneficiaries ~~and scope~~

1. — Any natural or legal person ***or any association of legal or natural persons*** shall have a right of access to documents of the Union institutions, ***bodies, offices and agencies***, 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 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. [Am. 28]~~

## *Article 2a*

### *Scope*

- 1. This Regulation shall apply to all documents held by a Union institution, body, office and agency, that is to say documents drawn up or received by it and in its possession, in all areas of activity of the Union. This Regulation shall apply to the Court of Justice of the European Union, the European Central Bank and the European Investment Bank, only in the course of the performance of their administrative tasks.*
- 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.*
- 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 derive from instruments of international law or acts of the institutions implementing them or by the law of the Member States. [Am. 29]*

## Article 3

### Definitions

For the purpose of this Regulation:

- (a) "document" ~~means~~**shall mean** any ***data*** 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 concerning a matter falling within the sphere of responsibility of a Union institution, body, office or agency.~~ ***Data*** contained in electronic storage, processing and retrieval systems, ~~are documents~~ ***including external systems used for the work of that institution, body, office or agency, constitute a document, notably*** if they can be extracted ~~in the form of a printout or electronic-format copy~~ using ***any reasonably*** the available tools for the exploitation of the system ***concerned. 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, ensure that the right of access is guaranteed as a fundamental right , 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 requests from the public;***
- (aa) ***"classified documents" shall mean documents which have been totally or partially classified in accordance with Article 3a(1);***
- (ab) ***"legislative act" shall include documents drawn up or received in the course of legislative procedures for the adoption of legislative acts, including measures of general application under delegated and implementing powers, and acts of general application which are legally binding in or on the Member States;***

- (ac) *"administrative tasks" shall mean measures dealing with the organisational, administrative or budgetary matters of the institution, body, office or agency concerned;*
- (ad) *"archive system" shall mean a tool or a procedure 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 and agencies which has been selected, on the terms laid down in point (a), for permanent preservation.*

*A detailed list of all the categories of 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 and agencies, which shall also agree and publish their common criteria for archiving;*

- (b) *"third party" means shall mean any natural or legal person, or any entity outside the institution, **body, office or agency** concerned, including the Member States, other ~~Community~~**Union** or ~~non-Community~~**non-Union** institutions and bodies and third countries. [Am. 30]*



## *Article 3a*

### *Procedure for the classification and declassification of documents*

*1. When grounds of public policy under Article 4(1) exist, and without prejudice to parliamentary scrutiny at Union 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 Union or of one or more of the Member States, notably in public security, defence and military matters. A document may be partially or totally classified. Documents 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 Union or of one or more of the 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 Union or of one or more of the 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 Union or of one or more of the 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 Union or of one or more of the Member States.*

*2. Documents shall be classified only when necessary. If possible, originators shall specify on classified documents a date or period by which or by the end of which 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 documents and for any subsequent downgrading or declassification rests with the institution, body, office or agency which originated or which received the classified document from a third party or from another institution, body, office or agency.*

3. *Without prejudice to the right of access by other Union institutions, bodies, offices and agencies, classified documents shall be released to third parties 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 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 Union shall not give any right to a third country or international organisation to prevent the European Parliament from having access to that 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 may be made in the public register.*
5. *Classified documents shall be recorded in a register of the institution, body, office or agency concerned, or released, 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 Union classified documents, the principles set out in this Regulation are respected.*
8. *The rules of the institutions, bodies, offices and agencies concerning classified documents shall be made public. [Am. 31]*

## Article 4

### Exceptions

1. The institutions, bodies, offices and agencies shall refuse access to a document where disclosure would undermine the protection of the public interest as regards:
  - (a) public security ~~including the safety of natural or legal persons~~ ***of the Union or of one or more of the Member States; [Am. 32]***
  - (b) defence and military matters;
  - (c) international relations;
  - (d) the financial, monetary or economic policy of the ~~Community~~ ***Union*** or a Member State; **[Am. 33]**
  - (e) the environment, such as breeding sites of rare species.

