



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Constitutional Affairs

2008/0090(COD)

30.11.2010

OPINION

of the Committee on Constitutional Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur (*): Anneli Jäätteenmäki

(*): Associated committee – Rule 50 of the Rules of Procedure

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SHORT JUSTIFICATION

The present regulation 1049/2001 on public access to EU documents was a significant step towards greater openness within the Union. In the eight years since its implementation, it has contributed to the creation of a more transparent culture of administration within the European Institutions.

The Treaty of Lisbon brings the importance of transparency to a new level by virtue of Article 10/TEU, Paragraph 3 which states that: "*Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen*".

The new Treaty clearly enlarges the scope of the regulation. Previously, the Treaty demanded openness only from the Parliament, Council and Commission, and now Article 15/TFEU states that "*Any citizen...shall have a right of access to documents of the Union **institutions, bodies, offices and agencies**, whatever their medium*"

The Parliament has made several requests to the Commission to put forward a new proposal for the recasting of Regulation 1049/2001 taking into account the change to its legal basis brought about by the Lisbon Treaty. Last December, the Parliament adopted a resolution whereby it stated that the Regulation should be urgently updated, and also deplored the fact that the Commission had not made a modified proposal.

Furthermore, since the Commission gave its proposal in 2008, the Court of Justice has made some very important decisions concerning access to documents. The most significant of these is the Turco case (T-84/03 Turco v. Council), in which the Court decided that access to the opinions of legal services should also be made available. In its conclusion, the Court stated that: "*openness...contributes to conferring greater legitimacy on the institutions in the eyes of European citizens and increases their confidence in them*".

However, the Commission has refused to make a new proposal. The only change that the Commission has in fact made is the modification of the legal base/basis of the regulation which was made in the Omnibus communication last December.

In this situation, the leading Committee, the Committee on Civil Liberties, has decided that the Parliament should take over the Commission's role and make the necessary amendments that would "lisbonize" the regulation.

The Commission proposal

We are now obliged to proceed on the basis of the Commission proposal from 2008. Unfortunately, this proposal does not enhance the transparency of the Union to the level that would be required by the new Treaty. On the contrary, many of the amendments proposed by the Commission would even reduce the present standard.

The most severe of these is the amendment that the Commission is proposing to Article 3 which would significantly limit the definition of a document. In the Rapporteur's opinion, the present definition should remain, covering all relevant documents - not only registered ones.

Another amendment that the Rapporteur finds worrying concerns the right of the Member States to withhold documents under Article 5. The formulation proposed by the Commission would give the Member States an unlimited right to refer back to their own legislation to justify refusing access to a document originating from a Member state. The institutions will only be able to consider grounds based on the Regulation, and not based on national law. Such a right would 'water down' the principle of transparency and leave it completely to the discretion of Member States. The exceptions listed in Article 4 of the Regulation should be sufficient. If they are not, changes should be made in Article 4 and not by giving the Member States unlimited rights.

The purpose of the regulation

As the title of the Regulation states, it concerns *public* access to documents. Our main objective is to guarantee the rights of citizens to participate in the democratic life of the Union by granting the widest possible access to EU documents.

According to the rapporteur, there should be a clear distinction between 'public access to documents' and 'information and participation of citizens', on the one hand, and the institutions' right of access, even to confidential documents, on the other. The latter may be settled via inter-institutional agreement.

AMENDMENTS

The Committee on Constitutional Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation

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;*

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 sphere of responsibility of an*

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;

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 the available tools for the exploitation of the system;

Justification

The amendment proposed by the Commission would limit public access to only a small number of documents. This would be a clear lowering of standards of openness compared to the present situation.

Amendment 2

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;

Justification

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

Amendment 3

Proposal for a regulation

Article 4 – paragraph 3

Text proposed by the Commission

Amendment

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

deleted

(a) documents relating to a matter where

the decision has not been taken;

(b) documents containing opinions for internal use as part of deliberations and preliminary consultations within the institutions concerned, even after the decision has been taken.

Amendment 4

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 assessing the public interest in disclosure, special weight shall be given to the fact that the requested documents relate to the protection of fundamental rights, environment, or human health.**

Justification

Regulation 1367/2006 establishes an overriding public interest in the release of information concerning emissions to the environment. There should be a similar presumption in favour of an overriding public interest in the release of information concerning protection of fundamental rights or risks to human health.

Amendment 5

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**

Amendment

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

lawful processing of such data laid down in EC legislation on the protection of individuals with regard to the processing 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 such cases, the institution, body, office or agency 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 partial access to that document is possible.

Justification

The Commission proposal does not do justice to the need for a right balance between the fundamental rights at stake.

Amendment 6

Proposal for a regulation Article 4 – paragraph 7

Text proposed by the Commission

Amendment

7. The exceptions as laid down in this

7. The exceptions as laid down in this

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

Article ***shall not apply to documents transmitted in the framework of procedures leading to a legislative act or a non-legislative act of general application.*** ***The exceptions*** shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years.

Justification

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

Amendment 7

Proposal for a regulation

Article 7 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Each institution shall nominate a person responsible for checking that all the time-limits laid down in this Article are duly met.

Justification

The Ombudsman recommended that an information officer be appointed to ensure that time-limits are met.

Amendment 8

Proposal for a regulation

Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a

Fresh applications

If, after receiving the information, the

applicant requests further documents from the institutions, that request shall be dealt with as a fresh application in accordance with Articles 7 and 8.

PROCEDURE

Title	Public access to European Parliament, Council and Commission documents		
References	COM(2008)0229 – C6-0184/2008 – 2008/0090(COD)		
Committee responsible	LIBE		
Opinion by Date announced in plenary	AFCO 19.10.2009		
Rapporteur Date appointed	Anneli Jäätteenmäki 22.2.2010		
Discussed in committee	6.4.2010	4.5.2010	2.6.2010
Date adopted	30.11.2010		
Result of final vote	+: -: 0:	13 10 0	
Members present for the final vote	Andrew Henry William Brons, Andrew Duff, Ashley Fox, Matthias Groote, Roberto Gualtieri, Enrique Guerrero Salom, Zita Gurmai, Gerald Häfner, Stanimir Ilchev, Constance Le Grip, Morten Messerschmidt, Potito Salatto, Algirdas Saudargas, György Schöpflin, Indrek Tarand, Rafał Trzaskowski		
Substitute(s) present for the final vote	Elmar Brok, Anneli Jäätteenmäki, Alain Lamassoure, Íñigo Méndez de Vigo, Helmut Scholz		
Substitute(s) under Rule 187(2) present for the final vote	Francesca Balzani, Maria do Céu Patrão Neves		