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Committee on Civil Liberties, Justice and Home Affairs

12.1.2006

PE 367.699v01-00

AMENDMENTS 1-14

Draft report

(PE 360.242v01-00)

Michael Cashman

with recommendations to the Commission on access to the institutions' texts
(2004/2125(INI))

Motion for a resolution

Amendment by Charlotte Cederschiöld

Amendment 1

Recital B, indent 1

- its implicit definition of legislative activity (Article 12) is too general and could create confusion with activities of an administrative nature. Moreover, the Regulation does not state that legislation should be debated and adopted in public by the Council and the Parliament, or that in addition to legislative initiatives, amendments submitted by the Member States should also be immediately accessible. ***Parliament, Council and the Commission should enter into discussions on preparatory documents and the publication of legislative texts in the Official Journal and of other texts in order to develop, in a constructive manner, the Commission Green paper on Transparency for 2006,***

Or. en

Amendment by Antonio Masip Hidalgo

Amendment 2

Recital B, indent 1

- its implicit definition of legislative activity (Article 12) is too general and could create confusion with activities of an administrative nature. Moreover, the Regulation does not state that legislation should be debated and adopted in public by the Council and the Parliament, or that in addition to legislative initiatives, amendments submitted by the Member States should also be immediately accessible. By the same token, all preparatory documents should also be accessible (irrespective of whether they are drawn up by the legal services of the institutions) so that decisions can be taken in full knowledge of the domain to be regulated, ***provided that Court of Justice case law is changed by its future judgment in the Turco case***. Furthermore, there is no clarification of the requirements regarding publication of legislative texts in the Official Journal or the organisation of that Journal (for instance, as far as the electronic edition is concerned),

Or. es

Amendment by Charlotte Cederschiöld

Amendment 3

Recital B, indent 3

- there is a clear need to define how specific documents can be totally or partially classified as confidential and for rules imposing a regular review of such classifications. Furthermore, it is contrary to the democratic principle on which the Union is founded that the European Parliament does not have a clear legal basis for accessing classified EU information, notably in cases where such access is also forbidden to or limited for national parliaments. ***In the same perspective, the rules should give Parliament better access to classified information. The new rules should be developed in an interinstitutional working group/committee.***

Or. en

Amendment by Elly de Groen-Kouwenhoven

Amendment 4

Recital C a (new)

- Ca. whereas the problems in the application of the Regulation have in some respects been linked to inadequate implementation; whereas the case-law of the Court of Justice relating to the Regulation has also revealed the need to specify and clarify some of the provisions of the Regulation, particularly those concerning documents***

produced by the Member States and third parties and the exceptions for investigations, legal advice and the "space to think",

Or. en

Amendment by Elly de Groen-Kouwenhoven

Amendment 5

Recital C b (new)

Cb. whereas the three institutions involved in the adoption of Community legislation still work on the basis of partially different sets of information; whereas the documents held by Parliament are, in general, public, while the Council and Commission are often in possession of classified documents and information which, in fields such as immigration and asylum policy and data retention and protection, are likely also to be used as a basis by those institutions for policy decisions in legislative matters to which Article 251 TEC applies,

Or. en

Amendment by Charlotte Cederschiöld

Amendment 6

Paragraph 1

1. Requests the Commission to submit to Parliament ***during 2006*** on the basis of Article 255 TEC, a legislative proposal on "the right of access to European Parliament, Council and Commission documents, and general principles and limits on grounds of public or private interest governing this right of access", ***which should be prepared in inter-institutional discussions and follow*** the detailed recommendations set out below;

Or. en

Amendment by Charlotte Cederschiöld

Amendment 7

Paragraph 2

2. Confirms that the recommendations respect the principle of subsidiarity, ***(deletion)*** the fundamental rights of citizens, ***the case-law of the ECHR, particularly that on Article 8, and Articles 7 and 8 of the Charter of Fundamental Rights;***

Or. en

Amendment by Charlotte Cederschiöld

Amendment 8

Recommendation 4, indent 2 a (new)

- *come into force on the same day as the new treaty/constitution in 2009 and respect earlier decisions, so that retroactive legislation is not introduced and previous contracts or presumed agreements are not breached;*

Or. en

Amendment by Charlotte Cederschiöld

Amendment 9

Recommendation 2, point (a), subparagraph 1 a (new)

The new inter-institutional committee/group on public access should, in order to ensure better access to documents and democratic scrutiny, discuss, amongst others, the following reforms:

- *access to preparatory documents which are linked to an identified decision-making procedure, so as to meet all of the relevant expectations of citizens in terms of transparency,*
- *access to debates in Parliament and Council when acting in their role as legislators,*
- *public-access rules or good practice for the drafting of legislation, so as to ensure that it is understandable, electronic publishing, consolidating basic texts and for the principles relating to the publication of such texts in the Official Journal, as well as the rules for multilingualism and the tasks of the Publications Office (OPOCE).*

Or. en

Amendment by Antonio Masip Hidalgo

Amendment 10

Recommendation 2, point (a)

- (a) **the notion of "legislative documents"**, which are currently defined in Article 12(2) of that Regulation as documents "...drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States", by adding a reference to the fact that the notion of (legislative) act should be reserved only for secondary law (with a direct legal basis in the Treaties), notably when

adopted by way of the codecision procedure in accordance with the procedure established by Article 251 TEC.