2. The institutions, ***bodies, offices and agencies*** shall refuse access to a document where disclosure would undermine the protection of: [Am. 34]

- (a) commercial interests of a natural or legal person;
- (b) intellectual property rights;
- (c) legal advice ~~and court, arbitration and dispute settlement proceedings;~~***relating to court proceedings***; [Am. 35]
- (d) the purpose of inspections, investigations and audits;
- (e) the objectivity and impartiality of ~~selection~~ ***public procurement*** procedures ***until a decision has been taken by the contracting institution, body, office or agency concerned, or the proceedings of a selection board leading to the recruitment of staff until a decision has been taken by the appointing authority.*** [Am. 36]

3. Access to ~~the following~~ documents ***drawn up by an institution, body, office or agency for internal use or received by it relating to a matter where it has not yet taken a decision*** shall be refused ***only*** if their disclosure would, ***due to their content and the objective circumstances of the situation, manifestly and*** 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.~~ [Am. 37]

4. ~~The exceptions under paragraphs (2) and (3) shall apply unless there is an~~***When balancing the public interest in disclosure under paragraphs (1) to (3), 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-~~***document*** requested relates to ***the protection of fundamental rights and the rule of law, the sound management of public funds, or the right to live in a healthy environment, including in terms of*** emissions into the environment. ***An institution, body, office or agency invoking one of the exceptions must make an objective and individual assessment and show that the risk to the interest protected is foreseeable and not purely hypothetical, and define how access to the document in question could specifically and effectively undermine the interest protected.*** [Am. 38]

***4a. Documents the disclosure of which would pose a risk to environmental protection, such as those relating to the breeding sites of rare species, shall only be disclosed in conformity with Regulation (EC) No 1367/2006.*** [Am. 39]

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.~~***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. [Am. 40]*

6. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.

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. *not apply to documents transmitted within the framework of procedures leading to a legislative act or delegated or implementing act of general application. Nor shall the exceptions apply to documents provided to institutions, bodies, offices and agencies for the purpose of influencing policy-making by lobbyists and other interested parties.* In the case of documents covered by the exceptions relating to the protection of personal data or commercial interests and in the case of sensitive documents, The exceptions may if necessary, continue to apply after this period.~~ ***shall only apply for as long as is justified by the content of the document and in any event for a maximum period of 30 years. [Am. 41]***

***7a. An institution, body, office or agency may grant privileged access to the documents covered by paragraphs (1) to (3) for the purpose of research. If privileged access is granted, the information shall only be released subject to appropriate restrictions regarding its use. [Am. 42]***

## Article 5

### ~~Consultations~~ ***Consultation of third parties***

1. As regards third-party documents, the institutions, ***bodies, offices and agencies*** 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.

2. Where an application concerns a document originating from a Member State, other than documents transmitted within the framework of procedures leading to a legislative act or a ~~non-legislative act~~ ***delegated or implementing act*** of general application, the authorities of that Member State shall be consulted ***where there is any doubt as to whether the document is covered by one of the exceptions.*** 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.~~ ***and take a decision on the basis of its own judgment as to whether the exceptions cover the document concerned.***

3. Where a Member State receives a request for a document in its possession, which originates from an institution, **body, office or agency**, 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 concerned. [Am. 43]

#### *Article 5a*

##### *Legislative acts*

1. *In compliance with the democratic principles outlined in Articles 9 to 12 TEU and with the case-law of the Court of Justice of the European Union, institutions acting in their legislative capacity, including under delegated and implementing powers, as well as Member States when acting in their capacity as Members of the Council, shall grant the widest possible access to documents relating to their activities.*

2. *Documents relating to legislative programmes, preliminary civil society consultations, impact assessments and any other preparatory documents linked to a legislative procedure, as well as documents relating to the implementation of Union law and policies linked to a legislative procedure, shall be accessible on a user-friendly and coordinated interinstitutional site and published in a special electronic series of the Official Journal of the European Union.*

3. *During the legislative procedure, each institution, 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.*

4. *Once adopted, legislative acts shall be published in the Official Journal of the European Union as provided for by Article 13. [Am. 44]*



## Article 6

### Applications

1. Applications for access to a document shall be made in any written form, including electronic form, in one of the languages referred to in Article 55(1) TEU ~~and in a sufficiently precise manner to enable the institution to identify the document~~. The applicant is not obliged to state reasons for the application. **[Am. 45]**
2. If an application is not sufficiently precise or if the requested documents cannot be identified, the institution, **body, office or agency concerned** 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. The time limits provided for under Articles 7 and 8 shall start to run when the institution, body, office or agency concerned has received the requested clarification. **[Am. 46]**
3. In the event of an application relating to a very long document or to a very large number of documents, the institution, body, office or agency concerned may confer with the applicant informally, with a view to finding a fair and practical solution.
4. The institutions, bodies, offices and agencies shall provide information and assistance to citizens on how and where applications for access to documents can be made.

