

CONTENT

Currently, Regulation (EC) No 1049/2001 governs the regime applicable to public access to documents. As to its institutional scope, it is only directly applicable to the European Parliament (EP), the Council and the Commission.

In April 2008, the Commission submitted a proposal for a recast of the 2001 Regulation with a view to enhancing transparency and accountability by promoting good administrative practice. This proposal still remains the basis for negotiations between the co-legislators.

With the entry into force of the Lisbon Treaty, Article 15(3) of the Treaty on the Functioning of the European Union (TFEU) became the legal base for public access to documents. This new provision extends to all the Union institutions, bodies, offices and agencies the public right to access documents. Even if, in practice, most EU institutions and bodies apply the 2001 Regulation, or similar rules, on a voluntary basis, there is a Treaty obligation to extend the institutional scope of the 2001 Regulation to all institutions. Consequently, in March 2011, the Commission submitted a proposal aimed at extending the institutional scope of the 2001 Regulation in order to adapt it to the Lisbon Treaty requirements.

On 15 December 2011, when the Parliament adopted its first reading position on the 2008 proposal, which aimed to recast the 2001 Regulation, it adopted a comprehensive approach, 'merging' into one legislative position the amendments relating to the 2008 recast and to the 2011 proposal adapting the Regulation to the Lisbon Treaty.

Aiming to ensure the fullest possible effect to the right of public access to documents, now enshrined in the TFEU, the European Parliament expressed strong criticism at the Commission's proposal, in particular with regard to its scope, as the draft legislation gives a narrow definition of what constitutes a 'document'. Thus, the EP called for much broader definition than the one proposed by Commission.

Moreover, the European Parliament proposed a broader application of the regulation, which should apply to all EU institutions, bodies, offices and agencies, and not only to the three main institutions. According to the European Parliament's position, the public should have the right to access all documents concerning the various Union activities held by all EU institutions, bodies, offices and agencies.

In addition, the European Parliament defined possible exceptions to the right of access in a more limited way than the Commission, and proposed rules for classified documents.

The Council has not adopted any position at this stage. An attempt was made to reach an agreement between the co-legislators, with trilogues launched under the Danish Presidency (first half of 2012). The Commission did not agree with the proposed possible compromises, which is the main reason for the standstill which has lasted for several years.

Although some Member States, especially Scandinavian countries, would be willing to move forward, discussions have shown strongly diverging views. Part of the Council is not keen on moving on the matter, fearing an impact on access to documents originating from Member States in the framework of procedures linked with EU institutional work.

Thus, a number of Member States, supported in this attempt by the Commission, would like to go below the current standards, for instance by requesting an ex-ante exemption of certain areas from transparency requirements, notably the competition and state aid areas, and by promoting a more narrow definition of the scope of the regulation. Finally, as regards the extension to EU agencies, Europol and Eurojust are requesting exemptions - Eurojust wanting to be excluded from the scope altogether (the Lisbon Treaty only provides for exceptions for the European Investment Bank (EIB), the European Central Bank (ECB) and the European Court of Justice (ECJ)).

The Lisbon Treaty has been in force for over ten years, but there is still no prospect of the adoption of a new regulation adapting the regime for public access to documents to the Treaty requirements. In its resolution of 2 April 2014 on the mid-term review of the Stockholm Programme, the Parliament reiterated its call for a revision of the 2001 Regulation and stressed the need to adopt a new instrument providing significantly more transparency and ensuring an effective implementation of Article 15 TFEU.

In its resolution of 28 April 2016 on public access to documents for the years 2014-2015 (Rule 116(7) of Parliament's Rules of Procedure), Parliament expressed regret that revision of the 2001 Regulation was still being stalled by the Council.

On its meeting of 16 October 2019, EP's Conference of Presidents, took a decision on how to proceed with the so called "unfinished business" files. According to that document, work will resume on regulation 2008/0090(COD) on public access to European Parliament, Council and Commission documents, while the Parliament should request the Commission to withdraw the regulation (2011/0073(COD)).

On 4 September 2019, Evin Incir (S&D, Sweden) was appointed rapporteur.

References:

- EP Legislative Observatory, [Procedure file on Public access to European Parliament, Council and Commission documents](#),

2011/0073(COD)

- [Regulation No 1049/2001 regarding public access to European Parliament, Council and Commission documents](#)
- European Commission, [Proposal for a Regulation regarding public access to European Parliament, Council and Commission documents](#), COM(2008)0229
 - EP Legislative Observatory, [Procedure file on Public access to European Parliament, Council and Commission documents](#),

2008/0090(COD)

- [The Lisbon Treaty](#)
- [Treaty on the Functioning of the European Union \(TFEU\)](#)
- [Parliament, Council and Commission documents](#), COM(2011)0137
- European Parliament, [Resolution on the deadlock on the revision of Regulation \(EC\) No 1049/2001](#), 2013/2637(RSP)
- European Parliament, [Resolution on the mid-term review of the Stockholm Programme](#), 2013/2024(INI)
- European Parliament, [Resolution on public access to documents for the years 2014-2015](#), 2015/2287(INI)

Further reading:

- European Parliament, [Openness, transparency and the right of access to documents in the EU. In-depth analysis for the Petitions Committee](#), June 2016
- European Parliament, Library, [Access to documents after Lisbon](#), Library Briefing, 2011

Author: Kristina Grošek, Members' Research Service, legislative-train@europarl.europa.eu

As of 20 November 2022.



RAPPORTEUR
Evin INCIR
LIBE