OPINION

of the Committee on Legal Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on public access to documents (Rule 116(7)) for the years 2014-2015
(2015/2287(INI))

Rapporteur: Heidi Hautala
SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Considers that the institutions, agencies and other bodies of the European Union still fail to take fully into account and to comply with the rules and the changes provided for in the Lisbon Treaty and the Charter of Fundamental Rights when applying Regulation (EC) No 1049/2001, especially as concerns participatory democracy; notes and welcomes the recent judgments of the Grand Chamber of the Court of Justice in the Digital Rights Ireland1 and Schrems2 cases, in both of which the Court based itself on the Charter when declaring invalid the Data Retention Directive3 and the Safe Harbour Decision4 respectively; stresses that the actual public access to documents and the management of registers of documents need to be based on standards which adequately comply with Articles 41 and 42 of the Charter;

2. Points out, in this connection, that the Treaties in force no longer contain any provisions comparable to the ones in Article 207(3) of the EC Treaty, which, though concerning only access to Council documents, were used to justify the application of the exception protecting the ‘space to think’ in Article 4(3) of the Regulation to legislative matters; reiterates its view, which is also held by the European Ombudsman, that the current procedures for trilogues prior to a possible first-reading agreement fail to ensure a satisfactory level of legislative transparency and access to documents; points out that, while trilogues are important and effective, the procedures currently applicable to them give rise to concerns as regards the openness of the legislative procedure and that this openness ‘contributes to strengthening democracy by allowing citizens to scrutinise all the information which has formed the basis of a legislative act’, as stated by the Court of Justice of the European Union in the joined cases Sweden and Turco v Council; recalls in this connection that, whereas the basic presumption is that of public disclosure of legislative documents, exceptions to disclosure may be applied on a case-by-case basis after thorough justification of a public interest and a real and substantial risk that disclosure would seriously undermine the institutions’ decision-making process;

3. Recalls that the case law of the Court of Justice of the European Union recognises the risk of external pressure and that this can be a legitimate ground for restricting access to documents relating to the decision-making process on the condition that the reality of such external pressure is established with certainty, and evidence is adduced to show that there was a reasonably foreseeable risk that the decision to be taken would be substantially affected owing to that external pressure5; is concerned that the present practice favours broader access by lobbyists to decisive phases of the legislative process than by the general public;

1 Joined Cases C-293/12 and C-594/12. Judgment of the Court (Grand Chamber) of 8 April 2014.
2 Case C 362/14. Judgment of the Court (Grand Chamber) of 6 October 2015.
3 Directive 2006/24/EC.
5 Case T-144/05, Pablo Munoz v Commission, para 86.
4. Considers, therefore, that documents created in the framework of trilogues, such as agendas, summaries of outcomes and minutes drawn up to facilitate negotiations cannot in principle be treated differently from other legislative documents; recalls that it has already instructed its own competent bodies to take action in this respect and has called on other institutions to do likewise; takes the view that a list of trilogue meetings and the above-mentioned documents should be made directly accessible on Parliament’s register of documents; recalls that the future interinstitutional agreement on better law-making will, if adopted, include provisions relating to a database on legislative files and to the appropriate handling of trilogues;

5. Underlines the importance, in order to improve transparency as regards first reading agreements commonly conducted in trilogues and deployed more and more frequently, of publishing the progress of negotiations after each trilogue and opting for a plenary mandate for Parliament’s negotiating team;

6. Emphasises that non-legislative documents such as administrative documents are also covered by the principle of ‘the widest possible access to documents’ enshrined in Article 1(a) of Regulation (EC) No 1049/2001 and that documents should be examined on a case-by-case basis in order to determine whether their disclosure would actually undermine the protection of one of the interests protected by the exceptions to public access and, where this possibility is foreseen in the regulation, whether an overriding public interest requires the disclosure of the document even though an exception might have been applicable prima facie;

7. Urges the Commission to establish a joint register for legislative procedures in order to facilitate the traceability of the legislative process;

8. Recalls that, under Articles 1(c) and 15(1), the institutions are required to ‘promote good administrative practises on access to documents’ and to ‘develop good administrative practices in order to facilitate the exercise of the rights guaranteed by (the) Regulation’; stresses that transparency is closely connected with the right to good administration, as referred to in Article 298 of the TFEU and Article 41 of the Charter of Fundamental Rights and reiterates its call for the adoption of a regulation on the administrative procedure of the EU’s own administration1;

9. Considers it a priority that EU institutions should ensure full transparency as regards access to documents; stresses, in this connection, that, in addition to access to documents, Council debates should be made public in order for citizens to understand how and why decisions have been taken;

10. Welcomes the idea of requesting that the Commission establish a register of delegated acts, which are an important part of EU legislation, and points out that, under Regulation (EC) No 1049/2001 and in order to ensure full, democratic and transparent oversight by Parliament, access must also be granted to documents drawn up as part of the procedure for the delegation of powers;

11. Urges the Council to review its policy on access to documents and bring it into line with

---

the relevant provisions of the Charter of Fundamental Rights;

12. Notes that, with a view to a legitimate, accountable democratic political system complying with the rule of law, citizens must have the right to know about and scrutinise the actions of their representatives, the decision-making process, and the way in which public money is allocated and spent, in line with the principle of traceability of funds and in conformity with the position taken by Parliament in earlier resolutions;

13. Points out that, while progress has been achieved in providing information on Parliament’s website regarding the different allowances to which Members are entitled and the rules by which they are governed, this policy should be pursued taking into account best practice in the national parliaments and the actions already undertaken by individual Members; encourages all Members, therefore, to become involved in this endeavour by proactively disclosing information relating to their specific activities and use of expenditure, so that Parliament remains at the forefront of efforts to achieve transparency and openness in the EU, and with a view to better public accountability of public funds;

14. Regrets that the last meeting of the Interinstitutional Committee established under Article 15(2) of Regulation (EC) No 1049/2001 took place on 15 December 2009; invites, once again, the Interinstitutional Committee to work more actively and report to the competent committees on the issues discussed; calls on the Interinstitutional Committee to meet more regularly and to open up internal discussions and deliberations by inviting and considering submissions from civil society, the European Ombudsman and the European Data Protection Supervisor; calls on the Interinstitutional Committee to address the issues mentioned in this resolution as a matter of urgency.
RESULT OF FINAL VOTE IN COMMITTEE ASKED FOR OPINION

<table>
<thead>
<tr>
<th>Date adopted</th>
<th>18.2.2016</th>
</tr>
</thead>
</table>
| Result of final vote | +: 22  
|                        | --: 0    
|                        | 0: 1     |
| Members present for the final vote | Max Andersson, Marie-Christine Boutonnet, Costas Chrysogonos, Therese Comodini Cachia, Mady Delvaux, Rosa Estaràs Ferragut, Dietmar Köster, Gilles Lebreton, António Marinho e Pinto, Jiří Maštálka, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, Tadeusz Zwiefka |
| Substitutes present for the final vote | Daniel Buda, Angel Dzhambazki, Heidi Hautala, Sylvia-Yvonne Kaufmann, Virginie Rozière, Rainer Wieland |
| Substitutes under Rule 200(2) present for the final vote | Edward Czesak, Eleonora Evi, Karin Kadenbach |