## Article 7

### Processing of initial applications

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, body, office or agency concerned 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 a total or partial refusal and inform the applicant of his or her right to make a confirmatory application in accordance with paragraph 4.

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~~ ***only once for a maximum period of*** 15 working days, provided that the applicant is notified in advance and that detailed reasons are given. [Am. 47]

3. ~~In the event of a total or partial refusal~~ ***The institution, body, office or agency concerned shall notify the applicant whether, and if so when, partial or full access to the document is likely to be possible at a later time.***

The applicant may, within 15 working days of receiving a reply from the institution, body, office or agency concerned, make a confirmatory application asking it to reconsider its position. [Am. 48]

4. Failure by the institution, body, office or agency to reply within the prescribed time limit shall entitle the applicant to make a confirmatory application.

***4a. Each institution, body, office and agency shall nominate a person responsible for checking that all the time limits laid down in this Article are duly met.*** [Am. 49]

## Article 8

### Processing of confirmatory applications

1. A confirmatory application shall be handled promptly. Within ~~30 working days~~ **maximum of 15 working days** from registration of such an application, the institution, **body, office or agency concerned** 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 a total or partial refusal. In the event of a total or partial refusal, ~~that~~ institution, **body, office or agency** shall inform the applicant of the remedies open to him or her. [Am. 50]

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~~ **only once for a maximum period of** 15 working days, provided that the applicant is notified in advance and that detailed reasons are given. [Am. 51]

3. In the event of a total or partial refusal, the applicant may bring proceedings before the General Court against the institution, body, office or agency and/or make a complaint to the European Ombudsman, under the conditions laid down in Articles 263 and 228 TFEU, respectively.

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, body, office or agency and/or make a complaint to the European Ombudsman, under the relevant provisions of the ~~EC Treaty~~ **Treaties**. [Am. 52]

## Article 8a

### Fresh applications

***If, after receiving the documents, the applicant requests further documents from an institution, body, office or agency, that request shall be dealt with as a fresh application in accordance with Articles 7 and 8. [Am. 53]***

## 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 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.~~
- [Am. 54]**

## Article 10

### Access following an application

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

2. If a document is publicly available and is easily accessible to the applicant, the institution, body, office or agency concerned may fulfil its obligation of granting access to documents by explaining to the applicant how to obtain the requested document.

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

**3a. *The content of a document shall be available without discrimination on the grounds of visual impairment, working language or operating system platform. Institutions, offices, bodies and agencies shall provide for actual access by an applicant to the content of documents without technical discrimination. [Am. 55]***

4. The cost of producing and sending copies may be charged to the applicant. Such a charge shall not exceed the actual cost of producing and sending the copies. Consultation on the spot, copies of fewer than ~~20 A4 pages~~ **50 A4 pages** and direct access in electronic form or through the register shall be free of charge. **[Am. 56]**

5. This Regulation shall not derogate from specific modalities governing access laid down in Union or national law, such as the payment of a fee.

## Article 11

### Registers

1. To make citizens' rights under this Regulation effective, each institution, body, office and agency shall provide public access to a register of documents. Access to the register should be provided in electronic form. References to documents shall be recorded in the register without delay.
2. For each document, the register shall contain a reference number (including, where applicable, the interinstitutional reference), the subject matter and/or a short description of the content of the document and the date on which it was received or drawn up and recorded in the register. References shall be made in a manner which does not undermine the protection of the interests in Article 4.
3. The institutions, bodies, offices and agencies shall immediately take the measures necessary to establish a register which shall be operational by 3 June 2002 *common interface for the institutional registers in order to ensure coordination between the registers*. [Am. 57]

## Article 12

### Direct access to documents

1. ~~Documents~~ *The institutions, bodies, offices and 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 EU Union legislative acts or delegated and implementing acts of general application ~~shall, subject to Articles 4 and 9, be made directly accessible to the public.~~ [Am. 58]
2. Where possible, other documents, notably documents relating to the development of policy or strategy, shall be made directly accessible in electronic form.
3. Where direct access is not given through the register, the register shall as far as possible indicate where the document is located.
4. Each institution, body, office and agency shall define in its rules of procedure which other categories of documents ~~are~~ *shall be proactively made* directly accessible to the public. [Am. 59]