The Regulation should be amended in a way which obliges access to be granted:

- to all preparatory documents linked to an identified decisional procedure; access should be granted as of the moment when those documents are formally submitted by each institution taking part in the decision;
- to the Parliament or Council debate where these institutions are acting in a legislative capacity, and to the documents debated (if not classified, see Recommendation 3 below);
- to the identity of the author of each initiative or formal amendment;
- to complementary pertinent information or documents related to the meetings of the working bodies in the institutions, and to the contributions submitted by the secretariats of the institutions (including the legal services) where such documents are not simply administrative in nature, ***provided that Court of Justice case law is changed by its future judgment in the Turco case.***

The Regulation should also be the legal basis for establishing rules, good practices and interinstitutional agreements ensuring the better drafting of legislative texts and accessibility to the final legislative texts, such as the rules to be followed for

- drafting legislative acts,
- publishing them in electronic form in the Official Journal, and
- consolidating basic texts with their amending acts.

Therefore, the Regulation should determine the format of the Official Journal, the rules to be followed for multilingualism, and the mission of the OPOCE.

Or. es

Amendment by Elly de Groen-Kouwenhoven

Amendment 11

Recommendation 2, point (a)

- (a) the notion of "legislative documents", which are currently defined in Article 12(2) of that Regulation as documents "...drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States", by adding a reference to the fact that the notion of (legislative) act should be reserved only for

secondary law (with a direct legal basis in the Treaties), *(deletion)*

Or. en

Amendment by Elly de Groen-Kouwenhoven

Amendment 12

Recommendation 2, point (b), subparagraph 1

- (b) the notion of "non legislative documents", as *(deletion)* documents linked to acts which are not binding. In such cases, *(deletion)* access to documents should be the rule unless confidentiality is justified by the protection of the interests underlying an exception.

Or. en

Amendment by Elly de Groen-Kouwenhoven

Amendment 13

Recommendation 3, paragraph 1, introduction and indent 1

As Regulation (EC) No 1049/2001 does not currently clearly define the "... limits on grounds of public or private interest" which could delay or prevent access to the pertinent documents or parts of them (Article 255 TEC) the Commission should amend, in particular, Articles 4 and 9 of the Regulation by defining more clearly on which basis or objective elements specific documents may be classified as confidential or limited in their distribution, in order to protect the essential interests of the EU. ***The amended Regulation should make it clear that, regardless of the field of EU action, the grounds on which basic policy decisions are taken and legislation adopted must be in the public domain. There is also a need for clarification of the distinction between, on the one hand, the need for confidentiality as regards, for instance, planned on-going operations by security services and, on the other hand, the requirements of accountability and a posteriori control.*** Taking into account best practice in the Member States, Regulation (EC) No 1049/2001 should also contain precise rules for:

- ensuring that documents are not *(deletion)* classified as confidential ***as a matter of routine, simply because they refer to a issue which is or might be relevant from a security point of view,*** and

Or. en

Amendment by Charlotte Cederschiöld

Amendment 14

Recommendation 3, paragraphs -1 a and 1 b (new)

The Commission should assist in making it clear that political work should not become exploited by interest groups at an early stage of the legislative procedure. For example, an MEP should, when preparing a report, have the right not to disclose every source of information, which could be difficult if all the papers prepared by the secretariat are made public. Rules on transparency must allow committee secretariats to give advice without the risk of disclosure of such advice leading to embarrassment. Such rules must also allow expert legal advice to be provided without the risk of the EU institutions' position being undermined in subsequent legal procedures or by enabling lobbyists or interest groups to apply public pressure. The provision of expert advice before a text is made public (before formal submission) should be part of better regulation and, together with protection of personal data, should be regarded as an essential ingredient of good and responsible governance.

Regulation 45/2001 (data protection) and Regulation 1049/2001 (public access) are both guaranteed by the institutions. Article 29 Data Protection Working Group stressed on May 17 2001 that "personal data contained in an official document or held by a public administration is still personal and must be accordingly protected" In the ECHR's case-law, data protection is broadly interpreted, and in a background paper of July 2005 on Public access and data protection, the EDPS points to key elements such as "protection from disclosure of information given or received by the individual confidentially".

Or. en