## Article 13

### Publication in the Official Journal

1. In addition to the acts referred to in Article 297(1) and (2) TFEU, the following documents shall, subject to Article 4 of this Regulation, be published in the *Official Journal of the European Union*:

- (a) Commission proposals and initiatives of a group of Member States based on Article 76 TFEU;
- (b) ~~common~~ positions adopted by the Council in accordance with the ~~procedures~~**procedure** referred to in ~~Articles 251 and 252 of the EC Treaty~~**Article 294 TFEU** and the reasons underlying those positions, as well as the European Parliament's positions in these procedures; **[Am. 60]**
- (c) acts adopted in accordance with Article 25 TEU;
- (f) international agreements concluded by the ~~Community or~~**European Union** in accordance with ~~Article 24 of the EU Treaty~~**Article 37 TEU and Articles 207 and 218 TFEU**. **[Am. 61]**

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

- (a) initiatives presented by a Member State or the High Representative of the Union for Foreign Affairs and Security Policy pursuant to Article 30 TEU;
- (c) acts other than those referred to in Article 297(1) and (2) TFEU, recommendations and opinions.

3. Each institution, body, office and agency may in its rules of procedure establish which further documents shall be published in the *Official Journal of the European Union*.

#### Article 14

##### Information

1. Each institution, body, office and agency shall take the requisite measures to inform the public of the rights they enjoy under this Regulation.

2. The Member States shall cooperate with the institutions, bodies, offices and agencies in providing information to the citizens.



## *Article 14a*

### *Information Officer*

*1. Each general administrative unit within each institution, body, office and agency shall appoint an Information Officer who shall be responsible for ensuring compliance with 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 another unit within the same institution, body, office or agency, provided that the other unit in question is in possession of such information.*  
[Am. 62]

## **Article 14b**

### **Principle of good and open 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 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>1</sup>. Those 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 Union, the Conditions of Employment of other servants of the European Union and in the internal rules of the institutions, bodies, offices and agencies . [Am. 63]*

## **Article 15**

Administrative *transparency* practice in the institutions, *bodies, offices and agencies*  
[Am. 64]

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

*1a. The institutions, bodies, offices and 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, and the services to which citizens may refer to obtain support, information or administrative redress. [Am. 65]*

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<sup>1</sup> OJ L 8, 12.1.2001, p. 1.

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

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

***Such documents shall also be accessible via a specific website and database, and on a database dealing with financial transparency in the Union. [Am. 66]***

## Article 16

### Reproduction of documents

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. **[Am. 67]**

## Article 17

### Reports

Each institution, body, office and agency shall publish annually a report for the preceding year including the number of cases in which access to documents was refused, the reasons for such refusals and the number of sensitive documents not recorded in the register.

***1a. By ...\*, at the latest, the Commission shall publish a report on the implementation 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 and agencies. [Am. 69]***

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\* ***Two years after the entry into force of this Regulation.***

## Article 18

### Repeal

Regulation (EC) No 1049/2001 is repealed with effect from [...].

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

## Article 19

### Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## ANNEX

CORRELATION TABLE<sup>1</sup>

Regulation (EC) No 1049/2001	This Regulation
Article 1	Article 1
Article 2(1)	Article 2(1)
Article 2(2)	-
Article 2(3)	Article 2(2)
Article 2(4)	Article 2(3)
Article 2(5)	Article 2(4)
-	Article 2(5)
-	Article 2(6)
Article 2(6)	Article 2(7)
Article 3	Article 3
Article 4(1) (a)	Article 4(1)
Article 4(1) (b)	Article 4(5)
Article 4(2)	Article 4(2)
Article 4(3)	Article 4(3)
Article 4(4)	Article 5(1)
Article 4(5)	Article 5(2)
-	Article 4(4)
Article 4(6)	Article 4(6)
Article 4(7)	Article 4(7)
Article 5	Article 5(3)
Article 6	Article 6
Article 7	Article 7
Article 8	Article 8
Article 9	Article 9
Article 10	Article 10
Article 11	Article 11
Article 12	Article 12
Article 13	Article 13
Article 14	Article 14
Article 15	Article 15
Article 16	Article 16
Article 17(1)	Article 17
Article 17(2)	-
Article 18	-
-	Article 18
-	Article 19
-	Annex

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<sup>1</sup> The correlation table will be updated during the legal-linguistic revision of the final act.